



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

Date:
01/17/2023
Employer ID number:

Person to contact:

Release Number: 202315012
Release Date 4/14/2023
UIL Code: 501.03-00,
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:
November 21, 2022
Employer ID number:

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

Legend:

B = state
C = date
D = entity
E = platform

UIL:
501.03-00
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 were formed as a corporation in the state of B on C. According to your Articles of Incorporation, your purpose is to explore, develop, support, and administer an Internet "world" where users are able to interact in multiple forms or "venues" for the purposes of entertainment.

According to your application, you will operate a virtual reality (VR) software platform to allow all VR users to equally participate, without being tied to a specific hardware platform. You will provide a place where everyone is able to participate in VR and interact with multiple proprietary platforms. The platform is intended to function all day, every day. Users will be able to experience and use the platform with no expectation of payment. Anyone with proper equipment and access can connect/participate. Your initial operations will be platform development and implementation (which may include distributed hardware). Ongoing activities would be system maintenance, system expansion, and platform upgrades.

You did not list an exempt purpose in your application. When asked how your activities further an exempt purpose, you stated that developing the platform is the entire basis for your founding but did not specify how the platform would further an exempt purpose.

No fee structure is currently anticipated. You hope to receive funds through donations, however, some of the activities within the platform may be fee-based. For example, you may charge to play some, or all, of the games you develop. Once the platform is active there are ideas for a digital arcade. You plan on charging fees for some of these games. There may also be tournaments for a particular game where an entry fee is required. You may collect a portion of these fees as income. Fees for games will be based on what the market will support, with monitoring and adjustment as needed. Fees for tournaments will be based on what users are willing to pay.

Currently you have no connections with for profit entities. And although you intend on maintaining the area as your own, you will look to work with outside companies and acquire needed commands to design an open platform allowing users to connect to other existing platforms. Any for profit companies you work with will be selected for their willingness to provide outside platform connections and their commitment to allow your project to remain a neutral platform. For example, you indicated a relationship with D, which promoted itself as a new way to log into VR devices and make the greatest experiences in VR even better by sharing them with the people you love spending time with. E makes it simple to meet up with friends-to play some ping pong, get in a group workout, build entirely new worlds and so much more.

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)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in IRC Section 501(c)(3).

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.

Revenue Ruling 66-179, 1966-1 C.B. 139, describes situations under which garden clubs may qualify for exemption under IRC Section 501. Situation 1 describes an organization that is incorporated as a nonprofit organization to instruct the public on horticultural subjects and stimulating interest in the beautification of the geographic area. In furtherance of these purposes, the organization (1) maintains and operates a free library of materials on horticulture and allied subjects; (2) instructs the public on correct gardening procedures and

conservation of trees and plant by means of radio, television, and lecture programs, (3) holds public flower shows of a noncommercial nature at which new varieties of plants and flowers are exhibited; (4) makes awards to children for achievements in gardening; (5) encourages roadside beautification and civic planting; and (6) makes awards for civic achievement in conservation and horticulture. Situation 2 describes an organization with the same facts as described in Situation 1 except that a substantial part of the organization's activities, but not its primary activity, consists of social functions for the benefit, pleasure, and recreation of its members. The organization in Situation 1 is organized and operated exclusively for charitable and educational purposes and qualifies for exemption under Section 501(c)(3) of the Code. The facts in Situation 2 are distinguishable from those in Situation 1 in that the organization in Situation 2 conducts substantial social functions not in furtherance of any of the purposes specified in Section 501(c)(3). Accordingly, the organization does not qualify for exemption under Section 501(c)(3).

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 are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does 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. 179 (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 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 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

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 include language that limits your purposes to one or more exempt purposes. The purposes for which you were created are broader than the purposes specified in IRC Section 501(c)(3). Accordingly, you do not satisfy the organizational test required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(1)(iv), and you are not organized exclusively for purposes described in Section 501(c)(3).

You are also not described in IRC Section 501(c)(3) because you fail the operational test. Specifically, you are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The facts show you are not operated exclusively for charitable purposes, but for the purpose of providing a virtual reality platform where users gather for entertainment purposes. These activities show more than an insubstantial part of your activities are furthering recreational and social purposes.

Although an organization may carry on activities that further one or more tax-exempt purposes, it will not be treated as operated exclusively for an exempt purpose if it has a single non-exempt purpose that is substantial in nature. You are formed primarily for social and recreational purposes in providing a virtual reality platform for users to share personal interactive and gaming experiences. Your everyday activities are aimed at development and maintenance of this platform. Even though you are providing this mostly free of charge you are not serving exclusive charitable or educational purposes. Social and recreational purposes which are more than insubstantial will defeat exemption under IRC Section 501(c)(3). (See St. Louis Science Fiction Limited and Better Business Bureau.)

Similar to the organizations described in Revenue Rulings 66-179 and 77-366, even though your activities may be instructive to participants, it is the overall purpose for which the activities are conducted that is considered. Your platforms primarily serve the social interests of your users, enabling them to gather virtually for social interaction and gaming. The organizations in these rulings offered activities instructing the public and furthering religion, but the primary purposes were social and recreational in nature. Any activities serving exclusive IRC Section 501(c)(3) purposes were outweighed by those serving extensive social and recreational purposes.

Conclusion

To be described in IRC Section 501(c)(3), your activities must exclusively further those exempt purposes. Based on the information in your application, you are organized and operated primarily for social and recreational purposes. You have not satisfied the organizational and operational test. Therefore, you fail to 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