



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

Date:
07/24/2023
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202342018
Release Date: 10/20/2023
UIL Code: 501.32-01,
501.33-00, 501.36-03

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: 05/22/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

T = Movement

V = Date of Formation

W = State of Formation

X = Date of Merger

Y = Author

Z = Related Entity

b = Percent of Royalties Paid

c = Percent of Contributions Paid

UIL:

501.32-01

501.33-00

501.36-03

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 V in W. Your Articles of Incorporation, in addition to containing the standard exempt purpose clause, provides that your specific purpose is to spread the message of Y, a spiritual author and teacher, founder of the T. You merged with a for-profit publishing company on X and you are the surviving corporation. The for-profit publishing company engaged in publishing and preserving Y's works on behalf of the estate of Y prior to the merger. You indicate that the assets you received from the merger exceeded the value of any remaining liabilities.

You continue to use the website of the for-profit publishing company for your activities. You sell books and other written materials to those interested in Y's message, and make Y's works available to other domestic and foreign publishing companies for resale. You also offer a book subscription service for this material, you provide free study materials on your website to the public and e to other study groups and nonprofit groups such as Z. You supply nonprofit groups with materials for their websites, you review the works of Y's for errors and

quality control, and you renovate transcripts of Y's works as a gift to Z. Z is a non-exempt organization inspired by Y.

The estate of Y owns the works of Y and has granted you exclusive publishing rights via numerous licenses to publish and distribute his works. You will pay the estate royalties equaling b percent of the net revenues based of an accounting of previous activity of net revenue received from sales. Per the consent agreement, the estate of Y agreed to the assignment of the publishing and royalty agreement to you as the surviving entity. The payment of royalties to the estate shall continue for the duration of the copyright for each individual book or derivative work.

Projected income derives from the sale of books through various publishing companies and subscriptions. Prices charged are equivalent to fair market value. Projected expenses include royalty, publishing, shipping, advertising, marketing, catalogs, cost of goods/print on demand, storage, website, and charitable contributions. Charitable contributions are expected to be less than c percent of your total projected income. You will pay a professional to perform renovations, of archival transcripts owned by the estate of Z. This will also be your gift to the estate.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious, or educational purposes, no part of the nets earnings of which inures 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 or 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(c)(2) provides an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Rev. Rul. 60-351, 1960-2 C.B. 169, describes an organization that published a foreign language magazine alleged to be of literary, scientific and educational character. The corporate charter affirms this in its articles of incorporation. The organization's income was derived mainly from subscriptions to the magazine and sales of individual copies. It was found that while the magazine was printed in a foreign language and may provide material unlike those in other magazines, its primary activity was devoted to publishing a magazine and selling

it to the general public in accordance with ordinary commercial business practices. There was no showing that the organization fulfilled a corporate role that serves an exclusive exempt purpose, and thus did not qualify for exemption under IRC Section 501(c)(3).

Rev. Rul. 77-4, 1977-1 C.B. 141, describes an organization's only activities were preparing and publishing a weekly newspaper that presented local, national and world news, solicited advertising and sold subscriptions. The pages of the newspaper are equally divided between community interest items of significance to the members of a certain ethnic group, national and international news articles of special interest to that group and regular commercial advertising. Income is derived from the sale of advertising and the sale of subscription services. Although the organization had been in existence for many years, it had yet to realize a profit from its operations. The Service held that the organization's activities were indistinguishable from commercial publishing, and as such, did not qualify for exemption under IRC Section 501(c)(3).

In Better Business Bureau of Washington, D.C., Inc v. United States, 326 U.S. 279 (1945), the Supreme Court concluded that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption under IRC Section 501(c)(3), regardless of the number and importance of true exempt purposes.

In Harding Hospital, Inc. v United States, 283 F. Supp. 2d 1068 (6th Cir. 1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the exemption statute.

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.

Application of law

You are not organized or operated exclusively for one or more exempt purposes under IRC Section 501(c)(3) as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You fail the operational test as further explained below.

You are not operating exclusively for an exempt purpose described in IRC Section 501(c)(3). Publishing as a substantial activity is acceptable only if it furthers a qualifying exempt purpose. You are operating in a manner consistent with similar for-profit businesses. You are primarily formed to restore, promote, distribute, and make available for free and sale Y's works which are owned by Y's estate. You have not established that your activities an exclusively charitable, educational, or religious purpose. Therefore, you have not met the requirements of exemption under IRC Section 501(c)(3). See Treas. Reg. Section 1.501(c)(3)-1(c)(1).

By engaging in the publishing, marketing and distributing the works of Y and providing a percentage of any income received to the estate of Y, you are serving a private rather than a public interest. You stated you will make payments in percentage of sales of the Y's works as well as additional gifts to the estate of Y. You will also use any income received by you to provide for the restoration of Y's transcripts. This will provide additional benefit to Y's estate in the long-term. The estate of Y is a private entity, and therefore this activity furthers a private interest. Thus, you are not operating for exclusively exempt purposes as described in IRC Section 501(c)(3). See Treas. Reg. Section 1.501(c)(3)-1(c)(2) and Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are like the organizations denied exemption in Rev. Rul. 60-351 and Rev. Rul. 77-4 because more than an insubstantial amount of your activities is devoted to publishing activities which are indistinguishable from commercial activities; you make Y's works available for sale under contracts through book distributors and subscriptions priced at market value. While your activity may provide some benefit to those who read the writings of Y, you have not established that the overall scope of your activities are distinguishable from a normal commercial enterprise, and thus serve an exclusively exempt purpose. The fact that this activity has not sustained a profit over the years is not an indicator that you meet the requirements of this section. Therefore, you do not meet the requirements under IRC Section 501(c)(3).

You are similar to the organization described in In Living Faith, Inc. You are operating a publishing company non-distinguishable from a for-profit entity conducting similar activities. While you do provide some works for free, you primarily produce, market and advertise these items are marketed to the general public for a fee in a similar fashion to the for-profit entity you assumed operations from. The price of the items you sell are set a fair market value; there is no donative element to this activity. You have represented that you will receive only a small amount of income from charitable contributions; the majority of your income will come from subscriptions and the outright sale of Y's works. These factors indicate that you are operated for a substantial non-exempt commercial purpose and thus do not qualify for exemption under IRC Section 501(c)(3).

You are like the organization described in Better Business Bureau of Washington D.C., Inc. While we acknowledge the works you produce may have an educational and religious element, as indicated in this case, the presence of your nonexempt commercial and private purposes disqualifies you from exemption under IRC Section 501(c)(3). You are also like the organization described in Harding Hospital, Inc. The information you provided for the administrative record does not demonstrate that you operate exclusively in furtherance of an exempt purpose.

Conclusion

Based on the information submitted, you are not operating exclusively for one or more purposes described in IRC Section 501(c)(3). Even though your publishing activity may provide some benefit to the those read these works, you are substantially operating in a similar fashion to an entity that conducts similar activities to a regular trade or business and serve a private interest to the estate of Y by making periodic royalty payments and gifts to it. 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements