



Department of the
Treasury Internal Revenue
Service Appeals Office
2525 Capitol Street, #201
Fresno, CA 93721

Date: FEB 16 2018

Person to contact:
Name:
Employee ID number:
Telephone:
Fax:
Employer ID number:

Number: 201819011
Release Date: 5/11/2018

A
B

UIL: 501.03-08
501.03-30
501.33-00
501.36-00

Certified Mail

Dear :

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") Section 501(a) as an organization described in Section 501(c)(3) of the Code.

We made the adverse determination for the following reasons:

You are not organized or operated exclusively for exempt purposes as set forth in Section 501(c)(3) of the Code. By providing vendors with an opportunity and a venue to sell their products, you are operated for the substantial purpose of private benefit to vendors at your farmers' market. Your operations are not exclusively charitable or educational and resemble those of a commercial enterprise.

You're required to file federal income tax returns on Forms. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Section 6110 of the Code after deleting certain identifying information. We provided to you, in a separate mailing, Notice 437, Notice of Intention to Disclose. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court	US Court of Federal Claims	US District Court for the District of Columbia
400 Second Street, NW	717 Madison Place, NW	333 Constitution Avenue, NW
Washington, DC 20217	Washington, DC 20005	Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under Section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status, for more information about the Appeals process.

You also have the right to contact the Taxpayer Advocate Service (TAS). 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 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.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosures:
Publication 892

cc:



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

Date: April 21, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = Date

D = State

F = County

J = Item

x dollars = dollar amount

y dollars = dollar amount

z dollars = dollar amount

UIL: 501.03-08

501.03-30

501.33-00

501.36-00

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 stated below.

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

Facts

You were incorporated on B in the state of D. Your Articles of Incorporation indicate that you are an association of farmers and gardeners whose purpose it is to promote agriculture through the provision of a retail outlet, and to provide residents of the area with the freshest and most nutritious produce possible, and to engage in any other activity which may be legally carried out by a non-profit corporation.

You filed Articles of Amendment on C. The amendment states that you are organized exclusively for educational, agricultural, nutritional and scientific purposes within the meaning of Section 501(c)(3) of the Code. Your specific purpose is to coordinate a farmers market which will enable local agricultural growers the opportunity to provide a healthy local food source to the community. You also seek to raise consciousness about sustainable food production on a local level and to provide education about local food production and nutrition

in an atmosphere that promotes healthy eating, a strong community connection and consumer participation, particularly low-income families.

Per your Bylaws, you have no members. All decisions and voting rights rest with the board of directors or persons to whom authority has been designated by the board. The board will fix policies, employ and discharge necessary staff, authorize expenditures and take all necessary steps to carry out the purposes of the corporation. The board will also elect all officers of the organization.

Your board of directors is composed of five individuals. These five individuals also serve as your officers. Four out of the five directors are listed on your website as vendors at the market.

You describe yourself as a community resource to educate the public on the health and environmental benefits of locally grown and produced foods. Your focus is on promoting sustainability and teaching the nutritional benefits of locally sourced foods to growers, producers and consumers at large. You call yourself a small, local, grass-roots effort and an organizer that handles the logistics of the operation of the farmers market. The local community has requested you oversee the operations of the weekly market.

Your website describes you as a tourist attraction. You request community support, including visiting your market frequently, sharing information about your market and your website, buying from advertisers, buying ad space, and providing feedback. You also provide information about your vendors, vendor forms, contacts, pictures, and entertainment at the market.

Advertisements for your market describe vendors and their products available that week, along with the time and location of the market.

You welcome all vendors, but you require all of your growers to produce goods within the county, F, to ensure support of the local economy. Vendors set their own prices for goods. Your market is located on land which is donated to you for use free of charge.

You recently hired a manager who assists in the overall operation of the market and staffs the information table where customers are presented with free literature about nutrition and the local food movement.

You accept EBT/SNAP in addition to WIC and Senior WIC coupons. You have a system where you issue J to those using EBT and WIC benefits. Customers purchase J from the market manager then use J to purchase items from vendors. The vendors then return the J to the manager and once a month, vendors will receive payment for redeemed J. This system helps you to collect data on the use of these programs to show the benefit to the community. You offer these individuals an additional x dollars to spend when purchases totaling x dollars are made.

When asked if you are operated in a deteriorated or blighted area, you provided the Charter of F, which describes how the county is governed. There is no reference contained describing F as being deteriorated or blighted.

For the last five tax years, your income is all from gross receipts. More than 95% of your income is from vendor fees for space and grower fees. You state grower fees are the redemption of the J. The vendor fees for summer and fall are set at y dollars, and the fees for winter and spring are set at z dollars, with lesser amounts for occasional vendors. The only funds you receive from vendors are the application fee.

Vendor fees offset the cost of salaries, advertising, brochures, insurance, replacement tents, and donations to a local school. On your financial information, your primary expense is grower payments. Other expenses listed include equipment, advertising, salaries, insurance, and other miscellaneous expenses associated with running the market.

In addition to the market, you have partnered with WIC and your local county extension to provide free cooking demonstrations and recipes focused on the health benefits of locally and organically sourced fresh fruits and vegetables. You also support other local endeavors by providing space to local schools to sell produce from their school gardens and to local food pantries to both gather and distribute product to their clients. On occasion, you provide space for local non-profits to connect with the greater community and for local musicians to play their music. You plan to establish a scholarship fund for students that demonstrate an interest in sustainable agricultural systems. You also plan to expand assistance to local community nutrition programs.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable, educational, or other enumerated purposes, and no part of their net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, in order 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 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(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(b)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in Section 501(c)(3).

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 that 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) 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides the term “charitable” is used in Section 501(c)(3) of the Code in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged,

combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

Treas. Reg. Section 1.501 (c)(3)-1(d)(3)(i) provides that the term "educational," as used in Section 501(c)(3) of the Code, relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 67-216, 1967-2 C.B. 180, established 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 be exempt from tax under Section 501(c)(3) of the Code.

Revenue Ruling 69-175, 1969-1 C.B. 149, describes an organization created to provide bus transportation for school children to a tax-exempt private school. The organization was formed by the parents of pupils attending the school. The organization provided transportation to and from the school for those children whose parents belonged to the organization. Parents were required to pay an initial family fee and an additional annual charge for each child. The Service determined that "when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest."

In Revenue Ruling 71-395, 1971-2 C.B. 228, a cooperative art gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under Section 501 (c)(3) of the Code. It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

In Revenue Ruling 73-127, 1973-1 C.B. 221, the Service held that an organization that operated a cut-price retail grocery outlet and allocated a small portion of its earnings to provide on-the-job training to the hard-core unemployed did not qualify for exemption. The organization's purpose of providing job training for the hardcore unemployed was charitable and educational within the meaning of the common law concept of charity; however, the organization's purpose of operating a retail grocery store was not. The ruling concluded that the operation of the store and the operation of the training program were two distinct purposes. Since the former purpose was not a recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

Revenue Ruling 77-111, 1977-1 C.B. 144, in Situation 1, held that an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations is not operated exclusively for charitable purposes and does not qualify for exemption under Section 501(c)(3) of the Code. The overall thrust is to promote business rather than to accomplish Section 501(c)(3) objectives exclusively.

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. The Petitioner's activities were largely animated by non-exempt purposes directed fundamentally to ends other than that of education.

In American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court noted that education is a broad concept, and assumed that the organization had

an educational purpose. The Court concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In Ginsberg v. Commissioner, 46 T.C. 47 (1966), the court considered a collective organization created to dredge waterways. The majority of the funds for this activity came from owners of property adjacent to the waterways. The court found that the primary beneficiaries were the adjacent property owners. Any benefit to the general public because these dredged waterways would be a safe harbor for boats during a storm was secondary. Therefore, the organization was not exempt because of the significant private benefit provided.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision, T.C. Memo. 1990-484, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify under Section 501(c)(3) of the Code. The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including that the operations were presumptively commercial. The organization competed with restaurants and food stores, used profit-making pricing formulas consistent with the food industry, and incurred significant advertising costs.

Application of law

Section 501(c)(3) of the Code 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 Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Your Articles of Incorporation and subsequent amendments do not include a purpose clause that limits your purposes to one or more exempt purposes. The purposes for which you were created are broader than the purposes specified in Section 501(c)(3) of the Code, including agricultural and nutritional purposes. Accordingly, you do not satisfy the organizational test required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(1)(iv), and you are not organized for exclusively exempt purposes.

You are also not described in Section 501(c)(3) of the Code because you fail the operational test. Specifically, you are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The facts show you are not operated exclusively for charitable and educational purposes, but for the purpose of facilitating sales for the benefit of growers and producers at your farmers' market. For a fee, you provide space at which vendors sell their goods directly to the public; you also advertise, promote, and inform buyers about your market. You operate an open market for vendors to sell goods, including the majority of your governing body. Your operations result in substantial private benefit to vendors of products at your market

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) requires an organization show that it is not organized or operated for private interests. Although the market includes educational events, more than an insubstantial part of your activities are in furtherance of the non-exempt purpose of being a profitable outlet for your vendors to increase their sales. You not only provide the outlet for them to sell their products, you provide marketing and cover overhead expenses that the vendors would otherwise have to expend. In addition, you have set up a system that allows EBT and WIC beneficiaries make purchases from vendors at the farmers market. Your redemption service allows eligible customers to purchase J which are used by EBT and WIC beneficiaries to transact

business with the farmers' market vendors. The J are later redeemed by your participating vendors from you for their cash equivalent face value. This arrangement enables your farmers' market vendors to access another class of customers to grow their sales. Because your governing body members are also vendors, the private benefit associated with all of these services and subsidies constitutes inurement. Therefore, you do not qualify for exemption under Section 501(c)(3).

You are like the organization described in Rev. Rul. 69-175 because you were formed by a group of farmers joining together to sell their products. Farmers and growers pay a vendor fee to participate in the market. By associating together and providing a cooperative service amongst themselves, your vendors are serving a private rather than a public interest.

Similar to the cooperative art gallery described in Rev. Rul. 71-395, you provide a venue for selling items that advance private interests. As explained in this ruling, an organization that operates for the purpose of exhibiting and promoting the sales of products for the benefit of private individuals does not qualify for exemption under Section 501(c)(3) of the Code. Similar to the organization described in the ruling, you are not operated exclusively for educational purposes. Even though providing information on healthy foods may be educational in other respects, it is not your primary purpose.

You are similar to the organization described in Ginsberg v. Commissioner. The primary beneficiaries of the activities of your market are your members who are selling their products. Any benefit the consumers of the goods receive through education on the food's production, preparation, and growing practices is secondary to the sale of goods.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides the term "charitable" is used in Section 501(c)(3) of the Code in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination. You did not provide evidence that you limit your services to the poor and distressed, or that your operations are in a deteriorated or blighted area. While you do plan to offer some charitable services, such as giving space to local schools and donating products to food pantries, this is incidental to your operation of a market for the sale of goods.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" as used in Section 501(c)(3) of the Code relates to the instruction of the public on subjects useful to the individual and beneficial to the community. While you will provide some educational services, such as cooking classes and scholarships, there is no evidence these are substantial activities. Any education you provide is incidental to the sale of members' products and promotion of their businesses. For these reasons, you are not serving exclusively educational or charitable purposes.

You are not like the organization in Revenue Ruling 67-216 because your principle purpose is to facilitate sales and pair buyers with sellers. You devote a majority of your resources and time to this purpose. You utilize resources to help local and regional farmers gain visibility to potential buyers through the vehicle of your farmer's market. You maintain a vendor list and distribute marketing materials to buyers in the effort to encourage the public to support farmers at your market.

You are similar to the organization described in Rev. Rul. 73-127 because the operation of the farmers' market and the provision of education on healthy foods are two distinct purposes. Because the operation of your market is not an exclusively charitable or educational purpose, you are not operated exclusively for exempt purposes.

Your activities are similar to the management and marketing activities conducted by the organization described in Rev. Rul. 77-111, supra. Like the organization described in Rev. Rul. 77-111, by conducting advertising and marketing as well as managing the market facility, you are engaged in activities which promote business in the market place generally rather than accomplish exclusively charitable purposes described in Section 501(c)(3) of the Code.

As held in Better Business Bureau of Washington, D.C., Inc. v. United States, a single non-exempt purpose, if substantial, will preclude tax exemption under Section 501(c)(3) of the Code. The operation of your farmers' market, a substantial part of your activities, is a non-exempt purpose.

You are similar to the organizations described in the American Institute for Economic Research v. United States and Living Faith, Inc. v. Commissioner. You are operating a farmers' market in competition with other commercial markets. Your sale of products is indicative of a business. Your sources of revenues are mainly from vendor fees and your expenses are primarily for grower payments, equipment, advertising, salaries, and insurance. Your market is a significant non-exempt commercial activity that is not incidental to the achievement of other educational purposes.

Your position

You assert that you are operated for the benefit of the community. First, the land where you operate is owned by a private individual who does not get paid and allows use of the property free of charge. Second, the market is an organizer/conduit that handles the logistics of the operation only; it has no affiliation with the farmers/growers, other than receiving vendors' fees from farmers/growers. Those fees are used to offset the costs of running and managing the market. Third, you state that the market undertakes no commercial operations and is urged by the local community to sponsor and police the weekly market. Finally, you intend to expand the SNAP and WIC programs that benefit children and the needy.

Our response to your position

By providing an outlet for local farmers and vendors, you are primarily serving the private interests of the businesses and individuals who come to your market to sell their products. Your financial information supports that you are a conduit handling logistics of a farmers market only; your financials show no substantial expenditures for charitable or educational programs. Even considering you provide an extra x dollars to those using EBT or WIC, that program is primarily a pass-thru service allowing vendors to accept payment via EBT or WIC, increasing their sales. You also provided no evidence that the area you serve is a depressed or blighted area. Even though you do describe some charitable and educational programs, like scholarships and working with other community charities, there is no evidence these are a substantial activities. The facts show your primary purpose is operating a local market for commercial purposes which results in private benefit to your vendors.

Conclusion

Based on the facts and circumstances presented, you do not qualify for exemption from federal income tax as an organization described in Section 501(c)(3) of the Code. You are not organized or operated exclusively for exempt purposes as set forth in Section 501(c)(3) of the Code. By providing members with an opportunity and venue to sell their products, you are operated for the substantial purpose of private benefit to members at your market. Your operations are not exclusively charitable or educational and resemble those of an ordinary commercial enterprise.

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892

cc: