



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities

Date:
05/09/2024
Employer ID number:

Person to contact:

Release Number: 202431014
Release Date: 8/2/2024
UIL Code: 501.03-30,
501.35-00

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
Letter 4038



Department of the Treasury
Internal Revenue Service

Date: 03/21/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

D = Organization Name

F = Date

G = Organization Name

H = Organization Name

J = Organization Name

UIL:

501.03-30

501.35-00

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 B, in the state of C. 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
- 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

According to your application, you are an association of D owners in C who gather annually for a banquet, sale and D showing.

Detailed information was subsequently requested.

You provided a copy of your original Articles of Incorporation which were filed on F. Your Articles of Incorporation state your purpose is to unite the D breeders of C in an effort to breed better D, to promote the use of purebred sires, to improve the methods of growing and marketing D, to further the D interest of the state, and for the general education of your members. You attested to filing an amendment with the state that includes limiting paragraphs compliant with IRC Section 501(c)(3).

Your activities include an annual show, meeting, and banquet. Your members gather for a sale of D in conjunction with the banquet. Your annual show of D is in conjunction with a county fair.

Participants in your activities must be members of the G and be current in their annual membership dues to participate in your show and sale. In addition to being able to participate in the state sale, benefits of membership include advertisement on your website and the ability to place an ad in your membership directory. The banquet is open to all members and guests.

Two of your members manage the annual sale. Their duties include preparing a catalog, promoting the sale, depositing the sales payments, and disbursing the payments to members who sold cattle. All of the animals for sale are produced by members, some of which are on your board of directors.

According to your website, you support the H and junior livestock shows and events. Your website contains a member's website listing to assist buyers in locating and selecting D. Members may advertise their sales or post a flyer in exchange for a small fee.

You stated that your sales activity is performed in conjunction with a separate non-profit organization, J. Each year J creates the sale catalog and manages all aspects of the sale, including location, collection, and payment. J remits to you a minor percentage of the sale proceeds. Further, you stated that J is controlled by a sales committee chosen annually by your board.

Your revenue consists of membership dues, contributions, sale of directory ads and proceeds from the sale. Your expenses are related to your activities and the sales of D at your annual event. You collect the amounts

paid by buyers to purchase D and then remit the amount minus expenses and commission to the member who sold that specific D.

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)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) defines the term educational as the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 61-170, 1061-2- C B 112, held that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under IRC Section 501(c)(3). Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Rev. Rul. 67-216, 1967-2 C.B. 180, held that 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.

Rev. Rul. 71-395, 1971-2 C.B. 228, held that a cooperative art gallery formed and operated by a group of artists to exhibit and sell their works doesn't qualify for exemption under IRC Section 501(c)(3). The gallery showed and sold only the works of its own members and is a vehicle for advancing the careers and for promoting the sale of their work. The ruling held that the organization serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (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.

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). Based on the information you provided in your application and supporting documentation, we conclude you fail the operational test.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in IRC Section 501(c)(3). While you do educate members and the public as to the advantages of the breed of D, you engage in a substantial non-exempt activity by providing for the advertisement and sale of your members D.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. You have a substantial purpose to advance the private interests of your members. This includes providing advertisement of your members' D for sale and a market for the sale of members' D. As stated in Better Business Bureau of Washington D.C., serving the private interests of your membership is a substantial nonexempt purpose which precludes exemption under IRC Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term educational relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Facilitating and marketing sales is not exclusively educational. These activities are a means of pairing potential buyers with sellers. While you have some educational activities, the sales activities are a substantial part of your operations. For this reason, you are not serving exclusively educational purposes.

You are similar to the organizations described in Rev. Rul. 61-170 and 71-395. These rulings noted that any public benefit provided by the organizations was superseded by the primary benefit established for organizational members which precluded exemption under IRC Section 501(c)(3). You have a substantial purpose to provide a market for your members, thus advancing the private interests of your members rather than the public.

You are not like the organization in Rev. Rul. 67-216 because your principal activity is not educational, rather, it's to facilitate a market for your members.

Conclusion

You are not operated exclusively for IRC Section 501(c)(3) purposes; you conduct substantial non-exempt activities that promote the private interests of your members. Therefore, we conclude that you do not qualify for exemption under Section 501(c)(3). Donors cannot deduct their contributions to you.

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