



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

Number: **202122011**
Release Date: 6/4/2021

UIL Number: 501.00-00, 501.30-30

Date:
03/09/2021
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:
01/12/2021
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:
X = State
Y = Date

UIL:
501.00.00
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 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 incorporated in X on Y. Your Articles of Incorporation state that your purpose is to establish, develop, and operate recreational facilities for the promotion of the health and welfare of your members. Your Articles of Incorporation are silent regarding the disposition of your assets upon your dissolution.

You operate a golf course. Anyone may utilize your golf course by purchasing a membership certificate and paying current dues. For your facilities, the immediate families of members (except members of the family over years of age and members of the family who are married or have been married regardless of age) are permitted to use your facilities. Any guest of a member, or a non-member, may use your facilities by paying a daily green fee or any other charge as required.

Your members are divided up into categories: immediate family of members, family-one golfer, single, social, and student. Only members and their immediate families may have the privilege of reserving and/or using your clubhouse facility for private entertainment. Your members may reserve the ballroom for private entertainment. The fees for reserving the ballroom will be determined by the manager(s) and board of directors. The manager(s) may extend the use of your clubhouse facilities to clubs, social, and charitable organizations as they see fit, with the same conditions as members using the facilities. Members reserving the clubhouse for private entertainment are privileged to invite any quests they choose, including nonmembers.

Your clubhouse (including the golf course) is reserved for members and their guests. Your guests are permitted to use the facilities and golf course provided they are guests of a member who is in good standing and have paid all current dues and fees. Your members have the right to use any part of your clubhouse at any time during open hours, except the ballroom when it is reserved for private entertainment. There may be a cover charge for dances with permission from your board of directors. Visitors who play golf may be introduced by one of your members and will pay a fee per day on weekdays, weekends and holidays as posted in your clubhouse. The fee for part of a day is to be considered the same as a whole day. You sell liquor and other beverages in your clubhouse.

You receive dues from members and revenue from your clubhouse activities, which cover the cost of day to day expenses. You are seeking exemption so that you can apply for grants to maintain and repair your facilities for your members and future members.

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, for an organization to be exempt under IRC Section 501(c)(3), it 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 or 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 limit the purposes of such organization to one or more exempt purposes and 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 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 60-143, 1960-1 CB 192, found that social and recreational activities carried on by an alumni association of a university, which are merely incidental to its basic purpose and objective of advancing the interests of the university, do not of themselves preclude such organization from tax exemption under IRC Section 501(c)(3) as an association organized and operated exclusively for educational and charitable purposes.

Rev. Rul. 77-366, 1977-2 C.B. 192, stated that a nonprofit organization that arranges and conducts wintertime ocean cruises during which activities to further religious and educational purposes are provided in addition to

extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption under IRC Section 501(c)(3).

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.

In Media Sports League, Inc. v. Commissioner, T.C. Memo 1986-568 (1986), the court ruled that an organization that sponsored sports competitions for adults in the community was not exempt under IRC Section 501 (c)(3). The court found that the organization had the substantial nonexempt purpose of promoting the social and recreational interests of its members.

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.

Your Articles of Incorporation state that you were formed to establish, develop, and operate recreational facilities for the promotion of the health and welfare of your members. Because your organizing document does not limit your purposes to exclusively IRC Section 501(c)(3) purposes, you do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Additionally, your Articles are silent regarding the disposition of your assets upon your dissolution, which also causes you to fail the organizational test per Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You do not meet the operational test under 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). Your activities consist of providing recreational facilities for your members, which is neither exclusively educational nor charitable.

You are unlike the organization in Rev. Rul. 60-143 because your social and recreational activities are not incidental to any charitable or educational purpose. Golfing is the only activity that you offer for your members. These activities do not meet the requirements for tax exemption under IRC Section 501(c)(3). Rather, you are like the organization in Rev. Rul. 77-366 because you operate for substantial social and recreational purposes.

Your purpose is to operate a golf course for your members. Your purpose is not considered charitable or educational as described in IRC Section 501(c)(3). Because you are operating for substantial non-exempt purposes, as described in Better Business Bureau of Washington, D.C., Inc., you are precluded from exemption under Section 501(c)(3).

You are like the organization described in Media Sports League, Inc. because your social and recreational activities are substantial and preclude exemption under IRC Section 501(c)(3).

Conclusion

Based on the information provided, you do not qualify for exemption under IRC Section 501(c)(3) because you are neither organized nor operated exclusively for exempt purposes within the meaning of Section 501(c)(3). Your articles do not limit your purposes to those described in Section 501(c)(3) and are silent regarding the disposition of your assets upon your dissolution, causing you to fail the organizational test. You fail the operational test because operating a golf course for your members further a substantial non-exempt purpose. Accordingly, 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