



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

PO Box 2508
Cincinnati, OH 45201

Number: 202228015
Release Date: 7/15/2022

UIL: 501.03-05, 501.33-00

Date:
04/18/2022
Employer ID number:

Form you must file:

Tax years:

Person to contact:
Name:
ID number:
Telephone:

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:

Redacted Letter 4034
Redacted Letter 4038



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

Date: **February 8, 2022**

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

t = number 1

u = number 2

v dollars = amount 1

W = material

X = state

Y = date

Z = individual

UIL:

501.03-05

501.33-00

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 Section 501(c)(3) of the Code? 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 purposes. You also attested 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 the above attestations.

You were incorporated in X on Y. Your organizational document does not properly limit your purpose or how assets will be distributed upon dissolution. You attested that you amended the organizational document to include the proper language to meet the organizational test under IRC Section 501(c)(3). However, to date, no amendment has been filed with X.

Your business plan reports your mission statement as the following:

- To perform or support global cooling and carbon sequestration technologies
- To engage the public in utilizing new materials, products, and processes of benefit to the climate that are helpful to aquaculture, agriculture, food security and to mitigate existential threats to humanity.

You plan to co-venture with universities and private industry to create new products, primarily, W. You will do this by establishing new product sales and through authorized franchises to mass produce your licensed products using local artisans and approved materials meeting your design specifications. Market development and sales start with an initial set of tools and materials. To date, you are unable to provide any details regarding co-ventures with universities or private industry.

You plan for a profit margin of t% of full market penetration; of u% for a few which could obtain an annual donation of v dollars. The annual donation was an expectation from consumers of your product

You intend to license and patent your products for fees and a percentage of the sales on the products sold. So far one patent has been secured in the name of its inventor, Z, who is your director of production and product quality assurance. Z is also a professional and educator. You did not provide any information on how you will determine fees or what percentage of sales you will charge. Further, you did not explain how you will obtain permissions to use Z's patents.

You list your potential customers as and You have not demonstrated how you will negotiate with these customers directly or how they will be contracting through authorized franchises. You do outline your plan for marketing this product, expecting W as a product line to put control back into the hand of target consumers, increasing their production, reducing their operating risk, and reducing exposure to environmental conditions at their sites. Your plan states industries not utilizing a product such as W in their routine operations will not stay competitive. You recognize the barriers to entry of a product such as W into your target markets – legitimacy and cost – and intend to prove that in real world applications no other products (such as W) have demonstrated relative results enhancing relationships with potential and existing clients.

Your revenue will come from membership dues, non-membership contributions and fundraising events. You have not established a membership yet. It is unclear if members will consist of authorized franchises or some other group. Non-member contributions will come from industrial and private philanthropy. Your expenditures are mostly fundraising expenses and administrative costs.

Law

IRC Section 501(c)(3), in part, exempts from taxation any corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, provided 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) provides that, 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 or 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 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(e)(1) provides that an organization may meet the requirements of IRC Section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

In Rev. Rul. 73-127, 1973-1 C.B. 221, the Service held that an organization that operated a cut-price retail grocery outlet and allocated a small portion of its earnings to provide on-the-job training to hard-core unemployed who did not qualify for exemption. The corporation was formed to operate a retail grocery store to sell food to residents of a poverty area at prices substantially lower than those charged by competing grocery stores, to provide free grocery delivery service to residents who need it, to participate in the Federal food stamp program, and to provide job training for unemployed residents. The organization's purpose of providing job training for hardcore unemployed was charitable and educational within the meaning of the common law concept of charity; however, the organization's purpose of operating a retail grocery store, where food was sold to residents of a poverty area at low prices, was not recognized as a charitable purpose under the basic common law concept of charity. The ruling went on to say the operation of the store and the operation of the training program are two distinct purposes, that was, ends or objects sought to be accomplished by the organization through use of its resources; and since the former purpose was not a recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

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 a claim for exemption regardless of the number or importance of truly exempt purposes.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), affd, 846 F. 2d 78 (Fed. Cir.) cert, denied, 488 U.S. 907 (1988), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under Section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiffs adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in Section 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under Section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found

that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Asmark Institute, Inc. v. Commissioner, T.C. Memo. 2011-20, aff'd, 486 Fed. Appx. 566 (6th Cir. 2012), the appeals court upheld the Tax Court decision that the organization was not entitled to exemption under Section 501(c)(3) because its operations were commercial in nature rather than charitable. The court found that the appellant's largely fee-based business plan and its competition within a for-profit market were strong evidence of the predominance of their nonexempt commercial purposes. The court further held that the sale of services is commonly considered to be a nonexempt commercial purpose.

Application of law

Although your eventual products are meant to improve the environment, your primary activity is the production of products for eventual sales, you intend to patent products for commercial purposes including eventual franchising. You operate in a manner consistent to and in competition with other suppliers of similar products. While your products are aimed at helping the environment this does not outweigh the commercial purposes for which you intend on engaging your product. You are organized/operated for the primary purposes of carrying on an unrelated trade or business rather than one that is exclusively charitable, educational or environmental. Operating a trade or business unrelated to an exempt purpose for an unrelated commercial purpose is not consistent with IRC Section 501(c)(3). [See Treas. Reg. Sections 1.501(c)(3)-1(a)1, 1.501(c)(3)-1(c)(1) and 1.501(c)(3)-1(e)(1)]

You are like the organization denied exemption in Rev. Rul. 73-127. In that ruling the organization served distinct exempt and non-exempt purposes; training and sales. Here, you are providing an environmental benefit coupled with commercial-type sales. Based on the information provided your commercial activities, sales, and intent to franchise demonstrate the commercial aspect of your operation is on a scale larger than that of any exempt activities. It is the environmental, charitable or educational aspects of your programs that would otherwise need to outweigh any commercial activity to qualify for exemption.

As held in Better Business Bureau of Washington, D.C., Inc. v. United States, a single non-exempt purpose, if substantial, will preclude tax exemption under IRC Section 501(c)(3). Your main objective is licensing of patents for a commercial purpose, which is a significant non-exempt purpose. Therefore, you are not operating exclusively for an exempt purpose as described in Section 501(c)(3).

You are like the organizations described in Easter House v. U.S., Living Faith, Inc. v. Commissioner, and Asmark Institute, Inc. v. Commissioner because you are operating for a substantial nonexempt commercial purpose rather than for a tax-exempt purpose. You license your patents for sale in a commercial manner for a fee and a percentage of the sales price. Therefore, you conduct the activity in a manner like for-profit businesses and are in direct competition with such businesses.

Conclusion

Based on the information submitted, you have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). Rather, you appear formed to operate for non-exempt commercial purposes. Therefore, based on the administrative record, you fail to qualify for exemption under Section 501(c)(3). Donations to you are not deductible by the donor.

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