



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: 202339045
Release Date: 9/29/2023
UIL Code: 501.36-00,
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

Redacted Letter 4038



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

Date: 04/17/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

- B = State of Formation
- C = Date of Formation
- d = Philosophy
- e = Movement
- f dollars = Subscription Fee
- g dollars = Donation
- h years = Years

UIL:

- 501.36-00
- 501.03-00

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 incorporated in the state of B on C. According to your Articles of Incorporation, you were formed for charitable and educational purposes. Your specific business activity is to promote d and make it accessible to the public by labeling products, restaurants, and companies with your e friendly label. Upon dissolution, assets will be distributed for one or more exempt purposes within the meaning of IRC Section 501(c)(3).

You will certify your business subscribers as e friendly. You will provide consulting services that help them add more e options to their businesses, connect them to other businesses, and advise them on how to be more ecologically friendly. Those you certify as e friendly will be featured on your mobile and web applications, be promoted on your social media platforms, and be featured in future events. They will be allowed to use your logo on their communications platforms. The subscription fee will vary with the type of business, its size, and its location. The range of fees will be between f per month per location/product.

You have a business subscriber application and specific criteria that must be met for a business to qualify for your services.

Consumer subscribers are those who download your application. Through the application, you will help consumers find e options. Consumers can choose to make a monthly donation through the application and, if they do, choose the e impact project(s) they would like to support. All subscribers will receive benefits from and discounts in your e certified businesses. The consumer subscriber will choose a monthly donation amount, with g being the minimum donation requirement.

You will create and maintain the application, plan, and execute the e impact projects and secure the benefits and discounts from your business subscribers. Until you launch your consumers services, all your time will be spent working with businesses. After the launch of your consumer services, approximately half of your time will be spent working with businesses and half working with consumers.

You expect to organize marches to support your cause every h years. You plan to deliver lectures to colleges and universities across the United States regarding d. You plan to have television commercials and billboards that promote d to increase awareness.

You will be funded mostly by the donations of your subscribers. Other funding will come from private donors and through your joint work with said businesses and restaurants who will use your e label for which they will pay monthly.

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, 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) 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 purpose. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, advancement of education and science, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes lessening of the burdens of government.

Treas. Reg. Section 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of IRC Section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in IRC Section 513.

Rev. Rul. 69-175, 1969-1 C.B. 149, describes a nonprofit organization, formed by parents of pupils attending a private school, that provided school bus transportation for its members' children. It was found that the organization served a private rather than a public interest and did not qualify for exemption under IRC Section 501(c)(3).

Rev. Rul. 70-186, 1970-1 C.B. 128, describes an organization that was formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake. It was financed by the lake front property owners, by members of the community adjacent to the lake, and by municipalities bordering the lake. It was further explained that the benefits to be derived from the organization's activities flowed principally to the public and it would be impossible for the organization to accomplish its purposes without providing benefits to the lake front property owners. The organization qualified for exemption under IRC Section 501(c)(3).

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 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 the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court determined that an organization that sold consulting services to nonprofit and exempt organizations interested in rural-related policy and program development operated a trade or business ordinarily carried on for profit. The burden rested on the petitioner to prove that it did not operate "a consulting business of the sort which is ordinarily earned on by commercial ventures organized for profit." The court stated that "competition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes." Accordingly, the court determined the petitioner "completely failed to demonstrate that its own services, or the services provided by its consultants, [were] not in competition with commercial businesses such as personnel agencies, consulting referral services, real estate agents, housing rental services, banks, loan companies, trash disposal firms, or environmental consulting companies." Furthermore, the petitioner did not conduct other substantial charitable activities. Other factors that counted against petitioner included the fact that the petitioner's financing did not resemble that of a typical IRC Section 501(c)(3) organization and that the petitioner failed to limit its services to IRC Section 501(c)(3) organizations. Therefore, the court determined that petitioner failed to qualify for recognition under IRC Section 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991) the court wrote that the activities were conducted as a business and the organization was in direct competition with other restaurants and health food stores; thus, it did not qualify for exemption under IRC Section 501(c)(3). The appellate court stated the factors that the court relied on to find commerciality and thus offered the best contemporary explanation of the commerciality doctrine. These factors include:

- 1) The organization sold goods and services to the public.

- 2) The organization was in direct competition with for profit businesses.
- 3) The prices set by the organization were based on pricing formulas common to retail food businesses.
- 4) The organization utilized promotional materials and "commercial catch phrases" to enhance sales.
- 5) The organization advertised its services and food.
- 6) The organization did not receive any charitable contributions.

In Geisinger Health Plan v. Commissioner, 985 F.2d 1210 (3rd Cir. 1993), the court applied the community benefit standard to find an HMO, which simply arranged for others to provide health care services but did not provide healthcare directly, to be not tax exempt under IRC Section 501(c)(3). The HMO was open for enrollment for anyone who could afford to pay and provided some subsidization of dues. However, because the organization arranged for the provision of medical services only to members that belonged, the court determined that it was not necessarily charitable. Under the community benefit test, the organization had to demonstrate that it benefited more than just its subscribers.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the District Court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which the organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. "Among the major factors courts have considered in assessing commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization received charitable donations."

Application of law

IRC Section 501(c)(3) sets forth two main tests for qualification for exempt status. 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 Section 501(c)(3).

You are not operating exclusively for exempt purposes consistent with IRC Section 501(c)(3). Your primary activity is consulting and labeling for businesses. You operate in a manner consistent and in competition with other similar for-profit businesses. A substantial portion of your activities include operating an unrelated trade or business. Therefore, you are not operating exclusively for charitable purposes as defined in Treas. Reg. Section 1.501(c)(3)-1(d)(2) and you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

Your consulting and labeling are considered an unrelated trade or business since offering consulting and labeling for d does not further an acceptable IRC Section 501(c)(3) exempt purpose. Based on Treas. Reg. Section 1.501(c)(3)-1(e)(1), you do not meet the requirements for recognition of tax exemption under Section 501(c)(3) because a substantial portion of your activities indicate you are operated for the primary purpose of carrying on an unrelated trade or business, as defined in IRC Section 513.

You serve a private rather than a public interest because you confer benefits primarily to your members. You operate a consulting and labeling program that is designed to provide benefits to your subscribing members. Members pay a monthly fee, and in return receive consulting advice and allow your labels to be placed on their products. Like the organization described in Rev. Rul. 69-175, you were formed to provide benefits to your members. Membership is open to anyone wishing to enroll and therefore, is not limited to a charitable class.

Because your beneficiaries are only your members, you operate substantially for a private interest rather than a public interest. Consequently, you are providing a service for your members, like Rev. Rul. 69-175, and are not operating for exclusively exempt purposes as described in IRC Section 501(c)(3). See Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are not like the qualifying organization described in Rev. Rul. 70-186 because you have not demonstrated that your activities primarily benefit the public. While the promotion of d may offer a public benefit, and you will provide some educational services in the form of lectures and other similar activities, the fact that you operate to provide benefits to your subscribing members precludes you from qualifying for exemption under IRC Section 501(c)(3). This substantial nonexempt purpose, as explained in Better Business Bureau of Washington, D.C., Inc., refutes your claim for exemption regardless of the number or importance of truly exempt purposes.

Like the HMO in Geisinger, you arrange consulting and labeling services for your subscribers only and provide no discernable services to the public. Consequently, under the community benefit standard, you do not primarily operate for an exempt charitable purpose and therefore do not meet the requirements for tax exemption under IRC Section 501(c)(3).

You are like the organizations described in B.S.W. Group, Inc., Living Faith, Inc., and Airlie Foundation. Your primary activity is the consulting and labeling for d, which is a trade or business ordinarily carried on for profit that presents some of the factors in Living Faith, Inc. You have established a business where businesses pay a monthly fee to receive consulting advice and allow your labels to be placed on their products. You also will connect them with other businesses and allow them to use your label on their products. You will charge monthly fees for these services. You will rent billboards and air commercials to promote d, feature your subscriber businesses on your mobile and web applications and promote them on your social media platforms and feature them in your future events. These factors indicate that you are operated for a substantial nonexempt commercial purpose.

Conclusion

You do not qualify for recognition of exemption from federal income tax as an organization described in IRC Section 501(c)(3) because you do not meet the operational test. Your operation of a consulting firm to commercial enterprises is a commercial business. Any charitable or educational objectives or results are incidental to your business purpose of consulting. Therefore, we conclude that 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 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