



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

Release Number: **201928015**
Release Date: 7/12/2019
UIL: **501.03-30, 501.33-00, 503.00-00**

Date:
April 16, 2019
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:
February 22, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = State
D = Number
u dollars = Amount
w dollars = Amount
x dollars = Amount
y dollars = Amount
z dollars = Amount

UIL: 501.03-30
501.33-00
503.00-00

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 C. Your Articles of Incorporation state that your purposes are to financially assist the families of your members during a time when the member is experiencing financial hardships due to sickness, death, or immigration issues. The articles are silent regarding the disposition of your assets upon dissolution. You submitted a second document entitled "Articles of Incorporation" which includes a statement that you are organized exclusively for charitable purposes as described in Section 501(c)(3) of the Code, as well as a statement that your assets will be distributed for Section 501(c)(3) purposes upon your dissolution. However, this document does not show evidence of being filed with the State of C.

The only description of your activities you provided was contained in your Bylaws. You were formed to provide benefits to your members. Members pay an annual fee of w dollars by a specific due date. If no

payments are made for two consecutive years, the non-paying individual will no longer be considered a member and will forfeit any benefits. Your activities include providing member benefits include the following:

1. A payment for burial expenses to any member, or their immediate family, who dies in the United States
2. A payment of x dollars in cash if the member is arrested by immigration for being a non-resident (excludes arrests for criminal activity)
3. A payment of y dollars if the member is sick at home for three months, additional payments of z dollars every three months if the illness continues, and
4. A payment of y dollars if there is a fire at the member's residence.

No personal loans are made to any member, except for bail or bond resulting from an immigration arrest. Benefits are only made if a member or their immediate family (spouse and direct children living in the United States) qualifies for the listed benefits. No other payments are to be made to any member.

You currently have D active members. All your members are not from the same family. Active members are those individuals who paid their yearly dues. Members do not apply for benefits. When a situation arises, you are informed by the member and funds are distributed accordingly if the situation is one of the ones described in your Bylaws. There are no eligibility criteria. If the recipient is a member and has paid their dues he/she is entitled to the benefits.

The only revenue you receive is from membership dues. You have paid out u dollars in member benefits to one individual in the last year.

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, 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 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(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for 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 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. It must not be operated for the benefit of designated individuals or the persons who created it.

Revenue Ruling 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.

Revenue Ruling 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.

Revenue Ruling 76-205, 1976-1 C.B. 154, describes an organization formed to aid immigrants in overcoming social, cultural, and economic problems by providing personal counseling, referrals to helpful agencies, social and recreational activities, instruction in English, and distributing a newsletter containing information on attaining citizenship, securing housing, and obtaining medical care is operated exclusively for charitable and educational purposes and qualifies for exemption under Section 501(c)(3) of the Code.

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) of the Code regardless of the number or importance of any other exempt purposes.

In Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978), the court held an organization that marketed handicrafts made by disadvantaged artisans through museums and other non-profit organizations and shops be operated for exclusively charitable purposes within the meaning of Section 501(c)(3) of the Code. The organization marketed only handicrafts it purchased in bulk from these communities of craftsmen. It did not select individual craftsmen based on the needs of the purchasers. The court concluded that the overall purpose of the activity was to benefit disadvantaged communities. The method it used to achieve its purpose did not cause it to serve primarily private interests because the disadvantaged artisans directly benefited by the activity constituted a charitable class and the organization showed no selectivity with regard to benefiting specific artisans. Therefore, the court held that the organization operated exclusively for exempt purposes.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), an organization made grants to various individuals, including officers of the church. The grants carried no legal obligation to repay any interest or principal. Although the church contended that the grants were made to assist the poor who were in need of food, clothing, shelter, and medical attention, the church failed to provide any documented criteria demonstrating the selection process of recipients and the reasons for the specific amounts given. The court affirmed the determination that the church failed to establish that its grant program constituted an activity in furtherance of an exempt purpose.

Application of law

You are not described in Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the organizational or operational tests. If an organization fails either the organizational or operational test, it cannot qualify as an exempt organization under Section 501(c)(3).

Organizational Test

Your filed Articles of Incorporation do not limit your purposes to one or more exempt purposes as required in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Financially assisting your dues-paying members during financial hardships, without more, is not an exempt purpose. Moreover, you fail the organizational test because your Articles of Incorporation do not dedicate your assets to an exempt purpose upon your dissolution as required in Treas. Reg. Section 1.501(c)(3)-1(b)(4).

Operational Test

You were formed primarily to provide financial benefits to your members when specific events occur. You do not employ eligibility criteria to select recipients for assistance. Once a member pays his/her annual dues they are eligible to receive the benefits. This is your only activity and it provides direct, substantial benefits to your members. Therefore, you fail the operational test because you are not operating exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are similar to the organization described in Rev. Rul. 67-367 because your activities serve to benefit your members rather than the public. The payment of these types of benefits to pre-selected, specifically-named individuals (your members) serves a private interest rather than a public interest, which is not an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

Like the group of parents in Rev. Rul. 69-175 who provided a cooperative service for themselves and thus served their own private interests, you were formed to provide benefits to your members. In your case, your only activity consists of providing funds for various expenses of your members and their families. The payments serve a private rather than a public interest.

You are unlike the organization described in Rev. Rul. 76-205, where assistance was provided to immigrants in overcoming social, cultural, and economic problems in a charitable and educational manner. Unlike this organization, you only provide monetary benefits to your members, which serve a private, rather than a public, interest.

The Supreme Court held in Better Business Bureau of Washington D.C. that a single nonexempt purpose, if substantial in nature, would preclude an organization from qualifying under Section 501(c)(3) of the Code no matter the number or importance of truly exempt purposes. Your only activity, providing funds for burial expenses and other hardships to your members, is serving private, non-exempt purposes, which precludes you from exemption.

In addition, you are unlike the organization in Aid to Artisans, Inc. because your beneficiaries aren't selected based on need or income, they are given benefits simply for being a dues-paying member and having a particular event occur. You are providing a set-aside amount of funds payable, much like an insurance policy, for your members in the event of a family death or other specifically named hardships. Also, you are like the

organization in Church in Boston because you failed to provide any documented criteria demonstrating the selection process of recipients and the reasons for the specific amounts distributed. There is no review to determine qualification or need because the payments you make to members are automatic.

Conclusion

Based on the information submitted, you are not organized or operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code. Your sole activity provides a substantial private benefit to your members, which is a non-exempt purpose and precludes you from exemption under Section 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892