



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

Box 2508  
Cincinnati, OH 45201

Release Number: **202221019**  
Release Date: 5/27/2022  
UIL: 501.03-00, 501.03-30

Date:  
February 28, 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

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 470329



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

Date: January 11, 2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

B = State

C = Date

D = Name

E = Organization

**UIL:**

501.03-00

501.03-30

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 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). Specifically, you attested 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 made expenditures in excess of expenditures limitations outlined in Section 501(h).
- Not provide commercial-type insurance as a substantial part of your activities.

You indicated in the mission statement on the Form 1023 EZ that you are the B State Chapter for E and that your purpose is to share knowledge and provide educational opportunities for public D professionals in B.

During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations. We also provided you a copy of your Articles of Incorporation obtained from the B's Secretary of State's website that were filed on C. These state you provide education, certification, resource and information sharing, and networking opportunities for professionals in the field of D. Additionally, they state "Should your organization dissolve you will give all net assets to your headquarters".

Your response indicated that you:

- Recognize professionals in D
- Encourage research and development in D
- Promote excellence on the ethical standards and development in D
- Promote best practices in D
- Mentor new professionals in D
- Provide a forum for professionals in D to discuss challenges to overcome
- Promote networking for professionals in D

You explained that membership is open to any person within the chapter area who is a member of E or to any non-member of E that supports the objectives and programs of your chapter. Members pay annual dues that are established by the Board of Directors. New member dues will be prorated on a quarterly basis.

You have numerous committees which include the following:

- The Membership Committee which lists, tracks members interest, implements strategies to increase membership as well as advises other programs about what members find most valuable in your offerings.
- The Communications and Marketing Committee which develops your brand. This consists of developing an online presence for information sharing such as your website with current information as well as assembling information into your newsletter template.
- The Certifications Committee which develops the priorities for which certification trainings are made available at which frequency and location. This committee also helps coordinate programming that allows people to get continuing education credits to maintain their certifications.
- The Educational and Networking Committee which develops the annual schedule of events for your members to create opportunities to learn about relevant topics and share knowledge and experiences. This committee also prepares the content for your newsletter.

You indicated that you are governed by an elected Board of Directors from among your membership of up to several members and five officers. You will also have additional directors who will serve as co-leads of your committees.

You will be supported by membership dues. You also anticipate receiving a donation from E to help conduct your programs once you are officially established and receive your business license. These funds were left over from a previously established chapter in your state.

### **Law**

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

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to qualify under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized and operated exclusively for one or more exempt purposes of organization, if they:

- (a) Limit the purpose 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)(4) which requires the dedication of remaining assets upon dissolution exclusively for purposes described in IRC Section 501(c)(3).

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

Revenue Ruling 59-6, 1959-1 C.B. 121, describes a professional association that was not entitled to exemption under IRC Section 501(c)(3) because its educational program was only an incidental part of its total activities. It had as its principal purpose the professional advancement of its membership.

Rev. Rul. 71-504, 1971-2 C.B. 231, describes an organization exempt under IRC Section 501(c)(6) that primarily directed its activities to the promotion of the common business purposes of its members. The organization could not be reclassified as an organization described in Section 501(c)(3). The activities were directed primarily at the promotion of the medical profession and thus further the common business purpose of its members. It was held that the presence of a single noncharitable or noneducational purpose, if substantial in nature, precluded exemption under Section 501(c)(3) regardless of the number or importance of truly charitable or educational purposes.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under IRC Section 501(c)(3) regardless of the number or importance of statutorily exempt purposes.

### **Application of law**

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. 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 organized to provide education, certification, resource and information sharing, and networking opportunities for public sector D professionals. 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, Treas. Reg. Section 1.501(c)(3)-1(b)(4) requires the dedication of remaining assets upon dissolution for purposes exclusively described in IRC Section 501(c)(3). However, the dissolution clause in your Articles of Incorporation provides that net assets will be given to E. This also causes you to fail the organizational test under Section 501(c)(3).

You are not operated in accordance with Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are not primarily engaged in activities that accomplish exempt purposes specified in IRC Section 501(c)(3). Similar to the organizations described in Revenue Rulings 59-6 and 71-504, your activities are not exclusively educational within the meaning of IRC Section 501(c)(3). Your purpose and your activities appear to be directed towards the professional advancement of your members in the field of D rather than being exclusively educational. For example, you are engaged in recognizing professionals in the field of D, promoting excellence on the ethical standards and development in the field of D and promoting best practices in the field of D as well as promoting networking in the field of D. The fact that you engage in a substantial amount of nonexempt activities, precludes you from being described as an organization in Section 501(c)(3).

In addition, although you may have some educational and charitable purposes, you are operated for a substantial nonexempt purpose. Like the organization described in Better Business Bureau, the presence of this substantial non-exempt purpose prevents exemption under IRC Section 501(c)(3).

### **Conclusion**

Based on the information submitted, you are not organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). You do not meet the organizational test because your organizing document does not limit your purposes to those described in Section 501(c)(3) 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 IRC Section 501(c)(3) because you are operated for substantial nonexempt purposes. Accordingly, 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 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](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