



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

Date:
09/25/2023
Employer ID number:

Tax years:
All
Person to contact:

Release Number: 202351014
Release Date: 12/22/2023
UIL Code: 501.03-33,
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:
August 1, 2023
Employer ID number:

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

Legend:

X = date
Y = state
Z = month
q dollars = amount 1
r dollars = amount 2
s dollars = amount 3

UIL:
501.03-33
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 attest that you were incorporated on X in Y. Your organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3) and contains the dissolution provision required under Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest 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

On Form 1023EZ, you indicate that you are formed to bring the community together for entertainment purposes. Your organizing document further specifies that you provide an annual festival for your local community.

Detailed information was subsequently requested.

Your annual festival takes place in mid-Z the weekend before the . It takes place on the local school grounds. The festival consists of entertainment, crafts, and food vendors. Live music, games, and inflatables are also available. You charge no fees to the general public to attend the festival.

You charge vendors fees to have a site or booth at the festival. The most recent fees are as follows:

- Nonelectric sites are q dollars
- Electric sites are r dollars
- Nonprofit sites are s dollars

Historically, nonprofits occupy slightly more than half of the sites and booths. The rest are operated by for-profits. Some of the for-profit vendors provide education on their trade or business.

All your revenues are from site or booth fees and sponsorships. Expenses cover the costs of the festival and any excess is held for the next year's event.

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 or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states 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.

In Revenue Ruling 67-216, 1967-2 C.B. 180, a nonprofit organization formed and operated exclusively to

instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products may qualify for exemption from federal income tax under IRC Section 501(c)(3). The organization's activities and exhibits were planned and managed by or in collaboration with persons whose business it was to inform and instruct farmers and the general public on agricultural matters (*i.e.*, home demonstration agents, county agricultural agents), and the resulting displays were designed to be instructive. The presence at the fair of recreational features such as midway shows, refreshment stands, and a rodeo are incidental to the fair's overall educational purpose.

In Rev. Rul. 77-366, 1977-2 C.B. 192, a nonprofit organization that arranged and conducted wintertime ocean cruises during which activities to further religious and educational purposes were provided in addition to extensive social and recreational activities was not operated exclusively for exempt purposes and does 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 stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under IRC Section 501(c)(3) regardless of the number or importance of statutorily exempt purposes.

In St. Louis Science Fiction Limited v. Commissioner, 49 TCM 1126, 1985-162, the Tax Court held that a science fiction society failed to qualify for tax-exempt status under IRC Section 501(c)(3). Although many of the organization's functions at its annual conventions (the organization's principal activity) were educational, its overall agenda was not exclusively educational. A substantial portion of convention affairs were social and recreational in nature.

In Spanish American Cultural Association of Bergenfield v. Commissioner, T.C. Memo 1994-510 (1994), an organization was created to foster the cultural heritage of the local Spanish-American residents. Except for the charitable donations and scholarships, the organization primarily engaged in social activities designed to provide Spanish-American residents with a sense of community. They were granted exempt status under IRC Section 501(c)(4), but then applied for exempt status as a charitable organization described in Section 501(c)(3). It was found that they did not qualify under Section 501(c)(3) because their social activities were more than insubstantial in comparison to its charitable activities.

Application of law

You are operated to provide an annual festival. This does not further an exclusive IRC Section 501(c)(3) purpose. To be recognized under Section 501(c)(3) you must be serving an exclusive charitable or educational purpose. Your activity of an annual festival, while serving the community, exceeds the allowable amount of social and recreational activities that an organization seeking exemption under Section 501(c)(3) may conduct. Thus, you are not operated exclusively for an exempt purpose and cannot be granted exemption under Section 501(c)(3). [See Treas. Reg. Sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1)]

You are not like the organization granted exemption in Rev. Rul. 67-216 because you have not demonstrated any significant charitable or educational programs associated with your festival. Rather, you are more similar to the organization denied exemption in Rev. Rul. 77-366. Your extensive social and recreational activities demonstrate you are not operated exclusively for exempt purposes that would qualify under IRC Section 501(c)(3).

As noted in Better Business Bureau of Washington, D.C., Inc., the presence of a single non-exempt purpose, if substantial, will preclude exemption regardless of other qualifying purposes. While your activities serve the general public and community at large, and certain activities may convey historical significance, ultimately the festival is for entertainment. Substantial recreational and social purposes preclude you from exemption under IRC Section 501(c)(3). This characteristic is further demonstrated in St. Louis Science Fiction Limited and Spanish American Cultural Association of Bergenfield, where the social and recreational aspects of the organizations' operations prevented their recognition under Section 501(c)(3).

Conclusion

You are operated for substantial social and recreational purposes. Any educational or charitable aspects of your operations are incidental. Thus, you are not operated exclusively for IRC Section 501(c)(3) purposes and do not meet the operational test. Therefore, we cannot grant your request for recognition under Section 501(c)(3) and donations to you are not deductible to the donor.

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