



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

Number: **202047013**
Release Date: 11/20/2020

UIL Number: 501.35-00

Date: August 25, 2020

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

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.

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 = Organization

UIL:

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 submitted Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on B. You attested on Form 1023-EZ you were incorporated on Y, in the state of X. You attested that you are operated exclusively to further charitable and educational purposes. You also attested that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Your mission statement on the Form 1023 EZ stated that you are a non-profit community venue that brings together farmers and neighbors in order to promote the important nutritional, environmental and community health benefits of purchasing food locally.

During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations.

Information in your bylaws shows that your purposes are:

- To provide growers and vendors within several miles of your community the opportunity to sell directly to the public;
- To promote the nutritional, environmental and the community health benefits of sustainable living;

- To create a unique atmosphere in which to appreciate the agriculture, arts, culture and character of the local community.

You accomplish your purposes through operating a farmer's market from Memorial Day weekend to the Saturday before Thanksgiving which operates on the lawn of a local family owned store who has been supportive of your operations. There is no cost to operate at this venue except for the permit fees required by the township.

You charge a fee to vendors to sell at the farmer's market which are based on your costs. Vendors have the option of selling periodically by paying a fee each time or vendors can choose to pay a seasonal fee and operate during the entire season. To encourage a new generation of farmers, first year participants at the farmers may request to have their first-year fees waived.

In addition, you provide a local artist table where a member of the local art council can display and sell their art. You also have a nonprofit table where community nonprofit organizations can set up to inform the community about their organizations. Furthermore, you:

- Offer special days during the year where you host activities for children and families such as scavenger hunts to teach about how food is grown;
- Have hosted workshops for community members including the basics of canning and freezing produce;
- Have collected bicycles for the local girls' and boys' clubs and shoes for recycling programs.

Your main source of revenue is vendor fees. However, you also receive some revenue from donations and sponsorships. Your largest expense is wages for the persons who provide administrative assistance such as management and coordination including paying a market manager consultant. The remainder of your expenditures are related to your operations including music and entertainment expenses, insurance and publicity.

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.

Treasury Regulation (Treas. Regs.) Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in Section 501(c)(3) of the Code, 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) 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 Section 501(c)(3) of the Code. 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 77-111, 1977-1 C.B. 144, in Situation 1, held that an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations is not operated exclusively for charitable purposes and does not qualify for exemption under Section 501(c)(3) of the Code. The overall thrust is to promote business rather than to accomplish Section 501(c)(3) objectives exclusively.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. The Petitioner's activities were largely animated by non-exempt purposes directed fundamentally to ends other than that of education.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals affirmed 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 under Section 501(c)(3) of the Code. The court found substantial evidence that the organization's activities furthered a substantial nonexempt 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 in IRC Section 501(c)(3) because you fail the operational test set forth in Treas. Reg. Section 1.501(c)(3)-1(a)(1). Specifically, you are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The facts show that you are not operated exclusively for charitable purposes. You are operated to facilitate sales for the benefit of vendors at your farmers' market. For a fee, you provide space at which your vendor members sell their goods directly to the public. The fee covers the cost of your operations. This results in substantial private benefit to the vendors of products at your market.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) requires an organization show that it is not organized or operated for private interests. Although you may conduct some charitable and educational activities at the market, more than an insubstantial part of your activities are in furtherance of the non-exempt purpose of being a profitable outlet for your vendors to increase their sales. Your activities provide a substantial private benefit to vendors. Therefore, you do not qualify for exemption under IRC Section 501(c)(3).

Similar to the organization denied exemption in Rev. Rul. 77-111, Situation 1, your overall thrust is to accommodate the sales of your vendors through conducting advertising and marketing as well as managing the market facility. Although you do provide some educational information, your objective is to provide a venue for the vendors to sell their wares.

Like the organization described in Better Business Bureau of Washington D.C., you have a substantial nonexempt purpose. For example, you devote a substantial amount of your time, resources and activities to creating an event for vendor sales. Your expenses are directed towards attracting potential buyers and facilitating sales. This substantial nonexempt purpose precludes exemption under IRC Section 501(c)(3).

Similar to the organization in Living Faith, you further a non-exempt commercial purpose. You have established a marketplace for vendors to come together and sell products to the general public at vendor established prices. Your activities are aimed at pairing potential buyers with sellers and facilitating sales transactions. This disqualifies you from the recognition of exemption under IRC Section 501(c)(3).

Your position

You provided a brief history of your operations. You previously operated under the fiscal sponsorship of Z. You then operated separately as a private foundation, which was automatically revoked for failure to file Form 990PF for three consecutive fiscal periods. All of this happened under a different federal employer identification number.

In an attempt to get back in good standing and change your classification from private foundation to public charity, you obtained a new federal employer identification number, incorporated and filed the current application (Form 1023) on which we are ruling. You feel that your exemption should be restored.

Our response to your position

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in IRC Section 501(c)(3). Although you indicated that you previously operated under the fiscal sponsorship of Z and then separately as a Private Foundation under a different federal identification number, you have the burden of proving that you satisfy the requirements for tax exemption. Similar to the organization in Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), you have failed to provide sufficient information to prove to us that you are operating exclusively for purposes described in Section 501(c)(3). Further, determinations are based on the very facts and circumstances contained within each individual application.

Conclusion

Based on the facts and circumstances presented, you do not qualify for exemption from federal income tax as an organization described in IRC Section 501(c)(3) because you are not operated exclusively for exempt purposes. By providing vendors with an opportunity and venue to sell their products for a fee, you are operated for the substantial purpose of private benefit to vendors at your market as well as for commercial purposes.

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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements