



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

Date: October 13, 2021

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Number: **202201015**
Release Date: 1/7/2022

UIL: 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.

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: August 25, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

V = Date

W = Name

X = Date

Y = Date

Z = State

b dollars = Amount

c dollars = Amount

d dollars = Amount

UIL:

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, Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on V.

You attest that you were incorporated on Y, in the state of Z. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest 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 a 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 mission on the Form 1023-EZ states that you maintain and promote a pleasant shopping experience in W and supporting businesses in that area. Monthly meetings for merchants and community members to discuss and resolve any issues of concern are held.

Detailed information was subsequently requested. Your Articles of Incorporation indicate you are formed to promote closer and better relationships among the merchants of the shopping center area, to promote and aid the economic well-being of all members, to create a better shopping area for the public, and to better identify the W to the public. You filed Articles of Amendment with Z on X, stating you are organized exclusively for charitable purposes.

You stated that you are a membership organization consisting of the businesses in W. Members pay dues for the maintenance and snow removal of a parking lot which you own and is for the use of patrons of W who park for free. The dues are based on the amount of square footage that the member business occupies and range from b dollars a year for small offices without any visitors or up to c dollars for restaurants. Furthermore, you provide snow removal and landscaping for the commercial areas of W.

Additionally, you conduct monthly meetings for your member businesses and community members including neighborhood representatives and guest speakers to discuss and resolve any issues of concern such as traffic, crime, joint promotional opportunities, developments, and vacant properties.

Other activities consist of an annual one-day music and craft festival for community vendors, visitors and other organizations as well as a free movie shown in your parking lot the night before. These events are free to the public, but vendors and organizations pay d dollars. In addition, you host an annual Halloween event in which individual businesses hand out treats.

You also indicated that you maintain two social media pages. One of these is used for internal communications among members such as fraud alerts, while the other is used for external public relations, such as promoting your events or events of your members.

About 80% of your income is derived from members' dues while 20% is from the annual music and craft festival which you host. About 60% of your outlays are for property taxes and utilities. About 30% of your outlays are for landscaping and snow removal. The remainder is for promotional activities, insurance and office expenses.

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) states that, in order to be exempt as an organization described in Section 501(c)(3) of the Code, 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(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 Section 501(c)(3) of the Code. 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.

Rev. Rul. 77-111, 1977-1 C.B. 144, Situation 1, held that an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations was not operated exclusively for charitable purposes and did not qualify for exemption under IRC Section 501(c)(3). The overall thrust is to promote business rather than to accomplish Section 501(c)(3) objectives exclusively.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Application of law

You do not meet the requirements for recognition of tax exemption under IRC Section 501(c)(3) because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You are not operated in accordance with Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are operated for a substantial nonexempt private purpose. The facts show you are operated for the benefit of your member businesses. For example, you own and maintain a parking lot for the convenience of members so their patrons can park for free. You also provide landscaping and snow removal to commercial areas for the convenience of your members as well as conduct promotional events for the benefit of members. These facts also illustrate that you are operated to serve the private interests of your member businesses in contravention to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are like the organization described in Rev. Rul. 77-111 because your overall purpose is to promote business which disqualifies you from exemption under IRC Section 501(c)(3).

You are similar to the organization described in Better Business Bureau of Washington, D.C., Inc. v. United States. Although you may have some charitable purposes, the presence of substantial non-exempt private purposes precludes exemption under IRC Section 501(c)(3).

Conclusion

You have not satisfied the operational test in accordance with IRC Section 501(c)(3). You are operated for the private benefit of your members, which is a substantial nonexempt purpose. Therefore, you are not described in Section 501(c)(3) and 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 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