



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

Release Number: **201824014**
Release Date: 6/15/2018
UIL Code: 501.00-00
501.05-00
501.05-01

Date:
March 20, 2018
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)(5) 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.

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.

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 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



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

Date:
January 11, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date of formation
d percent = Number

UIL:

501.00-00
501.05-00
501.05-01

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)(5) 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)(5) of the Code? No, for the reasons stated below.

Facts

You were incorporated in the state of B on C. Per your Articles of Incorporation, you were formed to provide a market where local farmers, producers, crafters, artisans, and nonprofit groups come together to offer a variety of fresh produce and related products directly to the public. The market connects the community with local food growers and producers and encourages social gathering and community building.

Per your Bylaws, your purpose is to act on behalf of your members to administer, operate, and promote the market as a sales outlet for the local producers of farm produce, as well as other crafts and goods approved for sale by your Board of Directors.

You operate a farmers' market year-round, once or twice per week, depending on the season. This activity accounts for approximately d percent of your time. Your remaining time is used to hold a Farm to Table Dinner, an event which serves both as a fundraiser and a means to connect the community with local farmers, with all products used in the dinner being locally grown or produced.

You have an agreement with the town for the free use of local parks to hold your spring-autumn market. The winter market takes place at a church.

In order to sell goods at your market, a vendor must apply and be accepted as a member. Any local landowner or resident whose goods meet your guidelines is eligible to become a member and to sell at your market, space permitting. The number of vendors already selling a similar product may affect the chances of a membership application being accepted. Members have voting rights.

All items for sale at the market must be homegrown, handmade, and/or vendor-created from locally owned operations. The purchase (or other acquisition) of items that are not produced by the vendor for resale at the market is strictly prohibited and will lead to the immediate termination of membership.

There are five vendor categories:

- Farmer/Grower (they make up the majority if your vendors)
- Producer (this category is distinguished from the Farmer/Grower and consists of those who sell prepared foods for human consumption, such as baked goods, canned goods, cheese, butter, etc.)
- Artisan/Crafter (this category makes up only a small percentage of total market stalls)
- Prepared Food (vendors who create/prepare food on site)
- Non-Profit Organizations (one stall only)

Vendors pay membership and stall fees, except for the non-profit organizations, which are not charged a fee. There is space for only one non-profit organization. The membership fees are the primary source of your revenue. The vendors can pay for their stall for the whole season or on a daily basis.

You also generate additional funds from the Farm to Table dinner and from a food stand you maintain at the market. Funds are mainly expended to operate the market, including wages for the market manager, signage, licensing, office expenses, and insurance. Additional expenses are associated with the Farm to Table Dinner and contributions, including a recent donation to the town for playground equipment.

Law

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations.

Treasury Regulation Section 1.501(c)(5)-1 describes organizations covered by Code Section 501(c)(5) as labor, agricultural, and horticultural organizations that have no net earnings inuring to the benefit of any member and have as their object the betterment of the conditions of persons engaged in those pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Revenue Ruling 66-105, 1966-1 C.B. 145, held that an organization composed of agricultural producers whose principal activity is marketing livestock as an agent for its members does not qualify for exemption. The sale of members' products with the return to them of the sale proceeds is neither an object nor an activity within the ambit of Section 501(c)(5) of the Code. Therefore, the organization does not meet the requirements of Treas. Reg. Section 1.501(c)(5)-1 and is not exempt under Section 501(c)(5).

Rev. Rul. 74-195, 1974-1 C.B. 135, held that a nonprofit organization formed to manage, graze, and sell its members' cattle did not of itself better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operations within the meaning of

Section 501(c)(5) of the Code. The principal purpose of the organization was to provide a direct business service for its members' economic benefit. The organization was denied exemption under Section 501(c)(5) of the Code.

Rev. Rul. 77-153, 1977-1 C.B. 147, held that a nonprofit organization that owns and operates a livestock facility and leases it to local members of a nonexempt national association of farmers for use in implementing the association's collective bargaining program with processors does not qualify for exemption as an agricultural organization. The operation and leasing of a facility for collecting, weighing, sorting, grading, and shipping of livestock, the organization's principal activity, is the providing of a business service to those members who make use of the national association's collective bargaining program. This service merely relieves the members of the organization of work they would either have to perform themselves or have performed for them. Such activity does not serve an exempt purpose of an agricultural organization under Treas. Reg. Section 1.501(c)(5)-1. Accordingly, the organization does not qualify for exemption from federal income tax under Section 501(c)(5) of the Code as an agricultural organization.

Application of law

You do not meet the requirements to be exempt under Section 501(c)(5) of the Code as described in Treas. Reg. Section 1.501(c)(5)-1 because your activities are not aimed at the overall betterment of conditions within the farming industry. Rather, you provide an economic benefit for your members. You are providing, for a fee, a location, as well as related advertising, for members to sell their goods. Where members would otherwise have to promote and sell their goods themselves, you are relieving them of this responsibility by providing the service of operating the farmers' market. An organization whose principal activity is the provision of a business service for its members is precluded from exemption under Section 501(c)(5).

You are similar to the organization in Rev. Rul. 66-105 because acting as an outlet for the sales of members products, where the proceeds are returned to the members, neither an object nor an activity within the ambit of Section 501(c)(5) of the Code.

Also, like the organization described in Rev. Rul. 74-195, you are providing an outlet for sales of members' products. This is a direct business service for the members' economic benefit. You are not bettering the conditions of those engaged in agricultural pursuits, improving the grade of their products, or developing a higher degree of efficiency in their operations. Your primary activity of operating a market for the sale of members' products precludes exemption under Section 501(c)(5) of the Code.

You are also like the organization described in Rev. Rul. 77-153. Your operation of a farmers' market to facilitate the sale of member products is the providing of a business service for members. The service merely relieves your members of work they would either have to perform themselves or have performed for them and does not serve the exempt purpose of a Section 501(c)(5) agricultural organization.

Your position

You said that your operations are similar to those of the farm bureau described in Rev. Rul. 57-466. Due to your location, limited growing season, and local emphasis on forestry, hunting, and fishing, the agricultural resources in your local area are very limited. For example, schools in the area don't have agricultural programs and communities don't have FFA chapters or 4-H clubs. Your members come from a wide region (one

encompassing a number of counties) and provide a diverse resource for agricultural information, expertise, and experience. Community members, students, and organizations can ask questions as well as seek information and advice from any of your members. In addition, you cooperate with local organizations, such as providing compost for a daycare center to develop a learning garden, giving farm tours to local schools and service organizations, providing resources for student projects, and serving as guest speakers at local meetings and events. For these reasons, you contend that you are a primary source of agricultural information and education and that your activities advance and improve agriculture. In addition to the educational activities explained above, you also actively market the products of your members in a manner you believe to be similar to the cited farm bureau.

Our response to your position

Although you engage in activities to educate the community on agricultural subjects, such activities are incidental to your primary activity of promoting and operating a marketplace so that your member-vendors can more readily sell their products. This primary activity constitutes the provision of a direct business service to your members for their economic benefit and precludes exemption under Section 501(c)(5) of the Code.

Regarding the farm bureau described in Rev. Rul. 57-466, although its charter provides that it may market agricultural products for producers, there is no indication in the revenue ruling that it actually engages in any such activity. Even if it were to do so, the facts presented in the ruling suggest that the educational activities traditionally conducted by farm bureaus would make up that organization's primary activity, thus qualifying it for exemption under Section 501(c)(5) despite the organization also being engaged in minor activities that may be unrelated to its exempt purpose.

Conclusion

Based on the information provided, we conclude that you are not operated as an organization described in Section 501(c)(5) of the Code. You were not formed to better the conditions of farmers as a whole, to improve the grade of their products, or to develop a higher degree of efficiency in their respective occupations. Rather, you were formed to provide a direct business service for your members' economic benefit. Accordingly, you do not qualify for exemption under Section 501(c)(5).

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