



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities

PO Box 2508  
Cincinnati, OH 45201

Number: **202036007**  
Release Date: 9/4/2020

Date: JUNE 11, 2020

Employer ID number:

Form you must file:

Tax years:

Person to contact:

**UIL: 501.35-00, 501.36-01**

Dear \_\_\_\_\_ :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in 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 generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit [www.irs.gov](http://www.irs.gov).

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:  
Notice 437  
Redacted Letter 4034  
Redacted Letter 4038



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

**Date:** APRIL 2, 2020

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B – Date

C - State

D – Area of City

**UIL:**

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 were formed on B in the state of C. Your Articles of Incorporation state that you may engage in any and all activities that are lawful for a C non profit corporation that is exempt from federal income tax under IRC Section 501(c)(3). Furthermore, you are organized exclusively for Section 501(c)(3) purposes. In addition, a clause provides that upon dissolution your assets will be distributed for Section 501(c)(3) purposes.

Your Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, states that you were formed as the governing body responsible for planning, engineering, development, programming and operation of a comprehensive and transformative greenspace and transportation solution for the region's most densely populated and diverse region, D. The project will create a world class recreational, entertainment and self-sustaining destination while connecting D with various outlying areas to the west and east. A public greenspace will be created in an area with a deficit of greenspace as well as provide a transportation solution around one of the most congested and outdated transportation situations in the State of C. Funds will be derived from donations from both private individuals and businesses as well as state and federal grants. Your submitted budgets for your initial three years appear to be for planning and development (construction) of the project. No information was provided regarding the operation of the project after construction.

You provided additional information regarding your activities at our request. You will be responsible for three phases of the project. Phase 1 involves planning and engineering of the project including obtaining public and private funding for construction and long-term operation/maintenance. Phase 2 involves the development of the project including selecting the architects and contractors and managing the status progress of the construction. Phase 3 begins at the completion of construction at which point you plan to have ownership of land/greenspace above the transportation deck. You will subsequently be responsible for the upkeep, maintenance, operation and programming of the space. We requested detailed information regarding the types of recreational, entertainment and self-sustaining development that you planned to operate. Your response indicated that you planned to provide increased access to and use of high-quality nature for local residents and workers. Furthermore, development would support the needs of local stakeholders and provide revenue to operate and maintain the proposed transportation and greenspace improvements. The transportation problems you seek to solve are of the highway system owned and operated by C Department of Transportation (CDOT) and the greenspace you plan to develop will require air rights from CDOT. In addition, the Federal Highway Administration must agree to partner/approve parts of the project. You submitted several analysis studies (site/stormwater/structural) and a copy a comparable case studies report of similar decking projects in other cities. The study overview indicates that “decking” is the process of constructing a usable structural space above a new or existing roadway, railway or waterway. The study also includes your recommendations for the project. One of the recommendations is to identify major streams of revenue to finance the annual operating costs. Finally, the study recommends providing constant and consistent programming for everyone which will also deter crime and ‘shady’ activity.

We sent a second request for additional information to which you did not respond. The second request was for detailed information regarding the operation of the project. For example, we requested information regarding the programming and revenue streams that will be generated. Also, the involvement of government agencies, local stakeholders and how the greenspace will be used to address transportation issues in the area.

## **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.

Revenue Procedure 2020-5, 2020-1 I.R.B. 241, Section 3 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application. Section 6 (and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed.

In Universal Life Church, Inc. v. United States, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that “one seeking a tax exemption has the burden of establishing his right to a tax-exempt status.”

Pius XII Academy, Inc. v. Commissioner, T.C. Memo. 1982-97, aff'd. 711 F.2d 1058 (6th Cir. 1983), provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization's request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service's denial, stated "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant." The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 (2009), states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

#### **Application of law**

A ruling on exempt status is based solely on facts and representations in the administrative file. You have not provided supporting documentation to establish you meet the requirements of IRC Section 501(c)(3). Section 501(c)(3) sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3).

You have not submitted sufficient information establishing you are operated exclusively for IRC Section 501(c)(3) purposes. (See Universal Life Church, Pius XII Academy, La Verdad, New Dynamics Foundation and Ohio Disability Association) including detailed information regarding your planned activities that will be conducted in the greenspace as well as how you will generate revenue. Also, you have not explained how you will address transportation issues and any government involvement with the project. Therefore, there is not sufficient documentation to establish that you are exempt from taxation as required by Section 501(c)(3) and Rev. Proc. 2020-5. As in Universal Life Church, you have the burden of establishing that you qualify for tax exemption.

In Pius VII Academy, Inc., La Verdad, and New Dynamics Foundation, it was established that an organization must establish, through its administrative record, that it meets the requirements for exemption. Because you failed to provide sufficient details in your initial application and the additional documentation you provided did not meet the statutory and regulatory requirements for exemption, you have not established that you meet the requirements for exemption under IRC Section 501(c)(3). As provided in New Dynamics Foundation, any gaps in the administrative record will be resolved against the applicant. Similarly, in Ohio Disability Association, the court found that even when additional information was provided, but it contained generalizations and failed to clarify purposes, denial is justified. You did not provide supplemental information; therefore, we are unable to determine that you qualify for exemption.

## **Conclusion**

Based on the information submitted, you have failed to establish that you are operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3) of the Code and the related income tax regulations. Therefore, based on the administrative record, you fail to 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