



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **202022006**
Release Date: 5/29/2020

UIL Number: 501.03-05, 501.32-00,
501.33-00, , 501.36-00

Date:
March 5, 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 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 4034, *Proposed Adverse Determination Under IRC Section 501(a)*

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:

January 16, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

M = State

B = Date

C = Vehicle

N = District

D = Date

x dollars = Amount

UIL:

501.03-05

501.32-00

501.33-00

501.36-00

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 incorporated in the state of M on B. Your Articles of Incorporation provide that you are organized to manage and administer commercial C operations and associated facilities in accordance with N's requirements and the laws of M. Your bylaws specify that you conduct such activities consistent with the requirements of IRC Section 501(c)(6) and identify your members as companies operating commercial C tours on N's land.

You indicated that N, _____ of the state of M, agreed to allow commercial C tours using its land to continue if your members agreed to pay for park maintenance and to provide a phone number for public inquiries regarding commercial operations at the park. N charges your members a fee for use of its land of x dollars per customer, which it collects monthly and requires to be paid in the form of one check covering all members' fees. You were formed to comply with N's requirements and pay the necessary expenses.

You entered into an agreement with N on D. The agreement outlines usage limits and operating procedures and requirements for commercial C tours using N's land and is only with your members. Pursuant to the contract, no

new business can conduct commercial C tours unless it purchases one of the existing members' businesses. The existing member would then surrender its membership certificate, and a new one would be issued to the purchaser.

You are required to maintain appropriate insurance policies to provide liability protection to N. Your members evenly split all costs associated with the agreement, including park maintenance, garbage pickup, restroom maintenance, phone bills, and accountant fees. Each member pays monthly dues for their portion of use of the park.

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(b)(1)(i) provides that an organization is not organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

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 an applicant must show that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 69-175, 1969-1 C.B. 149. describes a nonprofit organization, formed by parents of pupils attending a private school, that provided school bus transportation for its members' children. It was held this served a private rather than a public interest and did not qualify for exemption.

Rev. Rul. 71-395, 1971-2 C.B. 228, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under IRC Section

501(c)(3). The ruling concluded that the cooperative gallery served the private purposes of its members, even though the exhibition and sales of paintings may be an educational activity in other respects.

Rev. Rul. 75-286, 1975-2 C.B. 210, concerns a nonprofit organization whose membership is limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block. Although the activities benefited the community as a whole, they also provided private benefit by enhancing members' property rights. The organization therefore did not qualify for exemption under IRC Section 501(c)(3).

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945), the Supreme Court held that the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

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.

In Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973), the Fourth Circuit held that operating for the benefit of private parties constitutes a substantial nonexempt purpose.

Application of law

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you are not organized and operated exclusively for purposes described in IRC Section 501(c)(3).

You do not meet the organizational test provided by Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) because your organizing document does not limit your purposes or dedicate your assets to one or more exempt purposes described in IRC Section 501(c)(3). Rather, your organizing document indicates that you were formed to manage and administer commercial C operations and associated facilities in accordance with N's requirements and the laws of M. Further, your organizing document is silent as to how any remaining assets will be distributed upon dissolution.

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities involves operating for the benefit of your members. You were formed to ensure that your members meet their obligations under the agreement with N so they can continue commercial C tour operations.

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you do not show you serve a public rather than a private interest. Specifically, you serve the private interests of your members by allowing them to continue business operations as commercial C tour companies on the land owned by N.

You are like the organizations described in Ginsberg, Rev. Rul. 69-175, and Rev. Rul. 71-395. You were formed by your member C tour operators to comply with N's requirements for the members' commercial C tours to continue. Your members share the costs of expenses through monthly dues and a fee paid to N for each passenger. Your purpose is to assist your members in fulfilling a financial obligation to N. This shows that you

are operating for the convenience and private interests of your members. Any benefit to the general public through park maintenance is secondary.

You are similar to the organization in Rev. Rul. 75-286. Although your park maintenance activities benefit the public in certain respects, they are conducted as a requirement for your members to continue commercial C operations and therefore confer a substantial private benefit upon your members. As provided by Old Dominion Box Co., operating for the private benefit of your members constitutes a substantial non-exempt purpose, which, as held by Better Business Bureau of Washington, D.C., precludes exemption under IRC Section 501(c)(3).

Conclusion

Based on the information submitted, you are neither organized nor operated exclusively for one or more purposes described in IRC Section 501(c)(3). Your organizing document does not limit your purposes or dedicate your assets to one or more exempt purposes described in IRC Section 501(c)(3).

In addition, although your park maintenance activities benefit the public in some respects, you are primarily operated for the private benefit of your members' for-profit businesses, which constitutes a substantial non-exempt purpose.

Accordingly, you do not qualify for exemption as an organization described in 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 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