



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

Number: 202102012
Release Date: 1/15/2021

UIL Number: 501-00.00, 501.03-05, 501.03-30, 501.35-00

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 18, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

X = Activities
Y = Date
Z = State

UIL:

501.00-00
501.03-05
501.03-30
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 Section 501(c)(3) of the Code? 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 attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under IRC Section 501(c)(3).

During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations. You were formed as a nonprofit corporation on Y in the state of Z. Your articles state your purpose to encourage education and high standards, promote ethical conduct and professionalism among your members and to promote a positive public image of the X industry in Z. Your Articles are silent regarding the disposition of your assets upon dissolution.

Your Bylaws state your objectives are:

- To encourage education and high standards of the X industry

- To conduct educational activities
- To promote and encourage ethical conduct within the industry
- To promote professionalism in the industry
- To promote increased use of effective industry products and services
- To promote the positive public image of the industry
- To analyze and inform the members of conditions, and laws which may affect the industry
- To represent the interests of the industry in contacts with the , related organizations as well as the general public, specifically those in Z
- To gather, analyze, public and disseminate to the industry, and the public information relevant to the industry
- To foster programs and services which will enhance the efficient and economic performance of the industry
- To establish group programs of insurance and retirement benefits and to engage in any lawful activity which will enhance the welfare of the industry and the members
- To serve as the voice of the profession in all matters pertaining to the industry in the state of Z, and
- To do any and all lawful acts to perform and furnish any and all lawful services which may be deemed to be useful or desirable in order to effectuate any of the above objectives or to conduct any of the above activities.

Your membership is available for owner-operators of X businesses or related businesses. You have paid membership levels. The highest membership includes benefits such as an additional donation to a fund, a listing of their business on your website, and an advertisement in your newsletter when they are selling equipment or want to post a job. The level of membership is similar, but with some restrictions on their voting rights and no additional donation to the fund. The level does not have voting rights and you will not advertise their business on your website.

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 exclusively for one or more exempt purposes only if its articles of organization:

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

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be

considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes.

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.

Revenue Ruling 71-504, 1971-2 C.B. 231, describes a city medical society exempt under IRC Section 501(c)(6), that primarily directs its activities to the promotion of the common business purposes of its members may not be reclassified as an educational or charitable organization under 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.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have failed to meet both requirements, as explained below.

Because your Articles of Incorporation do not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), you fail the organizational test in IRC Section 501(c)(3). Furthermore, your Articles are silent regarding the disposition of your assets upon your dissolution, which also causes you to fail the organizational test as described in Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You are not operated in accordance with Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are not exclusively engaged in activities that accomplish exempt purposes specified in IRC Section 501(c)(3). Your activities include conducting periodic meetings to discuss events related to the X industry to ensure members are kept abreast of common issues facing the X industry, including updates on state and federal regulations. These facts illustrate you have a substantial non-exempt purpose of promoting the common business interests of members who are independent owners and operators in the X industry. Therefore, you are precluded from exemption under IRC Section 501(c)(3).

You are like the organization described in Rev. Rul. 71-504. Some of your activities are educational and charitable, however, your activities of keeping your members abreast of industry changes as well as updates, promoting industry best practices, and providing your members ads for selling equipment and posting their job openings illustrates that a substantial portion of your activities is furthering the common business interests of members. This prevents exemption under IRC Section 501(c)(3).

You are like the organization in Better Business Bureau of Washington, D.C., Inc. Although you may have some educational and charitable purposes, this is secondary to the purpose of promoting your members' common business interests. The presence of this substantial non-exempt purpose prevents exemption under IRC Section 501(c)(3).

Conclusion

Based on the information submitted, you are not organized nor operated exclusively for one or more purposes described in IRC Section 501(c)(3). Your organizing document does not contain an adequate purpose or dissolution provision required for exemption under Section 501(c)(3). Moreover, even though some of your activities may be educational, you are operating for the substantial non-exempt purpose of promoting the common business interests of your members. Therefore, you are not described in 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