



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

Number: **202125020**
Release Date: 6/25/2021

UIL Number: 501.03-00, 501.03-30, 513.04-00

Date: March 30, 2021

Employer ID number:

Form you must file:

Tax years: All

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: January 12, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
 C = Date
 D = City
 F = City
 G = Name
 p percent = Number
 q dollars = Amount
 r dollars = Amount

UIL:

501.03-00
 501.03-30
 513.04-00

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 incorporated in the state of B on C. According to your Articles of Incorporation, the purpose for which you were formed is "to act as a linkage to health care services while providing _____ services." The Articles do not include any provision for disposition of assets upon dissolution.

Your Bylaws state that your specific purpose is to "serve as a linkage to care and social support while offering _____ technician services and screenings to the community at large." By doing so, you "promote preventative health care screening, quality care, and _____ service efficiency by serving as a community resource and liaison to care and providing certified _____ services to assist in creating a more positive health care experience for the community at large."

According to your application for exemption, you were established to provide outpatients with select laboratory tests as requested by patients or health care providers. Your certified _____ technicians, as well as _____ students in training, will conduct timed tests and glucose tolerance tests in addition to any

requested general blood draw procedures. You will perform peripheral blood draws only on arms or hands, except for infants, where you will perform capillary collections on fingers or heels. Additionally, you will collect throat swabs for strep and flu as well as provide rapid testing that will be available for HIV, DNA, and other requested health conditions. Urinalysis and pre-collected stool samples will also be collected. G with whom you have a contract with will process your labs as needed.

Your services will be advertised to providers by mailing informational flyers. You will also request to meet with area providers to discuss and obtain buy-in regarding your services and their willingness to refer patients most eligible to receive services. Otherwise, your services will be advertised and marketed using radio promotions, local community calendars, and social media platforms.

Generally, patients will be referred to you by providers with whom you will form partnerships. You will require that these referring providers provide written or typed signed orders, which can be faxed, mailed, or patient-delivered with required patient information (full name, date of birth, provider name/address/phone/fax, provider signature, ICD-10 code(s) tests ordered, and any special collection).

You further indicated that you will primarily operate in the cities of D and F in B. You explained that while D has a significant number of laboratories, most of them are a part of hospitals or consist of G. While these other facilities are popular for their services, your facility provides a more intimate approach to and are more conveniently located in communities where travel to area hospitals and/or the universities are sometimes difficult, particularly for low-income and no-income individuals. Although there is a hospital in F, the area is considered moderately rural and services such as yours are in high demand due to the lack of such existing services in the area. You stated that your operations will also bring healthcare innovation to this moderately rural community, offering an opportunity for more laboratory tests to be performed more expeditiously but did not substantiate this.

You will initially be supported by fees for your services, but you anticipate receiving grants in the future from state and federal sources. When asked for a schedule of fees you charge for services, you indicated that you will follow the fee schedule established by the US Department of Health and Human Services, which will be provided to providers. You then indicated you will charge fees that range in price from q dollars to r dollars for walk-in services, including testing for COVID-19 Antibody, HIV Antibody, STI/STD, Pregnancy/HCG, Insulin (Rapid), and Urinalysis.

With respect to providing free or below cost services, you explained that referred patients who are un-insured or under-insured may apply for free or reduced testing. They will be required to complete a financial assessment to determine their eligibility for free or reduced services based on their income. You state these services will benefit the community because many community members are low income, yet do not qualify for services such as Medicaid or Medicare and have not opted for other plans under the Health Care Act. Your services will allow them an opportunity to receive necessary testing which could serve as a preventative or ultimate care measure.

You will also create a training program. This program will allow individuals to be trained in . Students will also be allowed to complete their required training hours using your facility. You will form relationships with local community colleges where certifications are being offered.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes where no part of the net earnings of which 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 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)(1)(iv) provides that in no case shall an organization 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 IRC Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

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.

Rev. Rul. 69-545, 1969-2 C.B. 117, holds that a non-profit hospital that benefits a broad cross section of its community by having an open medical staff and a board of trustees broadly representative of the community, operating a full-time emergency room open to all regardless of ability to pay, and otherwise admitting all patients able to pay (either themselves, or through third party payers such as private health insurance or government programs such as Medicare) may qualify as an organization described in IRC Section 501(c)(3).

Rev. Rul. 73-127, 1973-1 C.B. 221 held that an organization formed to operate a retail grocery store to sell food to residents of a poverty area at prices substantially lower than those charged by competing grocery stores, to provide free grocery delivery service to residents who need it, to participate in the federal food stamp program, and to provide job training for unemployed residents does not qualify for recognition of exemption from Federal income tax under IRC Section 501(c)(3). The size and manner of the food store operation and the facts relating to the actual purpose of the undertaking evidence that the operation of the store as a low-cost retail grocery outlet is in itself an independent objective of the organization not in furtherance of an exempt purpose.

Rev. Rul. 85-110, 1985-2 C.B. 166, addresses whether the performance of diagnostic laboratory testing by a tax exempt hospital upon specimens from patients of private physicians (who are not patients of the hospital) constitutes unrelated trade or business within the meaning of IRC Section 513. The hospital laboratory

performed diagnostic laboratory testing upon specimens obtained by non-employee staff physicians at non-hospital facilities from members of the public who were not hospital patients. The revenue ruling stated that commercial laboratories that performed testing identical to that performed by the hospital were available in the area and provided testing services on a timely basis. As such, the hospital laboratory's testing for the patients of private physicians who were not hospital patients constituted a separate trade or business. The revenue ruling also provides an exception to the general rule, stating in part...if other laboratories are not available within a reasonable distance from the area served by the hospital or are clearly unable or inadequate to conduct tests needed by hospital nonpatients, a hospital's testing services may further its exempt function of promoting community health. Whether such unique circumstances exist will be decided by the Internal Revenue Service on a case-by-case basis.

In Rev. Rul. 98-15, 1998-1 C.B. 718, the IRS noted that "not every activity that promotes health supports tax exemption under IRC Section 501(c)(3). For example, selling prescription pharmaceuticals certainly promotes health, but pharmacies cannot qualify for recognition of exemption under [Section] 501(c)(3) on that basis alone."

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), the Supreme Court held that the presence of a single non-exempt 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 (6th Cir. 1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979) aff'd 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 court said it was clear that petitioner's exclusive purpose for being was to sell drugs, an activity that is normally carried on by commercial profit-making enterprises. The Tax Court said that they failed to see how the fact that it happened to deal in drugs could convert it to a section 501(c)(3) organization. If it could be so converted, then so could a store 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 Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), it was held that if an activity serves a substantial non-exempt purpose, the organization does not qualify for exemption even if the activity also furthers an exempt purpose.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Your Articles of Incorporation do not include a purpose clause that limits your purposes to one or more exempt purposes. The purposes for which you were created are broader than the purposes specified in IRC Section 501(c)(3), specifically providing _____ services. Your organizing document does not contain a dissolution clause and you are unable to rely on the operation of state law. As a result, you have not satisfied the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i), 1.501(c)(3)-1(b)(1)(iv) and 1.501(c)(3)-1(b)(4).

You have also failed to establish that you are operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). Specifically, you have not established that you are operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The facts show you are operated for the purpose of performing laboratory testing services for referring providers and the public, primarily for fees. This illustrates that you have a substantial non-exempt commercial purpose which precludes exemption under IRC Section 501(c)(3).

Although an organization may carry on activities that further one or more tax-exempt purposes, it will not be treated as operated exclusively for an exempt purpose if it has a single non-charitable purpose that is substantial in nature. See Better Business Bureau and Schoger Foundation. The information provided shows that you offer laboratory testing services to the public and to referring providers. You do not operate as a hospital or provide health care services that benefit the community similar to the organization described in Rev. Rul. 69-545. Even a tax-exempt hospital that provides laboratory testing services to nonpatients was found to be operating a trade or business not in furtherance of their exempt purposes. Additionally, you are not exclusively serving areas that are devoid of other laboratory testing services. See Rev. Rul. 85-110.

You are similar to the organization described in Rev. Rul. 73-127. While you propose to operate in a low-income area and provide discounted services, the information you provided indicates your primary objective is to provide laboratory testing services for a fee, an independent objective not in furtherance of an exempt purpose.

Like the organization in Federation Pharmacy Services, Inc., your activities are normally carried on by commercial entities as a trade or business. While your laboratory testing services are ancillary to the promotion of health, not every activity that promotes health supports tax exemption under Section 501(c)(3). See Rev. Rul. 98-15.

Similar to the organization in Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), you have failed to provide sufficient information to prove to us that you are operating exclusively for purposes described in IRC Section 501(c)(3).

Conclusion

Based on the facts and circumstances presented, you have not shown that you qualify for exemption from federal income tax as an organization described in IRC Section 501(c)(3). The information provided shows that you are primarily providing laboratory testing services to the public and referring providers for a fee which indicates that you are operated for a substantial non-exempt purpose. Your operations are not exclusively charitable and resemble those of a trade or business. Therefore, you do not meet the requirements for recognition of tax 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 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