



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

Number: **201941029**
Release Date: 10/11/2019

Date:
July 16, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00, 501.33-00

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:
March 3, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date of formation
C = State of formation
D = Business 1
E = Business 2
F = Business 3
G = Business 4
H = Business 5

UIL:
501.03-00
501.33-00

Dear :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons 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

You were incorporated on B in the state of C, for the purpose of collaboration of like-minded local businesses to provide education, quality goods and services, events and programming to promote healthier living for residents of a certain city. Your Articles of Incorporation make no provision for disposition of assets in the event of dissolution.

The members of your Board are the proprietors of the for-profit businesses D, E, F, G, and H, each of which promotes an approach to wellness different from the others'.

You have entered agreements with apartment complexes to provide for a fee wellness events for the tenants of the complexes. The goals of your events are to educate on components of weight loss; to provide information on toning and healthy eating; to introduce different types of wellness opportunities that exist within the community; and to offer these services. Your charges will be limited to your costs, including the cost of instructors. For example, at one complex, you initially provided a health fair at which you provided a 30-minute mini classes for the residents. Each class introduced participants to wellness related services of the kind performed by businesses D, E, F, G, which were presumably conducted by associates of those businesses, if not the business owners themselves. Subsequently, you provided monthly health fairs for residents of the same complexes. Similarly, you provide a six-week series of classes and workshops for residents of another

complex, conducted by D, E, F, G. You have not asserted, and there is no other reason to believe, that the residents of these complexes are members of a charitable class.

You also host short classes for the public at area stores upon request. The personal trainer from E conducts weekly strength and conditioning workshops for tenants of another area apartment complex.

You will conduct health fairs at your current business meeting space where attendees can sample the various business offerings. The meeting space will host a future class, free except for food sold by collaborative members. All other activities will be provided at a modest charge, sufficient to cover your overhead, supplies and compensation for instructors, furnished by collaborative members D, E, F, G and H.

Your future activities include holding a public launch of your facility and the grand opening of H, a market, that will be joining your collaborative. Mini classes be offered free to the public on this occasion. You will continue to offer classes and workshops at other venues, at modest or no cost to the participants.

Your website states you make wellness more accessible to your city through local goods and services, and that you were formed by a team of local business owners and operators in the wellness industry who recognized a need for education, outreach and community engagement through the highest quality local goods and services available. With regard to the specific services you offer, it says that, along with a program of onsite wellness events, you bring local goods and wellness services to living or workplaces, offering an hourly or a flat rate depending on the project. Members of the public are invited to make an appointment through an online form where they describe their wellness needs and the location where the services are to be provided. You offer to help inquirers to identify their needs, scope of their goals, and budgets.

You invite wellness-focused businesses to consider becoming partners with you.

Your revenue derives from fees for services provided to pursuant to the agreements with apartment complexes, venues, program fees from individuals, sponsorships and donations. Your expenses include fees for instructors and supplies, printing, sound and exercise rentals, special events and events without accessible equipment on site.

Law

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states 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 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)(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)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes lessening of the burdens of government.

Promotion of health has long been recognized as charitable, provided that it is not carried on in a proprietary manner and the class of beneficiaries is sufficiently large and indeterminate to benefit the community as a whole. Restatement (Second) of Trusts, §§ 368, 372 (1959); 4A Austin W. Scott and William F. Fratcher, *The Law of Trusts* §§ 368, 372 (4th ed. 1989).

Revenue Ruling 68-373, 1968-2 C.B. 206 describes an organization that engaged in testing drugs for commercial pharmaceutical companies. Clinical testing is an activity ordinarily carried on as a part of pharmaceutical company's commercial operations. Such testing principally serves the private interests of the manufacturer rather the public interest. The organization did not qualify for exemption.

Revenue Ruling 69-632, 1969-2 C.B. 120 describes an organization formed by members of a particular industry to develop new and improved uses for existing products of the industry. It did not qualify for exemption under section 501(c)(3) of the Code. It contracts with various research organizations for specific research projects selected by a committee of technical experts who were chosen from the organization's membership. The members selected research projects that result in the increase of their sales by creating new uses and markets for their products. The organization did not qualify for exemption because the members' private interests were served.

In Federation Pharmacy Services, Inc. v. Commissioner, 625 F.2d 804, 807 (8th Cir. 1980), aff'g 72 T.C. 687 (1979), the court noted that "the selling of prescription drugs by Federation may serve to promote health, but it does not, without more, further a charitable purpose." Federation did not qualify for exemption because it was operated in a commercial and proprietary manner, rather than for the benefit of the community.

In Better Business Bureau v. United States, 326 U.S.278 (1945), the court held that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

Application of law

You are not described in Section 501(c)(3) of the Code because you are not organized or operated exclusively for charitable or educational purposes. You do not meet either the organizational or operational tests as required by Reg. 1.501(c)(3)-1(a)(1), because you are not organized and operated exclusively for exempt purposes.

You do not meet the organizational test because your articles of organization do not limit your purposes one or more exempt purposes as required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), the stated purposes being too broad; and do not expressly dedicate your assets to an exempt purpose, as required by Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You are not operated exclusively for exempt purpose as required by Treas. Reg. Section 1.501(c)(3)-1(c)(1), because you are not engaged primarily in activities which accomplish exempt purposes specified in Section 501(c)(3), more than an insubstantial part of your activities not being in furtherance of an exempt purpose.

Although there are educational aspects of your activities, you operate in a commercial manner. You provide services and products for fees pursuant to agreements with apartment complexes and according to wellness plans you prepare for the individuals. Your launch event serves as an open-house whereby members of the public are introduced to your member businesses and given the opportunity to secure services and goods from your member businesses. Your website invites the public to secure services and products offered by your member businesses. Your activities promote the business interests of your member businesses. Each member business provides a service or product which is distinguishable from those of the other members. Therefore, you are not operated exclusively for purposes described in section 1.501(c)(3)-1(c)(1) of the regulations.

You are like the organization described in Rev. Rul. 68-373 because your activities are commercial in nature, and like the organization described in Rev. Rul. 69-632 because your activities substantially serve the private interests of the members rather than the public.

You are like Federation Pharmacy Services, Inc., because, although your activities may promote health, they do so in a commercial and proprietary manner.

Like the organization in Better Business Bureau v. United States you have a substantial non-exempt purpose, that is, operating in a commercial manner and promoting the services of your members. You

Conclusion

Accordingly, we conclude that you do not qualify for exemption under Section 501(c)(3) of the Code. You do not meet the operational test for exemption because your activities benefit your member businesses.

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.

If you don't agree

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

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:
Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information 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 later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (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 if 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements