



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

Number: **202102009**
Release Date: 1/15/2021

UIL Number: 501.00-00, 501.03-00, 501.03-30, 501.33-00

Date:
October 20, 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:
August 25, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

W = Date
X = State
Y = Individual
Z = Number

UIL:

501.00-00
501.03-00
501.03-30
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 Section 501(c)(3) of the Internal Revenue Code*. You attested on Form 1023-EZ that you are organized and 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 Form 1023-EZ states that your most significant activity is that you gather yearly for sociality and celebration of your heritage, as you learn/teach about your common ancestors and historical family ties. You perform a yearly service project to benefit the needy and contribute to the less fortunate.

During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations. You were formed as a corporation on W in the state of X. Your Articles of Incorporation state that your purpose is to "share family history, stories, information and sociality" and to "provide yearly charity/service project." The amendment to your organizing document provides that in addition to the purpose statement in the original Articles, that you are organized exclusively for "genealogical, charitable, educational purposes" including such purposes, the making of distributions to organization that qualify as exemption organizations under IRC Section 501(c)(3). Upon dissolution, any remaining assets would be irrevocably dedicated to genealogical educational

charitable purposes. Additionally, your Articles contain a provision that states that notwithstanding any other provision of this document, you shall not carry on any other activities not permitted to be carried on (a) by any organization exempt from federal income tax under Section 501(c)(3), or (b) by an organization, contributions to which are deductible under Section 170(c)(2).

Your Constitution and Bylaws lists your purposes as:

- a) To provide an opportunity for all members to meet together once a year.
- b) To promote social relationships and closer acquaintanceship among members.
- c) To foster and encourage appreciation for our great heritage and strive for further knowledge concerning your ancestor and his wives.
- d) To contribute to a charitable service project.

You want your family members to be informed about their history. You maintain a website with information concerning family events and genealogy. Your website indicates that you strive to connect your extended family by organizing opportunities to meet once a year and to foster an appreciation of your heritage. You gather annually for a luncheon at which family stories, sociality, music presentations, and information on family history are shared. Games and crafts are provided for youth in attendance.

The primary participants in your activities are direct descendants of Y. Membership is open to all direct descendants over the age of Z years old.

Each year your president selects a charitable organization to be the recipient of the annual service project. Monetary donations or in-kind donations are made. The service project is be completed on the day of the annual luncheon. In the past you have collected baby items for a homeless shelter and collected canned food items for a foodbank. Future plans include the provision of scholarships to descendants of Y for educational and charitable purposes.

You receive income from membership dues and donations. Your expenses include bereavement flowers, website, postage, rent, speakers, music, supplies, catering, and luncheon supplies such as cups, plates, etc.

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) states 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(b)(1)(i) provides that an organization is organized and operated exclusively for one or more exempt purposes of organization:

- (a) Limit the purpose of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purpose.

Treas. Reg. Sec. 1.501(c)(3)-1(b)(1)(iv) provides that in no case an organization shall be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in Section 501(c)(3).

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) states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish 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. Section 1.501(c)(3)-1(d)(1)(iii), Example 1, provides an illustration of when an organization serves a private interest, rather than a public interest:

(i) O is an educational organization the purpose of which is to study history and immigration. O's educational activities include sponsoring lectures and publishing a journal. The focus of O's historical studies is the genealogy of one family, tracing the descent of its present members. O actively solicits for membership only individuals who are members of that one family. O's research is directed toward publishing a history of that family that will document the pedigrees of family members. A major objective of O's research is to identify and locate living descendants of that family to enable those descendants to become acquainted with each other.

(ii) O's educational activities primarily serve the private interests of members of a single family rather than a public interest. Therefore, O is operated for the benefit of private interests in violation of the restriction on private benefit in paragraph (d)(1)(ii) of this section. Based on these facts and circumstances, O is not operated exclusively for exempt purposes and, therefore, is not described in Section 501(c)(3).

Revenue Ruling 71-580, 1971-2 C.B. 235, describes an organization formed by members of a particular family to compile genealogy research in order to perform religious ordinances of the religious denomination to which the family members belonged. It qualified for recognition of exemption under IRC Section 501(c)(3).

Rev. Rul. 80-301, 1980-2 C.B.180, describes an organization that had a membership open to all persons in a particular geographic area and provided instruction in genealogical research techniques. The organization qualified for exemption as an educational organization.

Rev. Rul. 80-302, 1980-2 C.B. 182, describes an organization formed to locate, acquire, restore and preserve all available genealogical records of a particular family. Membership was limited to lineal or legal descendants. The organization did not qualify for exemption. The activities served the private interests of its members.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

The Callaway Family Association, Inc. v. Commissioner, 71 T.C. 340 (1978), held that a family association formed as a nonprofit organization to study immigration to and migration within the United States by focusing on its own family history and genealogy does not qualify for exemption under IRC Section 501(c)(3). The association's activities included researching the genealogy of its members for the ultimate purpose of publishing a family history. The court stated that the association's family genealogical activities were not insubstantial and were not in furtherance of an exempt purpose. Rather, they served the private interests of the members.

In Benjamin Price Genealogical Association v. Internal Revenue Service, 79-1 U.S.T.C. P9361 (D. D.C. 1979), the Court held that an organization formed to disseminate information on, and to preserve documents relating to, the genealogy of Benjamin Price did not qualify for exemption under IRC Section 501(c)(3) because it was created and operated primarily for the benefit of the private interests of its members rather than exclusively for educational purposes.

Application of law

As explained in Treas. Reg. Section 1.501(c)(3)-1(a)(1), to be exempt as an organization described in IRC Section 501(c)(3), you must be both organized and operated exclusively for one or more of the purposes specified in such section. You have failed to meet both requirements, as explained below.

Your organizing document does not limit your purposes to exclusively IRC Section 501(c)(3) purposes. As a result, you do not meet the requirement of Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Your articles state your purpose, in part, is share family history, stories, information and sociality. The amendment to your Articles did not remove that purpose but added to it that you are organized exclusively for “genealogical, charitable, educational purposes.” You cannot be considered to be organized exclusively for one or more exempt purposes if the purposes stated in your articles of incorporation are broader than the purposes specified in Section 501(c)(3), as prohibited by Treas. Reg. Sec. 1.501(c)(3)-1(b)(1)(iv). Although you have a notwithstanding clause, that cannot cure your non-exempt statement of purpose, since the specific purposes named are inherently incompatible with Section 501(c)(3) purposes.

You do not meet the operational test of IRC Section 501(c)(3) because you are not operating exclusively for exempt purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). You do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you are operating for the private interests of your family members rather than the general public. Any benefit to the general public through your service project is merely incidental to the private benefit accruing to family members.

You are very similar to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(iii), Example 1, because your genealogy activities primarily serve the private interests of members of a single family rather than a public interest.

You are not like the organization described in Rev. Rul. 71-580 because your activities are not conducted to fulfill a religious ordinance. Rather, your stated purpose is to conduct genealogical research for your family so that you can celebrate your heritage and share sociality with your extended family.

Unlike the organization described in Rev. Rul. 80-301, you only perform genealogical research for your family members, and not the general public. You are like the organization described in Rev. Rul. 80-302 because your research is only related to

Similar to the organization described in The Callaway Family Association, Inc. and Benjamin Price Genealogical Association, you are not exempt because you are formed for the benefit of members of a particular family and you focus on your own genealogy and social purposes with limited charitable benefit. Therefore, you are operated for the private interests of your family members and do not qualify for exemption under IRC Section 501(c)(3).

Although you do conduct some charitable activities, you do not qualify for exemption under IRC Section 501(c)(3) because your social activities and genealogical research further a substantial non-exempt, private purpose as explained in Better Business Bureau of Washington, D.C., Inc.

Conclusion

Based on the information provided, you do not qualify for exemption because you neither organized nor operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). You fail the organizational test because your organizing document does not limit your purposes to those described in Section 501(c)(3). You also fail the operational test because you further a substantial non-exempt purpose by conducting social and genealogical activities for the members of a particular family, which furthers private interests. Therefore, 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. 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