



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

Number: **202032007**
Release Date: 8/7/2020

UIL Code: 501-00-00, 501.03-00,
501.35-00, 501.36-00

Date:
May 12, 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

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:
March 5, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State

C = Date

t percent = Number

u percent = Number

w percent = Number

x percent = Number

y percent = Number

z percent = Number

UIL:

501.00-00

501.03-00

501.35-00

501.36-01

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 are currently exempt under IRC Section 501(c)(6) as a chamber of commerce. You have now submitted a Form 1023 and are requesting a change in subsection to Section 501(c)(3).

You were incorporated in the State of B on C. You amended your Articles of Incorporation to include the necessary IRC Section 501(c)(3) provisions prior to submitting your current application.

You provide education on the benefits of historic preservation, produce public events, coordinate volunteer upkeep of public spaces, and provide educational programs for small businesses and entrepreneurs. You also claim to ease the burdens of government.

Your activities also include promoting the benefits of shopping at locally-owned businesses, supporting local farms with your farmers' and artisans' markets, conducting market analysis to focus economic development

efforts, and engaging in reinvigorating your downtown city district. You encourage economic development by providing educational and promotional opportunities for small businesses and entrepreneurs. You said your popular event series attracts locals and tourists alike to shop, dine, and be entertained in the historic downtown district.

Over the most recent four-year period, your revenues derive from the following categories and approximate percentages:

| | |
|---|-----------|
| Gifts, grants, and contributions | u percent |
| Admissions, vendor fees, and merchandise sold | w percent |
| Membership dues | x percent |

Your website highlights local vendors in the categories of shopping; dining; nightlife; property; economic opportunities; area attractions; arts and culture, lodging; services; and, event venues. Your website also describes your multiple membership levels, and states one of the benefits of being a dues-paying member is representation on issues at the local, state, and national levels. Your business memberships promise advertising for members, featured on your website, newsletters, radio ads, and social media.

You provided additional information to clarify your activities. You said your activities include programs as such landscaping on public property, litter clean-up, grant writing, support for area non-profits, small business education, historic preservation activities, and multiple public events. Additionally, your programs also include the following, which account for y percent of your time and z percent of your resources:

- Farmers' and artisans' markets
- Shopping events to promote local merchants, and
- Small business assistance and promotion activities.

Clarification was sought regarding your economic development programming criteria. You do not limit your economic development services to businesses within a charitable class, nor do you limit your services to an area governmentally designated as blighted or deteriorated. Clarification was also sought regarding whether you are lessening the burdens of government. You only produced documentation that your programs were favorably recognized by your municipality, and that they supported your applications to compete for honorary awards.

Law

IRC Section 501(c)(3) provides for exemption for organizations 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, 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) states that in order to meet the operational test, 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.

Revenue Ruling 61-170, 1961-2 C.B. 112, held that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under IRC Section 501(c)(3). Although the public received some benefit from the organization's activities, the primary benefit of these activities was to organization's members.

Rev. Rul. 68-167, 1968-1 C.B. 255, held that a nonprofit organization created to market the cooking and needlework of needy women may be exempt from tax under IRC Section 501(c)(3). The organization operated a market where it sold the cooking and needlework of these women who were not otherwise able to support themselves and their families. The organization provided a necessary service for needy women by giving them a market for their products and sources of income.

Rev. Rul. 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 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 recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

Rev. Rul. 74-587, 1974-2 C.B. 162, describes a nonprofit organization that qualified for exemption under IRC Section 501(c)(3) by providing low-cost loans to businesses in economically depressed areas. Because of lack of development capital, limited entrepreneurial skills of business owners, social unrest and instability in the area, and depressed economic conditions in the larger region, many businesses in the target areas had declined, fallen into disrepair, or failed. The organization combats these conditions by providing working capital, either through low-interest loans or purchases of equity interests, to businesses that cannot obtain commercial financing.

Rev. Rul. 76-419, 1976-2 C.B. 146, describes an organization that purchased blighted land in a depressed area, converted it into an industrial park, and leased the land to business tenants who were required to hire and train a significant number of unemployed persons living in the area, and was held to be exempt under IRC Section 501(c)(3). The organization was funded pursuant to a public law providing for the such programs in areas with urban blight, little industry, and high unemployment and underemployment of low-income persons.

Rev. Rul. 77-111, 1977-1 C.B. 144, describes two separate organizations which were denied exemption. The purpose of the first organization was to increase business patronage in an economically deteriorated area. Although the first organization's activities may further charitable purposes, they were not limited to members of a charitable class. The overall thrust was to promote business in general, rather than to accomplish exclusively IRC Section 501(c)(3) objectives. The second organization sought to combat economic decline of an urban area by constructing a shopping mall to make the area more competitive with outlying shopping areas. The second organization failed to further primarily charitable purposes because it primarily benefited businesses that were located in the shopping center.

Rev. Rul. 85-2, 1985-1 C.B. 178, describes an organization providing legal assistance for guardians *ad litem*, which was found to be lessening governmental burdens, and, thus, qualified for exemption under IRC Section 501(c)(3). For an organization to be lessening the burdens of government, the organization's activities are activities that a governmental unit considers to be its burdens, and such activities actually 'lessen' such governmental burden. To determine whether an activity is a burden of government, the question to be answered is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government.

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 preclude exemption under IRC Section 501(c)(3), regardless of the number or importance of truly exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include, inurement, private benefit, and operations that further nonprofit goals outside the scope of Section 501(c)(3).

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the petitioner's sole activity was to offer consulting services for a fee to limited-resource organizations engaged in various rural-related activities. Some of its clients were exempt organizations, but not all. The fees charged were set at-cost or close to cost but were not less than its full cost of providing its services. It failed to show it would not be in competition with commercial enterprises. The organization was denied exemption because it operated in a commercial, non-exempt manner. The Court held that the organization was not operated exclusively for charitable, educational or scientific purposes within the meaning of IRC Section 501(c)(3).

In Easter House v. United States, 488 U.S. 907, 109 S. Ct. 257 (1988), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code because a substantial purpose of the agency was a non-exempt commercial purpose. The court rejected the organization's argument that the adoption services merely complemented the health-related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiffs adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in Section 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of a certain religious group does not qualify under IRC Section 501(c)(3). The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial non-exempt purpose, including that the operations were presumptively commercial. The organization competed with restaurants and food stores, used profit-making pricing formulas consistent with the food industry, and incurred significant advertising costs.

Application of law

You are not described under IRC Section 501(c)(3) because you are not operated exclusively for purposes designated therein as required by Treas. Reg. Section 1.501(c)(3)-1(a)(1). While you do operate some programs which are generally considered to be charitable and educational within the meaning of Section 501(c)(3), you also operate more than an insubstantial amount of non-exempt programs, which precludes you from exemption, as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

By operating markets and retail events and providing assistance and promoting small businesses not of a charitable class, you are providing private benefit to vendors, rather than serving the public interest. You are not operated exclusively for exempt purposes, as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii); rather, you are operated for the benefit of private interests and are precluded from exemption.

Similar to the organization described in Rev. Rul. 61-170, your activities of operating markets and retailing events, and providing assistance and promotion to small businesses, may give rise to employment opportunities, but the primary benefit is derived by the vendors. This serves a substantial private benefit rather than a public benefit and precludes you from exemption.

The manner in which you operate markets and retail events and provide assistance and promotion to small businesses is not similar to the circumstances in Rev. Rul. 68-167. You do not apply any charitable class restrictions to the vendors at your markets or events, or who limit who may receive your promotional assistance. Your markets and marketing assistance are not serving a charitable purpose.

Similar to the organization in Rev. Rul. 73-127, you have retail operations. However, the organization in this ruling also provided job training activities for the unemployed. You do not have such a training program. Even with job training activities, it was found in this case that the retail operations served an overshadowing commercial purpose, separate from and eclipsing the adjacent charitable and educational program. While the retailer in question could not gain exemption even with their charitable educational program, you have retail activities for the public and do not have a formal educational program.

You are not like the organization found to be performing exempt economic development activities described in Rev. Rul. 74-587 because you are not operating in an economically depressed area with limited resources, facing further decline. You do not limit your support to businesses that cannot obtain resources elsewhere. Your economic development activities may benefit any business and are not limited to assisting charitable classes, and thus, are not described with Section 501(c)(3).

You are not like the exempt organization performing economic development activities, described in Rev. Rul. 76-419, because you are not operating in a blighted area, you are not offering jobs training to unemployed or

underemployed persons, and you were not funded by a public law to provide such programs. Your economic development activities are not limited to those described within IRC Section 501(c)(3).

The two denied organizations described in Rev. Rul. 77-111 were both attempting to qualify for exemption by performing economic development in designated economically deteriorated areas. Your economic development activities are not being performed in an economically deteriorated area. Further, you are not limiting your support to a charitable class as the two denied organizations had done. Your economic development activities are not performed for charitable classes or in a designated blighted zone, thus, are not described within IRC Section 501(c)(3). Your activities benefit private interests of the businesses, rather than the public.

Based on the assertions of Rev. Rul. 85-2, you are not lessening the burdens of government. You have provided no manifestation that a governmental unit considers your activities to be their burden. You only provided a laudatory document from your municipality, but this does not substantiate that you are lessening the burdens of government. You do not meet the criteria for lessening the burdens of government.

You are similar to the denied party in Better Business Bureau of Washington, D.C., Inc. because you are not exclusively formed for exempt purposes. While you do perform some functions that are charitable and educational within the meaning of IRC Section 501(c)(3), you also perform more than insubstantial non-exempt operations that benefit private parties. Your non-exempt purposes are substantial in nature, thus, destroying your claim for exemption.

In the manner that the denied petitioner rendered commercial services, charging at-cost fees in B.S.W. Group, Inc., your vendors also sell goods to the public. Your vendors' operations cannot be differentiated from regular commercially-operated retailers. Your market and retailing events are not offered to strictly charitable clientele and cannot be distinguished from commercial retailers.

You are similar to the denied party in Easter House because you have substantial non-exempt operations. Operating retail markets and providing assistance and promotion to non-charitable small businesses is not exempt, and accounts for more than an insubstantial amount of your time and resources.

You are similar to the denied organization in Living Faith, Inc. in that you have substantial operations that further a non-exempt purpose, and you have provided no evidence that you are not in direct competition with commercially operated retailers.

Your position

You state you were not formed for the purpose of operating markets nor retailing events, but that the markets and retailing events are operated for the purpose of "combatting the deteriorated state" of your city and lessening the burdens of the local government.

You state that the markets and retailing events are educational, give employment opportunities to the vendors, and accept Supplemental Nutrition Assistance Program (SNAP) benefits.

You also said you charge below market rates for vendor fees.

You state that as the markets and retailing event activities account for y percent of all of your activities, y percent of your time, and t percent of your resources, the public benefit substantially outweighs the gain of private individuals and entities.

Our response to your position

You state your area is deteriorated; however, you have provided no official declaration that is has been formally designated as such.

You state the markets give employment opportunities to vendors. As discussed in Rev. Rul. 61-170, providing employment opportunities is not, in and of itself, a charitable activity. It serves a private interest, rather than a public interest. And, as discussed in Rev. Rul. 73-127, even when an organization had a formal jobs training program for the hardcore unemployed, the operation of a commercial grocery store overshadowed that activity.

You state your farmers' markets accept SNAP benefits. The SNAP program simply pays the vendors for their goods through a third-party. Thus, there is no donative element from the vendors. Also, regular commercial grocery stores also accept SNAP benefits. Thus, this does not distinguish you from commercial operations.

Additionally, charging vendors below-market rate fees is simply an additional private benefit to the vendors.

You acknowledge that you spend a portion of your time and resources supporting activities that are not described within IRC Section 501(c)(3). You state that this amount should be acceptable in consideration of the other qualifying activities. Exemption under Section 501(c)(3) is based on programs exclusively serving qualifying purposes. Better Business Bureau of Washington D.C., Inc. and B.S.W. Group, Inc. show us that the presence of more than insubstantial amounts of non-exempt activities is sufficient to destroy the claim for exemption. Spending y percent of time and d percent of assets on non-exempt activities destroys your claim for exemption, as you are not serving exclusively Section 501(c)(3) purposes, which you acknowledge.

Conclusion

Based on the facts and circumstances, you do not qualify for exemption under IRC Section 501(c)(3), as you perform more than an insubstantial amount of non-exempt activities. Your retail markets are indistinguishable from similar commercial operations. The assistance and promotion you provide to small businesses serves a direct private benefit to the businesses. You do not meet the criteria of lessening the burdens of government, as you have not shown that the government considers your activities to be their burden. For these reasons, you fail the operational test and are not exempt under Section 501(c)(3).

Your exemption under IRC Section 501(c)(6) remains in effect.

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

cc: