



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

Date: March 7, 2022

Employer ID number:

Person to contact:

Number: **202222007**
Release Date: 6/3/2022

UUI · 501 00-00, 501 03-00, 501.03-08, 501.03-30, 501.36-00, 501.36-01

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: 01/18/2022

Employer ID number:

Person to contact:

Name:
 ID number:
 Telephone:
 Fax:

Legend:

B = Date
 C = State
 D = Supplement
 E = Area
 F = City
 G = Area
 w dollars = Amount
 x dollars = Amount
 y dollars = Amount
 z dollars = Amount

UIC

501.00-00
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 501.36-01

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 incorporated in the state of C on B as a general corporation. Your Articles of Incorporation state you are organized exclusively for charitable and educational purposes within the meaning of IRC Section 501(c)(3). Your specific purpose is to promote the health benefits of organic products grown in the E, educate the general public on the health benefits of such organic products, and promote the use of these organic products for people that are _____ or having allergies to _____ foods and are interested in plant-based organic products in their diet.

Your activities consist of manufacturing and selling an oral herbal supplement D, as well as educating the public about the health benefits of D. You described D is a nutrient-rich plant-based supplement that is high in protein, vitamins, and minerals and D is not intended to diagnose, treat, cure, or prevent any disease. The health

benefits of D have not been evaluated by the FDA. D is produced in two forms, powder and capsules. D is manufactured and packaged at a facility that is certified to meet the ISO 9000 standards.

You sell D online, at farmers' markets throughout F and G, and at your complimentary educational events. When people order the product online, you ship it directly to them. You have no intention of opening a retail store. You sell D in 120-capsule bottle for x dollars and in 1-lb bag for y to z dollars. Your prices were determined by researching similar products on the market and set at a reasonable price to allow for a moderate income stream. Your officers and directors do their work without compensation.

You educate the public at the farmers' market with printed promotional and educational material and you also offer online classes. Your submitted brochure and flyer disseminate the benefits of D and some recipes of using D. You claim the most effective way for people to be educated on the health benefits of D is to actually try and use D.

You do not plan to operate through donations and majority of your income will be from the sale of D. When you come to a point you generate profit in excess of what you need to continue to operate, you will distribute the excess income to other IRC Section 501(c)(3) organizations. Due to the limited supply of D, you estimated your maximum annual sales revenue would be about w dollars.

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) provides 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(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 that accomplish one or more 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) defines the term educational as the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

In Revenue Ruling 72-369, 1972-2 C.B. 245, an organization was formed to provide managerial and consulting services for IRC Section 501(c)(3) organizations to improve the administration of their charitable programs.

The organization enters into agreements with unrelated Section 501(c)(3) organizations to furnish managerial and consulting services on a cost basis. This revenue ruling stated that:

An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the 'operational test,' the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of Section 501(c)(3) and the applicable regulations. Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for-profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of Section 501 (c)(3). Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67 (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. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the organization provided consulting services for a fee to various tax-exempt and non-profit organizations. The fees charged were set at or close to cost. The court concluded that those activities are not inherently charitable because they are of the type typically conducted by for-profit organizations. Even though the organization argued that its fees may in fact be lower than those charged by other firms, the court concluded that it was not enough to prove that organization's purpose are primarily exempt. The court concluded that the petitioner is not an organization described in IRC Section 501(c)(3) because its primary purpose in neither educational, scientific, nor charitable, but rather commercial.

In Living Faith, Inc. v. Commissioner, 950 F. 2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision stating that the organization operated its restaurants and health food stores for a substantial commercial purpose, and it did not qualify for exemption under IRC Section 501(c)(3). The appellate court provided the factors that may indicate a substantial non-exempt commercial purpose. These factors include:

- Direct competition with other for-profit businesses
- Existence and amount of annual and accumulated profits
- Competitive pricing policies and lack of below-cost pricing
- Use of promotional materials to enhance sales
- Advertising of goods and services
- Lack of plans to solicit charitable contributions
- Hours of operation that are competitive with other commercial enterprises

In Airlie Foundation v. Internal Revenue Service, 283 F. Supp. 2d 58 (D.D.C., 2003), the District Court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. "Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities, extent and degree of below cost services provided, pricing policies, and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations."

Application of law

You are not operated for exempt purpose consistent with IRC Section 501(c)(3). Your primary activities are the manufacturing and selling of D to the general public. Although you provide some educational information at the farmers' market and your website, your application shows you operate substantially for non-exempt commercial purpose. You are not operating exclusively for educational purpose as described in Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i). You operate in a manner consistent and in competition with other similar businesses. Therefore, you failed the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You are not as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities are devoted to non-exempt purposes. You set the prices of D to generate moderate income. Your possible future donations to other IRC Section 501(c)(3) organizations may further charitable purpose but this is not your primary purpose. As provided in Treas. Reg. Section 1.501(c)(3)-1(d)(2), you have not established that your operation accomplish exclusively charitable purposes.

You are like the organization described in Rev. Rul. 72-369 because you are operating in a commercial manner. The organization described in the revenue ruling was conducting commercial services only for organizations exempt under IRC Section 501(c)(3). Your offering of D to the general public is lack of donative element. The fact that you believe you are improving health and educating people by selling D is not sufficient to characterize the activity as charitable.

While you provide educational material to the general public and plan to make donations to other IRC Section 501(c)(3) organizations may be educational and charitable within the meaning of Section 501(c)(3), your primary activities are the manufacturing and selling of D. As discussed in Better Business Bureau of Washington D.C., Inc., a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Your operations are like the organizations described in B.S.W. Group, Inc., Living Faith, Inc., and Airlie Foundation. You are in direct competition with other for-profit stores which offer similar products. You set the prices based on market research on similar products and use of promotional materials. You are mostly funded from the sales of D. Consequently, you meet most of the factors provided in Airlie Foundation, indicating that you are operated for a substantial non-exempt commercial purpose.

Conclusion

Based on the facts and circumstances presented, we conclude that you fail to meet the operational test under IRC Section 501(c)(3) because you are operated in a commercial manner.

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.

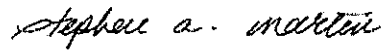
You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

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,

A handwritten signature in cursive script that reads "Stephen A. Martin".

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements