



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Number: 202017034  
Release Date: 4/24/2020

UIL Number: 501.03-30, 501.33-00

**Date:** January 30, 2020

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Form you must file:**

**Tax years:**

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:**

December 2, 2019

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = Date

C = Date

M = State

P = Geographic area

**UIL:**

501.03-30

501.33-00

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 stated below.

**Facts**

You submitted Form 1023-EZ, *Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on B. You attested on Form 1023-EZ that you are organized and operated exclusively to further charitable and educational purposes. You also attested that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3).

During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations. You incorporated on C in the state of M. Your purpose, as stated in your Articles of Incorporation, is to advocate on behalf of mobile food catering professionals in your area. Your Articles of Incorporation do not limit your purposes to one or more exempt purposes within the meaning of IRC Section 501(c)(3).

You describe yourself as a professional association comprised of independent food truck owners and operators in P with the mission of helping your members grow their businesses. To help you achieve your mission, your members are required to follow best practices you established. These requirements include:

- Maintaining all required state permits, local licenses, and a minimum insurance policy;
- Adhering to local and state laws pertaining to food truck zones and vehicle parking and storage laws;

- Demonstrating food safety practices that meet or exceed industry standards;
- Complying with all local, regional, and state health and fire department codes and requirements;
- Posting your member decal in their truck for public visibility; and
- Sharing with other members any mobile catering opportunities that they are not able to fulfill.

Failure to adhere to any of the guidelines may result in immediate removal of the member. You also encourage members to join other professional associations as a means of attracting additional exposure and ultimately more revenue for their business.

Your website lists many reasons for vendors to join your organization. You manage an online catering inquiry form that corporate, private, and community organizations use to submit catering requests to members. You also grant members opportunities to vend at exclusive events you sponsor, provide regulatory support and advice, and offer access to discounts on items such as food purchases, vehicle wraps, cooking equipment, and food truck manufacturing. In addition, your website advertises your members' food truck businesses and includes links to their respective websites.

Your website also assists your members in staffing their food trucks and provides information on financing providers you vetted to identify those who offering the best funding options. In addition, it includes links for businesses from which members can purchase supplies, equipment, and food.

You also host educational opportunities designed to help your members experience increased mobile food vending opportunities. You hold meetings every other month where you discuss topics that affect your members and their respective businesses, including fire safety and local health department codes and requirements. You also hold quarterly classes on topics such as food costing, marketing, public relations, social media, website design, and food menu design. These activities are designed to help your members better serve the public and improve their businesses.

You occasionally host educational seminars that charge a nominal fee. The fees generated are donated to local non-profit organizations. You also host food drives following natural disasters and distribute donated items to local food banks and other non-profit organizations conducting food assistance programs.

You are supported by membership dues, event fees, and donations. Your expenses include professional fees, office equipment and supplies, printing and marketing materials, telecommunications, equipment purchases, sponsorships and donations.

### **Law**

IRC Section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, for an organization to be exempt under IRC Section 501(c)(3), it 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 or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization will be regarded as organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of 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)(1)(ii) provides that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest.

Revenue Ruling 68-504, 1968-2 C.B. 211, held that a nonprofit organization formed and operated to conduct an educational program for bank employees in a particular urban area may qualify for exemption under IRC Section 501(c)(3).

Revenue Ruling 69-632, 1969-2 C.B. 120, describes a nonprofit organization composed of members of a particular industry to develop new and improved uses for existing products of the industry. It was held not to be exempt under IRC Section 501(c)(3) because any public benefit was secondary to the private benefit derived by the organization's members.

Revenue Ruling 71-504, 1971-2 C.B. 231, describes an organization exempt under IRC Section 501(c)(6) that primarily directed its activities to the promotion of the common business purposes of its members. The organization could not be reclassified as an organization described in Section 501(c)(3) because its activities were directed primarily at the promotion of the medical profession and thus furthered the common business purpose of its members.

Revenue Ruling 71-505, 1971-2 C.B. 232, describes an organization exempt under IRC Section 501(c)(6) that primarily directed its activities to the promotion and protection of the practice of law. The organization could not be reclassified as an organization described in Section 501(c)(3) because its activities were directed primarily at the promotion of the law profession and thus furthered the common business purpose of its members.

Revenue Ruling 74-553, 1974-2 C.B. 168, describes an organization whose principal activity is directed to establishing and maintaining standards for the quality and costs of medical services. Its primary objective is to maintain the professional standards, prestige, and independence of the organized medical profession and thereby furthers the common business interest of the organization's members. It did not qualify for exemption under IRC Section 501(c)(3), in part, because more than an insubstantial amount of its activities furthered the private interests of its members.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court determined the activities of that organization were aimed at promoting the prosperity and standing of the business community and therefore, served a substantial private purpose. It concluded that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

### **Application of law**

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have failed to meet both requirements, as explained below.

Your Articles of Incorporation do not limit your purposes to exclusively IRC Section 501(c)(3) purposes. As a result, you do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Therefore, you have not satisfied the organizational test.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will not be regarded as exempt under IRC Section 501(c)(3) or operated exclusively for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Substantially all the activities you conduct are for the benefit of your members and are directed primarily at the promotion of business. Therefore, you have not satisfied the operational test.

You are not operated exclusively for exempt purposes under Treas. Reg. Sec. 1.501(c)(3)-1(d)(1)(ii) because, like the organizations described in Revenue Rulings 69-632, 71-504, 71-505, and 74-553, substantially all your activities are directed primarily at promoting and improving the businesses of your members.

You are unlike the organization described in Revenue Ruling 68-504. While some of your activities are educational, substantially all your activities are directed primarily at the promotion of business and thus further the common business purposes of your members.

While some public benefit is derived from your activities, including the distribution of funds and goods to non-profit organizations, a more than insubstantial part of your activities is directed primarily at the promotion of business and thus furthers the common business purposes of your members. According to the court in Better Business Bureau of Washington, D.C., Inc., such a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of exempt purposes the organization serves.

### **Conclusion**

Based on the above facts and analysis, you do not qualify for tax exemption under IRC Section 501(c)(3) because you are neither organized nor operated exclusively for purposes described in Section 501(c)(3).

You do not meet the organizational test outlined in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) because your Articles of Incorporation do not limit your purposes to one or more exempt purposes.

You do not meet the operational test outlined in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you have the substantial non-exempt purpose of advancing the common business interests of your members, which furthers private interests.

Accordingly, you do not qualify for exemption under IRC Section 501(c)(3).

### **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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements