



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

Date:  
01/08/2025  
Employer ID number:

Form you must file:  
1120  
Tax years:  
All  
Person to contact:

Release Number: 202514011  
Release Date: 4/4/2025  
UIL Code: 501.03-00, 501.03-05, 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](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 (Rev. 11-2021)**  
Catalog Number 47632S



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

Date: 10/31/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

R = Date

S = State

T = Name

U = Name

V = Organization

**UIL:**

501.03-00

501.03-05

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 R in the State of S.

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, more than expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

You attest on Form 1023-EZ that you are a trade association organization which is an association of gardeners.

During our review of your Form 1023-EZ, we requested detailed information to supplement the above attestations. You indicated you are a membership organization of professionals organized to promote the gardening and landscaping professions. You hold membership meetings and conduct activities for the community depending on community needs and resources. Your members provide landscaping services and knowledge to the T community throughout the U County area.

You explained that you are a member of V, which is tax exempt under IRC Section 501(c)(6). Your revenue consists of membership dues and donations, and your expenses consist of dues to V, office supplies, meetings, education events, landscaping events, cost of newsletter, and supplies.

Your Articles of Incorporation were also obtained from the State of S's website and shared with you. These show you are organized as a nonprofit mutual benefit corporation. The specific purpose statement indicates you are a trade association organization which is an association of gardeners that is part of the larger federation.

#### **Law**

IRC Section 501(c)(3) provides for the recognition of exemption for 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 to be exempt as an organization described in IRC Section 501(c)(3), the organization must be organized and operated exclusively for one or more of the exempt purposes described in this 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(b)(1)(i) provides that an organization will be regarded as "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(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.

Revenue Ruling 66-179, 1966-1 C.B. 139, describes a "garden club" in situation 1 that qualified for exemption under IRC Section 501(c)(3) as an educational organization. Its exempt purpose was instructing the public on horticultural subjects and stimulating interest in the beautification of the geographic area. In furtherance of these purposes, the club (1) maintained and operated a free library of materials on horticulture and allied subjects, (2) instructed the public on correct gardening procedures and conservation of trees and plants by means of radio, television, and lecture programs, (3) held public flower shows of a noncommercial nature at which new varieties of plants and flowers were exhibited, (4) made awards to children for achievements in gardening, (5) encouraged roadside beautification and civic planting, and (6) made awards for civic achievement in conservation and horticulture. Membership in the organization was open to the public and consisted primarily of amateur gardeners and others not professionally or commercially connected with horticulture.

Rev. Rul. 71-504, 1971-2 C.B. 231, describes a city medical society exempt under IRC Section 501(c)(6), that primarily directed its activities to the promotion of the common business purposes of its members which was found not to qualify under IRC Section 501(c)(3).

Rev. Rul. 71-505, 1971-2 C.B. 232, describes a city bar association, exempt under IRC Section 501(c)(6), that primarily directed its activities to the promotion and practice of law which was found not to qualify under IRC Section 501(c)(3).

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (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.

#### **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 fail both tests.

#### **You do not meet the organizational test.**

Your Articles of Incorporation state your purpose is a trade association organization which is an association of gardeners that is part of the larger federation. Because your organizing document does not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), you fail the organizational test under IRC Section 501(c)(3).

#### **You do not meet the operational test.**

You do not meet the operational test under IRC Section 501(c)(3) because you are not operated exclusively for exempt purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are a trade association and are promoting the gardening and landscaping professions. Your membership is composed of gardening and landscape professionals. You hold membership meetings and conduct activities for your membership. Like the organizations in Rev. Rul. 71-504 and Rev. Rul. 71-505, you are directing your activities toward the promotion of the common business purposes of your members.

Unlike the qualifying organization described in Rev. Rul. 66-179, your membership does not consist primarily of amateur gardeners and others not professionally or commercially connected with horticulture. Even though you may conduct some educational activities for the community, your activities are designed to promote the gardening and landscaping professions which is a substantial nonexempt purpose. The Supreme Court stated in

Better Business Bureau, that the presence of a single nonexempt purpose, if substantial, will destroy the exemption regardless of the number and importance of your exempt purposes. Therefore, you are precluded from meeting the requirements for IRC Section 501(c)(3).

### **Conclusion**

Based on the above facts and analysis, you do not qualify for exemption under IRC Section 501(c)(3). You are not organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3). You do not meet the organizational test because your organizing document does not limit your purpose to one or more exempt purposes described in Section 501(c)(3). You also do not meet the operational test because you are operating for substantial nonexempt purposes. Accordingly, you do not qualify for exemption under IRC Section 501(c)(3).

Contributions to you are not tax deductible.

### **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