



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

Date:  
09/03/2024  
Employer ID number:  
  
Person to contact:

Release Number: 202448012  
Release Date: 11/29/24  
UIL Code: 501.00-00, 501.03-00, 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](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  
Letter 4038



Department of the Treasury  
Internal Revenue Service  
PO Box 2508  
Cincinnati, OH 45201

Date: 06/24/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

B = Date

C = State

F = City

**UIL:**

501.00-00

501.03-00

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 B, in the state of C. You attest that you have the necessary organizing document, that the organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that the 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 the 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

You convene as a business association to share knowledge and strengthen local economic vitality to the extent that the status of the corporation as an organization exempt under Section 501(c)(3) of the Internal Revenue Code is not affected.

Detailed information was subsequently requested. You worked with F's Chamber of Commerce and Economic Development Corporation to decorate and activate an underutilized public park during the holiday season, which attracted hundreds of families to the downtown area and exposed local businesses to new customers. All your members are small business owners and managers operating in F's downtown and waterfront district areas. They meet monthly and volunteer their time to create programming and events that encourage visitation to F's downtown and waterfront district areas. Your goal is to encourage support for local small businesses.

Special events and activities may occur throughout the year as opportunities arise. F's tourism season is strongest from March through December, but you strive to shorten the off-season to encourage visitation year-round. You raised funds with non-profit organizations, the government and business partners to install public art assets in the downtown area. All your activities are promoted to the public and are free of charge.

#### **Law**

IRC Section 501(c)(3) provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided no part of the net earnings inures 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 Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more 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 operates exclusively for exempt purposes if it engages primarily in activities that accomplish exempt purposes specified in Section 501(c)(3) of the Code. 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) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Rev. Rul. 69-175, 1969-1 C.B. 149, describes a nonprofit organization formed by the parents of pupils attending a private school that provided school bus transportation for its members' children. It was held this organization served a private rather than a public interest and did not qualify for exemption under IRC Section 501(c)(3).

Rev. Rul. 75-286, 1975-2 C.B. 210, held that an organization whose membership is limited to the residents and business operators within a city block, and formed to preserve and beautify the public areas in the block, is organized and operated to serve the private interests of its members within the meaning of Treas. Reg. Section 1-501(c)(3)-1(d)(1)(ii). Although the activities benefited the community, they also provided private benefit by enhancing members' property rights. The organization therefore did 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 held that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under IRC Section 501(c)(3), if it has a single non-exempt purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

#### **Application of law**

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3). Based on the information you provided in your application and supporting documentation, you do not meet the operational test.

You promote and assist businesses in your area. Your members are small business owners, that organize meetings to plan for activities and events to improve their businesses. Although your activities may serve the public, these benefits are insubstantial when compared to the private benefits conferred to your members. Therefore, you are operated for the private interests of your members, and you are not described in IRC Section 501(c)(3). You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You do not meet the requirements of Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) because you serve a private, rather than a public interest. Specifically, you serve the private interests of your members by conducting activities to promote local small businesses.

Similar to the organizations in Rev. Rul. 69-175 and Rev. Rul. 75-286, the majority of your programming is for the benefit of your members. Although some of your activities, such as decorating an underutilized park may serve the public, your main goal is to give visibility and support local small businesses, and that is a direct private benefit to your members. As provided in Better Business Bureau v. United States, the presence of a single substantial non-exempt purpose will destroy the exemption. You are operating for the promotion of your members' businesses and that constitutes a substantial non-exempt purpose which precludes exemption under IRC Section 501(c)(3).

#### **Conclusion**

Based on the above facts and analysis, you are not operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). You are operated for the private interests of your members. Your main activity is to

promote local small businesses in F. Therefore, you fail the operational test under IRC Section 501(c)(3). Accordingly, we conclude 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.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements