



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

Number: **202031010**  
Release Date: 7/31/2020

UIL Number: 501.00-00, 501.35-00

Date: May 8, 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 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: March 11, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

X = Date

Y = State

**UIL:**

501.00-00

501.35-00

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 were formed on X in Y as a domestic for-profit limited liability company.

Your activities consist of operating a used car dealership, which is opened daily. You sell as well as service used cars. You have two directors who are husband and wife who are responsible for your daily operations and are compensated. Other paid employees include salesmen and mechanics.

Your income is solely from the sale of used cars and from repair services that you provide. Your expenses include compensation, rent, utilities, auto parts and inventory purchases.

Your website describes you as a family owned and operated dealership that offers quality used cars for sale, auto services and vehicle finance options

**Law**

IRC Section 501(c)(3) exempts from taxation any corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or

international amateur sports competition, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

IRC Section 513(a) describes an “unrelated trade or business” as any trade or business the conduct of which is not substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 501 Code.

IRC Section 513(c) provides that a “trade or business” includes any activity which is carried on producing income from the sale of goods or the performance of services. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides 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 IRC Section 501(c)(3). If an organization fails to meet either the organizational or 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(e)(1) provides that an organization may meet the requirements of IRC Section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in IRC Section 513.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978) the Court considered an organization which provided consulting services to groups that were mostly IRC 501(c)(3) organizations. The organization charged fees for its services set close to its own cost. The court concluded that there was nothing to distinguish its activities from those of an ordinary commercial consulting enterprise and therefore did not qualify for exemption.

In Airlie Foundation v. Internal Revenue Service, 283 F. Supp. 2d 58 (D.D.C., 2003), the Court determined the organization was operated for non-exempt commercial purposes rather than for exempt purposes because of the commercial manner in which the organization conducted its activities. The organization did not qualify for exemption.

### **Application of law**

You do not meet the requirements for recognition of tax exemption under IRC Section 501(c)(3) because you fail both the operational and the organizational tests.

You fail the organizational test for IRC Section 501(c)(3) because you were formed as a for profit limited liability company under Y. Moreover, you fail the operational test because your sole activity is the conduct of a trade or business for the production of income. You conduct no other activity aside from selling and servicing

used cars at rates similar to that of for-profit businesses. You provide your products and services to anyone willing to pay for them. Compensated employees also conduct your operations on a regular and continuous basis. You also offer financing options to qualifying customers. This shows that you operate in the same manner as any other used car dealership and repair service provider. Based on Treas. Reg. Section 1.501(c)(3)-1(e)(1), you do not meet the requirements for recognition of tax exemption under Section 501(c)(3) because you are operated for the primary purpose of carrying on an unrelated trade or business, as defined in IRC Section 513(a) and IRC Section 513(c).

Furthermore, you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You are not operating per Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you operate for a substantial nonexempt commercial purpose. Your activities consist of operating a used car dealership and service provider on a daily basis open to the general public, similar to that of a for profit business.

You are comparable to the organization described in B.S.W. Group, Inc. v. Commissioner, because your activities constitute the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Like a for-profit business, your revenues are solely from fees paid by customers for your products and services. Paid employees conduct your operations. Therefore, based on the information, you are operating for substantial nonexempt purposes.

You are similar to the organization described in Airlie Foundation v. Internal Revenue Service, supra. The fact that you sell products and provide services to the public for a fee directly competes with other businesses that provide similar products and services. Like any commercial business, your products and services are available to any individual or organization willing to pay your fees.

### **Conclusion**

Based on the above facts and analysis, you do not qualify for tax exemption because you are neither organized nor operated exclusively for purposes described in IRC Section 501(c)(3). You were formed as a for profit limited liability company and you are operating for a nonexempt business purpose. Accordingly, you do not qualify for 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