



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

Date:
November 10, 2020
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:
ID number:
Telephone:

Number: **202105011**
Release Date: 2/5/2021

UIL: 501.00-00, 501.03-05, 501.33-00

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:
 September 1, 2020
 Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

- B = State
- C = Permit type
- D = Date
- E = Date

UIL:

- 501.00-00
- 501.03-05
- 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 were incorporated in state of B on D as a mutual benefit corporation. In addition to stating that you are organized and operated exclusively for public and charitable purposes within the meaning of IRC Section 501(c)(3), your Articles state that your specific purpose is to provide disadvantaged adults suffering with cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine headaches, or any other illness for which marijuana provides relief who comes to your facility or uses your delivery services to feel cared for, valued, safe and respected. Your Articles further state your goal is to provide safe alternatives to treatment by toxic chemicals. Due to costly high-tech equipment and resources required for indoor cultivation of medical cannabis, the majority of the patients are unable to grow the medicine. You provide safe access to a wide variety of dried marijuana, edibles, extracts, and concentrates, in compliance with state and local law.

On E you filed a certificate of amendment to change from mutual benefit corporation to public benefit corporation. You also later attested that you had amended your Articles to limit your purposes to those described in IRC Section 501(c)(3) and that your organizing document does not empower you to engage, other than as an insubstantial part, in activities that do not further an exempt purpose.

You are seeking a foundation classification under Sections 509(a)(1) and 170(b)(1)(A)(ix), which describes an organization directly engaged in the continuous active conduct of agricultural research in conjunction with a college or university. You did not provide any information to indicate that you are working with a college or university, nor did you explain how you meet this classification.

Your narrative description of your activities lists three activities/purposes:

- 60% of your time you spend on providing a safe means for facilitating and coordinating transactions between qualified patient members and/or primary caregiver members relating to medical cannabinoids the production and provisions of which only being performed by our members. You charge a one-time member fee for this transaction and accept donations to fund this activity.
- 20% of your time is dedicated to providing safe access to a wide variety of dried marijuana, edibles, extracts, and concentrates. You charge a one-time member fee and accept donations to fund this activity.
- 20% of your time will be used for the cultivation of medical cannabis for your members to feel better naturally. This activity will be funded by donations only.

You are a membership organization. Members must provide a valid B state medical marijuana ID card along with a valid Driver's License or State ID card and complete a medical application before taking advantage of your services/products. Your members understand and agree that while medical cannabis has been authorized by people of B and its legislature and consistently upheld by all B courts, the federal government persists in enforcing portions of the Controlled Substances Act, which makes the possession and use of medical cannabis a federal crime.

All members must complete and sign Collective Membership Application and Agreement ("Collective"). One provision of the Collective indicates that members understand and agree to indemnify and hold you harmless from all alleged wrongdoing which may be the fruit of undercover investigations conducted by the patient during their membership. Any undercover officers, narcotics investigators with or without identification who join the collective and obtain information about the collective activities must acknowledge to relinquish all information and agree that said information may not be used in a court of law to support any testimonial evidence by the member/officer. The members certify that they have been advised by an authorized agent of the Collective that possession and use of marijuana for medical purposes might be a ground for prosecution under federal law. Before the member is admitted he/she must indicate if they would testify in court if you or any of your members were charged for criminal offences relating to cultivation, possession or transportation of medical marijuana.

All new patients/members agree that they have no associations with any law enforcement agencies or entities and agree not to mislead you by failing to admit that the new member is an undercover officer. All officers and law enforcement agents who pose as an undercover officer or not, agree that all criminal evidence discovered as a result of the officer being your member is irrelevant hearsay and inadmissible evidence in either a civil or criminal court setting. For these purposes all undercover investigations mean all evidence and witness information derived from the undercover officers posing as a new patient, including but not limited to any patients who may be informants, in witness protection programs, patients possessing fraudulent documents, licenses, or posing as sales reps or producers.

You inform members that any edible products they purchase from you have been made by your members but that, due to the current state of the laws in B and the County in which you are operating, said edibles have been

made in private kitchens that are not Certified Commercial Kitchens under B law. In addition, said edibles have been produced in kitchens by members that do not have a C permit.

You don't require members to participate in the cultivation process, however, as a part of the application process, you encourage and request that members participate in cultivation if they so desire and have skills, time, knowledge or other resources can be useful in cultivation process.

You indicated there is no facility currently, but once acquired, the facility would be set up in the form of the lounge/coffee shop where members will have the option to view products/items and consume them at one of designated tables or booth at their leisure.

You require all members to pay all personal out-pocket expenses and reasonable compensation for services related to providing medical marijuana to them and other member/patients. You indicated anyone can make donations of any amount at any time. At the same time, you established the prices on medical marijuana options to satisfy medical treatments your members have. All prices include local and state taxes. Registered members will have the option of discreet delivery services based on limited amount per delivery and location. You did not provide any information on how you determine the prices and if you provide the product free of charge if patient/member is not able to pay.

We requested additional information on three separate occasions. We received a response to our first two requests for additional information. Some of the details requested in our last (unanswered) request included how you meet the foundation classification you're seeking, your pricing strategies (at cost, below cost, above cost) and a breakdown of the types of the revenues and expenses you were anticipating. Several telephone calls were made to you regarding our request for additional information, but no calls were returned, and no response was received.

Law

IRC Section 501(c)(3) provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided no part of the net earnings 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 exempt purposes. 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 operates exclusively for exempt purposes only if it engaged primarily in activities that accomplish exempt purposes specified in IRC Section 501(c)(3). An organization will not be operated exclusively for exempt purposes 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)(ii) states that an organization is not operated exclusively for one or more exempt purpose unless it serves a public rather than a private interest.

21 U.S.C. Section 802(16) defines marijuana as “all parts of the plant *Cannabis Sativa L.* whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.”

21 U.S.C. Section 821(c), Sch. I(c)(10) lists marijuana as a hallucinogenic substance and includes it on schedule I of the Schedules of Controlled Substances. A schedule I substance is a substance that (1) has a high potential for abuse; (2) has no currently accepted medical use in treatment in the United States; and (3) there is a lack of accepted safety for use of the drug under medical supervision.

21 U.S.C. Section 841(a), known as The Controlled Substances Act, states that it is illegal for anyone to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance.

Revenue Procedure 2020-5, 2020-1 I.R.B. 241, Section 3 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application. Section 6 (and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed.

Revenue Ruling 61-170, 1961-2 C.B. 112, holds that a nurses' association, which maintains an employment register primarily for the employment of its members, is not entitled to exemption under IRC Section 501(c)(3). The organization is primarily engaged in the performance of personal services by operating an employment service principally for the benefit of its members. Public participation in the management and support of the organization is negligible. It draws its support primarily from members, and a board of trustees composed of professional nurses controls the organization without public participation of any kind. Therefore, the organization is not free from substantial private benefit considerations in the operation of the nurses' register.

Rev. Rul. 69-175, 1969-1 C.B. 149, holds that a nonprofit organization formed by parents of pupils attending a private school that provides school bus transportation for its members' children serves a private rather than a public interest. The organization's income approximately equals the expenses involved in its operations.

Rev. Rul. 73-349, 1973-2 C.B. 179, holds that an organization formed to purchase groceries for its membership at the lowest possible prices on a cooperative basis is not exempt as a social welfare organization described in IRC Section 501(c)(4). The organization was a private cooperative enterprise for the economic benefit or convenience of its members. Any benefit to the community was incidental to the benefit received by the members.

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

In Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. 1974), the court held that an organization has the burden of proving that it satisfies the requirements of the particular exemption statute. The court noted that whether an organization has satisfied the operational test is a question of fact.

In Federation Pharmacy Services, Inc. v. Commissioner, 625 F.2d 804 (8th Cir. 1980), the Tax Court stated that the sale of prescription drugs to senior citizens and handicapped persons is a trade or business normally carried on for-profit. The court ruled that sales of prescription drugs to the elderly and the handicapped even at a discount is not, without more, in furtherance of a charitable purpose. The Tax Court said that they failed to see how the fact that it happened to deal in drugs could convert it to an IRC Section 501(c)(3) organization. If it could be so converted, then so could a store be selling orthopedic shoes, crutches, health foods, or any other product beneficial to health. Virtually everything we buy has an effect, directly or indirectly, on our health. They concluded that they did not believe that the law requires that any organization whose purpose is to benefit health, however remotely, is automatically entitled, without more, to the desired exemption.

In Universal Life Church v. United States, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that “one seeking a tax exemption has the burden of establishing his right to a tax-exempt status.”

Pius XII Academy, Inc. v. Commissioner, T.C. Memo. 1982-97, affd. 711 F.2d 1058 (6th Cir. 1983), provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization’s request for tax-exempt status was reasonable.

In United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 121 S. Ct. 1711 (2001), the court reiterates that there is only one exception for cannabis: Government-approved research projects. “It is clear from the text of the Act that Congress has made a determination that marijuana has no medical benefits worthy of an exception.”

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service’s denial, stated “It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant.” The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

In Mysteryboy, Inc. v. Commissioner, T.C. Memo 2010-13 (2010), the Tax Court held that the organization failed the operational test partly because the organization proposed to promote illegal activities.

Application of law

An organization can be recognized as exempt under IRC Section 501(c)(3) only if it shows that it is both organized and operated exclusively for charitable, educational, or other exempt purposes. If an organization fails to meet either the organizational test or the operational test, it is not exempt, per Treas. Reg. Section 1.501(c)(3)-1(a)(1). You fail the operational test for two reasons: you did not provide all the information we requested and the information we have indicates that even if you did provide the requested information, you would not qualify for exemption.

You do not satisfy the operational test of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you did not provide all of the information we requested. Whether an organization operates exclusively in furtherance of an exempt purpose is a question of fact. An organization seeking tax-exempt status under IRC Section 501(c)(3) carries the burden of proving that it satisfies the requirements of the statute as discussed in Harding Hospital Inc.

As stated above, even if you did provide the additional information we had requested, your activities benefit your members only. Operating for private purposes rather than the public interest is in contravention of Treas. Reg. Section 1.501(c)(3)-1(c)(2). An organization that operates primarily for the benefit of its members serves the interests of a select group of individuals rather than the community or the public interest. A business or other activity that assists the community incidentally and only provides benefits to a limited number of members of the community more than incidentally is not charitable.

Additionally, you are formed to operate a medical marijuana dispensary for licensed marijuana medical card holders in B. Federal law does not recognize any health benefits of cannabis and classifies it as a controlled substance, as detailed in 21 U.S.C. section 812(c), Schedule I(c)(10). Federal law, under 21 U.S.C section 841, prohibits the manufacture, distribution, possession, or dispensing of a controlled substance. Additionally, as detailed in Oakland Cannabis Buyers' Cooperative, Congress has determined that marijuana, as defined in 21 U.S.C. section 802(16), has no medical benefits worthy of an exception to the general rule that the manufacture and distribution of cannabis is illegal. Current federal law prohibits the use of marijuana and cannabis except in limited circumstances; those limited circumstances do not include its use for medicinal purposes. The fact that your state legalized distribution of marijuana and cannabis for medical purposes is not determinative because under federal law, distribution of marijuana is illegal. Because you advocate and engage in activities that contravene federal law, you serve a substantial non-exempt purpose.

You are similar to organizations described in in Rev. Rul. 61-170, Rev. Rul. 69-175, and Rev. Rul. 73-349, where the organizations were created to benefit their members. You are a cooperative organization that cultivates and distributes cannabis only to your members. You have not provided any details on how the prices are determined, but members reimburse all expenses in addition to the reasonable compensation for your services related to providing them with medical marijuana. As a cooperative, your activities benefit private interests more than incidentally, which precludes exemption under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You sell goods to your members which you state benefit their health. You are like the organization described in Federation Pharmacy Services, Inc. because selling “health” items is not a charitable activity. Rather, you operate for the purpose of carrying on an unrelated trade or business and cannot be exempt under IRC Section 501(c)(3) per Treas. Reg. Section 1.501(c)(3)-1(e)(1).

As explained in Universal Life Church, you have the burden of establishing that you qualify for tax exemption. You have not provided supporting documentation to establish you meet the requirements of IRC Section 501(c)(3) as outlined in Pius XII Academy, Inc. and La Verdad. You have not provided the requested operational details, including pricing policies, sources of revenue, and how you engage in agricultural research in conjunction with a college or university. Therefore, you have not established that you are exempt from taxation as required by Section 501(c)(3) and Rev. Proc. 2020-5.

As provided in New Dynamics Foundation, any gaps in the administrative record will be resolved against the applicant. You did not provide supplemental information; however, based on the information we do have, it

appears that even if you had provided the required information, you would not qualify for exemption under IRC Section 501(c)(3) for the reasons described above.

In addition, in the case of Mysteryboy, it was found that the organization was not exempt because they were encouraging an activity that violated public policy as reflected in federal and state laws. Because your activity of providing medical marijuana is violating public policy, you do not qualify for exemption under IRC Section 501(c)(3).

Conclusion

Based on the facts and information submitted, you are not operated exclusively for exempt purposes as described in IRC Section 501(c)(3). You also did not establish that you are operated exclusively for charitable purposes and that you are not operated for the substantial private benefit of your members. While your marijuana dispensary activities may be considered legal at the state level where you operate, you are conducting substantial non-exempt activities as you are promoting an activity that is considered illegal by federal law. 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