



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

Number: **202021025**  
Release Date: 5/22/2020

UIL Number: 501.03-00, 501.33-00

Date: February 27, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:  
1120

Tax years:  
All

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). 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 Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. 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 Section 6110 of the Code) 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 Section 6104(c) of the Code). 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 23, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date  
M = State  
C = Date  
N = City

**UIL:**

501.03-00  
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 in the state of M on C. Your Articles of Incorporation state that your primary purpose is to support a local-based food system that:

- improves public health and well-being by increasing dietary intake of fresh fruits and vegetables;
- improves access to fresh fruits and vegetables by limited resource families;
- enhances the capacity for sustainable food production, processing, and distribution by addressing the educational needs of producers;
- supports tourism and economic development in the region by providing a profitable retail outlet for local agriculture producers, artisans, crafters, food vendors, and their goods, and;
- strengthens the social fabric of the local community by increasing awareness and support of local agriculture and the arts.

Your Articles of Incorporation also provide that you have two categories of members: producer/vendor and individual/non-vendor.

You operate a bi-weekly farmers' market from May to October with an additional indoor markets in November and December. Regional farmers and craftspeople within miles of N who grow, produce, or make craft items are eligible to be vendors at the market.

You grant regional non-profit organizations, support groups, and clubs that conduct programs involving health and well-being free access to the market in the form of booth space, supplies and equipment, labor, and technical assistance at or before the market. You also provide discounted space for beginning farmers and young entrepreneurs.

In addition, your governing body, market manager, and volunteers operate a booth providing information on local programs addressing food access, senior coupons, SNAP, WIC, and other federal and state nutritional programs.

You are supported by vendor fees that are set to cover your marketing and market manager costs.

### **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. No part of the net earnings may inure 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) 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 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 or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides the term "charitable" is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides that the term "educational," as used in IRC Section 501(c)(3), relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 69-175, 1969-1 C.B. 149, describes an organization created to provide bus transportation for school children to a tax-exempt private school. The organization was formed by the parents of pupils attending the school. The organization provided transportation to and from the school for those children whose parents belonged to the organization. Parents were required to pay an initial family fee and an additional annual charge for each child. The Service determined that “when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest.”

In Revenue Ruling 71-395, 1971-2 C.B. 228, a cooperative art gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under IRC Section 501(c)(3). It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

In Revenue Ruling 73-127, 1973-1 C.B. 221, the Service 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. 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.

Revenue Ruling 77-111, 1977-1 C.B. 144, in Situation 1, held that an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations is not operated exclusively for charitable purposes and does not qualify for exemption under IRC Section 501(c)(3). The overall thrust is to promote business rather than to accomplish Section 501(c)(3) objectives exclusively.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (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. The Petitioner's activities were largely animated by non-exempt purposes directed fundamentally to ends other than that of education.

In Ginsberg v. Commissioner, 46 T.C. 47 (1966), the court considered a collective organization created to dredge waterways. The majority of the funds for this activity came from owners of property adjacent to the waterways. The court found that the primary beneficiaries were the adjacent property owners. Any benefit to the general public because these dredged waterways would be a safe harbor for boats during a storm was secondary. Therefore, the organization was not exempt because of the significant private benefit provided.

### **Application of law**

You are not described in IRC Section 501(c)(3) because you fail the operational test set forth in Treas. Reg. Section 1.501(c)(3)-1(a)(1). Specifically, you are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The facts show that you are not operated exclusively for charitable purposes. You are operated to facilitate sales for the benefit of growers and producers at your farmers' market. For a fee, you provide space at which your vendor members sell their goods directly to the public. The fee

covers the cost of marketing and your market manager. Your operations result in substantial private benefit to vendors of products at your market.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) requires an organization show that it is not organized or operated for private interests. Although your market includes educational information and you provide free space to non-profit organizations, more than an insubstantial part of your activities are in furtherance of the non-exempt purpose of being a profitable outlet for your vendors to increase their sales. You not only provide the outlet for them to sell their products, you provide marketing and cover overhead expenses that the vendors would otherwise have to expend. Your activities provide a substantial private benefit to vendors. Therefore, you do not qualify for exemption under IRC Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides the term "charitable" is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination. You did not provide evidence that you limit your services to the poor and distressed, or that your operations are in a deteriorated or blighted area. While you do plan to offer some charitable services, such as giving space to local non-profit organizations conducting programs related to public health, this is incidental to your operation of a market for the sale of goods.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" as used in IRC Section 501(c)(3) relates to the instruction of the public on subjects useful to the individual and beneficial to the community. While you will provide some educational services, such as offering information on government nutritional programs, this is incidental to your operation of a market for the sale of goods.

You are like the organization described in Rev. Rul. 69-175 because you were formed by a group of vendors joining together to sell their products. Vendors pay a fee to participate in the market. By associating together and providing a cooperative service among themselves, your vendors are serving a private rather than a public interest.

Similar to the cooperative art gallery described in Rev. Rul. 71-395, you provide a venue for selling items that advance private interests. As explained in the ruling, an organization that operates for the purpose of exhibiting and promoting the sales of products for the benefit of private individuals does not qualify for exemption under IRC Section 501(c)(3). Similar to the organization described in the ruling, you are not operated exclusively for charitable or educational purposes. Even though providing space to non-profit organizations and offering educational information may be charitable and educational in some respects, it is not your primary purpose.

You are similar to the organization described in Rev. Rul. 73-127 because the operation of the farmers' market, the granting of free space to non-profit organizations, and the operation of an educational booth are three distinct purposes. Because the operation of your market is not an exclusively charitable or educational purpose, you are not operated exclusively for exempt purposes.

Your activities are similar to the management and marketing activities conducted by the organization described in Rev. Rul. 77-111. Like that organization, by conducting advertising and marketing as well as managing the market facility, you are engaged in activities that promote business in the market place generally rather than accomplish exclusively charitable purposes described in IRC Section 501(c)(3).

As held in Better Business Bureau of Washington, D.C., Inc, a single non-exempt purpose, if substantial, will preclude tax exemption under IRC Section 501(c)(3). The operation of your farmers' market, a substantial part of your activities, is a non-exempt purpose.

You are similar to the organization described in Ginsberg. The primary beneficiaries of the activities of your market are your members who are selling their products. Any public benefit is secondary to the sale of goods.

### **Conclusion**

You do not qualify for recognition of exemption under IRC Section 501(c)(3) because you fail the operational test. You operate for the private benefit of your vendors by providing them with a forum to sell their products to the public. This is a substantial non-exempt purpose, which precludes you from exemption under 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

