



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

Date:
07/03/2023
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202339040

Release Date: 9/29/2023

UIL Code: 501.03-00

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



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

Date: 05/08/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

D = City

F = Place

x percent = %

UIL:

501.03-00

501.33-00

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 incorporated on B in C. You are organized and operated exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, specifically, to promote and support the visual art and visual artists of D.

You operate an art gallery at the F and conduct educational and visual arts related programs. You offer art classes and demonstrations in addition to arts sales at the gallery. Your purpose is educating the public and artists through exhibition, discussion, and classes. You are a supportive group for regional artists to network, better their craft, and market their art.

Members pay an annual fee, quarterly fee for exhibit space and a x percent commission on art sold.

Each member contributes 8 hours a month at the gallery by presence at the gallery and any additional classes and events.

The gallery exhibits juried works of member artists. Only member artists can submit art for jury review. Each member artist is juried based on 3 to 5 pieces of art ready to display. The artist chooses what to display and for how long. The artist determines the sales price of their art.

Your income is from annual membership fee, gallery space rent assessed quarterly and a x percent commission on each art sale. You have no paid employees.

Law

Internal Revenue Code (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(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) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Revenue Ruling 66-178, 1966-1 C.B. 138, found that a nonprofit organization created to foster and develop the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are selected by a panel of qualified judges for viewing and are gratuitously displayed is exempt from Federal income tax under IRC Section 501(c)(3).

Rev. Rul. 71-395, 1971-2 C.B. 228, found that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under Section 501(c)(3) of the Code because the organization served the private purposes of its members, even though the exhibition and sale of painting may be an educational activity in other respects.

Rev. Rul. 76-152, 1976-1 CB 151, found that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery does not qualify for exemption under Section 501(c)(3) of the Code because the organization is serving the private interests of those artists whose works are displayed for sale.

In Goldsboro Art League, Inc., v. Commissioner of Internal Revenue, 75 T.C. 337 (1980), the court found that the corporation was entitled to exemption from Federal taxation and entered a decision in its favor. The

corporation contended that it was operated exclusively for exempt purposes, that the sale of artwork in its galleries was an incidental activity, but one which helped it pursue its exempt purposes, that it was not operated in furtherance of a substantial commercial purpose, and that the primary purpose of its sales and other activities was to further the public's appreciation of art and not to serve private interests. The Commissioner argued that since the corporation's activities were indistinguishable from activities required in operating a commercial art gallery for profit, the corporation was operated for a substantial commercial purpose and could not qualify for exemption under Section 501(c)(3) of the Code despite the presence of any number of truly exempt purposes. The court found that the purpose of the corporation's art gallery and art market was primarily to foster community awareness and appreciation of contemporary artists and to provide a constant flow of art for students to study art and painting techniques. The corporation's sales activities were incidental to its other activities and served the same overall objective of art education.

Application of law

You are not described in IRC Section 501(c)(3) because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You do not meet the operational test under Section 501(c)(3) because you are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are operating for the private interest of your artist members whose art you sell. Providing a display and retail space for member artists, allowing each member artist to set the sales price and select the works for sale and you receive a commission promotes the private interests of the artist members. Moreover, the education of the public is secondary to the sale of artwork.

You are not like the organization in Rev. Rul. 66-178, because you are a membership organization consisting of artists who select and sell members' artwork in a gallery operated by you. The artist member sets the sales price, and you earn a commission on work that is sold. Thus, you are operating for the private purposes of your members.

You are similar to the organization described in Rev. Rul. 71-395, because you were formed by a group of artists and are operating an art gallery opened to the general public, which displays and sells members' artwork. In addition, like this organization, a committee chosen by your board selects whose works will be offered for sale. Consequently, like the organization in the revenue ruling, you are a vehicle for advancing members' careers and are promoting the sale of members' artwork. This serves the private purposes of your members, even though the exhibition of paintings may be an educational activity in other respects.

You are like the organization in Rev. Rul. 76-152, because the artists whose works are displayed and sold are being directly benefited by your operations. Therefore, you have a substantial non-exempt purpose.

You are different from the organization in Goldsboro Art League, Inc. Unlike this organization the sale of artwork is a substantial portion of your activities. In addition, all artists that display and sell art works are your members.

Conclusion

Based on the information submitted, you are not operating exclusively for one or more purposes described in IRC Section 501(c)(3) of the Code. Even though some of your activities are educational, you are primarily

operating to benefit your member artists and therefore, you are not described in IRC 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