



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

Date: **June 28, 2021**

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Number: **202138008**

Release Date: 9/24/2021

UIL Code: 501.00-00, 501.03-00, 501.03-30, 501.33-00, 501.35-00

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](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: **May 11, 2021**

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date  
C = State  
D = Name  
F = Date  
G = Organization  
H = Number

**UIL:**

501.00-00  
501.03-00  
501.03-30  
501.33-00  
501.35-00

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**

Per your Form 1023 application, you were formed as a limited liability company (LLC) on B in the State of C. Your operating agreement indicates that your purpose is engaging in any lawful act or activity for which limited liability companies may be organized. Members hold membership interests. Profits and losses will be allocated according to such interests. Upon dissolution, assets will be distributed to members based on membership interest.

Your application stated that for approximately three years, your purpose was to generate a profit. However, recently, a partnership was created under the LLC which you call D. During development of your application, you provided a response that stated D is an unincorporated association formed on F but also included a document titled "Statement of Conversion" for the LLC to convert to a corporation. This document shows no evidence of being filed with the Secretary of State.

You were founded by chefs dedicated to creating a community that supports employers and employees as they work to prioritize physical, mental, and financial health both on and off the job. Your purpose is to support the well-being of those who work in all facets of the food & beverage industry. Your Form 1023 breaks down your activities between past and present/future. Past activities include the following:

- Program – a group of individuals who inspire health and wellness in the food and beverage industry on your social media platforms.
- Program – a community specific network incentive program to encourage employees to develop healthy habits. You refer them to local businesses in several categories such as nutrition, stress relief, spa treatments, energy drinks, etc.
- Hangout and Meetup Events – ticketed sales for wellbeing activities, leaders for tomorrow series, and cooking videos.

You stated that the purpose of your present and future activities is to be a well-being concierge for the food and beverage industry. You create solutions to move toward a happier and healthier workplace by offering ways to improve the culture of the food and beverage industry:

- Wellness Resources – helping employers and employees save money on benefits and cost saving services (health, fitness, healthy food, stress relief, finance) by creating a Listserv of vetted partners.
- Staff Retention Tools – providing employers with options for workplace/staff wellness so they can appeal to job seekers, engage employees, and retain top talent.
- Community Health Care – finding affordable, flexible plans for small to mid-size businesses. You have partnered with G, a health insurance provider, to connect members of the local food & beverage industry with affordable healthcare which will help employers reduce health care costs, positively influence culture at work, build a sense of camaraderie around health, increase employee satisfaction and help the bottom line. Further, you will raise funds to cover H employees for an introductory month of health insurance. After this, G will work with the employee on a personalized plan to fit their budget.
- Industry Meals – Giving back to the food & beverage industry monthly by placing a catering order for H meals with a struggling local business and then serving H meals to team members at other struggling local food businesses.
- Restaurant Restoration Project – helping employers in the food & beverage industry with unique challenges that exist by providing them opportunities to dive deep into company's culture and solve problems.

Your programs are supported by Go Fund Me campaigns, company sponsorship, membership dues and donations. Your membership model has three categories including vetted partners, business support, and online members. Each category of membership has an associated fee and specific benefits such as being included in the list serv of vetted partners or unlimited logins to the list serv for employees.

#### **Law**

IRC Section 501(c)(3) provides for the exemption from federal income tax of organizations 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) states that in order to qualify under 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 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:

- (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)(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 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides the term "charitable" is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

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

In Revenue Ruling 71-504, 1971-2 C.B. 231, a city medical society exempt under IRC Section 501(c)(6), that primarily directs its activities to the promotion of the common business purposes of its members may not be reclassified as an educational or charitable organization under Section 501(c)(3). The society was created for the purpose of promoting the art of medicine, the betterment of public health, and the unity, harmony and welfare of members of the medical profession. Membership is open to all doctors in the community. Activities included presentations on new procedures and clinical care, an extensive library of medical books for use by members, a monthly medical journal, supporting medical education and local health programs, a patient referral service for members, meetings concerned with matters affecting the promotion and practice of medicine and enhancing and improving the public image of the medical profession. While some of the society's activities are charitable or educational, several are instead directed primarily at the promotion of the medical profession and thus further the common business purposes of its members.

In Better Business Bureau of Washington, D.C., Inc v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States interpreted the requirement in IRC Section 501(c)(3) that an organization be "operated exclusively" by indicating that an organization must be devoted to exempt purposes exclusively. The presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

### **Application of law**

IRC Section 501(c)(3) sets forth two main tests for qualification of exempt status. Per Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3).

You do not meet the organizational test. Based on the documentation provided (even though it appears you may have attempted to change your entity status), you are legally formed as an LLC. Your operating agreement does not limit your purposes per Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) or dedicate your assets per Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You do not meet the operational test. You are not operating "exclusively" for exempt purposes as required by Treas. Reg. Section 1.501(c)(3)-1(c)(1). Most of your activities are directed at creating a healthy and happy workplace for those working in the food and beverage industry and you provide specific resources and tools to your members relating to cost savings, staff retention, finding affordable healthcare, referrals, and problem solving. These activities are not charitable per Treas. Reg. Section 1.501(c)(3)-1(d)(2) or educational per Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i). Like the organization in Rev. Rul. 71-504, you have substantial noncharitable and noneducational purposes and activities. Thus, you are precluded from exemption under IRC Section 501(c)(3).

You are like the organization in Better Business Bureau. Although you may have some charitable purposes and activities (donating meals), you are primarily operating to provide resources, tools, and other services to improve the food and beverage industry. This is a substantial non-exempt purpose and destroys exemption.

### **Conclusion**

Based on the information submitted, you do not qualify for exemption under IRC Section 501(c)(3). You do not meet the organizational test because your operating agreement does not contain the required provisions for exemption. You do not meet the operational test because you are operated for a substantial non-exempt purpose.

### **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