



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

Date: October 21, 2021

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Number: **202202017**
Release Date: 1/14/2021

UIL: 501.03-30, 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
PO Box 2508
Cincinnati, OH 45201

Date: July 27, 2021

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

D = Name

E = Name

r dollars = Amount

s dollars = Amount

UIL:

501.03-30

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*. You attest on Form 1023-EZ that you are organized and operated exclusively to further charitable and educational purposes. You also attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations.

You were formed as a corporation on B in the State of C. Your Articles of Incorporation indicate you are organized for "any lawful purpose". They also indicate that if you dissolve, the remaining assets will go towards existing bills and the rest will go to local charities as determined by the existing officers. You attested that you amended your Articles to include language that meets the organizational test under IRC Section 501(c)(3). However, there is no evidence that this was ever completed.

Your mission is to bring together off-highway vehicle (OHV) enthusiasts to promote and provide responsible OHV recreation activities, to work with local officials and those with the D Forest to promote OHV access across the region and to promote a good motor sport image.

Your activities consist of:

- Conducting family OHV activities,
- Educating the public on OHV safety,
- Working with public land agencies for OHV trail design, construction and maintenance,
- Organizing and providing guided OHV rides.

You also conduct a program known as E in conjunction with the U.S. Forest Service which services the D Forest. Through E, you host a variety of events, such as winch training, map training, road patrols and trash clean-up. Additionally, through E, you provide trail and road maintenance, signage for the D Forest as well as host and staff informational booths in the D Forest. The booths provide the public with forest and general recreation information, motorized recreation information, and maps.

Further, you explained that you are a membership organization. Your membership is open to individuals for an annual fee of r dollars and for families for an annual fee of s dollars.

Membership fees are your main source of income, but you also solicit donations. Expenses are related to membership social events, trail maintenance activities, educational activities and donations to local charities.

Finally, your promotional materials and website show that you provide weekly guided rides through one half of the year, host club campouts and a variety of social events (barbeques, community parades, holiday parties, etc.) for members, and organize a variety of activities centered around the D forest.

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 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) states 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 which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) states:

“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 by operation of law, be distributed for one or more exempt purposes, or to a State or local government, for a public purpose, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgement of the court will best accomplish the general purposes for which the dissolved organization was organized.”

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. 67-216, 1967-2 C.B. 180 - 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 qualified for exemption from federal income tax under IRC Section 501(c)(3). The organization's activities and exhibits are planned and managed by or in collaboration with persons whose business it is to inform and instruct farmers and the general public on agricultural matters (i.e., home demonstration agents, county agricultural agents), and the resulting displays are designed to be instructive. The presence at the fair of recreational features such as midway shows, refreshment stands, and a rodeo are incidental to the fair's overall educational purpose.

Rev. Rul. 68-224, 1968-1 C.B. 262 - An organization that conducts an annual festival centered around regional customs and traditions is determined to qualify for exemption under IRC Section 501(c)(4). The festival takes place in an agricultural region where interest in horses and Western traditions runs high and enjoys the broad involvement of local citizens. It typically features a banquet or barbecue, a parade made up of local organizations and floats depicting community history, various contests relating to dress and costumes traditional of the area, and a rodeo. The revenue ruling holds that, in carrying on these activities, the organization provides recreation for the community and generally promoted civic betterments and social improvements.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of private benefit, if substantial in nature, will destroy an organization's tax-exempt status regardless of the organization's other charitable purposes or activities.

In Minnesota Kingsmen Chess Association v. Commissioner, T.C. Memo 1983-495, the organization sponsored chess tournaments, provided chess magazines and books to libraries, offered free chess lessons, and published a newsletter that primarily contained reports of past tournaments and announcements of future ones. The petitioner sought exemption under Section 501(c)(3) of the Code because its purposes and activities were described as educational. The court found that the promotion of chess tournaments furthered a substantial recreational purpose, even though individual participants may have received some educational benefits.

In St. Louis Science Fiction Limited v. Commissioner, 49 TCM 1126, 1985-162, the Tax Court held that a science fiction society failed to qualify for tax-exempt status under Section 501(c)(3) of the Code. Although many of the organization's functions at its annual conventions (the organization's principal activity) were

educational, its overall agenda was not exclusively educational. A substantial portion of convention affairs were social and recreational in nature.

Application of law

You do not meet the two main tests set forth in IRC Section 501(c)(3) and 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 have failed to meet both requirements, as explained below.

Your Articles of Incorporation state that you are formed for any lawful purpose. Because your Articles of Incorporation do not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), you fail the organizational test under IRC Section 501(c)(3). Furthermore, your Articles of Incorporation do not contain an adequate dissolution clause as required by Treas. Reg. Section 1.501(c)(3)-1(b)(4). Specifically, your dissolution provision indicates that the remaining assets will go towards existing bills and the rest will go to local charities as determined by the existing officers. However, any remaining assets must be dedicated exclusively for purposes described in IRC Section 501(c)(3). Therefore, this also causes you to fail the organizational test under Section 501(c)(3).

You are not operated exclusively for one or more exempt purposes as required by Treas. Reg. Section 1.501(c)(3)-1(c)(1). A substantial portion of your activities are devoted to bringing together OHV enthusiasts to promote and provide responsible OHV recreation activities. You offer regularly scheduled rides and conduct social events for members. These facts indicate that you are operated for substantial nonexempt social and recreational purposes, which preclude exemption under IRC Section 501(c)(3).

You are not like the organization granted exemption in Revenue Ruling 67-216 that was held exempt under IRC Section 501(c)(3). In that ruling the recreational features of the organization's events were incidental to their overall educational purpose. Although you do have some educational and charitable activities, your main purpose is to promote recreational OHV riding.

You are more like the organization in Revenue Ruling 68-224. However, that organization was not granted exemption under IRC Section 501(c)(3). Like the organization in the ruling, you offer activities and programs that are aimed at providing recreation for the community. Although some of your activities are aimed at maintaining the trails for public use and educating the public on OHV safety, your main program and purpose is promoting the recreational activity of OHV trail riding for members. Additionally, a substantial portion of your expenses are related to social events of your members. Thus, your social and recreational aspects outweigh any exempt purpose you serve.

You are like the organization described in Better Business Bureau. Although you may have some educational and charitable purposes, you are operated for substantial nonexempt, social and recreational purposes. This is further clarified in both Minnesota Kingsmen Chess Association and St. Louis Science Fiction, where the substantial recreational purposes prohibited exemption under IRC Section 501(c)(3).

Conclusion

Based on the information submitted, you are not described in IRC Section 501(c)(3). You fail both the organizational and operational tests under Section 501(c)(3). You do not meet the organizational test because

your organizing document does not limit your purposes or dedicate remaining assets upon dissolution to one or more exempt purposes described in Section 501(c)(3). You also do not meet the operational test for Section 501(c)(3) because you are operated for substantial nonexempt purposes. Accordingly, you do not qualify for exemption under Section 501(c)(3). Donations to you are not deductible to donors.

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