



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date:
January 23, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Release Number: **202016019**
Release Date: 4/17/2020
UIL Number: **501.03-00, 501.03-30**

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Internal Revenue Code (IRC) Section 501(c)(3). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors can't deduct contributions to you under IRC Section 170. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under IRC Section 6110) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under IRC Section 6104(c)). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date:
November 4, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = State
x dollars = Amount

UIL:

501.03-00
501.03-30

Dear :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under IRC Section 501(c)(3)? No, for the reasons described below.

Facts

You were formed on B in the State of C. You will operate a community tavern and meeting place based on the idea that you can create a culture of philanthropy in a distinctive venue through selling locally brewed beer and wine to your supporters with sales proceeds being distributed to nonprofit organizations.

You will acquire locally produced beer from breweries in the community. You hope to make purchases at a discounted price or receive beverages as an in-kind donation. You did not specify how you will acquire wine or other goods sold.

You stated that if exempt status were granted, you would commence a fundraising Member Program that will have different levels of membership. A member will donate a specific amount with each level offering different benefits, similar to a sponsorship program. Benefits include free t-shirts or merchandise, opportunities to vote on potential non-profit organization beneficiaries, and special "member only events." Funds raised in years one and two through the membership program will go toward buying a property and the building of a permanent structure.

After the building is complete, funds raised through the membership program will go toward operations and sustainability of the organization. Once you are established, you will sell beer and wine with the proceeds being allocated to operations and a non-profit partnership program.

The non-profit partnership program will allow local organizations to apply to become a quarterly partner. On a quarterly basis, five types of local non-profit organizations will be represented: health, education, animal/environmental, human services/community, and arts. Sales proceeds will go directly to the chosen participating non-profit organizations through the partnership program.

The partnership program will also allow these organizations to educate the community on their mission and impact through various events, media, and marketing.

You will be supported by sales revenue and an estimated annual membership fee of x dollars.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, in order to be exempt as an organization described in IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged as well as the advancement of religion.

Rev. Rul. 71-581, 1971-2 C.B. 236, stated that an organization that operated a thrift store where substantially all of the merchandise sold had been contributed and more than half of the work performed was performed without compensation may be exempt under IRC Section 501(c)(3). The organization was organized by a group of nonprofit organizations exempt under Section 501(c)(3). The primary purpose for which the organization was formed was to serve the group of exempt organizations by performing an essential function for them of soliciting contributions of goods on their behalf and converting the contributed goods to cash for charitable uses.

Rev. Rul. 73-127, 1973-1 C.B. 221, held that an organization that operated a cut-price retail grocery outlet and allocated a small portion of its earnings to provide on-the-job training to the hard-core unemployed did not qualify for exemption under IRC Section 501(c)(3). The organization's purpose of providing job training for the hardcore unemployed was charitable and educational within the meaning of the common law concept of charity; however, the organization's purpose of operating a retail grocery store was not. The ruling concluded that the

operation of the store and the operation of the training program were two distinct purposes. Since the former purpose was not a recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

In Rev. Rul. 76-94, 1976-1 C.B. 171, an organization whose purpose was to provide a resident facility and therapeutic program for emotionally disturbed adolescents operated a grocery store as part of its therapy program. The grocery store was supervised by a manager who is experienced in both the retail food industry and in working with disturbed adolescents. All other employees were emotionally disturbed adolescents who were participating in the organization's program. The store was operated at a level to utilize only the number of adolescents residing at the facility. The ruling held that since the grocery store was almost fully staffed by the adolescent residents and was operated at a scale no larger than was reasonably necessary for the organization's training and rehabilitation program, the operation of the grocery store was not a related trade or business.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In American Institute for Economic Research v. United States, 302 F.2d 934, 157 Ct. Cl. 548 (Ct. Cl. 1962), the court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services included providing advice for purchases of individual securities. The court noted that education is a broad concept and assumed that the organization had an educational purpose. It concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court held that an organization did not qualify for exemption under IRC Section 501(c)(3) because it was primarily engaged in an activity that was characteristic of a trade or business and was ordinarily carried on by for-profit commercial businesses.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the court affirmed that an organization did not qualify for exemption under IRC Section 501(c)(3) because it operated its restaurants and health food stores for a substantially commercial purpose. Its underlying religious purposes did not mitigate the clear commercial purpose of its operations.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D. D.C. 2003), the court found that the organization was formed principally to organize, host, conduct, and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax-exempt entities but included patrons of a private and corporate nature. The organization paid significant advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its primary activity of operating a for-profit conference center.

In Zagfly, Inc. v. Commissioner, T.C. Memo 2013-29, the court held that the organization's primary activity, the operation of a web-based broker that would sell flowers at market rates, was not a charitable activity but rather a commercial activity that amounts to an unrelated trade or business. Therefore, the organization did not meet the requirements of IRC Section 501(c)(3) because its primary activity did not further a Section 501(c)(3) purpose.

Application of law

You are not described in IRC Section 501(c)(3) or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you fail the operational test. Specifically, the facts show that you are not operated exclusively for Section 501(c)(3) purposes because a substantial part of your activities consists of the operation of a tavern in a commercial manner.

While donating funds to other non-profit community organizations is charitable as described in Treas. Reg. Section 1.501(c)(3)-1(d)(2), your main focus is the operation of a tavern. Additionally, while some of the activities that take place in the tavern advance charity and education, more than an insubstantial portion of your activities serve a commercial purpose. Per Treas. Reg. Section 1.501(c)(3)-1(c)(1), you are not regarded as "operated exclusively" for one or more exempt purposes because you do not engage primarily in activities which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). Your primary activity is the operation of a tavern in a commercial manner.

Additionally, you do not meet the requirements of Treas. Reg. 1.501(c)(3)-1(c)(1) because more than an insubstantial amount of your activities furthers non-exempt purposes. Your operation of a tavern consists of providing beverages to the public for a fee. You are similar to the organization in Better Business Bureau of Washington, D.C., Inc., in that you have a substantial commercial purpose. You are like the organization in B.S.W. Group, Inc. because your primary purpose is commercial. Your tavern resembles a trade or business that is ordinarily carried on by commercial ventures organized for profit.

You are distinguishable from Rev. Rul. 71-581 in that you will sell products that are not donated. While you may have the common goal of donating the funds you make for charitable purposes, you do not anticipate donating funds to non-profit organizations until your building is constructed and you establish sustainability. Even if you do, contributing net profits to charity does not make an organization exclusively charitable.

You are similar to the organization described in Rev. Rul. 73-127 because the operation of the tavern and your program to partner with other organizations are separate and distinct activities. Since the operation of the tavern is a substantial part of your activities and does not further an exclusively charitable purpose, you are not organized and operated exclusively for 501(c)(3) purposes.

You are not similar to the organization ruled in Rev. Rul. 76-94 because the operation of your tavern is your main function and your planned charitable programs are secondary to your tavern activities.

You are similar to the organizations described in the American Institute for Economic Research, B.S.W. Group, Inc., Living Faith, Inc., Airlie Foundation, and Zagfly, Inc. because the operation of your tavern constitutes a substantial non-exempt commercial activity.

Conclusion

Based on the facts and circumstances presented, we conclude that you do not qualify for recognition of exemption from federal income tax as an organization described in IRC Section 501(c)(3). Your tavern activities are indistinguishable from similar activities of an ordinary commercial enterprise.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements