



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

Number: **202047010**  
Release Date: 11/20/2020

Date: August 25, 2020  
Employer ID number:  
Form you must file: 1120  
Tax years: ALL  
Person to contact:  
Name:  
ID number:  
Telephone:

UIL Number: 501.00-00, 501.33-00, 501.35-00

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:** June 26, 2020

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

X = State

Y = Date

Z = City

p = Numbers

q dollars = Amount

r = Number

**UIL:**

501.00-00

501.33-00

501.35-00

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

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (Code) Section 501(a). We determined that you don't qualify for exemption under Code 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 incorporated in X on Y. Your Articles of Incorporation state that you will be operated exclusively for charitable and educational purposes within the meaning of IRC Section 501(c)(3).

Your mission is to provide tools and opportunities for small business owners to build their brands, connect with their audiences, and hire more employees. To accomplish this, you will host events and talks for small businesses mostly consisting of vendors to make connections. Vendors include jewelry makers, packaged goods, artists, creators, chefs, woodworkers, clothing designers, tea makers, and leather good makers.

You have held many of these events in Z but are starting to expand to other cities. You produce up to \_\_\_\_\_ large scale events a year and then multiple smaller gatherings in between. The large-scale events run between \_\_\_\_\_ and \_\_\_\_\_ days and have attracted in the range of p individuals. The events are mostly free for members of the general public to attend.

For each event, you obtain a large venue that can accommodate the participating vendors typically up to r vendors. These venues may consist of spaces that you rent, closed streets and other public spaces that you obtain permits to use. You offer booth spaces and assign all vendors their own space. You decorate the space to encourage attendees to take photos and post to social media. You promote the events and vendors through social media. You also obtain the local news to cover your events.

To fund your events, you charge vendors booth fees in the range of q dollars that you stated are lower than other events of similar size. The fee charged depends on the amount of space the particular vendor needs. These fees are meant to help cover the cost of production. You also provide several "micro vendor" booth spaces. These are spaces for businesses that are not in a financial position to pay for a booth, so you sponsor most of their fee.

At every event you offer a DJ playing music and numerous food trucks selling food and drinks. You also offer a space at the venue dedicated to art, where attendees can just walk around, look at art from local artists, eat food, listen to music and talk with local makers and creators. Attendees can generally make purchases from the vendors. There are also informational booths dedicated to specific nonprofits.

All revenue comes from fees paid by vendors for booths and sponsorships. Expenditures are related to your events. Before every event, you offer educational meetings for any vendor looking to maximize their impact at the market. Although we asked, you did not submit any information on the content of these meetings.

## Law

IRC Section 501(c)(3) provides, in part, for the exemption from Federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where no part of the net earnings inures to the benefit of any private shareholder or individual.

Treas. Reg. 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 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(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.

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 private benefit, if substantial in nature, will destroy an organization's tax-exempt status regardless of the organization's other charitable purposes or activities.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under IRC Section 501(c)(3) because its activities

constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical Section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than “cost.” And finally, the corporation did not limit its clientele to organizations that were Section 501(c)(3) exempt organizations.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (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 the Seventh Day Adventist Church did not qualify for exemption under Section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the “commerciality” doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose.

### **Application of law**

You do not meet the requirements for recognition of tax exemption under IRC Section 501(c)(3) because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). A substantial portion of your activities consists of organizing events for small businesses for a fee in order for them to promote their businesses and sell their goods and/or services. Because you operate for substantial nonexempt private and commercial purposes, you are not operating exclusively per Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) . You are organizing events for small businesses for fees that are in the range of q dollars in order for them to promote and sell their products. This shows you are operating for the private interests of the small businesses and precludes exemption under IRC Section 501(c)(3).

You are similar to the organization described in Better Business Bureau of Washington, D.C., Inc. v. United States. Although you may have some educational purposes, the presence of the non-exempt commercial and private purposes of organizing events for small businesses for a fee precludes exemption under IRC Section 501(c)(3).

Similar to the organization in B.S.W. Group, Inc., your revenue consists only of booth fees and your expenses are dedicated to organizing events for vendors to sell their products. There is no indication you will charge fees that are below cost. Although you do sponsor some micro businesses and offer informational booths to non-profits, this is not your purpose. Organizing events for small businesses to promote and sell their products is not an inherently exempt activity but is a business that is ordinarily carried on by commercial ventures organized for profit.

You are similar to the organization described in Living Faith, Inc. that was denied tax exemption due to the

commercial nature of its operations. Your activity of organizing events for small businesses for a fee is indistinguishable from any ordinary commercial business. The fact that this activity accounts for your revenues and expenses shows this is a substantial purpose, precluding you from exemption under IRC Section 501(c)(3).

You are operated for a substantial nonexempt purpose like the organization described in Airlie Foundation. Applying the factors stated in this case, your provision of organizing events and renting booths for a fee directly competes with other providers of similar services. Like an ordinary business, your services are generally available to any individual or organization willing to pay your fees. Because of this demonstrated substantial nonexempt purpose, you are not exempt under IRC Section 501(c)(3).

## **Conclusion**

You are primarily operated to promote for-profit businesses. This is a nonexempt purpose which is not insubstantial in nature. A substantial nonexempt purpose prevents exemption under IRC Section 501(c)(3). Thus, your request for exemption under Section 501(c)(3) is denied. Donations to you are not deductible by the donor.

## **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