



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Number: **201648020**
Release Date: 11/25/2016

UIL: 501.03-30, 501.33-00

Date:
September 1, 2016
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). 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 Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date:

June 16, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Name

C = Name

D = Date

E = State

F = County Department

G = Date

H = Year

UIL:

501.03-30

501.33-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

Prior to your formation, B, your incorporator and director, was using personal funds to restore C, a property designated by F on G as an historic landmark. B has owned C since H and resides there as well. B formed you to obtain grant funding to continue to pay for the extensive restoration of C. You were incorporated on D in the state of E for educational purposes. Your bylaws state your specific purposes are to educate the public as to the significance of the past through the preservation of C historic structure.

Once you establish your exempt status, you project all revenue to come in the form of donations and grants. You have not provided a detailed breakdown of your expenses, but they are all related to the restoration and maintenance of C and the property that surrounds it. C and the property surrounding it will continue to be owned by B. B will interview and select all workers that will perform the restoration of C as well as supervise all work. B's permission is needed for anyone to view the property and appointments to do so are encouraged. You wrote you may be interested in inviting school groups for educational field trips and plan to eventually provide an educational program on site.

Besides B, you have two other directors.

Finally, you provided a document entitled "Articles of Incorporation" with your Form 1023 application which had the required provisions for the organizational test for 501(c)(3), but had not been filed with E. You later attested you would file an amendment with the necessary provisions to meet the organizational test with the state. There is no evidence you filed this document.

Law

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for educational or charitable 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) states that in order to qualify under Section 501(c)(3) of the Code, 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 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:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states 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 such 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(c)(2) provides 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 as defined in Section 1.501(a)-1(c).

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Rev. Rul. 75-470, 1975-2 C.B. 207. A nonprofit organization formed to promote an appreciation of history through the acquisition, restoration, and preservation of homes, churches, and public buildings having special historical or architectural significance and to operate the structure for viewing by the general public was held to be carrying on activities similar to those of a museum and thus educational and charitable within the meaning of IRC 501(c)(3).

Application of law

You are not as described in Section 501(c)(3) of the Code and Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not satisfy the organizational and operational requirements of the Code and Regulations.

You do not meet the requirements in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). The document you provided containing the necessary provisions to meet the organizational test does not show it was filed with the appropriate state agency.

You do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. You are operating to obtain grant funding to pay restoration costs of property owned by B, your incorporator and director. These facts show you were formed to further private purposes not public.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(c)(2) because your net earnings inure to the benefit of B who is your incorporator and director. This is illustrated by the fact you are funding the renovation of property owned by her, which she is supervising and overseeing. In addition, C can only be viewed with B's permission. Appointments are arranged with her.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(ii) because you are serving the private interests of B. You were formed to obtain grants to pay for the restoration of property in which B owns and resides. She is controlling all aspects of the restoration which also indicates her private interests are being served.

You are not similar to the organization described in Revenue Ruling 75-470. Unlike that organization, your primary purpose is to restore the property owned by your incorporator, and director. This results in inurement. Any public benefit is secondary and incidental to your primary purpose of furthering the interests of B.

Your Position:

You indicated the restoration of the property serves a public rather than a private benefit to B. The fact that the property was designated an historical land mark by D, you wrote, shows that you are operating for exempt purposes. In addition, school groups and students from other educational facilities have shown an interest in touring the property.

Our Response to Your Position

Although you may have some planned educational activities and programs, this does not overcome the fact that you are operating for the benefit of B, and your net earnings are inuring to the benefit of B which precludes exemption under Section 501(c)(3).

Conclusion

Based on the information submitted, you are not organized or operated exclusively for one or more purposes described in IRC 501(c)(3). Your Articles of Incorporation do not contain the provisions required by IRC 501(c)(3) causing you to fail the organizational test. Your net earnings inure to the benefit of B, your director

and incorporator causing you to be precluded from exemption under IRC 501(c)(3). Since you fail both the organizational and operational tests, you do not qualify for exemption as an organization described in IRC 501(c)(3).

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:
Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:
Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892