



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

Date:  
11/08/2023  
Employer ID number:

Form you must file:  
1120

Tax years:  
All

Person to contact:

Release Number: 202405007  
Release Date: 2/2/2024  
UIL Code: 501.03-00,  
501.03-33

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](http://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 9, 2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

**Legend:**

V = Date

W = Date

X = State

Y = Individual

Z = Name

UIL:

501.03 00

501.03-33

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**

Your exempt status was automatically revoked on V due to non-filing of information returns for consecutive tax years.

You submitted Form 1023-EZ seeking reinstatement of your exempt status.

You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of 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 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

**Letter 4034 (Rev. 01-2021)**  
Catalog Number 47628K

- 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, as stated on the Form 1023-EZ, is “to provide and support the local community with emotional support and counseling based on foundation of faith.”

During review of your Form 1023-EZ, detailed information was requested to supplement the above information.

You were incorporated on W in the state of X. Your Articles of Incorporation state that the purpose for which you are formed is to provide “counseling services in the local communities the corporation serves. This includes education classes, group sessions and individual help.” The Articles further state that upon dissolution, any remaining assets will be dispersed to similar nonprofit organizations. We requested that you amend your organizing document to meet the organizational test of IRC Section 501(c)(3), however, per review of your secretary of state, it has yet to be amended.

You were formed to provide funding to individuals and groups so that they may attend coaching and therapy sessions with Y, a life coach. Y owns Z, a for-profit organization which provides this coaching and counseling. Your goal is to provide access to life-changing counseling services offered by Y. You will provide financial support for those who are unable to afford the full session fees for individual therapy and coaching by Y. You will solicit donations on your website. Money received is given to Y. Y determines which clients will receive the funding and applies it directly to their accounts with Z. You do not have input on who receives the funding.

Your website states you were created “to support Z. As we became more aware of the importance of access to quality care, we felt it necessary to offer financial support to those who cannot afford to pay the full session fees. Our goal is to provide access to Y for as many as possible.”

### **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 net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) requires an organization described in IRC Section 501(c)(3) be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- Limit the purposes of such organization to one or more exempt purposes; and

- Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

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 that accomplish one or more 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) states that 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 or operated exclusively for one or more exempt purposes unless it serves a public rather than private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

In Church by Mail, Inc., Petitioner-appellant, v. Commissioner Internal Revenue Respondent-appellee, 765 F.2d 1387 (9th Cir. 1985), the organization sent out sermons in numerous mailings. This required a great deal of printing services. Twentieth Century Advertising Agency provided the printing and mailing. Twentieth Century was controlled by the same ministers. It also employed family members. The services were provided under two contracts. The contracts were signed by the two ministers for both Church by Mail and Twentieth Century. Church by Mail business comprised two thirds of the business of Twentieth Century. In deciding for the government, the Court made the following statement: "There is ample evidence in the record to support the Tax Court's finding that the Church was operated for the substantial non-exempt purpose of providing a market for Twentieth's services."

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under IRC Section 501(c)(3) of a nonprofit corporation that conducted continuing medical education tours. The petitioner had three trustees: Mr. Helin, who was a shareholder and the president of H & C Tours, a for-profit travel agency, Mr. Regan, an attorney, and a third director, who was ill and did not participate. Mr. Helin served as executive director. The petitioner used H & C Tours exclusively for all travel arrangements. There is no evidence that the petitioner ever sought a competitive bid. The Court found that a substantial purpose of the petitioner was benefiting the for-profit travel agency. It concluded that: "When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively within the meaning of IRC Section 501(c)(3), even if it furthers other exempt purposes." The court found that a substantial purpose of the applicant's operations was to increase the income of H&C Tours. H&C Tours benefits from the distribution and production of brochures which solicit customers for tours arranged by H&C Tours.

#### **Application of law**

IRC Section 501(c)(3) sets forth two main tests for qualification of exempt status. Per 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 do not meet the organizational test as explained in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4). Your organizing document contains a broad purpose statement that does not limit your purposes to one or more exempt purposes described in IRC Section 501(c)(3). Further, your organizing document does not dedicate your assets upon dissolution to purposes described in Section 501(c)(3).

You do not meet the operational test as explained in Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are not operating exclusively for exempt purposes because your funds inure to Y and his for-profit business, Z. When funds inure to the benefit of private individuals, an organization is not operating exclusively for an exempt purpose. Treas. Reg. Section 1.501(c)(3)-1(c)(2).

Likewise, you are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you operate for private rather than public interests. You were formed and operate for the benefit of a designated individual and his for-profit business.

In Church by Mail, supra, the critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit benefits substantially from the operation. Like Church by Mail, the funding you provide directly to Y to subsidize his client's therapy fees substantially benefits him individually as well as provides a market for Z's services and increased business revenue.

You are also similar to the organization described in International Postgraduate Medical Foundation, supra, because Y and, by extension, Z, benefit substantially from the manner in which your activities are carried on. Your only expense is providing funding to Y, which substantially benefits him and his for-profit business. Thus, you are not operating exclusively within the meaning of IRC Section 501(c)(3) even if you may have other exempt purposes.

### **Conclusion**

Based on the information submitted, you do not qualify for exemption under IRC Section 501(c)(3). You do not meet the organizational test because your Articles do not limit your purposes to one or more exempt purposes and your assets are not dedicated to an exempt purpose. You do not meet the operational test because you are operated for a substantial non-exempt purpose.

### **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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements