



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities  
PO Box 2508  
Cincinnati, OH 45201

Number: **202040008**  
Release Date: 10/2/2020

Date: July 7, 2020

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

**UIL: 501.32-01, 501.33-00**

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: May 8, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date  
C = Name  
D = State  
E = Date  
F = Date

**UIL:**

501.32-01  
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 IRC Section 501(c)(3) on B. You indicated on the Form 1023 EZ that your mission is to manage and disburse monetary gift donations provided by residents of C for the employees at C. During review of your Form 1023-EZ, detailed information was requested supplemental to the information provided with your application.

Information that you provided shows that you were incorporated in D on E. Your purpose as stated in the Amendment to the Articles of Incorporation filed on F is:

To manage and disburse monetary gift donations provided by residents of C for the support staff at C, and said organization is organized exclusively for charitable purposes, including, for such purposes the making of distributions to support individuals within the group who may have fallen hard times and for the general welfare of individuals aided by the organization.

They further indicate that “Upon the dissolution of your corporation, the remaining assets will be distributed for one or more exempt purposes within the meaning of Section 501(a) of the Code”.

You are providing financial gifts to the support staff of C which is a retirement community. Because C does not pay bonuses to its support staff and prohibits them from receiving tips, you were formed by the residents of C so they can express gratitude to the support staff for the excellent service they provide to them. You describe the support staff at C as hourly workers with no benefits living below the poverty line. At the end of the year, the money collected is divided up among the support staff and is presented as holiday bonuses. You do not have an application or selection process for the payment of bonuses. All support staff receive bonuses.

Your source of income is the donations received from residents and their guests. Your expenditures are for the gifts/bonuses paid to the support staff at C.

### **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) of the regulations provides that in order to be exempt under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it does not qualify for exemption.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is 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 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) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization’s assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization’s articles or operation of law, be distributed for one or more exempt purposes

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 that 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 one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement of this subsection, the burden of proof is on the organization to show 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 57-449, 1957-2 C.B. 622 held that a trust formed to pay a certain sum to all the individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust. The beneficiaries were a group of identifiable individuals.

Revenue Ruling 67-367, 1967-2 C.B. 307 describes an organization that provided educational assistance to pre-selected specifically-name individuals, which did not qualify for exemption under IRC Section 501(c)(3).

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v Commissioner 2 TCM 905 (1943), the court determined a trust created for the benefit of an aged clergyman and his wife was not entitled to recognition of exemption under IRC Section 501(c)(3). The court concluded that the trust was a private trust rather than a charitable trust because it served private interests rather than charitable interests even though the elderly gentleman had financial need.

### **Application of law**

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3). You have failed to meet both requirements, as explained below.

The purpose in your Articles of Incorporation states in part that your purpose is to “To manage and disburse monetary gift donations provided by residents of C for the support staff at C. Because your Articles of Incorporation do not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), you fail the organizational test under IRC Section 501(c)(3). Furthermore, your Articles of Incorporation do not contain a dissolution clause required by Treas. Reg. Section 1.501(c)(3)-1(b)(4) which dedicates your assets exclusively to purposes in IRC Section 501(c)(3). This also causes you to fail the organizational test under IRC Section 501(c)(3).

You are not operated exclusively for exempt purposes because your activities do not accomplish one or more exempt purposes specified in IRC Section 501(c)(3) per Treas. Reg. Section 1.501(c)(3)-1(c)(1). You conduct an activity that provides direct benefits to predetermined individuals. that is more than insubstantial in nature. For this reason, you are not operating exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are like the organization in Rev. Rul. 57-449. You are formed to provide gifts/bonuses to pre-identified individuals, the support staff of C.

You are like the organization in Rev. Rul. 67-367. You are collecting donations throughout the year in order to pay bonuses to preselected individuals consisting of the staff of C. By paying bonuses to specifically named individuals, you are serving private interests rather than charitable interests. Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. This precludes you from qualifying for exemption under IRC Section 501(c)(3).

You are like the organization in Carrie Maxwell. You are raising funds to provide bonuses to the staff of C which is a preselected group of individuals as opposed to an indefinite class of individuals. This shows you are operating for noncharitable purposes even though the individuals may have established financial need.

### **Conclusion**

Based on the above facts and analysis, you do not meet the organizational test for IRC Section 501(c)(3) because your organizing document does not limit your purposes to one or more exempt purposes of IRC Section 501(c)(3). You also do not meet the operational test for IRC Section 501(c)(3) because you are operated for substantial nonexempt purposes. Accordingly, you do not qualify for exemption under 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](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