



Department of the Treasury  
Internal Revenue Service  
Independent Office of Appeals

Date: **OCT. 13 2020**

Person to contact:  
Name:  
Employee ID number:  
Telephone:  
Fax:  
Hours:  
Employer ID number:

Number: **202101008**  
Release Date: 1/8/2021

Uniform issue list (UIL):

**UIL: 501.30-00**  
**501.33-00**  
**501.36-01**

**Certified Mail**

Dear

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") Section 501(a) as an organization described in Section 501(c)(3) of the Code.

We made the adverse determination for the following reasons:

You have not demonstrated that you will be operated exclusively for charitable, educational or other exempt purposes as required by section 501(c)(3) of the Internal Revenue Code. Rather, you appear to be operated primarily for the non-exempt purpose of providing operational support for the scheduling of ice hockey officials in exchange for fees. In addition, your primary activities more than incidentally serve the private interests of your member or affiliated hockey officials rather than public interests.

Contributions to your organization are not deductible under Section 170 of the Code.

You're required to file federal income tax returns on Forms . Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions 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).

We'll make this letter and the proposed adverse determination letter available for public inspection under Section 6110 of the Code after deleting certain identifying information. We provided to you, in a separate mailing, Notice 437, Notice of Intention to Disclose. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

<b>United States Tax Court</b>	<b>US Court of Federal Claims</b>	<b>US District Court for the District of Columbia</b>
400 Second Street, NW	717 Madison Place, NW	333 Constitution Avenue, NW
Washington, DC 20217	Washington, DC 20005	Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under Section 7428 of the Code.

You also have the right to contact the Taxpayer Advocate Service (TAS). 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 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.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosures:

cc:



**Department of the Treasury**  
**Internal Revenue Service**  
P.O. Box 2508  
Cincinnati, OH 45201

Date:

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B=  
C =  
D=  
F =

**UIL:**

501.03-00  
501.33-00  
501.36-01

Dear Applicant:

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 section 501(c)(3) of the Code? No, for the reasons stated below.

**Facts**

You were formed on B in the State of C as a nonprofit corporation. You amended your Articles on D. You included the following purpose clause in your Articles of Amendment:

Said organization is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under the section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code. The business activity for said organization is as follows: Provide operational support for scheduling of ice hockey officials in the state of C. Provide training and development for all on and off ice officials in the state of C.

Your bylaws state that you are organized

To associate and organize ice hockey officials registered with F, to facilitate registration, training, and development of those officials for the overall improvement of the quality of amateur ice hockey officiating. The Association shall provide a forum for discussion and a

medium for dissemination of information on ice hockey rules and interpretations to insure uniformity of rules interpretation and application; to develop more efficient and effective officials; to maintain the highest standards of officiating; and to create a better understanding between officials, coaches and players.

You are a membership organization. Membership in you is restricted to persons who have (1) paid all fees, dues and assessments as prescribed by the Board of Directors (2) has met the F registration requirements and are currently registered as an F on-ice official at any level or is an off-ice official registered with F as an affiliated (non-skating) official.

You are responsible for facilitating and maintaining all relations between ice hockey officials in the State of C. You provide scheduling for ice hockey officials who are independent contractors for all F games in the state of C. You bill the leagues for your services. You keep an administrative fee per game and pay the balance to the officials for their salaries. You state that you also provide a scholarship. The purpose of your scholarship program is to provide funding for hockey officials to attend training camp. Your scholarship program is 2 percent of your total activities. However, scholarship expenses are not reflected in your budgets

### **Income and expenses:**

Your financial data shows that currently all your revenue is from league payments for officiating services. In the future you may conduct fundraisers. Nearly all of your expenses are for the remuneration of members for their officiating services. The remainder are administrative expenses.

### **Law**

Section 501(c)(3) of the Internal Revenue Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, 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. Sec. 1.501(c)(3)-1(d)(1)(ii) assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically 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.

Treas. Reg. Sec. 1.501(c)(3)-1(e)(1) provides in part that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such

trade or business is in furtherance of the organization's exempt purpose or purposes. However, an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

In Rev. Rul. 61-170, 1961-2 C.B. 112, an association composed of professional private duty nurses and practical nurses which supports and operates a nurses' registry primarily to afford greater employment opportunities for its members is not entitled to exemption from Federal income tax under Section 501(c)(3) of the Code.

Rev. Rul. 69-175, 1969-1 C.B. 149 states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children the organization is enabling the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than a public interest. Accordingly, it is not exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 72-369, 1972-2 C.B. 245, describes an organization formed to provide managerial and consulting services at cost to unrelated nonprofit organizations exempt from Federal income tax under section 501(c)(3) of the Code to improve the administration of their charitable programs. Receipts of the organization are from services rendered. Disbursements are for operating expenses. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

In B. S. W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978) the court found that the taxpayer did not meet the operational test under Section 501(c)(3) because it was primarily engaged in an activity which was characteristic of a trade or business. B.S.W. Group was a corporation formed to provide consulting services in the area of rural-related policy and program development to tax-exempt and not-for-profit clients. It planned to hire independent paid consultants to perform the work and, although its policy was to provide the services at "cost," it would charge a nominal administrative fee for making the arrangements. Several of the taxpayer's planned service areas were of the sort ordinarily carried on for profit by commercial businesses such as banks, personnel agencies, and trash disposal firms, the taxpayer did not provide any free or below-cost services, and the taxpayer's clientele was not limited to Section 501(c)(3) exempt organizations.

### **Application of law**

You are not described in IRC Section 501(c)(3) because you are not operated exclusively for the purposes described in IRC Section 501(c)(3) as required by Treas. Regs. 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1).

You do not operate for public interests rather than private interests as required by Treas. Reg. 1.501(c)(3)-1(d)(1)(ii). You are like the association of nurses in Rev. Rul. 61-170 in that your activities serve the private interests of your membership by affording them employment opportunities, and, like the school bus cooperative in Rev. Rul. 69-175, by rendering services exclusively to your members.

Like B. S. W. Group, Inc and the organization described in Rev. Rul. 72-369, the character of your activities is essentially commercial. The leagues pay you to provide qualified officials to officiate their games. This is a business activity which is not inherently charitable, and as a general rule rendering such a service at cost, as B.S.W. Group and the organization described in Rev. Rul. 72-369 do, does not make it charitable. You are therefore operated for the primary purpose of carrying on an unrelated trade or business, and by the terms of Treas. Reg. Sec. 1.501(c)(3)-1(e)(1) are not exempt under Section 501(c)(3).

### **Conclusion**

You do not qualify for exemption under Section 501(c)(3) because you fail the operational test, being operated in a commercial manner, while serving the private interests of your members by finding employment for them, rather than a public interest.

### **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,

Director, Exempt Organizations  
Rulings and Agreements