



Date:
06/13/2022
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Number: 202236011
Release Date: 9/9/2022

UIL: 501.03-30, 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:
2/22/2022
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Legend:

X = State
Y = Date
Z = Name

UIL:

501.03-30
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 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 your attestations.

You were incorporated in X on Y, as a charitable or religious nonprofit corporation. Your organizational document, Articles of Incorporation contain a proper purpose and dissolution clause.

You are the go-to authority on Z. Your main activity is archiving the history of Z, in the form of past marketing materials, promotional materials, photos and assembly manuals. Currently all archives are owned by a private party who intends to transfer ownership to you. You promote yourself on social media and the internet and through planned merchandise. Your social media and websites are a forum for Z enthusiasts to exchange information, discuss their collections and share their experience. You currently charge no fees. Your only expense thus far has been for your website.

You plan to hold Z shows, Z runs/rallies and have other social events. Your goal is not only to raise revenue to further showcase this great time in automotive history but also to provide resources to other organizations and individuals in need. You also hope to work with organizations that teach young adults auto repair skills as well as animal welfare groups. You plan to set up an _____ page that sells Z memorabilia.

You estimate that _____ % of your time and resources are spent on social media activities, _____ % of your time will be devoted to Z shows and rallies and _____ % is dedicated to archiving. The rest of your time and resources are spent on fundraising activities.

In the future, you plan to create a headquarters where Z could be displayed, archives could be accessed as well as an afterschool program that would teach teens basic automotive skills.

Your proposed budgets show revenue coming from contributions, events, and merchandise sales. Your expenses will be mostly overhead and/or administrative costs. The proposed budgets show revenue exceeding (more than double) expenses.

Law

IRC Section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for charitable, educational, or other enumerated 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, 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 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.

In Revenue Ruling 67-139, 1967-1 C.B. 129, Situation 2 describes a club formed by mineralogy and lapidary enthusiasts “to disseminate knowledge of mineralogical and lapidary subjects, to promote their application so that greater pleasure may be derived from these activities, and to promote good fellowship among its members.” To further its purposes, this club held meetings in which its members would “discuss gem and mineral topics and sell, purchase, or exchange rock and mineral specimens”. It was determined that the club was organized and operated primarily for the benefit, pleasure, or recreation of its members. Its activities were only incidentally educational, and as such, the club did not qualify for tax exemption under IRC Section 501(c)(3). However, it did qualify under Section 501(c)(7).

Revenue Ruling 77-366, 1977-2 C.B. 192, states that a nonprofit organization that arranges and conducts wintertime ocean cruises during which activities to further religious and educational purposes were provided in addition to extensive social and recreational activities was not operated exclusively for exempt purposes and did 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 a claim for exemption regardless of the number or importance of truly exempt purposes.

In *First Libertarian Church v. Commissioner of Internal Revenue*, 74 T.C. 396 (1980), the Court stated that the church failed to show that it successfully segregated the clearly social and political aspects of its supper club meetings and its publication from its purpose to further the doctrine of ethical egoism. As the church operated for social and political purposes to more than an insubstantial degree, it fails to qualify for exemption under Section 501(c)(3) of the Code. The court stated that an organization will not qualify for exemption if a nonexempt activity is more than an insubstantial part of its overall activities or if an activity has more than an insubstantial non-exempt purpose. The court explained that "clearly the regulations and cases contemplate that a single activity may be carried on for more than one purpose. If a substantial secondary purpose is not an exempt one, qualification under section 501(c)(3) will be denied."

In *Minnesota Kingsmen Chess Association v. Commissioner*, T.C. Memo 1983-495 (1983), the organization sponsored chess tournaments, provided chess magazines and books to libraries, offered free chess lessons, and published a newsletter that primarily contained reports of past tournaments and announcements of future ones. The petitioner sought exemption under IRC Section 501(c)(3) because its purposes and activities were described as educational. The court found that the promotion of chess tournaments furthered a substantial recreational purpose, even though individual participants may have received some educational benefits.

In *St. Louis Science Fiction Limited v. Commissioner*, T.C. Memo. 1985-162, the Tax Court held that a science fiction society failed to qualify for tax-exempt status under IRC Section 501(c)(3). Although many of the organization's functions at its annual conventions (the organization's principal activity) were educational, its overall agenda was not exclusively educational. A substantial portion of convention affairs were social and recreational in nature.

Application of law

You do not meet the requirements for recognition of tax exemption under IRC Section 501(c)(3) because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You are not operated exclusively for one or more exempt purposes as required by Treas. Reg. Section 1.501(c)(3)-1(c)(1), because a substantial portion of your activities consists of activities that promote fellowship amongst Z enthusiasts. For example, you plan shows, exhibitions, and rallies for Z enthusiasts. Your social media and website offer opportunities for members to share knowledge and to exchange memorabilia. These facts indicate that you are operated for substantial nonexempt social purposes, which precludes exemption under IRC Section 501(c)(3).

You operate like the organization described in Situation 2 of Revenue Ruling 67-139. Although some of your activities such as archiving the history of Z and future plans to education youth may serve charitable and educational purposes, a substantial portion of your activities including shows, exhibitions and rallies facilitate fellowship, create opportunities to share knowledge and display Z. This shows you are not operated exclusively for an exempt purpose, moreover, you are operated primarily for social or recreational purposes.

This same concept is reaffirmed in Revenue Ruling. 77-366. In that Ruling, the religious and educational purposes of the organization were quashed by the extensive and substantial social and recreational activities.

Thus, the organization was denied exemption under IRC Section 501(c)(3).

As noted in *Better Business Bureau of Washington D.C.*, exemption under IRC Section 501(c)(3) cannot be granted when an organization has a non-exempt purpose which is more than insubstantial in nature. This is further clarified in *First Libertarian Church, Minnesota Kingsmen Chess Association and St. Louis Science Fiction*, where the substantial recreational or non-exempt purposes prohibited exemption under Section 501(c)(3).

Conclusion

Based on the facts you provided, you do not meet the operational test because a substantial portion of your activities have social and/or recreational purposes. Thus, you do not meet the standards of exemption under IRC Section 501(c)(3). Donations to you are not deductible to 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