



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

Date:
08/28/2023
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202347018
Release Date: 11/24/2023
UIL Code: 501.03-00,
501.36-00

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: 5/23/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = State

C = Date

D = Country

F = Continent

G = Country

d dollars = Amount

f dollars = Amount

g dollars = Amounts

h dollars = Amounts

UIL:

501.03-00

501.36-00

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 purposes. Your specific business activity is to partner with churches and nonprofit organizations to fight poverty and care for the needy. Upon dissolution, assets will be distributed for one for more exempt purposes within the meaning of IRC Section 501(c)(3).

According to your corporate bylaws, your mission is to partner with churches, tax-exempt organizations, and NGOs to fight poverty and care for the needy locally, nationally, and internationally including sustainable development projects, economic development projects, obtaining or restoring clean water and affordable energy, improved educational opportunities, cultural exchange, disaster relief, and humanitarian aid. Initially you will provide humanitarian aid to the people of D.

You indicated in your application that you will open and use the recurring revenue of fitness gym operations to help those who are in need locally, nationally, and internationally. Examples of aid include humanitarian aid to D, child sponsorships, building wells in F, providing food for those in need, rescuing those in sex slavery, helping the homeless, etc.

The gyms will be open _____ a day, and serve the local communities they are placed in. They will be run full-time by managers and trainers who will be paid a normal rate for their services. You will receive funds from members joining the gym and from outside donors. You will distribute all funds exceeding expenses to other nonprofits, churches, or organizations that serve to bring hope to the world.

Initially, you will provide intervention for the people of D during and after the war with G. You will aid struggling families, elderly, refugees, handicapped people, and people in danger in all regions of D, as well as those in all countries taking in and assisting refugees. You will network with churches, other nonprofits, businesses, and food banks to enrich, support, and enhance the lives of these disadvantaged and marginalized individuals, children, families, and communities by providing access and funds for medical care, and to help people become emotionally, financially, and physically stable and safe. You will provide needed food, shelter, access to medical care, clothing, and education for those displaced by war. Your long-term mission includes helping individuals, families, and communities in D, surrounding areas, and around the world including the United States with sustainable development projects, economic development projects, obtaining or restoring clean water and affordable energy, improved educational opportunities, cultural exchange, fighting poverty for the needy, disaster relief, and humanitarian aid.

According to your Statement of Revenue and Expenses, while you expect some amounts from gifts, grants, and contributions, approximately _____ % of your revenue was listed as gross receipts with an explanation that these represented “revenues after expenses from nonprofit fitness gyms.” We asked what your expected gross income would be, an itemized list of expenditures related to gym operations, and salary expenses but received no response.

We asked for more information about your fitness gym operations and if the sole purpose was to produce a profit that is then payable to other exempt organizations. You replied that producing a profit from fitness operations to give to other organization is not your sole exempt purpose, but that your purpose is to also promote health. You went on to describe how the nation has a health crisis from obesity. The Centers for Disease Control and Prevention state that the U.S. obesity rate is about 42%. Obesity-related conditions include heart disease, stroke, Type 2 diabetes, and certain types of cancer. People are not taking good care of themselves, and their health is suffering. Obese people on Medicare, Medicaid and other government-sponsored medical care are costing the government and taxpayers more because they aren't healthy or physically fit. Some don't have good eating habits, and many don't exercise because they don't have a place to do so, and don't know how to get the right exercise to become physically fit. We sent an additional information request letter asking for details about your facility and how you intend to advertise the fitness gyms but received no response.

You explained that your board members see a way to improve the overall health of people out of shape and obese, as well as those who are and want to remain fit. That is the reason for the fitness operations. CDC reports show that people of lower socio-economic status and education levels tend to be more obese and less fit than those who have higher education levels and more income. You stated that it seems unfair that lesser-educated, lower-income people can't have the same access to quality fitness instruction and facilities as those who can afford to pay high costs for memberships in expensive fitness facilities. You want to fix that by providing

cardio, free weights, and strength machines them.

a day, and you will provide trainers to those who need

You have a big vision. You hope that in your operation of fitness facilities, you will make a profit so that you can also address the needs of your community, nation, and the 17 UN Sustainable Development Goals to impact people around the world, especially the people of D. You want to be a part of the relief effort for those people.

With respect to your gym operations, any individual or family in the area who wants to improve or maintain their fitness is welcome to join. They must fill out a membership application form. Members have access to cardio, free weights, strength machines, and trainers. Members will know that any profits from membership will go into your mission to assist those in need locally, nationally, and internationally.

You will use the HHS Poverty Guidelines to establish fees for membership. For individuals who fall under the Guidelines, their membership will be approximately d dollars per month or f dollars for a family membership. These fees are about half of your regular fees. For those individuals and families who are above the Guidelines, you will charge a standard fee comparable to the , , or . You will determine what that fee is based on the overhead to operate a fitness facility around the clock. You expect the fee to be between g dollars per individual, or h dollars per family membership.

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, 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)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, 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 Section 513.

Rev. Rul. 79-360, 1979-2 C.B. 236 held the operation of health club facilities in a commercial manner by an exempt organization whose purpose is to provide for the welfare of young people, constitutes unrelated trade or business.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, (1945), 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 Section 501(c)(3) organizations. Therefore, the court determined that petitioner failed to qualify for recognition under Section 501(c)(3).

In Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979) aff'd 625 F.2d 804 (8th Cir. 1980), the Tax Court stated that the sale of prescription drugs to senior citizens and handicapped persons is a trade or business normally carried on for profit. The court also ruled that sales of prescription drugs to the elderly and the handicapped even at a discount is not, without more, in furtherance of a charitable purpose. The court said it was clear that petitioner's exclusive purpose for being was to sell drugs, an activity that is normally carried on by commercial profit-making enterprises. The court also stated that in regard to the promotion of health "We do not believe that the law requires that any organization whose purpose is to benefit health, however remotely, is automatically entitled, without more, to the desired exemption. We have been cited no evidence that Congress intended to exercise its grace in such an expansive manner."

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 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 operating a fitness gym open to the general public. You expect revenues from this activity to not only make a profit, but to comprise the majority of your income. Although you offer reduced fees for individuals whose income falls below poverty guidelines, your membership is open to anyone willing to pay a monthly fee comparable to other gyms in the area. Your gym is operated by paid staff paid at a normal rate for their services. You operate in a manner consistent and in competition with other similar for-profit businesses. A substantial portion of your activities includes operating an unrelated trade or business. You are similar to the organization described in Rev. Rul. 79-360. Therefore, you are not operating exclusively for charitable purposes as described 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 fitness gym operations are considered an unrelated trade or business since offering facilities and equipment that individuals use to stay in shape 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 you are operated for the primary purpose of carrying on an unrelated trade or business, as defined in Section 513.

Your primary activity is the operation of a fitness gym, which is a trade or business ordinarily carried on for profit that presents most of the factors in Living Faith Inc. You have established a business where customers pay a monthly membership fee to use your facilities and equipment that competes with other similar commercial businesses. While you offer a reduced rate to some, your normal membership fees are priced at comparable rates in your area. Your source of revenue is from membership fees and your expenses are mainly for facilities and salaries. Because you conduct activities similar to a commercial business, you do not meet the qualifications for exemption under IRC Section 501(c)(3).

You are like the organizations described in B.S.W. Group, Inc., Federation Pharmacy Services, Inc., Living Faith, Inc., and Airlie Foundation because you are operating for a substantial nonexempt commercial purpose rather than for a tax-exempt purpose. You are open to the general public during regular business hours. Your prices are comparable to other fitness gyms, you have a paid staff, and you will be funded primarily through membership fees. These factors indicate that you are operated for a substantial nonexempt commercial purpose.

While you plan to use the profits from your operations for charitable purposes, your primary activity is the operation of a fitness gym open to the public. As the court found in Better Business Bureau, the presence of a single, substantial non-exempt purpose will preclude exemption regardless of the number of other exempt activities.

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 fitness gym open 24 hours a day to anyone who pays a monthly membership fee is a commercial business. Any charitable or educational objectives or results are incidental to your business purpose of providing gym facilities. 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