



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities

Box 2508  
Cincinnati, OH 45201

Date:  
January 4, 2022  
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Check if 501(c)(3) denial

Check if valid POA

Release Number: **202213012**  
Release Date: 4/1/2022  
UIL: 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 Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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,

Director, Exempt Organizations  
Rulings and Agreements

Enclosures:  
Letter 437  
Redacted Letter 4034  
Redacted Letter 4038

Letter 4038 (Rev. 11-2021)  
Catalog Number 47632S



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Date: **October 21, 2021**

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

X = Date

Y = State

Z = Name

j dollars = Amount

s %= Number

**UIL:**

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 September 27, 2020.

You attest that you were incorporated on X, in the state of Y. 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 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

During review of your Form 1023-EZ, detailed information was requested supplemental to the above attestations.

Your mission, as provided on Form 1023-EZ and in your Articles of Incorporation, is a “non-profit organization for Z religious and funeral purposes.” You also indicated on the Form 1023-EZ that you are organized and operated exclusively to further charitable and religious purposes.

We requested additional details regarding your activities. You stated that you serve public and community interests like funeral and burial. All activities are conducted by your members and directors. Activities are conducted at your address, and all activities occur from time to time on different occasions. All members pay dues of j dollars per year and spend s percent of their time for the activities.

You did not submit sufficient details describing your activities and purposes, therefore, we sent you a second request. You submitted the same information the second time.

### **Law**

IRC Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Treasury Regulation (Treas. Reg.) Section 1.501(c)(3)-1(a)(1) states that, 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)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term “charitable” also includes lessening of the burdens of government.

Revenue Procedure 2021-5, 2021-1 I.R.B. 2, Section 3 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application. Section 6 (and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed.

In Universal Life Church v. United States, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that “one seeking a tax exemption has the burden of establishing his right to a tax-exempt status.”

Pius XII Academy, Inc. v. Commissioner, T.C. Memo. 1982-97, affd. 711 F.2d 1058 (6th Cir. 1983), provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization’s request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service’s denial, stated “It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant.” The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 (2009), states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

### **Application of law**

A ruling on exempt status is based solely on facts and representations in the administrative file. You have not provided supporting documentation to establish you meet the requirements of IRC Section 501(c)(3). Section 501(c)(3) sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. 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 operational test under IRC Section 501(c)(3) because you are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). A non-profit organization operated for Z religious and funeral purposes does not necessarily further Section 501(c)(3) purposes. In addition, while funeral and burials may be of public and community interest it is unclear how you further these purposes. As provided in Treas. Reg. Section 1.501(c)(3)-1(d)(2), you have not established that your operations accomplish exclusively charitable purposes.

You have not submitted sufficient information establishing you are operated exclusively for IRC Section 501(c)(3) purposes. (See Universal Life Church, Pius XII Academy, La Verdad, New Dynamics Foundation and Ohio Disability Association) You have not described the activities that you conduct to public and community interests such as burial and funeral. Furthermore, you have not explained how your activities further a recognized Section 501(c)(3) purpose. Therefore, there is not sufficient documentation to establish that you are exempt from taxation as required by Section 501(c)(3) and Revenue Procedure 2021-5. As in Universal Life Church, you have the burden of establishing that you qualify for tax exemption.

In Pius VII Academy, Inc., La Verdad, and New Dynamics Foundation, it was established that an organization must establish, through its administrative record, that it meets the requirements for exemption. Because you failed to provide sufficient details in your initial application and the additional documentation you provided did not meet the statutory and regulatory requirements for exemption, you have not established that you meet the requirements for exemption under IRC Section 501(c)(3). As provided in New Dynamics Foundation, any gaps in the administrative record will be resolved against the applicant. Similarly, in Ohio Disability Association, the court found that even when additional information was provided, but it contained generalizations and failed to clarify purposes, denial is justified. You did not provide supplemental information; therefore, we are unable to determine that you qualify for exemption.

### **Conclusion**

Based on the information submitted, you are not operating exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). Your only activity is serving public and community interest such as burial and funeral. Therefore, you do not 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](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