



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

Date: August 10, 2021

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Number: **202144030**
Release Date: 11/5/2021

UIL Number: 501.03-00, 501.03-19, 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)(x). 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: June 8, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = State
D = County
E = Community organization
F = Number

UIL:

501.03-00
501.03-19
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

You submitted Form 1023-EZ *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.

You attested on Form 1023-EZ that you are organized and operated exclusively to further charitable and educational purposes. You also attested that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3).

You were formed as a corporation on B in the State of C. Your organizing document, Articles of Incorporation, state that your purpose is to provide an opportunity for male athletes F years or older in D to participate in regional and national softball tournaments to enhance their health, fitness and well-being through organized sport. provides that your directors are elected or appointed according to your bylaws, which have not been submitted.

You attest that you are organized and operated exclusively to further charitable purposes and that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3).

Specifically, you attest that you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made an IRC Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

Your Form 1023-EZ was identified for technical review, and detailed information was requested supplemental to the above attestations.

You indicated on the form that you are organized and operated exclusively to foster national or international amateur sports competition. You provide males F years and older the opportunity to participate in regional and national softball tournaments to enhance their health, fitness and well-being through organized sports. You have weekly practices and monthly tournaments. Additional practices or scrimmages are scheduled on non-tournament weekends. You play against other teams in E. National tournaments may be attended based on standings within the ranked teams and tournaments won/lost. The members of your team are male athletes who are F years or older who have been invited to join the team who are not otherwise committed to another team in E. E keeps the standings for each team. Each team provides a facility for the tournament. The monthly tournaments are local or within the state, there is the possibility of one team going to a national tournament. During a tournament weekend, the activities are scheduled for Saturday and Sunday with two games per day.

Practices are generally three hour sessions. Coaches spend time before and after practices and tournaments planning, creating lineups, calculating statistics and counseling struggling players. Team members pay a fee to cover the cost of their hotel room during a tournament. The entire fee is used to pay for the hotel room. In addition, team members are charged a fee for showing up late to practice, tournaments, and scrimmages. These fees are used to buy supplies for the team such as balls, nets, shirts, etc. All of your income is derived from your team members and all of your expenses go towards covering the cost of the team activities.

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.

IRC Section 501(j) provides special rules for certain amateur sports organizations.-- (1) In general.--In the case of a qualified amateur sports organization--

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) Qualified amateur sports organization defined.--For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states 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 to 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 Section 501(c)(3) of the Code.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) states 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 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)(1)(ii) states 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. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, 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) defines the term educational as 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.

Revenue Ruling 59-310, 1959-2 C.B. 146, granted exemption under IRC Section 501(c)(3) to an organization that was formed to establish, maintain and operate a public swimming pool, playground and other recreation facilities for the children and other residents of the community. The income derived from charges for admission to the swimming pool was nominal and such charges were purely incidental to the orderly operation of the pool. Since the property and its uses are dedicated to members of the general public of the community and are charitable in that they serve a generally recognized public purpose which tends to lessen the burdens of government, it is concluded that the instant organization is exclusively charitable within the meaning of Section 501(c)(3).

Revenue Ruling 64-275, 1964-2 C.B. 142, describes an organization that was created for the purpose of providing advance training to suitable candidates in the techniques of racing small sailboats in national and international competition through classroom lectures, seminars and practical training sessions. They were improving the caliber of candidates for game competitions and other international racing events. The purpose of its activities was to improve the individual student's capability for sailing and racing and increase the number of qualified candidates for possible Olympic participation. The organization was recognized as an organization described in IRC Section 501(c)(3).

Revenue Ruling 66-179, 1966-1 C.B. 139, describes situations under which garden clubs may qualify for exemption under Section 501 of the Code. Situation 1 describes an organization that is incorporated as a nonprofit organization to instruct the public on horticultural subjects and stimulating interest in the beautification of the geographic area. In furtherance of these purposes, the organization (1) maintains and operates a free library of materials on horticulture and allied subjects; (2) instructs the public on correct gardening procedures and conservation of trees and plants by means of radio, television, and lecture programs; (3) holds public flower shows of a noncommercial nature at which new varieties of plants and flowers are exhibited; (4) makes awards to children for achievements in gardening; (5) encourages roadside beautification and civic planting; and (6) makes awards for civic achievement in conservation and horticulture. Situation 2 described an organization with the same facts as described in Situation 1 except that a substantial part of the organization's activities, but not its primary activity, consists of social functions for the benefit, pleasure, and recreation of its members. The organization in Situation 1 is organized and operated exclusively for charitable and educational purposes and qualifies for exemption under Section 501(c)(3) of the Code. The facts in Situation 2 are distinguishable from those in Situation 1 in that the organization in Situation 2 conducts substantial social functions not in furtherance of any of the purposes specified in Section 501(c)(3). Accordingly, the organization does not qualify for exemption under Section 501(c)(3). However, because the organization is operated primarily to bring about civic betterment and social improvements and the social functions for the benefit, pleasure and recreation of the members do not constitute its primary activity, the organization qualifies for exemption under section 501(c)(4).

Revenue Ruling 70-4, 1970-1 C.B. 126, describes an organization engaged in promoting and regulating a sport for amateurs. The organization's stated purposes were to promote the health of the general public by encouraging all persons to improve their physical condition and fostering public interest in a particular sport. Its activities were directed toward promoting sport tournaments, exhibitions, and instructive clinics. The organization did not qualify for exemption under IRC Section 501(c)(3). However, the organization by promoting and regulating a sport for amateurs is providing wholesome activity and entertainment for the social improvement and welfare of the community. This promotes the common good and general welfare of the people of the community. Accordingly, the organization qualified for exemption under Section 501(c)(4) of the Code.

Revenue Ruling 77-365, 1977-2 C.B. 192, describes an organization that was organized and operated to instruct and educate individuals of all ages and skill levels in a particular sport. It conducts clinics, workshops, lessons, and seminars. The organization was recognized as an educational organization described in 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 Hutchinson Baseball Enterprises, Inc. v. Commissioner, 696 F.2d 757 (1982), the court held that an organization that promoted recreational and amateur sports was exempt as a charitable organization under IRC Section 501(c)(3). The organization undertook numerous activities to promote the sport of baseball and the court found that the purpose of promoting sports predominated over subsidiary purposes, such as members' recreational or social benefit.

In The Media Sports League, Inc. v. Commissioner, T.C. Memo 1986-568, 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.

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.

In Wayne Baseball, Inc. v. Commissioner, T.C. Memo. 1999-304, the court held that the organization's nonexempt social and recreational activities were substantial in comparison to its promotion of baseball in the community. The court found that the only activity sponsored by the organization was the operation of an adult amateur baseball team and that the primary beneficiaries of the organization were the individual team participants.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You failed to meet both requirements, as explained below.

You do not meet the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) because your Articles of Incorporation do not limit your purposes to those described in IRC Section 501(c)(3). Providing an opportunity for male athletes over F to participate in sports tournaments to enhance their health, fitness and well-being does not necessarily further Section 501(c)(3) purposes. Also, your Articles of Incorporation do not include language that limits your purposes to one or more exempt purposes. The purposes for which you were created are broader than the purposes specified in Section 501(c)(3), including social and recreational purposes. Accordingly, you do not satisfy the organizational test required by Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(1)(iv), you are not organized for exclusively exempt purposes. In addition, your Articles of Incorporation do not contain a provision that dedicates your assets to exempt purposes described in Section 501(c)(3) upon your dissolution. Therefore, you do not meet the organizational test as described in Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You do not meet the operational test under Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are not operated exclusively for one or more exempt purposes. You engage primarily in activities, operating a softball program for men F years and older, which do not accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). A more than insubstantial part of your activities are not in furtherance of an exempt purpose.

You indicated on your submitted Form 1023-EZ that you are organized and operated exclusively to foster national or international amateur sports competition. Furthermore, you provide males F years and older the opportunity to participate in regional and national softball tournaments to enhance their health, fitness and well-being through organized sports. You have weekly practices and monthly tournaments involving other teams in your local area. Unlike the organization described in Hutchinson Baseball Enterprises, Inc., you do not conduct activities to promote a sport. Instead, you organize recreational events for your members. Like the

organizations described in The Media Sports League, Inc. and Wayne Baseball, Inc., your recreational sports activities also further the substantial nonexempt purpose of serving the private interests of your members, who are invited to join the team, contrary to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are not an amateur sports organization as described in IRC Section 501(j). You do not foster national or international amateur sports competition nor are you operated primarily to conduct national or international sports competition to support and develop amateur athletes for national or international competition in sports as described in Section 501(j). While there is a possibility that you could participate in a national tournament based on your record in the weekend tournaments, this does not rise to the required level of national or international amateur competition. The athletes involved in your programs are casual athletes participating in a sport for their own personal health, fitness and well-being as well as recreational and social purposes.

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. While you do provide some educational services, such as teaching softball skills during practices, there is no evidence you were formed and operated exclusively for these purposes. 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.

Your activities are not like those described in Rev. Rul. 59-310 where a public pool and other recreational facilities were operated by an exempt organization. You are distinguished from this ruling because you are not maintaining a recreational facility for the general public in a similar manner. While the promotion of health may further charitable purposes, 'charity' in the legal sense of the term includes benefits which are for an indefinite number of persons. Unlike the organization described in the ruling you are actively involved in the conduct of social and recreational activities such as softball tournaments encouraging social interaction between members who were invited to join the team. Social events are not considered charitable or educational purposes under IRC Section 501(c)(3). Your activities do not benefit an indefinite number of persons.

You are not like the organization described in Revenue Ruling 64-275 because your activities are devoted to organizing recreational and social events for your members. You are not improving the individual players skills to increase the number of qualified candidates for international sports participation. Therefore, your activities are not exclusively charitable or educational.

You are similar to the organization described in situation 2 in Rev. Rul. 66-179, a garden club that conducts substantial social functions was not exempt under IRC Section 501(c)(3). While you do conduct some activities and serve some purposes that are exempt under Section 501(c)(3), you also serve substantial purposes that do not qualify.

Like the organization described in Rev. Rul. 70-4, that did not qualify for exemption under IRC Section 501(c)(3), you do not engage primarily in activities that accomplish one or more exempt purposes specified in Section 501(c)(3). You promote the wellbeing of your team members by providing an opportunity to improve their physical condition through your sports activities. Your activities are directed toward providing practices and tournaments to improve their fitness. This benefits the members of your team not the general public.

You are not like the organization described in Rev. Rul. 77-365. You do not instruct individuals of all skill levels in a particular sport through clinics, workshops, or lessons. Rather, you organize recreational and social events for your members.

The furtherance of substantial non-exempt purposes precludes exemption under IRC Section 501(c)(3). See Better Business Bureau of Washington D.C., Inc. Any educational activities you conduct are incidental to your recreational and social activities. Because of these substantial non-exempt activities, you are precluded from exemption under 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. Exemption under Section 501(c)(3) cannot be granted when an organization furthers a single non-exempt purpose as you do. Finally, as held in Schoger Foundation, an organization will not qualify if an activity serves a substantial non-exempt purpose even if the activity also furthers an exempt purpose.

Conclusion

You have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3) and the related income tax regulations. Rather you are operated to provide social and recreational activities for your members. Any exempt purposes that are furthered are insubstantial and incidental to your non-exempt purposes. Therefore, you fail to 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 Determination 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
PO 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

Enclosure:
Publication 892