



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

**Date:**  
06/12/2023  
**Employer ID number:**

**Form you must file:**

**Tax years:**

**Person to contact:**

**Number: 202336030**  
**Release Date: 9/8/2023**

**UIL: 501.03-30**

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:** 4/17/2023

**Employer ID number:**

**Person to contact:**

Name:

ID number:

Telephone:

Fax:

**Legend:**

X = Date

Y = State

B = Name

**UIL:**

501.03-30

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 formed on X, in the state of Y. 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 the 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 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
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

Your mission indicated on the Form 1023EZ is to provide respectful and affordable interment services that meet the needs of the community. Detailed information was subsequently requested. Your Articles of Incorporation state that your purpose “shall be the keeping in good condition and improvements of the grounds comprising the present Cemetery ... and all burial lots therein, acquire title to real estate of lots now unsold in said cemetery and also of lands contingent or adjacent thereto or elsewhere; to hold and dispose of the same for the purpose of interment of the bodies of deceased persons under proper regulations; also acquire and hold funds subscribed and which may be hereafter contributed thereto from or by any source, invest and reinvest and expend the same for the purposes and object hereof, do and perform such other acts and things necessary for the maintenance of a well-regulated and properly conducted cemetery”. Further, there is no provision for the dedication of assets upon dissolution.

You will provide general maintenance and improvement of the B, including mowing, road maintenance and general upkeep. You are funded by the sale of grave sites and fees for grave layouts, maintenance, and perpetual care proceeds. Your expenses consist of insurance, mowing, and trash pickup. Volunteers conduct your activities.

#### **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) provides that in order to be exempt under IRC Section 501(c)(3) an organization must be organized and operated exclusively for one or more of the exempt purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it does not qualify for exemption.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized and operated exclusively for one or more exempt purposes of organization:

- Limit the purpose of such organization to one or more exempt purposes; and
- 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 purpose.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) requires the dedication of remaining assets exclusively for purposes described 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 that accomplish one or more 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.

Treasury Regulation Section 1.501(c)(3)-1(d)(2) provides the term charitable is used in Section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in Section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. The regulation further provides the term charitable includes:

- Relief of the poor and distressed or of the underprivileged,
- Advancement of religion,
- Advancement of education or science,
- Erection or maintenance of public buildings, monuments, or works,
- Lessening of the burdens of Government, and
- Promotion of social welfare by organizations designed to accomplish any of the above purposes, or:
  - ❖ To lessen neighborhood tensions,
  - ❖ To eliminate prejudice and discrimination,
  - ❖ To defend human and civil rights secured by law, or
  - ❖ To combat community deterioration and juvenile delinquency

Rev. Rul. 79-359, 1979-2 C.B. 226, held that an organization whose purpose is to provide traditional burial services that directly support and maintain basic tenets and beliefs of a religion regarding burial of its member may qualify for exemption under IRC Section 501(c)(3). Through the provision of burial services to members of a religion in compliance with the detailed requirements of religious laws, the organization is preserving and perpetuating traditional religious customs and obligations. The organization is accomplishing a charitable purpose by contributing to the advancement of religion.

In Passaic United Hebrew Burial Association v. United States, 216 F.Supp. 500 (1963), the court held that a synagogue that provides Hebrew funerals and burials for fees to members of the Jewish religion may qualify for exemption under IRC Section 501(c)(3).

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 Linwood Cemetery Association v. Commissioner, 87 T.C. 1314 (1986), the court held that cemetery activities such as selling plots, markers, evergreens, crypts, vaults, and perpetual and special care services have not been found charitable in nature and such substantial activities defeat exemption under Section 501(c)(3).

#### **Application of law**

You are not described in IRC Section 501(c)(3) because you don’t meet the organizational and operational tests outlined in Treas. Reg. Section 1.501(c)(3)-1(a)(1).

Your Articles of Incorporation state in part that your purpose shall be “the keeping in good condition and improvements of the grounds comprising the present cemetery ... and all burial lots therein”. Because your Articles of Incorporation do not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), you fail the organizational test under IRC Section 501(c)(3). Furthermore, your Articles of Incorporation do not contain a dissolution clause as required by Treas. Reg. Section 1.501(c)(3)-1(b)(4). Therefore, this also causes you to fail the organizational test under IRC Section 501(c)(3).

You do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(c)(1), because you are operated for a substantial nonexempt purpose. You are providing respectful and affordable interment services that meet the needs of the community. These activities are not “charitable” as defined in Treas. Reg. Sec. 1.501(c)(3)-1(d)(i).

You are not similar to the organizations described in Passaic United Hebrew Burial Association and Rev. Rul. 79-359 because you do not provide burial services to members of a particular faith. Instead, you are similar to the organization described in Linwood Cemetery Association v. Commissioner because you sell grave sites and layouts and provide perpetual care services to the general public. As described in Better Business Bureau of Washington, D.C., Inc. v. United States, the presence of a single non-exempt purpose, if substantial in nature, defeats exemption under Section 501(c)(3).

### **Conclusion**

Based on the facts presented, you are not organized and operated exclusively for exempt purpose within the meaning of IRC Section 501(c)(3). Your only activity is operating a cemetery. Therefore, you do not 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](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