



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

Date:
11/21/2022
Employer ID number:

Tax years:
All
Person to contact:

Release Number: 202307007
Release Date: 2/17/2023
UIL Code: 501.03-00,
501.03-30, 501.33-00,
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 43 /

Redacted Letter 4034

Redacted Letter 4038



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

Date:
 09/29/2022
Employer ID number:

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

Legend:

- B = date
- C = state
- D = city
- E = number
- F = religion
- G = religion
- H = religious phrase
- t dollars = amount 1
- w dollars = amount 2
- x dollars = amount 3
- y dollars = amount 4
- z dollars = amounts

UIL:

- 501.03-00
- 501.03-30
- 501.33-00
- 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 C. Your Articles of Incorporation did not include a purpose clause and stated that your assets will be distributed to one or more qualifying organizations described in IRC Section 501(c)(3).

You are formed to be D's first and only F community building place for events. You will provide F events with a twist. Your hope is to provide the F community with a service to build connections and encourage more F friendships and and to enable couples to continue and further the traditions that G holds dear. Your mission is to facilitate F individuals for relationships- friendships, dating, and marriage while giving back to the F community. You are based on the F concept of H.

You indicate that your industry is that of a F social club and service. You further state that your competitors are all online services or other or events in the D and surrounding areas. Your competitive edge is that you are the only exclusive F social event club and service.

You intend to have three main activities:

- (1) An exclusive F social club,
- (2) Individual where a client hires you specifically to find their using your database and resources
- (3) Community events for your membership

You intend to have E members and charge dues for your membership. The dues follow a tiered system. Tier 1 is t dollars for months to join, and these members pay per event at a "non-member rate". Tier 2 is w dollars for months to join and members get each monthly event at discounted "member prices". Tier 3 is x dollars for months to join and members get each monthly event at a discounted "member price". You also offer a Tier 4 rate of y dollars where all events are free of charge and the co-founders also more intensely hand pick with extensive research to allow the individuals in this tier to get quicker.

Tickets for monthly events are your second source of revenue. These tickets range from z dollars (depending on the type of event) and the membership tier. Outside of membership dues and ticket sales, you anticipate receiving revenue from donations, sponsorships, and partnerships. Your revenues are expected to be primarily from donors, sponsors and partnerships, followed by membership fees, events tickets, and revenue from events. Your primary expenses are anticipated to include events, salaries, business expenses, and marketing.

Should you not meet your membership goals, your events will need to be smaller, and will cost less. If you need to raise money, you will sell banner ad space on your website to businesses that want to promote their brand.

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)(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 to 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(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)(1)(ii) provides that an organization is not organized or operated exclusively for an exempt purpose unless it serves a public rather than a private interest. The organization must demonstrate that it is not organized or operated for the benefit or private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly by such private interests.

Treas. Reg. Section 1.501(c)(3)-1(e) provides that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under IRC Section 501(c)(3), even though its net profits do not inure to the benefit of individual members of the organization.

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

In Better Business Bureau of Washington, D.C. Inc v. U.S., 326 US. 279 (1945), the court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of statutorily exempt purposes.

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 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 petitioner's financing did not resemble that of a typical IRC Section 501(c)(3) organization and that 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 Syrang Aero Club, Inc v Commissioner, 73 T.C. 717 (1980), the court held that while an organization may serve educational and charitable purposes, it does not exclusively operate for educational, charitable, or other exempt purposes because it also serves a substantial recreations purpose.

In Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), it was held that if an activity serves a substantial non-exempt purpose, the organization does not qualify for exemption even if the activity also furthers an exempt purpose

In St. Louis Science Fiction Limited v. Commissioner, 49 TCM 1126, 1985-162, the Tax Court held that a science fiction society failed to qualify for tax-exempt status under Section 501(c)(3) of the Code. 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.

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

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 both tests.

Your Articles of Incorporation do not limit your purposes to one or more exempt purposes. You are not organized exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(b)(i) and fail the organizational test.

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). You engage in substantial non-exempt activities through the matchmaking, social club and social events. Although portions of these activities are intended to further religious purposes, overall, these activities serve substantial non-exempt purposes. You therefore do not operate exclusively for exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for an exempt purpose unless it serves a public rather than a private interest. Your matchmaking and event services further the private interests of your members rather than the interests of the general public. These matchmaking and event services provide a direct social and recreational benefit to your members, furthering their private interests and lack the benefit to the general public typical of organizations described in IRC Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(e) provides that an organization which is organized and operated for the primary purpose of operating an unrelated trade or business is not exempt under IRC Section 501(c)(3). Treas. Reg. Section 1.501(c)(3)-1(e)(1) also provides that an organization may be recognized as tax-exempt even

though 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 organizations exempt purpose or purposes. Similar to the organizations described in B.S.W. Group, Inc. your activities are commercial in nature and directly compete with similar for-profit businesses. While you offer health seminars the totality of your activities is more indicative of a commercial business than that of an educational organization. Your matchmaking services are considered an unrelated trade or business ordinarily carried on by commercial ventures since these services are not furthering an acceptable Section 501(c)(3) exempt purpose.

Living Faith Inc., provides six factors that the courts rely on to find commerciality. Your primary activities include operating a F social club, operating an individual service, and hosting community events for your members. Your activities are a trade or business ordinarily carried on for profit that presents five of these factors. You have established a business where customers pay you to find . You are operating a service that directly competes with other commercial service. Your prices are set similarly to the pricing formulas of other m services. You use promotions and advertising similar to that of for-profit businesses. Your sources of revenues include donations, sponsorships, and partnerships, membership fees, and fees. Your expenses are mainly for events and salaries. A substantial amount of your current income comes from and membership fees. Because you conduct activities similar to a commercial business you do not meet the qualifications for exemption under IRC Section 501(c)(3).

Similar to the organization described in Schoger Foundation, you serve substantial recreational and social purposes for paid members. Your members participate in F events with a twist. These events provide opportunities for your members to socialize and find potential friends or partners. There are no apparent religious activities other than the simple fact that the members partaking are all F. These social and recreational activities are substantial and will preclude exemption under IRC Section 501(c)(3).

You are like the organizations described in St. Louis Science Fiction Limited and Syrang Aero Club Inc. Participants in your service could have some religious or educational benefit, but overall you serve substantial recreational and social purposes for paid members. Because these activities further a substantial non-exempt purpose, as described in Better Business Bureau of Washington, D.C. Inc., you do not qualify for exemption under IRC Section 501(c)(3).

Conclusion

Based on the facts and circumstances presented, you do not qualify for exemption from federal income tax as an organization described in IRC Section 501(c)(3). You do not meet the organizational and operational tests. You are operated for substantial nonexempt purposes and you operate similar to commercial ventures normally carried on for profit. You are not organized or operated exclusively for exempt purposes set forth in Section 501(c)(3) of the code.

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