



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

Date:  
03/06/2023  
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Number: **202322019**  
Release Date: 6/2/2023

**UIL: 501.03-00, 501.03-08**

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](http://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:**  
 01/04/2023  
**Employer ID number:**

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

**Legend:**

- Q = State
- R = Related Organization
- S = Location
- T = Bank
- b = Date

**UIL:**

- 501.03-00
- 501.03-08

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 in the state of Q on b. Your Articles of Incorporation state the purpose for which you were formed is to lessen the burdens of government by performing economic development services for S that would otherwise provide such services themselves, and to solicit, receive, and administer funds exclusively for such charitable purposes. Your organizing document does not include a dissolution clause.

The founders and officers of R, a business league currently exempt under IRC Section 501(c)(6), created your organization so that investors could make tax deductible contributions to an organization exempt under IRC Section 501(c)(3). Investors are not able to make charitable contributions to R. You will help R provide economic development services on behalf of S and a number of municipal governments located within S. You will provide funding to R for economic development purposes. You will also provide technical assistance, planning, and grant writing assistance directly to S, and all cities, \_\_\_\_\_, and \_\_\_\_\_ therein.

You have no formal agreement nor have been granted any type of authority by S or any of the other municipalities.

The municipalities in S were not involved in your creation nor in the selection of your board of directors. Those involved in your creation have held ongoing conversations with both elected and employed governmental officials to understand the needs of these governments. The elected and employed government officials were not and are not involved in the management of your organization. Their involvement was limited to the feedback they provided in the creation of your work plan. Your board was selected due to existing relationships with, and understanding of, local government entities. They have knowledge in the operation of local government and are in a position to offer expertise toward your overall mission.

Your Board of Directors is comprised of three individuals, one of whom is the County Administrator for S. He is not acting in his official capacity as the County Administrator, nor does he have control over your policies, programs or activities. Neither your Articles of Incorporation nor your bylaws make it a requirement for any elected official or government employee to be selected as a board member.

You plan on conducting one on one meetings with community leaders to explain the programs you offer. You have targeted the county's municipal governments. None of the municipal governments will exercise oversight or control over your activities. Their involvement will be limited to discussions during your research into how you could assist them and understand their needs.

You will support economic development in S with a focus on:

- Business Development - helping struggling firms survive while supporting the expansion and diversification of the employer base for the future.
- Workforce Development - building the talent pipeline to ensure your companies have workers they need now and into the future, with a focus on increasing career opportunities that will elevate incomes, reduce poverty, and improve your county's standard of living.
- Real Estate Development - addressing housing and industrial building shortage, which is limiting population, business, and tax base growth.

You will provide each of the municipalities in S with technical assistance in community development to help them achieve their own goals. Examples include:

- Identification, planning, and marketing of government owned property for development/redevelopment
- Market evaluation and strategy development to increase accessible housing stock
- Providing technical assistance in the identification of and application to grant programs for project funding
- Support for placemaking and downtown initiatives
- Offering technical assistance for planning, zoning, and permitting best practices to support attracting investment and development for expansion of commerce and housing in distressed and vacant corridors
- Contacting each local government to identify properties they currently own and review their ordinances to determine the highest and best use of the property. You will market the properties to developers and users in the target areas.

You will offer planning and technical assistance to create vibrant downtowns serving as quality places for residents to live, work and play. The assistance will be dependent on the needs of each municipality. You will perform an analysis of needs and develop a plan.

You will give programmatic support to T that will provide the following redevelopment tools throughout the county:

- Use of tax increment financing to finance property development/redevelopment
- Clear title
- Sell property
- Promote the land bank tools to potential developers
- Promote the sale of available properties to developers or potential end users

Your activities will be outlined and controlled via contracts with local governmental bodies. No governmental entity has granted you the authority to take on the burden they considered their responsibility.

You will provide annual financial reporting to the governmental agencies you will service. However, your policies or procedures do not require that you provide the financial reporting to any governmental entity.

You do not focus your activities in areas that have been classified as \_\_\_\_\_ or \_\_\_\_\_. In addition, the median income of the S residents is \_\_\_\_\_. You have not shown how your activities are going to exclusively benefit a charitable class.

You provide technical assistance and prepare grant programs. You will support grant applications on behalf of communities such as those related to broadband, parks and shared spaces, sidewalks, water and sewer, roads, recycling, community facilities, and community revitalization. Your fees will be based on the costs necessary to perform the services contracted with government bodies with a goal of paying as much as possible from identified grant sources.

### **Law**

IRC Section 501(c)(3) of the Code exempts from taxation any corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures 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 or operational test, it is not exempt.

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)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of 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(d)(2) includes “lessening of the burdens of government” in the definition of the term “charitable.”

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) defines the term educational as relating to instruction of the individual for the purpose of improving or developing his capabilities, or instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 70-79, 1970-1 C.B. 127, describes an organization that assisted local governments of a metropolitan area by researching solutions for common regional problems, such as water and air pollution, waste disposal, water supply, and transportation, that was operated exclusively for the charitable purpose of relieving the burden of government. The chief elected officers of the local jurisdictions constituted the membership of the organization. Receipts included assessments on the local jurisdictions. The interrelationship between the local governments and the organization indicates the existence of a burden of government in that the organization’s membership was composed totally of government officials; persons appointed by the local governments involved. The funding of the organization from the government assessments indicates a burden of government. Developing regional plans and policies for regional problems is an activity normally conducted by governmental units and indicates a burden of the government.

Rev. Rul. 74-587, 1974-2 C.B. 162, held that an organization that devoted its resources to programs to stimulate economic development in economically depressed, high-density, urban areas, inhabited mainly by low-income minority or other disadvantaged groups, qualified for exemption under IRC Section 501(c)(3). The organization made loans and purchased equity interests in businesses unable to obtain funds from conventional sources because of financial risks associated with their location and/or because of being owned by members of a minority or other disadvantaged group. The organization established that its investments were not undertaken for profit or gain, but to advance its charitable goals. Funds for its program were obtained from foundation grants and public contributions.

Rev. Rul. 85-1, 1985-1 C.B. 177, states that an activity is a burden of government only if there is an objective manifestation by a governmental unit that it considers the activities of the organization to be its burden. This was demonstrated through participation of government officials on the governing body of the charity, the provision of funding, and the actual use of the organization's services.

Rev. Rul. 85-2, 1985-1 C.B. 178, states that an organization is lessening the burdens of government if its activities are activities that a governmental unit considers to be its burdens, and the activities actually lessen such governmental burden. The organization must demonstrate that a governmental unit considers the organization to be acting on the government’s behalf, thereby actually freeing up government assets - human, material, and fiscal - that would otherwise have to be devoted to the particular activity. This determination is based on facts and circumstances. The fact that a government sometimes takes part in an activity will not be enough to meet the test, nor will mere expressions of support from officials.

In Better Business Bureau of Washington D.C., Inc. v. U.S., 326 U.S. 279 (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 a trade association had an “underlying commercial motive” that distinguished its educational program from that carried out by a university, and therefore, the association did not qualify for exemption.

In Columbia Park & Recreation Association, Inc. v. Commissioner, 88 T.C. 1 (1987), aff’d without published opinion, 838 F.2d 465 (4th Cir. 1988) (“Columbia Park”), the petitioner argued that it had a charitable purpose to lessen the burdens of government. According to the petitioner, it provides a wide range of services and facilities to the residents of a large private real estate development and that if it did not provide these services and facilities the local or state government would have to provide them. The Tax Court, in upholding an IRS ruling that the petitioner is not organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3), rejected the petitioner’s argument, saying that the mere assertion that, in petitioner’s absence, government would have to assume the activities in question does not mean the activities are, in fact, the burdens of government. Rather, the court said, the organization must demonstrate that the government accepts the activities conducted by the petitioner as its responsibility and recognizes petitioner as acting on its behalf. In addition, the organization must further establish that its activities actually lessen the burden of the state or local government.

#### **Application of law**

You meet neither the organizational nor the operational test as required by IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(b)(4). As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3).

Your Articles of Incorporation do not limit the distribution of your assets upon dissolution for one or more exempt purposes. As a result, you have not satisfied the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You do not meet the operational test as required by Treas. Reg. Section 1.501(c)(3)-1(a)(1), because you cannot be regarded as “operated exclusively” for such purposes specified in IRC Section 501(c)(3) or as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You provide services to S and the municipal entities within S. You focus on business development, workforce development, and real estate development. You are not like the organization described in Rev. Rul. 74-587 because the areas where you will focus your activities are not economically depressed or inhabited mainly by a low-income or a disadvantaged group. Your activities improve the economic conditions of businesses and persons within the county. The median income of the residents within the county are not at or below the poverty level. As required in Treas. Reg. Section 1.501(c)(3)-1(d)(2), you have not established that your operations accomplish exclusively charitable purposes.

You do not meet the operational test under IRC Section 501(c)(3) because you are not operating exclusively for educational purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your services are intended to support expansion and diversification of an employer base, a talented workforce, and a shortage of housing and industrial buildings of S and the municipal entities within S. Your activities are not exclusively dedicated to educating the public, but rather to improve business conditions and opportunities. As provided in Treas. Reg.

Section 1.501(c)(3)-1(d)(3)(i), you have not established that your operations accomplish exclusively educational purposes.

You state that you were established for the purpose of relieving the burdens of government. You must demonstrate that Q accepts your activities as its responsibility and recognizes that you are acting on its behalf. See Columbia Park & Recreation Association, Inc. v. Commissioner.

The term “charitable” includes lessening the burdens of government. Treas. Reg. Section 1.501(c)(3)-1(d)(2). To qualify as an IRC Section 501(c)(3) organization on the basis of lessening the burdens of the government, you must meet a two-pronged test. The first prong requires that a government unit objectively manifest that it considers your activities to be its burden. See Rev. Rul. 85-1, and Rev. Rul. 85-2.

You do not meet the first prong of the lessening the burdens of government test as there is no objective manifestation by Q that it considers your activities to be its burden. Although you are working with representatives of various municipalities, you have not taken on any responsibilities that were once conducted or considered by any of the municipalities to be their burden.

Therefore, we must consider all relevant facts and circumstances in determining whether an objective manifestation exists. “A favorable working relationship between the government and the organization is strong evidence that the organization is actually ‘lessening’ the burdens of the government.” Rev. Rul. 85-2, supra. The stronger the control a government has over the activities of the organization, the better evidence of an objective manifestation. Rev. Rul. 85-1. You are not controlled by S or any of the municipal entities within S. Your board is composed of three members, one of whom is an employee of the county. Although he may exert some influence, he is not in control of your activities. His role is solely that of board member and officer. You have not shown that he is a representative of any governmental agency who is exerting direct control of your activities through his role as a board member. You are not like the organization described in Rev. Rul. 70-79, you have not demonstrated an interrelationship between you and the local governments you will serve. The county has no direct role in your operations. In addition, the municipalities for whom you will provide services, have no influence or representatives in your governing body. The parameters of your relationship with any governmental entity will be outlined in the contracts with those entities.

Your funding will come from grants and contributions. Your fees will be determined based on the grants you are able to obtain. You will also charge a fee for the preparation of grant proposals as a service to the county and the municipalities. You have not shown that you will be funded, supported or have a working relationship with any governmental entity. Therefore, you have not demonstrated an objective manifestation by a state recognizing that your activities are its burden or responsibility, as required by Rev. Rul. 85-1 and 85-2.

Even if the first prong of the test was met, you do not meet the second prong of the lessening the burdens of government test. To meet the second prong your activities must actually lessen the burdens of a governmental unit. Evidence that the organization is actually lessening the burdens of government is shown when the government could not continue to conduct its program without the organization’s activities. Rev. Rul. 85-2. Your activities do not alleviate any fiscal or personnel burden of Q. There is no evidence you defray any of Q’s expenses. Thus, you also fail to meet the second prong of the test and do not qualify under IRC Section 501(c)(3) as an organization that is lessening the burdens of the government within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(2).



You devote more than an insubstantial amount of time and activities in supporting a non-exempt purpose, the economic development activities of R and within S, and for this reason do not meet the qualifications under IRC Section 501(c)(3); see Better Business Bureau of Washington D.C., Inc. v. United States.

### **Conclusion**

You do not qualify for tax exemption under IRC Section 501(c)(3) because you are neither organized nor operated exclusively for purposes described in IRC Section 501(c)(3).

You do not meet the organizational test outlined in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) because you have not established that your organizing document permanently dedicates your assets for IRC Section 501(c)(3) purposes.

You are not operated exclusively for one or more purposes described in IRC Section 501(c)(3) and therefore, you are not 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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements