



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

Release Number: **201944015**  
Release Date: 11/1/2019  
UIL: **501.00-00, 501.36-00, 501.33-00**

Date:  
August 6, 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:  
June 13, 2019  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

S = Date  
T = State  
U = Name

**UIL:**

501.00-00  
501.36-00  
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 qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons stated below.

**Facts**

You were formed as a corporation on S in the state of T. Your Articles of Incorporation state your purpose is to own, furnish, maintain and manage a building to be known as the U to be used and operated for social, library and educational purposes. We suggested that you amend your organizing document to comply with the organizational requirements under Section 501(c)(3) of the Code, but we have nothing to confirm that an amendment was filed.

You were previously exempt under Section 501(c)(4) of the Code but you were revoked via examination more than \_\_\_\_\_ years ago. You are now seeking exemption under Section 501(c)(3). You said that "as nearly as can be determined" you lost your exemption because of your bar operations. You have been filing Form 1120 and operating as a for-profit business for at least \_\_\_\_\_ years. During that time, your board decided to remain in the "retail bar business." Over the ensuing years many problems with managing that enterprise were experienced. Operational losses mounted while the board had trouble recruiting members. You re-formed when the board proposed dissolution and liquidation of assets, and a committed group of your members assumed management of you. You said that your membership hasn't changed and that your assets still belong to your members.

You now have leased the bar space to a private party. The new bar operation is a completely independent, for-profit entity. You have no relationship with that entity other than landlord/tenant. You said you are the same shareholders who were not willing to give up on their grandparents' dream when they created you.

You are now committed to pursuing and expanding your founding ethnic heritage purposes and maintaining and upgrading your remarkable historically significant building. This property is not currently on any historical register. You said that you are part of a historic three-block section of town that have exteriors that may qualify as potentially historically significant, but you currently have no such designation.

Your membership is comprised of several hundred individuals. Each member owns an equal share in you. The shares make each member a partial owner of you, which includes your facility. They have the rights to the revenues generated by the activities you conduct. The shares of deceased members may be transferred to an immediate family member that is a child or grandchild, sibling to sibling, aunt/uncle to niece/nephew, or vice versa of the deceased.

You described your past activities, which have included language classes, cooking class demonstrations, hosting forums for international speakers, ethnic performance groups, etc. You describe your current activities as preserving and maintaining your building, including the kitchen, clubrooms, and ballroom. You also describe one of your present activities as maintaining good tenant relationships to ensure a viable source of revenue. One of your tenants is an organization exempt under Section 501(c)(3) of the Code.

Your planned future activities include ballroom rental to the general public for activities such as weddings, reunions, dance parties, etc. You will also have authors of local history stories speak to book clubs, ethnic food demonstrations and classes, fundraisers for public needs, ethnic tradition seminars, demonstrations, ethnic music, and art events, and there will be meeting rooms available to the public for local ethnic clubs. You will also have library reference material for travel, genealogical study, and ethnic history and heritage.

You oversee the coordination and scheduling of all events to be held in your facility, which include the bar operation, banquets, parties, etc. You work with the bar owners and other staff to coordinate and ensure the efficient and effective use of your resources for events.

The majority of your gross revenues are generated from renting your facility. Building maintenance accounts for approximately half of the hours spent on your operations. The remaining hours of your activities are spent on various administrative duties.

### **Law**

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for educational purposes.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that to be tax exempt, an organization must be both organized and operated exclusively for one or more exempt purposes specified in Section 501(c)(3) of the Code. 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 of its activities, in activities which themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) asserts 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). An organization will not be so regarded if more than an insubstantial part of its activities are not in furtherance of exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes under Section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 76-366, 1976-2 C.B. 144, held that an association of investment clubs formed to enable members and prospective investors to make sound investments by the mutual exchange of investment information, does not qualify for exemption from federal income tax. The association carried on not only educational activities, but other activities directed to the support and promotion of the economic interests of its members. Moreover, by furnishing information to prospective investors to enable them to make sound investments, the association is serving private interests.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy an exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an “underlying commercial motive” that distinguished its educational program from that carried out by a university.

In Goldsboro Art League, Inc. v. Commissioner, 75 T.C. 337 (1980), the court found that an organization operating an art gallery and art market was exempt under Section 501(c)(3) of the Code. Its purpose was primarily to foster community awareness, encourage appreciation of contemporary artists and provide a constant flow of art for students to study art and painting techniques. The organization conducted many charitable and educational activities apart from operating the art gallery and art market including: the operation of an art center which sponsored 20-25 art classes quarterly at a community college, offered art courses to children, sponsored various art demonstrations and film series, gave a series of art lectures and workshops, owned a permanent art collection which it displayed and offered tours of. Artwork displayed at the gallery/market was selected by jury procedures. None of the art was by anyone on the board or officer of the petitioner and only two of over 100 artists whose art was displayed were members of the petitioner. No other art museum, gallery or similar facility was available in the county or any adjacent county. The organization contended that the sale of artwork in its galleries was an incidental activity but one that helped to further its exempt purposes.

#### **Application of law**

You are not described under 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 for exemption under Section 501(c)(3).

You fail the organizational test because your formation document does not limit your purposes to one or more exempt purposes as required in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Your organizational document also

does not dedicate your assets to an exempt purpose as required by Treas. Reg. Section 1.501(c)(3)-1(b)(4). For these reasons, you fail the organizational test.

You are also not described in Section 501(c)(3) of the Code because you are not operated exclusively for an exempt purpose or purposes as required by Treas. Reg. Section 1.501(c)(3)-1(c)(1). Although you conduct some cultural and educational activities, your primary activity is the rental and maintenance of your facility, which is owned by your members. Your activities serve a private rather than a public interest as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are like the organization described in Rev. Rul. 76-366. Your activities are directed to the support and promotion of the economic interests of your members, who have an ownership interest in your facility.

You are different from the organization in Goldsboro Art League, Inc. Unlike the organization in this ruling, your primary activity consists of renting your facility for non-exempt purposes. Even with planned additional educational activities, your educational and charitable activities do not constitute exclusive activity required for Section 501(c)(3) of the Code.

Akin to Better Business Bureau of Washington D.C., Inc. you devote more than an insubstantial amount of time and activities in supporting a non-exempt purpose, and for this reason you fail to qualify for exemption under Section 501(c)(3) of the Code.

### **Conclusion**

Based on the information submitted, you are neither organized nor operated exclusively for one or more exempt purposes described in Section 501(c)(3) of the Code. You serve the private interests of your members and are not operated exclusively for exempt purposes. Any educational and charitable activities you conduct are incidental to your non-exempt purposes. Accordingly, you are not described in 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](http://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