



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

Release Number: **202016025**
Release Date: 4/17/2020
UIL: **501.00-00, 501.33-00**

Date: January 23, 2020

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.

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

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: November 14, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State

C = Date

D = Industry

UIL:

501.03-30

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 IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You formed as a Not-For-Profit Corporation in the State of B on C. Your Articles of Incorporation state the nature of your business or purpose is "to engage in any lawful act or activity for which corporations may be organized under the general corporation law of B". Your Articles do not contain a dissolution clause.

Your bylaws indicate that you are a membership organization consisting of independent operators in the D industry. They also indicate that you are formed to:

- Actively provide education and promote policy to benefit the D industry at the local, state, and national levels;
- Secure and preserve a viable livelihood for present and future generations;
- Support the financial, environmental, cultural and historical interests of those in the D industry in B and across America.

Your activities include:

- Conducting periodic formal and informal regional and county meetings to discuss current events related to the D industry, common issues facing the industry, and state and federal regulations affecting independent operators in the D industry;
- Providing continuing educational and promotional efforts to independent operators in the D industry which help improve business practices and continued promotion of better economic, environmental, quality, and otherwise operational benefits;
- Collaborating with industry affiliated, associated trade organizations, and charitable organizations multiple times throughout the month to provide a continuous flow of information involving new developments and updates regarding ongoing issues and activities in the D industry;
- Creating and implementing educational programs including educational discussions regarding how the industry has evolved and what the future of the industry will be like; and
- Publishing a periodic newsletter, which summarizes general developments in the D industry as well as provides legislative updates on issues affecting those in the D industry.

You also hold a convention opened to those in the D industry. Presenters at your convention have included advocates for free enterprise, for private property rights, and for agricultural productivity as well as the leader of the national organization of the D industry producers.

In addition, you provided financial information that shows your sources of revenue as membership fees, convention registrations, donations, and the selling of merchandise. Your expenses consist of convention expenses and miscellaneous expenses.

You further stated that your activities serve to improve members' capabilities and operations as well as assist members in understanding issues and the best practices and alternatives for managing their business in the volatile business climate that is characteristic of the D industry.

Finally, you provided documentation from B that you have been approved to operate as a political action committee in B.

Law

IRC Section 501(c)(3) 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:

- Limit the purposes of such organization to one or more exempt purposes; and
- 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.

Rev. Rul. 71-504, 1971-2 C.B. 231

A city medical society exempt under Section 501(c)(6), that primarily directs its activities to the promotion of the common business purposes of its members may not be reclassified as an educational or charitable organization under Section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Application of law

You are not operated exclusively for one or more exempt purposes under IRC Section 501(c)(3) as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you fail both the organizational and operational tests.

The purpose in your Articles of Incorporation states "to engage in any lawful act or activity for which corporations may be organized under the general corporation law of B". Because your Articles of Incorporation do not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), you fail the organizational test in IRC Section 501(c)(3). Furthermore, your Articles of Incorporation do not contain a dissolution clause required by Treas. Reg. Section 1.501(c)(3)-1(b)(4) which causes you to fail the organizational test under IRC Section 501(c)(3).

You are not operated in accordance with Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are not exclusively engaged in activities that accomplish exempt purposes specified in IRC Section 501(c)(3). You have been approved to operate as a political action committee in your state. In addition, your activities include conducting periodic meetings to discuss current events related to the D industry to ensure members are kept abreast of common issues facing the D industry, including updates on state and federal regulations and best practices. These facts illustrate you have a substantial non-exempt purpose of promoting the common business interests of members who are independent producers in the D industry. Therefore, you are precluded from exemption under IRC Section 501(c)(3).

You are like the organization described in Rev. Rul. 71-504, 1971-2 C.B. 231. For instance, some of your activities are educational and charitable. However, your activities of keeping your members abreast of industry changes as well as legislative updates, promoting industry best practices, and providing your members alternatives for managing their businesses in the volatile business climate illustrates that a substantial portion of your activities is furthering the common business interests of members. This prevents exemption under IRC Section 501(c)(3).

You are like the organization in Better Business Bureau v. United States. Although you may have some educational and charitable purposes, this is secondary to the purpose of operating to promote your members' common business interests. The presence of this non-exempt purpose prevents exemption under IRC Section 501(c)(3).

Conclusion

You have not satisfied the organizational or operational tests in accordance with IRC Section 501(c)(3). Your organizing document does not contain the required provisions for exemption under Section 501(c)(3). Moreover, even though some of your activities may be charitable, you are operating to promote the common business interests of your members, which is a substantial nonexempt purpose. Therefore, you are not described in Section 501(c)(3) and you fail to qualify for exemption under Section 501(c)(3).

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.

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