



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

Date:
09/13/2023
Employer ID number:

Tax years:
All
Person to contact:

Release Number: 202349013
Release Date: 12/8/2023
UIL Code: 501.03-19,
501.03-30, 501.33-00

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:
July 17, 2023
Employer ID number:

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

Legend:

X = date
Y = state
U = area 1
V = area 2
W = area 3
Z = area 4
q dollars = amount 1
R = number 1
s dollars = amount 2
t percentage = number
2

UIL:
501.03-19
501.03-30
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 submitted Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

You attested that you were incorporated on X, in the state of Y. You attested that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under Section 501(c)(3).

You attested that you are organized and operated exclusively to further charitable purposes. You attested that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

Your mission or most significant activities on the Form 1023-EZ is to promote fellowship and unity of the cottage owners and residents of U located on the environs of V in W, Y.

Detailed information was subsequently requested.

Your organizing document stated your purpose is to promote fellowship and unity of the owners and residents of U located on the shores and environs of said lake, to make reasonable rules and regulations in connection with the use of the lake and adjacent shores and lands, to promote general health and atmosphere, to provide for the general welfare of said owners, to acquire interest in real property, including the lake bottom, and/or buildings which may be beneficial to the association, and to lease, mortgage, purchase, and convey interest in real property.

The lake was originally developed as the , but it was . It was decided for the dam property to be sold. You agreed to purchase the dam, and each property owner gave q dollars to be used for the dam purchase. Your reason for this was to protect the lake and prevent it from being drained.

You stated that you exist to maintain the lake and the dam, and to foster the fellowship and unity of the owners and residents.

You conduct a yearly membership meeting for approximately R members. Business would be discussed and reviewed, officers elected for the next year, and all members participate in the social gathering. Your volunteers take the time, on an as need be basis, to monitor the dam and lake. They would provide any maintenance (like brush clearing, etc.) that is required.

Your members, members' families, and guests utilize the lake for recreational activities like boating, fishing, and swimming. These activities are operated on a basis or based upon the preference of your individual member. All R owners and residents, plus their respective families, can take part in these activities.

Your membership dues are s dollars per year. Your fee is calculated based on the estimate of what is required to properly maintain the dam, the lake, and the lake outlet. For expenses, you mostly pay for dam maintenance, lake maintenance, real estate taxes, and liability insurance.

Your scheduled recreational or social activity is the annual meeting where the members and families gather to socialize. You stated that your members spend 100% of their time and resources on recreational and social activities.

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) provides 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(b)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes if by the terms of its articles the purposes for which such organization is created are broader than the purposes specified in IRC Section 501(c)(3).

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) describes that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Therefore, to meet this requirement it is necessary for an organization to establish that it is not organized and operated for the benefit of private interests.

Revenue Ruling 59-310, 1959-2 C.B. 146, granted exemption to an organization that was formed to establish, maintain, and operate a public swimming pool, playground and other recreation facilities for the children and other residents of the community. Its funds were principally raised by public subscription. The income derived from charges for admission to the swimming pool was nominal and such charges were purely incidental to the orderly operation of the pool. Since the property and its uses are dedicated to members of the general public of the community and are charitable in that they serve a generally recognized public purpose which tends to lessen the burdens of government, it is concluded that the instant organization is exclusively charitable within the meaning of IRC Section 501(c)(3).

Rev. Rul. 70-186, 1970-1 C.B. 129, discusses an organization that improved and sustained a lake used for public purposes. The organization improved the condition of the water in the lake to enhance its recreational features for public benefit. The organization's principal activity was to treat the water, to remove algae, and to otherwise improve the condition of the water for recreational purposes for the public. The organization was found to be exempt under IRC Section 501(c)(3).

Rev. Rul. 78-85, 1978-1 C.B. 150, a nonprofit organization formed by residents of a city to help preserve, beautify, and maintain a public park located in the city and whose support is derived from membership dues and

contributions from the general public, is operated exclusively for charitable purposes and qualifies for exemption under Code section 501(c)(3).

In Ginsberg v. C. I. R., 46 T.C. 47 (Tax Court 1966), held, the corporation was organized and operated primarily for the benefit of those persons owning property adjacent to the waterways dredged rather than for public or charitable purposes. It was clear that the association was organized and operated primarily for the benefit of those persons contributing to it: it certainly was not organized and operated exclusively for charitable purposes, as required by section 501(c)(3), and payments to it are not allowable as charitable contributions as defined in IRC Section 170(c)(2).

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 a claim for exemption regardless of the number or importance of truly exempt purposes.

Application of law

You do not meet the organizational or operational test under IRC Section 501(c)(3). Hence, you cannot be recognized as exempt under this section. See Treas. Reg. Section 1.501(c)(3)-1(a)(1).

Your stated purpose on your organizing document is not an exempt purpose, and it is not recognized under IRC Section 501(c)(3). Thus, you do not meet the organizational test specified in IRC Section 501(c)(3). See Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv).

You operate to maintain and repair a dam and lake for a specific group of people. You are serving a private interest instead of the public. This does not further any exempt purpose recognized in IRC Section 501(c)(3). Thus, you are not operated exclusively for any exempt purpose and do not meet the operational test. See Treas. Reg. Section 1.501(c)(3)-1(c)(1) and Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are not like the organization granted exemption in Rev. Rul. 59-310. You were not formed to establish, maintain, and operate a public lake or facilities for the children and other residents of the community. Your activities are limited to members, members' families, and guests. While your members can invite 'guests' over, it is incidental in comparison to the number of members making use of the property. Your property and its uses are not dedicated to members of the public of the community and are not charitable in that they serve a generally recognized public purpose which tends to lessen the burdens of government. This is further demonstrated in Rev. Rul. 70-186 and Rev. Rul. 78-85. You do not seek to maintain the lake and dam enhance its recreational features for public benefit.

You are similar to the organization denied exemption in court case, Ginsberg v. C. I. R., because you are operated primarily for the benefit of your members who contributed to the purchase of the lake.

You are like the organization denied exemption in the court case, Better Business Bureau of Washington, D.C., Inc. v. United States, because you have a substantial non-exempt purpose. Your only scheduled recreational or social activity that is formally conducted are the annual meetings where the members and families can gather to socialize. Your members spent 100% of their time and resources on recreational and social activities. Your members, members' families, and guests also utilized the lake for other recreational activities like boating, fishing, and swimming. These activities were operated on a year-round basis or based upon the preference of your individual member.

Conclusion

You do not qualify for exemption under IRC Section 501(c)(3). Your activities and operations are not directed exclusively for exempt purposes, and you do not engage primarily in activities that accomplish exempt purposes under Section 501(c)(3). Your activities are for members and their family and not the general public. You have also failed both the organizational and operational test. This aspect precludes you from 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