



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

Number: **202131012**
Release Date: 8/6/2021

Date:
May 11, 2021
Employer ID number:

Form you must file:

Tax years:

Person to contact:
Name:
ID number:
Telephone:

UIL: 501.03-00, 501.33-00, 501.36-00, 501.36-01

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: March 16, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

X = date

Y = state

Z = business name

UIC

501.03-00

501.33-00

501.36-00

501.36-01

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 on X in Y. Your Articles of Incorporation state you will provide a venue for farmers in your area of Y to sell their goods, provide reduced market entrance fees for military veteran farmers and provide education to consumers. You also submitted Form 1023EZ reflecting similar activities.

You currently conduct an outdoor farmers market on Z, a local vineyard/winery, every Thursday for _____ hours between _____ and _____. The number of vendors for your market is between _____ and _____, due to limited space. Of your regular vendors, two are _____ who sell _____ and _____ at the market from their family farm. The other vendors include a farmer who primarily sells produce and another that sells bread.

As stated, _____ of your vendors serve as _____.

Market operation activities constitute % of your time

While you have indicated that % of your activities would consist of education, to date none has been conducted due to getting the market established. Additionally, the presence of COVID has altered some plans. Instead, the remaining % of your time has been dedicated towards marketing to support vendors. You indicated in correspondence that future plans include relocating the market to a space which would accommodate more vendors and be assessible to more consumers. You are working to get SNAP/EBT certified, so persons using food stamps can make purchases. You are seeking to be part of a program whereby food stamp dollars spent at the market will be matched enabling doubled purchasing power. You will conduct food drives and work with vendors to donate their unsold produce to local foodbanks. You will work with schools to provide information on the benefits of organic farming. You will work with certain senior care facilities to have them bring seniors to the market via their shuttles. You further state you will provide scholarships to veterans seeking careers in farming and will work with veterans suffering from PTSD. You listed these activities to total 100%, although these activities are still in conjunction with the regular farmers market vendor sales.

There are two types of vendor fees: a seasonal and a daily or pop-up rate. Farmers who are veterans that wish to sell items at the market pay discounted vendor fees. You provide marketing for the selected vendors through the distribution of flyers, yard signs and use of social media. Specific names of vendors are not used. The flyers indicate that goods sold at the market include

You describe your vendors as owners, producers and preparers of food items. Vendors must grow or prepare their own food. In addition, craft vendors sell goods at the market. Consideration to vendor type is given to ensure a variety of vendors participate in the market.

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 Regulations Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt under IRC Section 501(c)(3), an organization must be both 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 will be regarded as 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 to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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 that 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. An organization will not be so regarded 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)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement of this subsection, the burden of proof is on the organization to show that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" as used in IRC Section 501(c)(3) relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 61-170, 1961-2- C.B. 112, held that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under IRC Section 501(c)(3). Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Rev. Rul. 67-216, 1967-2 C.B. 180 established that a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry and farm products may be exempt from tax under IRC Section 501(c)(3). The principal activities and exhibits of the fair are educational. They are planned and managed by persons whose business it is to inform the public and farmers about the resources of the region, and the methods by which they may be conserved, utilized, and improved.

Rev. Rul. 71 395, 1971 2 C.B. 228, a cooperative art gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under section 501(c)(3) of the Code. It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit.

Moreover, it did not appear that the corporation ever planned to charge a fee less than “cost.” And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations

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 limit your purposes to one or more exempt purposes and expressly empower you to engage in activities which in themselves are not in furtherance of one or more exempt purpose. You are not organized exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that assets must be dedicated to an exempt purpose on dissolution. Your Articles of Incorporation do not provide for the distribution of assets on dissolution. Accordingly, you do not meet the organizational test.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in IRC Section 501(c)(3). You engage in a substantial non-exempt activity similar to a commercial enterprise and marketing service by operating an open market. Farmer and vendors participating in your market are free to set prices facilitating sales for their benefit. You therefore do not operate exclusively for exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Your organization will help farmers sell produce, including members of your governing body. Although you plan to conduct educational activities, more than an insubstantial part of your activities are in furtherance of the non-exempt purpose of being a profitable outlet for your vendors. You not only provide the outlet for them to sell their products, you provide marketing, coordinate layout, location and cover overhead expenses the vendors would otherwise have to expend.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term educational relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Facilitating and marketing product sales is not exclusively educational. These activities are a means of pairing potential buyers with sellers. While you have projected future educational activities, these are limited, and your primary activity would still be the operation of the market. For these reasons you are not serving exclusively educational purposes.

You are similar to the organization described in Rev. Rul. 61-170. This ruling noted that any public benefit provided by the organization was superseded by the primary benefit established for organizational members which precluded exemption under IRC Section 501(c)(3). Your primary purpose is to provide a market for vendors. Substantially all of your resources are used to arrange a commercial market for vendors – including founding members. While the public does benefit from an increase in market selection the overall purpose of your organization is to serve and benefit the members and vendors selling at the market and not the general public.

You are not like the organization in Rev. Rul. 67-216 because your principle activity is not educational, rather, it is to facilitate an open market for product sales. While portions of your activities will inform the public and

farmers about the resources of the region, and the methods by which they may be conserved, this is not your primary purpose. Instead, you utilize resources to help vendors gain visibility to potential buyers through the vehicle of your market.

You are like the cooperative art gallery described in Rev. Rul. 71-395. You operate for the purpose of providing space to local farmers and vendors to exhibit and sell their products. Exhibiting and promoting the sales of products for the benefit of private individuals does not qualify for exemption under IRC Section 501(c)(3).

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under IRC Section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature (Better Business Bureau v. United States). You devote a substantial amount of your time, resources and activities to creating an event for vendor sales. Your expenses are directed towards attracting potential buyers and facilitating produce sales. As these are not serving exclusively Section 501(c)(3) purposes and are not insubstantial in nature you are similar to the organization in the above ruling.

You are similar to the organization in B.S.W. Group, Inc. v. Commissioner, where the conduct of a trade or business ordinarily carried on by commercial ventures was found to be a non-qualifying activity. You have established a marketplace for vendors to come together and sell products to the general public at vendor established prices. You are operating a market in competition with other commercial markets. Your sales of products such as flowers, produce, breads, crafts, honey and syrup are indicative of a regular business. Your source of revenue is from vendor fees and your expenses are mainly for marketing and supplies. Even though you offer discounted fees for veterans, vendors are not selected based on charitable criteria. Also, as seen in B.S.W. Group, a lack of public support is evidence that an organization is operating for commercial rather than charitable purposes. A substantial amount of your current income comes from vendor fees. Because you conduct activities similar to a commercial business you do not meet the qualifications for exemption under IRC Section 501(c)(3).

Conclusion

You do not qualify for recognition of exemption from federal income tax as an organization described in IRC Section 501(c)(3) because you do not meet the organizational and operational tests. Your activities are similar to those of an ordinary commercial enterprise and these activities provide substantial private benefit to your vendors. Therefore, we conclude that you do not qualify for exemption under Section 501(c)(3).

Accordingly, you must file federal tax returns and contributions to you are not deductible under IRC Section 170.

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