



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

Date:
08/09/2023
Employer ID number:

Tax years:
All
Person to contact:

Release Number: 202344017
Release Date: 11/3/2023
UIL ode: 501.01-00,
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:
June 5, 2023
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Legend:

B = date
C = state
D = location
F = organization

UIL:

501.00-00
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 were incorporated in C on B as a domestic nonprofit Limited Liability Company (LLC). Your amended Articles of Organization state that you are organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations described under IRC Section 501(c)(3), or corresponding section of any future federal tax code.

Your activities described on Form 1023 are to raise and distribute funds to military charities. Specifically, your goal is to create a replica of _____ in D. The project will be funded by individual and corporate donations. You said based upon the success you will then pursue other civic projects which will enhance the community of D.

Your operating agreement indicates your purpose is to bring a replica of _____ to D as well as raise funds, thru various fund raisers to offset the cost and distribute remaining funds to charitable organizations which assist U.S. military veterans.

Subsequent research indicates that your sole member (F) is not an organization exempt under IRC Section 501(c)(3) but rather exempt under Section 501(c)(19).

Your operating agreement indicates that your sole member is F, an IRC Section 501(c)(3) organization, and at no time shall membership interest in you or your assets be sold or in any other way transferred to any other person or organization. If a transfer or sale of assets becomes necessary or the sole member of the organization ceases to be described under Section 501(c)(3), assets must be distributed to a Section 501(c)(3) organization or governmental unit or instrumentality. All available assets held now or in the future shall only be availed of or transferred to any non-member other than a Section 501(c)(3) organization or governmental unit or instrumentality in exchange for fair market value. Upon dissolution, all your remaining assets shall be distributed to Section 501(c)(3) organizations which help U.S. military veterans. If any amendments are to be made to the organizing documents amendments must be consistent with Section 501(c)(3). You shall not merge with or convert into a for-profit entity or distribute any asset to any members or organizations who cease to be organizations described in Section 501(c)(3) or governmental units or instrumentalities.

Law

IRC Section 501(c)(3) provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, for an organization to be exempt and described in IRC Section 501(c)(3), that 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(b)(1) provides that an organization is organized and operated exclusively for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more exempt purposes.

Notice 2021-56, 2021-45 I.R.B. 716, 2021, sets forth current standards that a limited liability company (LLC) must satisfy to receive a determination letter recognizing it as tax-exempt under section 501(a) of the Internal Revenue Code and described in section 501(c)(3).

Notice 2021-56, Section 3.02 provides the required provisions that an LLC must have in their articles of organization and operating agreement. To qualify, both the LLC's articles of organization and its operating agreement must include:

- (1) Provisions requiring that each member of the LLC be either (i) an organization described in section 501(c)(3) and exempt from taxation under section 501(a) or (ii) a governmental unit described in section 170(c)(1) (or wholly owned instrumentality of such a governmental unit).
- (2) Express charitable purposes and charitable dissolution provisions in compliance with Treas. Reg. Sections 1.501(c)(3)-1(b)(1) and (4).
- (3) The express chapter 42 compliance provisions described in section 508(e) (1), if the LLC is a private foundation.
- (4) An acceptable contingency plan (such as suspension of its membership rights until a member regains

recognition of its section 501(c)(3) status) in the event that one or more members cease to be section 501(c)(3) organizations or governmental units (or wholly owned instrumentalities thereof).

Notice 2021-56, Section 3.03 provides required provisions regarding representation on enforceability. The LLC must represent that all provisions in its articles of organization and operating agreement are consistent with applicable state LLC law and are legally enforceable.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). The standards set forth for issuing determination letters have generally included a requirement that all members of an LLC must themselves be Section 501(c)(3) organizations, governmental units, or wholly owned instrumentalities of a state or political subdivision thereof. (See Notice 2021-56) While you are operating to conduct charitable purposes in raising funds for a war memorial, since your Articles do not limit your purposes you fail the organizational test under Treas. Reg. Section 1.501(c)(3)-1(b)(1).

Neither your Articles of Organization nor your Operating Agreement meet the organizational requirements for an LLC outlined in Notice 2021-56:

- Membership is not limited to organizations exempt under IRC Section 501(c)(3) or a governmental unit described in section 170(c)(1); instead, your sole member is exempt under Section 501(c)(19)
- While your Articles of Organization nor Operating Agreement limit your purposes to one or more exempt purposes under IRC Section 501(c)(3), and they do not expressly empower you to engage in activities that are not in furtherance of one or more exempt purposes, this does not apply given your sole member is not exempt under Section 501(c)(3)
- Your sole member is an organization exempt under IRC Section 501(c)(19), not entities who are exempt under IRC Section 501(c)(3) or governmental units (or wholly instrumentalities thereof)

Conclusion

Based on the information you have submitted you do not qualify for exemption under IRC Section 501(c)(3). You do not meet the organizational test because your Articles of Organization do not limit your purposes to one or more exempt purposes.

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