



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

Number: **202005022**
Release Date: 1/31/2020

Date:
November 4, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.00-00, 501.05-01

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:
August 27, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
D = State
G = County
w dollars = amount
x dollars = amount
y dollars = amount
z dollars = amount

UIL:
501.00-00
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 on B in the state of D. Per your Articles of Incorporation, you are an association of farmers and gardeners whose purpose is to promote agriculture through the provision of a retail outlet, and to provide area residents with the freshest and most nutritious produce possible.

You later amended the purpose indicated in your Articles to state that you are organized exclusively for educational, agricultural, nutritional and scientific purposes within the meaning of Section 501(c)(3) of the Code. Your specific purpose is to coordinate a farmers' market which will enable local agricultural growers the opportunity to provide a healthy local food source to the community and nearby towns. You also seek to raise consciousness about sustainable food production on a local level and to provide education about local food production and nutrition in an atmosphere that promotes healthy eating, a strong community connection and consumer participation, particularly to low-income families.

You operate a weekly farmers' market year-round. Vendors must submit an application to be considered for a space. Application is open to farmers, growers, and producers within G county. You determine fees for vendor spaces annually, with a current fee of w dollars for full-time vendors (May to November), x dollars for part-time vendors (every other week for outside season), and y dollars per market for occasional vendors. You collect fees and vendor application information, assign vendor space, oversee set-up and clean-up of the market, and answer vendor/customer questions. Vendors set their own prices for products. Products sold must be labeled with the vendor's name and business. Produce sold must be grown by vendors from seed, purchased plugs, cutting, bulb or rootstock. Your vendors are allowed to sell the following; vegetables, fruit, berries, honey, eggs, fresh or dried culinary herbs, cultivated mushrooms, seafood, shellfish, lobsters, potted plants, fresh cut flowers, dried flowers, jam, jellies, sauces, salsas, vinegar, chocolates, coffee, baked goods, seafood; and any other items deemed appropriate by your board of directors. Vendors will be immediately evicted if you determine that a vendor is involved in the resale of any product at your market.

You strive to obtain a mix of vendors attractive to customers in order to nurture market growth and develop repeat customers, with at least % produce (raw, edible food). To maintain this mix, you may limit the types of products allowed for sale at any given time. Vendors are required to submit a complete list of all products they wish to sell with their application and you must approve all products offered for sale. Vendors may not sell products that do not appear on their application.

Per your Handbook of Rules & Regulations, you hope to maximize the consumption of local foods and products and strengthen consumer support of local agriculture. You are committed to creating a diverse marketplace with the emphasis on the highest quality, local grown and produced agricultural products available. Vendors must understand and agree to abide by the rules and regulations regarding market operations and associated rules.

You accept EBT/SNAP in addition to WIC and Senior WIC coupons. You have a system where you issue tokens to those using these benefits. Customers purchase tokens from the market manager and then use them to purchase items from vendors. The vendors then return the tokens to the manager and receive payment. This system helps you to collect data on the use of these benefit programs. You offer those using these benefits z dollars for additional purchases when purchases totaling z dollars are made.

You provide an information table at the market where customers can obtain free literature about nutrition and the local food movement. This table is also where you administer the EBT/SNAP and WIC programs.

Your website includes directions to the market, vendor profiles, vendor forms, contacts, pictures, history, and information about products, the annual vendor meeting, how to support the market, and entertainment at the market.

In addition to the market, you have partnered with WIC and your local county extension to provide free cooking demonstrations and recipes focused on the health benefits of locally and organically sourced fresh fruits and vegetables. You also support other local endeavors by providing space to local schools to sell produce from their school gardens and to local food pantries to both gather and distribute product to their clients. On occasion, you provide space for local non-profits to connect with the greater community and for local musicians to play their music. You plan to establish a scholarship fund for students that demonstrate an interest in sustainable agricultural systems. You also plan to expand assistance to local community nutrition programs.

Per your Bylaws, all decisions and voting rights rest with the board of directors or persons to whom authority has been designated by the board. The board will fix policies, employ and discharge necessary staff, authorize expenditures and take all necessary steps to carry out your purposes. The board will also elect all of your officers.

Your board of directors is composed of individuals who also serve as your officers. of the directors are listed as vendors on your website. You have a manager who assists in the overall operation of the market and staffs the information table at the market. Your manager coordinates between your vendors, your customers and your board.

For the last tax years, your income is almost exclusively from vendor application fees and grower fees (reimbursements for the EBT/SNAP, WIC, and Senior WIC benefit programs). Approximately % is strictly from vendor application fees. Less than % of your income is from donations and miscellaneous income. Vendor fees collected are used for advertising, marketing efforts, administrative costs, supplies, maintenance, and entertainment during market hours. Per your financial information, your primary expense is grower payments for the EBT/SNAP, WIC, and Senior WIC benefit programs. Other expenses listed include equipment, salaries, insurance, and other miscellaneous expenses associated with running the market.

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 Section 501(c)(5) of the Code 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).

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 aimed at marketing the end results of your member vendor's agricultural farming efforts rather than any aspects of the farming process itself. Your furnishing of a farmers' market to enable your member vendors to sell their products to the general public does not better the conditions within the farming industry. You are providing, for a fee, promotion and a location for member vendors to generate sales of their products. Where member vendors would otherwise have to promote and sell their products themselves, you are relieving them of this responsibility by providing the service of operating the market. The earnings from the sale of products inures to the benefit of member vendors, including of your board members.

You are similar to the organization in Rev. Rul. 66-105 because providing a market place for member vendors to sell their products, where they in turn receive revenue from sales, is 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 sale of member vendor products, 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 provides a direct business service for your member vendors' economic benefit which precludes exemption under section 501(c)(5) of the Code.

You are also similar to the organization in Rev. Rul. 77-153. By providing a market place for member vendors to sell their products, you are relieving them of work they would either have to perform themselves or have performed for them, which precludes exemption under Section 501(c)(5) of the Code.

Conclusion

Based on the facts above, 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 provide an economic outlet to enable member vendors to sell their products directly to the general public. Accordingly, you do not qualify for exemption under Section 501(c)(5) 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, 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 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 (Section 7428(b)(2) of the Code).

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 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 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