



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

Date: 02/28/2022

Employer ID number:

Person to contact:

Release Number: 202221018
Release Date: 5/27/2022
UIL: 501.36-00, 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 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Letter 437
Redacted Letter 4034
Redacted Letter 4038



Department of the Treasury
Internal Revenue Service
PO Box 2508
Cincinnati, OH 45201

Date: 01/04/2022

Employer ID Number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

UIL:

501.36-00

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 were formed on B in the State of C. You are currently exempt under IRC Section 501(c)(19). You are now seeking exemption under Section 501(c)(3).

Article III of your Articles of Incorporation provides that you are organized exclusively for charitable, scientific, literary, and educational purposes within the meaning of IRC Section 501(c)(19). Your Articles further provide that you "shall not carry on any activities not permitted to be carried on (a) by an organization exempt from Federal income tax under Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code of 1986."

You provided a statement that your Articles of Incorporation limits your purposes to one or more purposes described in IRC Section 501(c)(3) and your organizing document permanently dedicates your assets to Section 501(c)(3) purposes. You amended your dissolution clause as follows:

Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or a state or local government for a public purpose.

In your application you explained that 25 percent of your activities is providing grants and contributions to organizations exempt under IRC Section 501(c)(3). The remaining 75 percent of your time is to construct a

civic center where you will conduct various activities including information seminars, business trainings and social events. The operation of the civic center will be your future primary activity.

You explained further that percent of facility use time will be used to host your own events and percent of facility time will be used to host private events. You will also make your facility available to active-duty military and veterans for social events for promotion ceremonies/parties, retirement ceremonies/parties etc. at no cost. You will charge for the use of your facility by other private parties.

Of the event you host, you explained that percent is for military veteran organizational business meetings. percent is for military veteran organizational social mixers, percent is for military/veteran/civic organizational information seminars.

Although you classified these events as events you host, in a subsequent correspondence you explained that the events are actually hosted by small military/veteran organizations within your region.

In your final response, you explained that percent of the percent facility use time will be used to host your own events which include monthly board/membership meetings and social events. The balance of the percent of facility use time is for IRC Section 501(c)(3) and Section 501(c)(19) organizations which may use the facility without charge unless they opt to pay the cleaning fee of \$ rather than clean the facility themselves.

Based on the information you provided, we summarized the percentages as follows:

Activity	Notes	Overall Percentage
Distributions to other IRC Section 501(c)(3) organizations		%
Facility you use for meetings and social events	% of % Facility Use Time	%
Use of facility by other Section 501(c)(3) and Section 501(c)(19) organizations	% of % Facility Use Time	%
Facility rented for private events	% of % Facility Use Time	%

You are mostly funded by gifts, grants and contributions. Your expenses are for fundraising expenses, professional fees and contributions, gifts, and grants paid out to other organizations.

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) 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(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.

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 Ruling 69-572, 1969-2 C.B. 119 concluded that a nonprofit organization created to construct and maintain a building for the exclusive purpose of housing and serving exempt member agencies exempt under IRC Section 501(c)(3) is exempt under Section 501(c)(3). Because of the close connection between the organization and the charitable functions of the tenant-organizations and the rental of the facilities at rates substantially below fair rental value, the organization furthers the charitable purposes of the tenants. The organization primarily relied on charitable contributions from the public and loans from charitable organizations to pay expenses and costs.

Rev. Rul. 77-366, 1977-2 C.B. 192 states that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption under 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 held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

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 under IRC Section 501(c)(3) even if the activity also furthers an exempt purpose.

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.

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. 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).

Your Articles of incorporation state that you are formed for purposes described in both IRC Section 501(c)(3) and Section 501(c)(19). The purposes in Section 501(c)(19) are different and broader than those described in Section 501(c)(3). As a result, you have not satisfied the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i).

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). Although, at least percent of your activities, making contributions to Section 501(c)(3) organizations may further charitable purposes, your application shows that you operate substantially for social 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.

In Pius XII 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. The information you provided did not establish that you operate exclusively for the purposes described in IRC Section 501(c)(3). You conduct your own social events and the primary events conducted by other organizations are social mixers. You will also make your facility available to veterans for social events for promotion ceremonies/parties, retirement ceremonies/parties etc.

You are similar to the organization described in Rev. Rul. 77-366, which conducted substantial social activities and failed to qualify for exemption from federal income tax under IRC Section 501(c)(3). In addition, as held in

Schoger Foundation, an organization will not qualify if an activity serves a substantial nonexempt purpose even if the activity also furthers an exempt purpose.

You are distinguished from the organization in Rev. Rul. 69-572 which provided a facility for organizations exempt under IRC Section 501(c)(3) at below its cost to operate the facility. You provide facility space for both Section 501(c)(3) and Section 501(c)(19) organizations without charge except for cleaning fees. By providing facility space to Section 501(c)(19) organizations you are furthering purposes broader than those described in Section 501(c)(3).

Your own activities together with renting the facility for private parties account for _____ % of your total activities and do not further purposes described in IRC Section 501(c)(3). As stated in Better Business Bureau of Washington, D.C., Inc., the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The substantial nonexempt purposes preclude exemption under Section 501(c)(3).

Conclusion

Based on the facts presented, we conclude that you do not qualify for exemption under IRC Section 501(c)(3). A substantial portion of your activities include making your facility available for use for nonexempt purpose. Therefore, you are precluded from exemption under Section 501(c)(3). Your exemption under Section 501(c)(19) remains in effect.

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

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements