



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

Release Number: **202004015**
Release Date: 1/24/2020
UIL Number: 501.03-25, 501.03-30

Date: October 31, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

1120

Tax years:

All

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: September 10, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B= Date

C = Date

D = State

E = Chapter

F = Name

UIL:

501.03-25

501.03-30

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 submitted Form 1023-EZ, *Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on date B.

You attest that you were incorporated on date C, in the state of D. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of Section 501(c)(3) of the Code, that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under Section 501(c)(3) of the Code. You also attest that you are organized and operated exclusively to further charitable purposes. Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way;
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals;
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially;

- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s);
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h);
- Not provide commercial-type insurance as a substantial part of your activities.

In addition, the description of the mission or most significant activities in your Form 1023EZ application states that you will establish a local E of F. which is the

Subsequently, we located and provided you a filed copy of your Articles of Incorporation obtained from D's Secretary of State's website. Your Articles of Incorporation state you are organized pursuant to D's nonprofit corporation code. Additionally, there are no provisions in this document for the disposition of assets upon dissolution. We also requested detailed information regarding your activities.

You responded that you are a membership organization whose purpose is to provide access to fine dining experiences for your members and the greater benefits that membership in F has to offer. You will typically host four quarterly events per year for your members and these will be held in local fine dining establishments, which may include a restaurant or facility owned by a member, a member's home or another suitable place that offers access to fine dining

Your membership consists of individuals inside and outside of the fine dining profession. Your members have similar interests in fine dining and wine. You meet together regularly to enjoy fellowship, education, exploration and shared experiences across common interests. Membership fees are determined by the cost of each event and these are divided among your members who choose whether or not to attend the event.

% of your time will be spent arranging, preparing, and conducting your fine dining experiences for members. You have provided a proposed budget that indicates that all of your income will come from membership fees. Your proposed expenses were shown to equal your proposed revenue, however, you did not provide an itemized list of expenses.

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 that 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 is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 77-366, 1977-2 C.B. 192 describes an organization that was formed to arrange and conduct cruises during which activities to further religious and educational purposes are provided. However, it was found that an extensive amount of time and resources were spent devoted to the conduct of social and recreational activities, and the facts and circumstances indicated these activities served substantial independent purposes of a non-charitable nature. Therefore, this organization did not qualify for exemption under Section 501(c)(3) of the Code because it was not operated exclusively for exempt purposes.

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 to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have failed to meet both requirements, as explained below.

You do not meet the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) because your Articles of Incorporation do not limit your purposes to those described in Section 501(c)(3) of the Code. In addition, your Articles of Incorporation do not have a provision that dedicates your assets to exempt purposes described in Section 501(c)(3) of the Code upon your dissolution. This also causes you to fail the organizational test per Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You are not operating in accordance with Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are not primarily engaged in activities that accomplish exempt purposes specified in Section 501(c)(3) of the Code. Your primary activity is planning and hosting your fine dining social events for your members. This is a substantial nonexempt social purpose which precludes you from exemption under Section 501(c)(3) of the Code.

Additionally, you do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) as you have not provided how you are serving a public rather than the private interest of your members. For example, you are planning and hosting dinners at fine dining establishments as well as you pool members funds to pay for these

events and divide the costs evenly among your members who attend. This precludes you from qualifying under Section 501(c)(3) of the Code.

You are similar to the organization described in Rev. Rul. 77-366. Your primary activity is organizing fine dining experiences for your members. Although you may have some educational activities, you are primarily providing social and recreational activities for your members, which prevents you from qualifying under Section 501(c)(3) of the Code.

Conclusion

Based on the information submitted, you are not organized for purposes described under Section 501(c)(3) of the Code. In addition, you are not operating exclusively for one or more purposes described in Section 501(c)(3) of the Code. You are primarily organizing fine dining events for your members which serves a substantial non-exempt recreational and social purpose. Therefore, you are not described in Section 501(c)(3) of the Code.

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