



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

Date:
September 8, 2020
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:
ID number:
Telephone:

Number: **202049005**
Release Date: 12/4/2020

UIL Number: 501.00-00, 501.03-05, 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.

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:
July 16, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = State
D = Amusement ride
E = Organization
f dollars = Amount
g dollars = Amount
h dollars = Amount
j dollars = Amount

UIL:

501.00-00
501.03-05
501.35-00

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 were formed as a corporation on B in the state of C. Your purpose, per your Articles of Incorporation, is to inspire "families, memories, and communities to benefit families in helping their children heal, with charitable donations."

Your Bylaws state that your purpose is to:

- a. Preserve the history of the D
- b. To provide a fun filled family entertainment destination for all ages
- c. To support the preservation of physical items from historic D or D builders within IRC Section 501(c)(3) that may be owned by other 501(c)(3) organizations, private individuals, or any other entity, and
- d. To raise funds through sponsors, donors, events and fundraisers, to donate to charitable organizations and help communities.

Your activities will consist of the following:

- a. You will offer rides on your D for f dollars and will be operating every day of the week with operating hours to be determined once operational.
- b. You will offer a Halloween walk-through event during the month of October and an annual Christmas light display. You will charge admission, which varies based upon age. There is no charge for children age five and under.
- c. You will provide party room rentals for a fee. The fee ranges from g dollars to h dollars during regular operating hours which includes two D rides per person. You may charge additional fees if rental is outside of normal operating hours.
- d. You will have a reception hall available for rent for at an estimated cost of j dollars. The fee includes day-ahead decorating. The hall will accommodate several hundred people and the rental will include free rides on your D for one hour, with an option to purchase additional hours at an additional fee.

Your board determined the fees you would charge by researching other similar organizations within the area. You based pricing off the median and low-end prices that other organizations charge per ride. All holiday display pricing and hours were determined based upon pricing of other displays around the country. Your board considered population and income of surrounding counties to set a price reasonable for the area. Rental rooms pricing was based upon research into other event centers by what event centers offered and what was included in the price.

You have a close connection with a tax-exempt organization called E. You and E share a board of directors. You will fund E with excess cash flow based on monthly profit margins and from donations from private individuals and/or companies.

Most of your revenue is from gross receipts from admissions. You will solicit donations via your website. Your largest expenses are for salaries and wages, compensation of officers, directors, and trustees, and occupancy.

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 of which inures to the benefit of any private shareholder or individual.

Treasury Regulation 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 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 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.

Revenue Ruling 67-216, 1967-2 C.B. 180, describes a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products qualified for exemption from federal income tax under IRC Section 501(c)(3). The organization's activities and exhibits are planned and managed by or in collaboration with person whose

business it is to inform and instruct farmers and the general public on agricultural matters, and the resulting displays are designed to be instructive. The presence at the fair of recreational features such as midway shows, refreshment stands, and a rodeo are incidental to the fair's overall educational purpose.

Rev. Rul. 77-366, 1977-2 C.B. 192, states that a nonprofit organization that arranges and conducts wintertime ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption under IRC Section 501 (c)(3).

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.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the organization provided consulting services for a fee to various tax-exempt and non-profit organizations. The organizations fees were set at or close to cost. The court concluded that those activities are not inherently charitable because they are of the type typically conducted by for-profit organizations. Even though the organization argued that its fees may in fact be lower than those charged by other firms, the court concluded that it was not enough to prove that organization's purposes are primarily exempt. The Court concluded that the petitioner is not an organization described in IRC Section 501(c)(3) because its primary purpose is neither educational, scientific, nor charitable, but rather commercial.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) state that an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You are not engaged primarily in activities that accomplish one or more exempt purposes specified in Section 501(c)(3) of the Code. You conduct substantial social and recreational activities, as well as hall-rental activities. These activities are not ones that further exempt purposes under Treas. Reg. Section 1.501(c)(3)-1(c)(1). Accordingly, you fail the operational test.

You are unlike the organization granted exemption in Rev. Rul. 67-216. In that ruling the recreational features of the organization's events were incidental to their overall educational purpose. There is no evidence that you have any educational or other exempt element to your operations.

Your activities are like those described in Rev. Rul. 77-366 because you conduct substantial social and recreational activities. Your activities are neither inherently educational or charitable, rather, they are social and recreational.

You stated that your purpose is to provide D rides, a Christmas display, a Halloween walk-through, and party room/reception rentals. According to Better Business Bureau of Washington, D.C., Inc., you fail to qualify for exemption from federal income tax due to the presence of a substantial non-exempt purpose.

Like the organization in B.S.W. Group, Inc., your activities are not inherently charitable. Rather, your primary purpose is providing recreational activities and rental facilities for a fee, which is a substantial non-exempt purpose. Although you state that you will donate excess cash to a related non-profit organization, this purpose is only incidental to your recreational activities and hall rental functions.

Conclusion

Based on the above facts and analysis, you do not qualify for exemption under IRC Section 501(c)(3) because you are not operated exclusively for exempt purposes within the meaning of Section 501(c)(3). You have the substantial non-exempt purpose of providing recreational activities, as well as rental facilities for a fee, for the general public. Accordingly, you do not 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.

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