



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

Date:
06/06/2022
Employer ID number:

Person to contact:

Release Number: **202235012**
Release Date: 9/2/2022
UIL Code: 501.00-00, 501.03-00, 501.03-08
501.03-03, 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: 04/14/2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

D = Year

t dollars = Amount

UIL:

501.00-00

501.03-00

501.03-08

501.03-30

501.36-00

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 on B in the state of C. Your Articles of Incorporation are silent regarding the purpose of the corporation. Your Articles are also silent regarding the disposition of your assets upon your dissolution. You submitted an attestation that you amended your Articles of Incorporation to include adequate purpose and dissolution clauses. However, there is no evidence that this amendment was ever filed with the appropriate state agency.

Your By-Laws Article 2, Section 2.01 state your specific purposes "are to provide natural health remedies for conventional health ailments through lifestyle modification with 1.) health education by providing health seminars and information to the public and 2.) nutritional advice along with the sale of raw healthy drinks and foods at discounted prices to the public."

Your purpose is to provide affordable healthy juices to your customers. You operate in a rural area where many of your customers cannot afford the expensive healthy juices that are crucial to their health. You recognized the need and fulfilled the need through making your juice fresh, organic, and affordable.

You spend _____ percent of your time and _____ percent of your resource to operate a juice and smoothie bar by making fresh juices and smoothies for customers. You buy fresh vegetables and fruits on a weekly basis from local farmers market and stores to make fresh pressed organic juices. The juices and smoothies are prepared on demand for customers in the store. You also bake bread on site _____ a week or as demanded by customers. You charge _____ dollars plus tax per _____ product. Your prices were determined by comparing the prices of organic fresh juice sold by for-profit organizations in the neighboring towns and charging _____ of their prices. You submitted advertising material disseminate the benefits of organic juices and bread and you offer buy _____ get _____ punch cards to your customers. You have _____ manager and _____ volunteers as needed to operate the juice bar.

You spend the remaining _____ percent of your time and _____ percent of your resource to conduct monthly health seminars on health topics, such as, how to make health juices, and the importance of living a healthy lifestyle. These _____ classes are held on the last Sunday of the month for one hour in the evening. Your speakers are local church members who are knowledgeable in areas of natural lifestyle.

You state that you have not made a profit since your inception. Your sales do not cover your operating expenses and current sales are used to purchase more vegetable supplies.

Your _____ takes yearly food and safety handling training offered by the local county. The manager also takes _____ training. Your _____ volunteers take health seminar classes and are trained on hygiene by the manager.

Your income consists of a substantial donation in D, and gross receipts from juice and smoothie sales in subsequent years. Your expenses include salaries and wages, gifts grants and contributions paid out, professional fees, advertising, depreciation, occupancy expenses, storage, and miscellaneous other expenses.

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 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) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be

considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for 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)(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.

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 purpose of carrying on an unrelated trade or business, as defined in Section 513.

Revenue Ruling 72-369, 1972-2 C.B. 245, determined that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for recognition under IRC Section 501(c)(3). The organization provided managerial and consulting services for Section 501(c)(3) organizations at cost. The ruling found that providing managerial and consulting services on a regular basis for a fee was a trade or business ordinarily conducted for profit. Furthermore, the ruling explained that an organization does not qualify for exemption merely because its operations are not conducted for the purpose of producing a profit. Rather, providing services at cost lacked the donative element necessary to establish the activity as charitable. Accordingly, the ruling held that the organization did not qualify for recognition under Section 501(c)(3).

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 American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court noted that education is a broad concept and assumed that the organization had an educational purpose. The Court concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court determined that an organization that sold consulting services to nonprofit and exempt organizations interested in rural-related policy and program development operated a trade or business ordinarily carried on for profit. The burden rested on the petitioner to

prove that it did not operate "a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit." The court stated that "competition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes." Accordingly, the court determined the petitioner "completely failed to demonstrate that its own services, or the services provided by its consultants, [were] not in competition with commercial businesses such as personnel agencies, consulting referral services, real estate agents, housing rental services, banks, loan companies, trash disposal firms, or environmental consulting companies." Furthermore, the petitioner did not conduct other substantial charitable activities. Other factors that counted against petitioner included the fact that the petitioner's financing did not resemble that of a typical IRC Section 501(c)(3) organization and that the petitioner failed to limit its services to Section 501(c)(3) organizations. Therefore, the court determined that petitioner failed to qualify for recognition under Section 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991) the court wrote that the activities were conducted as a business and the organization was in direct competition with other restaurants and health food stores; thus, it did not qualify for exemption under IRC Section 501(c)(3). The appellate court stated the factors that the court relied on to find commerciality and thus offered the best contemporary explanation of the commerciality doctrine. These factors include:

- 1) The organization sold goods and services to the public.
- 2) The organization was in direct competition with for profit businesses.
- 3) The prices set by the organization were based on pricing formulas common to retail food businesses.
- 4) The organization utilized promotional materials and "commercial catch phrases" to enhance sales.
- 5) The organization advertised its services and food.
- 6) The organization did not receive any charitable contributions.

In Airlie Foundation v. Commissioner, 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 the 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 received charitable donations."

Application of law

IRC 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).

There is no evidence that you have filed an amendment to your Articles with adequate purpose and dissolution clauses. As a result, you have not satisfied the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

You are not operated for exempt purpose consistent with IRC Section 501(c)(3). Your primary activity is the operation of a juice and smoothie bar to the general public. Although you provide monthly health seminars to your customers, you are not operating exclusively for education purpose as described in Treas. Reg. Section

1.501(c)(3)-l(d)(3)(i). You operate in a manner consistent and in competition with other similar for-profit businesses. A substantial portion of your activities include operating an unrelated trade or business. Therefore, you failed the operational test as described in Treas. Reg. Section 1.501(c)(3)-l(c)(1).

Your juice and smoothie sales are considered an unrelated trade or business since the sales of these juices and smoothies are not furthering an acceptable IRC Section 501(c)(3) exempt purpose. Based on Treas. Reg Section 1.501(c)(3)-l(e)(1), you do not meet the requirements for recognition of tax exemption under Section 501(c)(3) because you are operated for the primary purpose of carrying on an unrelated trade or business, as defined in Section 513.

Your primary activity is the sale of juices and smoothies, which is a trade or business ordinarily carried on for profit that presents most of the factors in Living Faith Inc. You have established a business where customers come to purchase juices and smoothies. You are operating a juice and smoothie bar that competes with other similar commercial businesses. Your sales are indicative of a regular business. Your pricing is based on that of for-profit juice and smoothie businesses in the area. You use promotions and advertising similar to that of for-profit businesses. Your source of revenue is from juice and smoothie sales, and your expenses are mainly for supplies, advertising, and salaries. Even though you offer discounted fees compared to other juice and smoothie bars in the area, your sales are commercial in nature. A lack of public support is evidence that an organization is operating for commercial rather than charitable or educational purposes. Other than the substantial donation in D, your current income comes from product sales. Because you conduct activities similar to a commercial business, you do not meet the qualifications for exemption under IRC Section 501(c)(3).

You are like the organization described in Rev. Rul. 72-369 because you are operating in a non-exempt manner. The ruling explained that an organization does not qualify for exemption merely because its operations are not conducted for the purpose of producing a profit. Your juice and smoothie bar, while not operated for the purpose of producing a profit, is still considered an unrelated trade or business that does not further an acceptable IRC Section 501(c)(3) exempt purpose. This is a substantial non-exempt purpose, as described in Better Business Bureau of Washington, D.C. Inc., which precludes you from exemption under Section 501(c)(3).

You are similar to the organizations described in American Institute for Economic Research, Airlie Foundation, and B.S.W. Group, Inc. Your activities are primarily commercial in nature, and directly compete with neighboring for-profit businesses. Your organization offers health seminars as an insubstantial part of your activities, and the totality of your activities is more indicative of a commercial business than that of an educational organization. The conduct of your juice and smoothie bar is considered a trade or business ordinarily carried on by commercial ventures and has been found to be a non-qualifying activity.

Conclusion

You do not qualify for recognition of exemption from federal income tax as an organization described in IRC Section 501(c)(3) because you do not meet the organizational and operational tests. Your operation of a juice and smoothie bar is a commercial business. Any charitable or educational objectives or results are incidental to your business purpose of selling juices and smoothies. Therefore, we conclude that 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 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