



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

Number: **202103014**  
Release Date: 1/22/2021

Date: October 27, 2020

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

**UIL: 501.03-00, 501.03-30**

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](http://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:**

B = Date

C = Location

D = State

E = Date

F = Location

G = Organization

**UIL:**

501.03-00

501.03-30

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 do not 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 IRC Section 501(c)(3) on B. You indicated on the Form 1023 EZ that your mission is to conduct an annual \_\_\_\_\_ festival in C.

We subsequently requested additional information as well as provided you a copy of your Articles of Incorporation obtained from the D's Secretary of State's website. These were filed on E. Your purposes as stated in the Articles of Incorporation are to:

- a) Provide F with a quality festival in which it will extend and promote F and its vicinity.
- b) Remain in good faith with the businesses and community of F.

They further indicated that upon the dissolution of your corporation, the remaining assets will be distributed to: "A successive organization with the same general purpose or then to G for use as the then current Board of Directors deems most beneficial, or then to be split between other not-for-profit charities as directed by the then current Board of Directors".

Information that you provided shows you conduct a -day festival which includes a beauty pageant, parade, corn hole and fishing tournaments, run event, car show, fireworks, game booths, art and craft booths, kids' activities and musical entertainment. No admission fees are charge. Your income is from registration fees to participate in some of your events and booth rental fees received from the art, craft, food, and commercial vendors.

Your expenditures include expenses associated with pageant t-shirts, sashes, prize money and food; parade trophies and prizes; games and sports related expenses; printing supplies; fireworks supplies and contracts; car show supplies, trophies and prizes; entertainment expenses for bands and advertising; fun run t-shirts and food; and security related expenses.

You are operated by a volunteer board of directors. Your event is promoted primarily through social media.

### **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) provides that in order to be exempt under IRC Section 501(c)(3) an organization must be organized and operated exclusively for one or more of the exempt purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it does not qualify for exemption.

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. Section 1.501(c)(3)-1(b)(4) which requires the dedication of remaining assets exclusively for purposes in IRC 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 that accomplish one or more 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. 18 describes a nonprofit organization that was formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products. It qualified for exemption from federal income tax under IRC Section 501(c)(3). The organization's activities and exhibits were planned and managed by or in collaboration with persons whose business it was to inform and instruct farmers and the general public on agricultural, and the resulting displays were designed to be instructive. The presence at the fair of recreational features such as midway shows, refreshment stands, and a rodeo were incidental to the fair's overall educational purpose.

Rev. Rul. 68-224, 1968-1 C.B. 262, describes an organization that conducted an annual festival centered around

regional customs and traditions. It was determined to qualify for exemption under IRC Section 501(c)(4). The festival took place in an agricultural region where interest in horses and Western traditions ran high and enjoyed the broad involvement of local citizens. It typically featured a banquet or barbecue, a parade made up of local organizations and floats depicting community history, various contests relating to dress and costumes traditional of the area, and a rodeo. The revenue ruling held that, in carrying on these activities, the organization provided recreation for the community and generally promoted civic betterments and social improvements.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court determined the activities of that organization were aimed at promoting the prosperity and standing of the business community and therefore, served a substantial private purpose. It concluded that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

### **Application of law**

You do not meet the two main tests set forth in of IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1). An organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3). You have failed to meet both requirements, as explained below.

The purposes in your Articles of Incorporation state that you provide a quality festival that promotes F and its vicinity, and fosters good faith among the businesses and community of F. 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 under IRC Section 501(c)(3). Furthermore, your Articles of Incorporation do not contain an adequate dissolution clause as required by Treas. Reg. Section 1.501(c)(3)-1(b)(4). Your dissolution clause provides that any remaining assets would be distributed to an organization with the same general purpose as yours. Any remaining assets must be dedicated exclusively for purposes described in IRC Section 501(c)(3). Therefore, this also causes you to fail the organizational test under IRC Section 501(c)(3).

You are not operating in accordance with Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are not primarily engaged in activities that accomplish exempt purposes specified in IRC Section 501(c)(3). Your primary activity of conducting a festival for the benefit of F serves a substantial recreational purpose. Therefore, you are precluded from exemption under IRC Section 501(c)(3).

You are not similar to the organization that qualified for 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 are operated exclusively for educational and charitable purposes within the meaning of IRC Section 501(c)(3). You are primarily organized and operated to provide recreation for the community, which is similar to the organization in Rev. Rul. 68-224. However, that organization was not granted exemption under IRC Section 501(c)(3).

You are like the organization described in Better Business Bureau. Although you may have some educational and charitable purposes, you are operated for a substantial nonexempt purpose. The presence of this substantial non-exempt purpose prevents exemption under IRC Section 501(c)(3).

### **Conclusion**

Based on the information submitted, you do not qualify for exemption under IRC Section 501(c)(3). You are not organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3). You do

not meet the organizational test because your organizing document does not limit your purpose or dedicate remaining assets upon dissolution to one or more exempt purposes described in IRC Section 501(c)(3). You also do not meet the operational test for IRC Section 501(c)(3) because you are operated for substantial nonexempt purposes. Accordingly, you do not qualify for exemption under IRC 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](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,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements