



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201736025**
Release Date: 9/8/2017
UIL Code: 501.03-30
501.33-00

Date: June 16, 2017

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,

Stephen A. Martin
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: August 11, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = Date

D = State

E = City

F = Organization

g dollars = Amount

h dollars = Amount

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 meet the organizational test under Section 501(c)(3) of the Code? No, for the reasons described below.
- Do you meet the operational test under Section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You submitted Form 1023-EZ, *Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.

You attest that you were formed as a corporation on date B in the state of D. 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 Section 501(c)(3), and 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 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 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

During review of your Form 1023-EZ, detailed information was requested to supplement the above attestations. This information shows that you were formed as a corporation on C in the state of D.

Your Articles of Incorporation state you were formed to provide charitable assistance to your members, and nominees, with financial problems arising from catastrophic illness, injury or death to themselves or immediate family. In addition, your Articles of Incorporation state you also support various E area children's charities.

Your Bylaws state you formed for the sole purpose of assisting your members with financial problems arising from catastrophic illness, injury or death to themselves or immediate family by payment of death benefits.

As described in your Bylaws, a death benefit is available to be disbursed to the family of any member who dies while employed with the fire department. For the purpose of your fund, immediate family is defined in your Bylaws as, but is not limited to, a spouse that is the husband or wife of the member as defined by the IRS and claimed as such on the member's previous year's federal tax return. Immediate family also includes the child or children claimed as a dependent on the member's and/or the member's spouse's previous year's federal tax return.

Your Bylaws state that only active-duty members of F in good standing may make an application for assistance for themselves or another member, that the amount of the death benefit is to be fixed by the board of directors, and the amount is to be reviewed yearly for adjustments.

Your financial data shows that a substantial amount of your revenue is paid to members for hardship or death benefits. You provided financial data for the last three years. Your biggest disbursement for the last two years, other than the expense of holding a golf fundraiser, is the disbursement for hardships. In the most recently completed year you expended nearly half of your total revenue for hardship distributions.

You also provide scholarships in the amount of g dollars to children of your members who have died in the line of duty.

Persons seeking fund disbursements for charitable assistance from you must apply to the Board of Directors. The Board will consider each application and issue a written decision to the applicant. There is no guarantee that the request will be granted and the Board has discretion in determining the amount of the disbursement with a maximum allowable payment of 50 percent of your net assets on the date of the application.

You collect \$ dollars from your members twice a year via an automatic payroll deduction. This was voted on and approved by your membership at the time of your formation. You will also raise funds from your members and the general public through special events such as an annual golf outing.

You contribute annually to a local youth baseball league. You also contribute annually to a local burn camp to support distressed children who have suffered disfiguring and traumatizing burns. To foster community relations, your member volunteers partner with this camp to provide volunteer hours and service in addition to financial support.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious or educational 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 exempt purposes. 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 limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, 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) 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 of 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(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. It must not be operated for the benefit of designated individuals or the persons who created it.

Rev. Rul. 67-367, 1967-2 C.B. 188, describes an organization whose sole activity was the operation of a scholarship plan for making payments to pre-selected, specifically named individuals. The organization established a plan whereby it entered into agreements with subscribers. The subscribers deposited a certain amount of money with a designated bank. The subscriber also named a specific child to be the recipient of the scholarship money. The recipient received the scholarship around the time he or she were to begin college. The organization did not qualify for exemption under Section 501(c)(3) of the Code because it was serving the private interests of its subscribers rather than serve public charitable and educational interests.

Rev. Rul. 69-175, 1969-1 C.B. 149, describes an organization which was formed by parents of pupils attending a private school. The organization provided bus transportation to and from the school for those children whose parents belong to the organization. The organization did not qualify for exemption under Section 501(c)(3) of the Code because it served a private rather than public interest.

Rev. Rul. 81-58, 1981-1 C.B. 331, describes an organization formed to provide retirement payments to its members or death benefits to the beneficiaries of the members. Its income is used to provide direct economic benefits to members. Although the class of employees benefited by the organization consists of police officers engaged in the performance of essential and hazardous public services and there is an incidental benefit provided by the organization to the larger community, the fact remains that the primary benefits from the organization are limited to its members. The organization which is primarily engaged in providing retirement benefits to members and death benefits to the beneficiaries of members, does not qualify for exemption from federal income tax under Section 501(c)(4) of the Code as a social welfare organization.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), the Supreme Court determined that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under Section 501(c)(3) regardless of the number or importance of any other exempt purposes.

In Police Benevolent Association of Richmond, (PBA) v. U.S., 661 F. Supp. 765, (E.D.Va. 1987), the U.S. District Court held that as a matter of law, the association could not establish that it was organized and operated for a charitable purpose under Section 501(c)(3). Because a substantial purpose of the association and its activities were intended to serve the pecuniary interests of its members, a non-exempt purpose, the court held that the association could not qualify as an organization operated exclusively for the promotion of social welfare under Section 501(c)(4), either.

Application of law

In order to qualify for exemption under Section 501(c)(3) of the Code you must be both organized and operated exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). Your organizational document does not limit your purposes to those exclusively exempt in nature as required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). As a result you do not satisfy the organizational test requirement to be recognized as exempt under Section 501(c)(3) of the Code.

You also fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are primarily operated for the non-exempt, private benefit of your members and not exclusively for exempt purposes.

In order to qualify for exemption under Section 501(c)(3) of the Code you must serve a public, rather than a private, interest as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). You are similar to the organization described in Rev. Rul. 67-367. Like that organization, your activities serve to benefit the private interests of your members rather than the public.

Like the organization described in Rev. Rul. 69-175, you were formed to provide benefits to your members. In your case, a substantial portion of your activities consists of providing death, catastrophic illness or injury benefits to members. The payment of these benefits serves private interests, precluding you from exemption.

The Supreme Court held in Better Business Bureau that a single nonexempt purpose, if substantial in nature, precludes an organization from qualifying under Section 501(c)(3) no matter the number or importance of truly exempt purposes. Despite the other qualifying charitable activities that you conduct, your activity of providing benefits to your members in the event of death, catastrophic illness, or injury is substantial and serves private, non-exempt purposes.

Similar to the organization in Rev. Rul. 81-58, your income is used to provide direct economic benefits to your members. This ruling stated that an organization which is primarily engaged in providing benefits to members does not qualify for exemption under Section 501(c)(4) of the Code as a social welfare organization. If providing payments to members is too much private benefit under Section 501(c)(4), it is logical to conclude that it is also too much private benefit to qualify under Section 501(c)(3). This was confirmed in Police Benevolent Association, where the court determined that an organization providing retirement and death benefits to members could not qualify for exemption under Section 501(c)(3) or 501(c)(4) due to the private benefit to members. You are similar to these associations because your substantial activity of providing benefits to your members is serving private interests, which is a non-exempt purpose and precludes you from exemption under Section 501(c)(3).

Conclusion

Based on the above facts and analysis, you do not qualify for exemption under Section 501(c)(3) of the Code. You are neither organized nor operated exclusively for Section 501(c)(3) purposes because your activities serve a substantial non-exempt purpose which more than incidentally benefits your members.

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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892