



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

Date:  
12/04/2023  
Employer ID number:

Tax years:  
All  
Person to contact:

Release Number: 202409020  
Release Date: 3/1/2024  
UIL Code: 501.03-00,  
501.03-30

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:  
September 20, 2023  
Employer ID number:

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

**Legend:**

B = date  
C = state  
D = church  
E = company  
F = cultural

**UIL:**

501.03-00  
501.03-30

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 attested you were incorporated on B in C. You will build, own, and maintain a community center for community events, such as: church services, weddings, F events, farmers markets, art and craft fairs, and

Detailed information was subsequently requested. You will own and operate a community center that will serve three purposes: church services, community activity, paid-for events. You are partnering with D for church services on Sundays and Wednesdays and will allow them to have an office. There will be no fees charged to D and the community events.

The community activities will consist of art fairs, farmer's markets and educational activities. Educational activities will be conducted by police and fire departments, local schools, and counseling from D. All community activities are open for noncommercial purposes and will be promoted and advertised through social media, school involvement, police and fire departments, and similar non-profit organizations.

The paid-for events will be managed by a for-profit entity, E. E was created by two members of your governing body who also serve as directors of E. Anyone or any entity can rent the facility through E for events, such as

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

weddings, parties, or business meetings. E will be able to rent the spaces whenever you are not holding any church services or community events. E will pay rent at fair market value to you for use of the building. The public will be able to distinguish for-profit entities and non-profit entities by signage placed by the entities' rented location. You state the for-profit entities will place their own signage like other for-profit businesses. The paid-for events will serve as a main fundraising activity to help pay for and maintain your facility.

It is anticipated that E will be allowed to rent the community center on Fridays and Saturdays when you are not holding other community events. The vast majority of the community center will be used by the church on Sundays and Wednesdays. Most likely, the community center will be closed on Mondays; the remaining days will be used by you for community events and possibly by E for some business events. Thus, the use will be spread over the different uses.

### **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 in order to be exempt under IRC Section 501(c)(3) an organization must be organized and operated exclusively for one or more of the exempt purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it does not qualify for exemption.

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(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.

In Revenue Ruling 75-198, 1975-1 C.B. 157, an organization that establishes a service center providing information, referral, counseling services relating to health, housing, finances, education, and employment, as well as a facility for specialized recreation for a particular community's senior citizens, who need not become members to obtain the services or participate in the activities, may qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 76-206, 1976-1 C.B. 154, describes a nonprofit organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station by seeking program sponsors, encouraging continuation of contracts by existing sponsors, urging the public to patronize the sponsors, soliciting subscriptions to the station's program guide, and distributing materials promoting the classical music programs. The organization did not qualify for exemption from federal income tax under IRC Section 501(c)(3) because the activities tended to increase the station's revenues.

Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), 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.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9<sup>th</sup> Cir. 1985), the United States Court of Appeals affirmed a Tax Court decision that private benefit prevented the organization from meeting the operational test under Section 501(c)(3). The critical inquiry was not whether particular contractual payments to a related for-profit organization were reasonable or excessive, but instead whether the entire enterprise was carried on in such a manner that the for-profit organization benefited substantially from the operation of the Church.

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under Section 501(c)(3) of the Code of a nonprofit corporation that conducted continuing medical education tours. The Tax 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 Section 501(c)(3), even if it furthers other exempt purposes." A substantial purpose of the applicant's operations was to increase the income of the for-profit travel agency.

In KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo. 1997 424 (1997), aff'd. 82 AFTR 2d 7092, (2<sup>nd</sup> Cir. 1998), the Tax Court held that while the organization raised money for charitable purposes, it also operated for the substantial benefit of private interests. The organization operated for the substantial private benefit of KJ's Place and its owners.

### **Application of law**

In order to qualify for exemption as described in IRC Section 501(c)(3), you must be both organized and operated exclusively for one or more of the purposes as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You are not operating exclusively for exempt purposes described under Section 501(c)(3); rather, you will be operating and maintaining a facility that will be used by the residents of the area, in part, for meetings, parties, gatherings, etc. managed by a for-profit entity.

To satisfy the operational test under Treas Reg Section 1.501(c)(3)-1(c)(1) an organization must establish that it is operated exclusively for one or more exempt purposes. You were formed for the purpose of maintaining and renting a community center. While part of this time the center will be used by exempt entities, such as a church and various local organizations, equal time will be given to a for-profit LLC for other events. Of the six days you have stated you will be open, two are designated for the church, two for E itself, and two split between E and other community events. Your activities are not charitable as defined in Treas. Reg. Section 1.501(c)(3)-1(d)(2) as only one-third of your designated events at this location are dedicated for exclusive Section 501(c)(3) purposes. See the organization who received exemption in Revenue Ruling 75-198, that operated exclusively for senior citizens in offering a community center for their activities. While your community center would serve certain charitable organizations, the other individuals and groups renting and using this facility are not all underserved or exclusively charitable.

You are like the organization in Rev. Rul. 76-206 because you serve a private rather than a public interest by enabling E to operate regular business activities and increase revenues. You and E were created by shared members of each governing body to operate together. You own the facility, and E rents the facility out for a

profit. You are E's only customer. Although there may be some charitable and educational purposes served by your educational and religious activities, the private benefit to E is more than incidental. The ruling quotes "where an organization is serving both public and private interests, the private benefit must be clearly incidental to the overriding public interest. A contrary finding will indicate the organization is serving a private interest."

Similarly, as noted in Better Business Bureau of Washington, D.C., a single non-exempt purpose will destroy exemption regardless of the number or importance of truly exempt purposes. The fact that you may have a religious or educational purpose does not absolve the substantial non-exempt purpose of furthering E's financial interests. Additionally, you are like the organization described in International Postgraduate Medical Foundation, because E, a for-profit organization, benefits substantially from your activities even if you further other exempt purposes. Similarly, like the organization in KJ's Fund Raisers, Inc., although you may raise money for charitable purposes, you are also operated for the substantial benefit of E.

You are similar to the organization in Church by Mail, Inc., because E benefits substantially and directly in connection with your operations. You and E operate together and partner to create a community center with non-exempt activities. Your operations benefit a for-profit organization more than insubstantially, regardless of whether rent paid for E is fair-market value.

### **Conclusion**

Based on the facts presented, you are not operated exclusively for exempt purpose within the meaning of IRC Section 501(c)(3). You have substantial non-exempt activities that serves private interests. Therefore, 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](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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements