



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

Date:
08/08/2022
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Number: **202244018**
Release Date: 11/4/2022

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: 5/9/2022

Employer ID number:

Person to contact:

Name:

ID number

Telephone:

Fax:

Legend:

B = State

C = Date

D = Individual

F = Name

G = Name

H = Name

J = Name

q dollars = Amount

r dollars = Amounts

s dollars = Amount

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 educational 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 as a nonprofit corporation in X on Y by Z. You operate to create communities that enable full participation in community life. To accomplish your purpose, you spend approximately half of your

Letter 4034 (Rev. 01-2021)
Catalog Number 47628K

time providing gap analysis services, designing instruction, and delivering training. You explained that you will implement a survey tool like the F, G, H, I, J or some other instrument and/or conduct interviews to assess the current situation. Once the current situation of the client is understood, you then are able to assist the client with identifying their ideal situation. From there, you will examine the gap between the current and ideal situations and determine what, if any steps are necessary to close or reduce the identified gap including designing plans to close skill, performance and knowledge gaps.

Fees are charged for these services. The total amount charged will vary depending on the contract, but fees are q dollars hourly. You indicated that services similar to what you provide cost in the range of approximately r dollars. You explained that you decided on q dollars per hour because this amount is what the market can bear.

The rest of your time is spent providing personal and professional development training to the community. This training occurs every month for hours. You initially stated that this is offered free of charge. However, you then stated that you offer significantly reduced fees (typically less than cost) to nonprofits that can benefit from your services. You also design and deliver free training and professional development services for individuals in the area

Most of your revenue is derived from sales income which appears to be from consulting on curriculums, as well as assessing and facilitating programs. Your main expense is for contractors (consultants). Other expenses consist of marketing expenses, printing expenses, website expenses, and office expenses. When asked about who was paid the fees that are charged, you indicated that you are paid the fee. But went on to indicate "When I [D] am designing under the banner of [organization], or when we engage other design specialists and consultants, [organization] has been billed up to s dollars/hr..."

D, who is a governing body member, has provided similar consulting services in the past.

Law

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

Treasury Regulation (Treas. Reg.) 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 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 operates exclusively for exempt purposes if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Revenue Ruling (Rev. Rul.) 69-528, 1969-2 C.B. 127, describes an organization that was formed to provide investment services of a fee basis exclusively to organizations exempt under IRC Section 501(c)(3). The Service held that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The Service further held that the activity would constitute an unrelated trade or business even if the services were regularly provided by one tax-exempt organization for other tax exempt organizations.

Rev. Rul. 71-529, 1971-2 C.B. 234, found a nonprofit organization that assisted in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualified for exemption under IRC Section 501(c)(3). In the instant case, most of the operating expenses were paid for by grants from independent charitable organizations. The member organizations, which was limited to colleges and universities exempt under Section 501(c)(3), pay only a nominal fee for the services performed. These fees represent less than fifteen percent of the total costs of operation. By providing this service the organization was performing an essential function for charitable organizations. By performing this function for the organizations for a charge that is substantially below cost, the organization was performing a charitable activity within the meaning of Section 501(c)(3). Rev. Rul. 69-528 distinguished.

Rev. Rul. 72-369, 1972-2 C.B. 245, found that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption. 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 were provided at cost and solely for exempt organizations was not sufficient to characterize this activity as charitable within the meaning of IRC Section 501(c)(3). It was also found that furnishing the services at cost lacks the donative element necessary to establish this activity as charitable. Rev. Rul. 71-529 distinguished.

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 B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under IRC Section 501(c)(3). The Court found that the petitioner's activities constituted the conduct of a consulting business of the sort which is ordinarily carried on by commercial businesses.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail the operational test

The facts show you are not operated exclusively for charitable and educational purposes. A substantial portion of your activities consists of providing consulting services in a manner similar to a for-profit business. This does not further an exempt purpose. Thus, you are not operated exclusively for an exempt purpose and fail the operational test. See Treas. Regs. 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1).

You are like the organizations denied exemption in Rev. Rul. 69-528 and Rev. Rul. 72-369 because you provide services for fees. You operate in a manner consistent with how any commercial or for-profit consulting service operates. See B.S.W. Group, Inc. You have not provided any evidence that you charge fees that are substantially below cost. Thus, you are not similar to the organization granted exemption in Rev. Rul. 71-529.

Providing consulting services for a fee does not further any exempt purpose. Rather, it denotes the commercial nature of your operation. Thus, a substantial non-exempt purpose is served by your operations. Even though you have some educational aspects to your operations, as noted in Better Business Bureau of Washington, D.C.

evidence of a substantial non exempt purpose prevents you from qualifying for exemption under IRC Section 501(c)(3).

Conclusion

You are not operated exclusively for an exempt purpose. You provide consulting services in a manner similar to a commercial enterprise. This is not in furtherance of an exempt purpose. Any educational aspect of your operation is outweighed by the non exempt way you provide consulting services. You have not provided any evidence to the contrary. Accordingly, you do not qualify for exemption as an organization described in IRC 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