



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Number: **202047009**
Release Date: 11/20/2020

UIL Number: 501.00-00, 501.03-05, 501.03-30,
501.33-00

Date:
August 25, 2020
Employer ID number:

Form you must file:

Tax years:

Person to contact:
Name:
ID number:
Telephone:

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). 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 IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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 call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034

Redacted Letter 4038



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

Date:
 June 26, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

R = State
 S = Date
 T = Company
 V = Year
 W = City
 x dollars = Amount
 y dollars = Amount
 z dollars = Amount

UIL:

501.00-00
 501.03-05
 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 Code Section 501(c)(3)? No, for the reasons stated below.

Facts

You were incorporated in R on S. Your Articles of Incorporation state that your purpose is to facilitate construction plan exchange. Upon your dissolution your assets will be distributed for one or more exempt purposes within the meaning of IRC Section 501(c)(3).

You were formed to take over the operations of a for-profit, T, in order to convert it to a non-profit. T was established in V and is the largest member-owned and only _____ in W. You will take over T's location and operations.

You have members. You offer three different membership levels. Members get access to plan rooms at your facility to accommodate their plan review and estimating needs. Your location offers air-conditioned estimating rooms and accommodations to make plans, prints, specification copies, and scans. A computer workstation with

internet access is also available. Your location is open Monday-Friday from 8:00am to 5:00pm but closed on major holidays. In order for your members to network, you host summer picnic and a Christmas social.

Membership levels are as follows:

- Associate Membership (Level 1): x dollars/year - The Associate Membership level is the basic membership level. Members receive a weekly bulletin, by mail and/or email.
- Active Membership (Level 2): y dollars/year - The Active Membership level grants all the benefits of the Associate level and also allows access to the building and plan rooms. Members can also view all plan and specification documents and use your special tables and the like. Active members also have access to your printers, scanners, and copiers (available for use at additional cost per copy/scan). The Active membership level also allows members to check out plans and specifications overnight or over the weekend.
- Online Membership (Level 3): z dollars/year - The Online Membership level offers all of the benefits of Level 1 and Level 2 memberships and are also allowed access to your newly designed online Plan Room. Online members may view all plans, specifications, and addendums that are available, online, without ever having to leave the comfort of their home or office. Online members are also allowed building and plan room use at your location, as well as printer/copier/scanner use (available for use at additional cost per copy/scan).

You stated that there is little to no change in the day-to-day operations since you have taken over T's operations, but your vision has changed. Now there is no desire to return profits to owners. Any excess revenue is intended to be used to further assist the construction industry as a whole and give back to the community. Giving back to the community would not be just monetarily but could include an educational component which would involve introducing the public to opportunities in the construction industry.

Your primary source of revenue will be membership fees and the rest will come from services provided to members. Proposed expenses include wages, occupancy costs, professional fees, and other administrative expenditures. Your budgets are based on the financial records of T. You anticipate taking over all of T's assets and liabilities, but no transfers have taken place to date.

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 qualify under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or 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(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 IRC 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) provides 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, the organization must establish that it is not organized or operated for the benefit of private interests such individuals.

Revenue Ruling 71-395, 1971-2 C.B. 228, held that a cooperative art gallery did not qualify for exemption under IRC Section 501(c)(3). The gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works. Even though the exhibition and sale of paintings may be an educational activity in other respects in this situation it served the private purposes of its members.

Rev. Rul. 77-111, 1977-1 C.B. 144, Situation 1, held that an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations was not operated exclusively for charitable purposes and did not qualify for exemption under IRC Section 501(c)(3). The overall thrust is to promote business rather than to accomplish Section 501(c)(3) objectives exclusively.

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 private benefit, if substantial in nature, will destroy an organization's tax-exempt status regardless of the organization's other charitable purposes or activities.

Application of law

As stated in Treas. Reg. 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3). Your formation document states that your purpose is to facilitate construction plan exchange, which is not a recognized exempt purpose. Therefore, you do not meet the organizational test as noted in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i).

You provide services to your members for a fee, which serves their private interests. This activity does not further an exempt purpose. Thus, you do not meet the operational test as noted in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You also do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you serve the substantial private interests of your members and not a public interest.

You are like the organization denied exemption in Rev. Rul. 71-395. You provide a place for your members to do their work, which serves their private purposes. Accordingly, you are operated for the private benefit of your members rather than for a public purpose.

You are like the organization denied exemption in Rev. Rul. 77-111 because your overall thrust is to promote your members' businesses rather than to accomplish exclusively charitable or educational purposes.

Although you indicated you may conduct some educational activities in the future, your primary purpose is to provide a workspace for your members. Like the organization in Better Business Bureau of Washington, D.C.,

Inc., you have a substantial non-exempt purpose. Therefore, you are precluded from exemption under IRC Section 501(c)(3).

Conclusion

You are neither organized nor operated exclusively for an exempt purpose as described in IRC Section 501(c)(3). Your formation document does not limit your purposes to those described in Section 501(c)(3). Your activities provide for the substantial private benefit of your members and do not exclusively further an exempt purpose. Accordingly, you are not exempt 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements