



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

Date:
04/03/2023
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Number: 202326022
Release Date: 6/30/2023

UIL: 501.03-00, 501.03-05

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: 02/13/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date of Incorporation

C = State of Incorporation

UIL:

501.03-00

501.03-05

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, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.

You attest that you were incorporated on B, in the state of C. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under IRC Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially

(1988), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under Section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court found that the organization competed with for-profit adoption agencies, engaged in substantial advertising and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiffs adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in Section 501(c)(3).

In Zagfly, Inc. v. Commissioner, T.C. Memo 2013-29, the court held that the organization's primary activity, the operation of a web-based broker that would sell flowers at market rates, was not a charitable activity but rather a commercial activity that amounts to an unrelated trade or business. Therefore, the organization did not meet the requirements of IRC Section 501(c)(3) because its primary activity did not further a Section 501(c)(3) purpose.

Application of law

IRC Section 501(c)(3) and Treas. Reg. 1.501(c)(3)-1(a)(1) sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3). You have not provided supporting documentation to establish you meet the requirements of IRC Section 501(c)(3), as further explained below.

You do not meet the operational test under IRC Section 501(c)(3) because you are engaging primarily in an activity that does not accomplish an exempt purpose. Your primary activity is to buy and sell in a commercial manner. This activity is substantial and not in furtherance of an exempt purpose. Thus, you do not qualify for exemption under IRC Section 501(c)(3). See Treas. Reg. Section 1.501(c)(3)-1(c)(1).

Your activities also do not serve a public interest. You are providing funds to people that donate, or to you. This isn't considered a true donation since people are receiving funds in exchange for giving products. This activity serves the private interest of the individuals donating items, rather than a public interest. Therefore, you do not meet the operational requirement for IRC Section 501(c)(3). See Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are similar to the organization described in Rev. Rul. 73-127 because the operation of retail sales and your program to donate to other organizations are separate and distinct activities. Since the operation of retail sales is a substantial part of your activities and does not further an exclusively charitable purpose, you are not organized and operated exclusively for 501(c)(3) purposes.

You are like the organizations described in Easter House v. U.S. and Zagfly, Inc v. Commissioner. Your primary activity is to operate a retail store. You have not provided any evidence that this is distinguishable from a general commercial enterprise and that your business purpose is not your primary goal. Because you are primarily operating for a substantial nonexempt commercial purpose rather than for a tax-exempt purpose, you do not meet the operational test for exemption under IRC Section 501(c)(3).

Conclusion

Based on the information you have provided, you do not meet the requirements for tax exemption under IRC Section 501(c)(3). You are operating for a substantial, commercial non-exempt purpose and you are serving the private benefit of individuals who donate items to you for sale by providing money for said items. Therefore, you do not qualify for exemption under IRC Section 501(c)(3). Donations to you are not deductible.

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