



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

Date: August 25, 2020

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Number: **202047014**

Release Date: 11/20/2020

UIL Number: 501.00-00, 501.03-05, 501.04-06,
501.35-00, 501.36-02

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.

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 4034

Redacted Letter 4038



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

Date:
 June 22, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
 C = Date
 e percent = Percentage
 f percent = Percentage
 g percent = Percentage
 h percent = Percentage
 j percent = Percentage
 k percent = Percentage
 m percent = Percentage

UIL:

501.00-00
 501.03-05
 501.04-06
 501.35-00
 501.36-02

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 were incorporated in B on C. You are currently exempt under IRC Section 501(c)(4) and are now seeking exemption under Section 501(c)(3).

Your Articles of Incorporation initially stated you were formed to plan, manage, operate and conduct an annual fair called Y and other community and civic functions. Before filing Form 1023, you amended your purposes to add that you are organized for IRC Section 501(c)(3) purposes and your assets are now dedicated to Section 501(c)(3) purposes upon your dissolution.

Your Bylaws indicate that the primary purpose or purposes are to organize, direct, perpetuate, promote, advertise, and otherwise oversee an annual festival and for this purpose, to acquire by purchase or otherwise,

own, hold, buy, sell, convey or lease property, both real and personal, and to establish funds and accounts in financial institutions and to establish rules and regulations and to do any and all other things necessary or incidental to the promotion of the festival. If you should elect to support community projects or activities beyond the festival these should primarily benefit certain residents.

Your application indicates that your primary activities are holding an annual free -day festival. The activities are conducted by you or your volunteers. The activities of this festival include, but not limited to, talent shows, pageants, parades, races, food sales, and social tents. There are fees and prizes for some activities but not all. There is an entry fee to participate in the pageants to become the festival queen and junior festival queen. The festival queen, junior festival queen, and the runners ups receive a trophy, flowers, a tiara, and a cash prize. There are also prizes for other events, such as the art and photography show.

You stated that activities offered at the festival vary each year and many are hosted by you but conducted by other groups. A significant portion of your time is spent organizing and promoting the festival, working with participants, and preparing and cleaning the grounds. The activities that you conduct yourself, in order of time and resources spent from greatest to least, include:

- Chicken and food sales – e percent of your time and resources
- Social tent for live music and beverages = f percent of your time and resources
- Grand parade – g percent of your time and resources
- Antique car parade – g percent of your time and resources
- Pageant – g percent of your time and resources
- Junior pageant – g percent of your time and resources
- Kiddie tractor pull – g percent of your time and resources
- Cake show – g percent of your time and resources
- Art and photography show – g percent of your time and resources
- Rides and games – g percent of your time and resources

The remainder of your time is spent on coordinating activities conducted by other groups, obtaining insurance, event set up and tear down, as well as board meetings and other community events. The chicken and food sales and the social tent activities together account for almost half of your total time and resources.

You donate festival profits to community organizations and projects. You said that a local park is the largest recipient of funding from the festival. You used festival profits to purchase and build out the park and provide operating funds and fund improvements. The park is used by baseball and youth soccer for free. The park is also available for public use and events for nominal rates and fees. You also make donations to multiple community projects. You said that after covering festival improvement costs, substantially all the festival's net profits are donated to the community.

You provided financial information for four past years, which included donations you made to community organizations. One year you donated h percent of your total revenue, j percent the next year, k percent the following year, and m percent the last year. In none of the years did your total contributions to other organizations reach a quarter of your revenue received.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where no part of the net earnings inures 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(c)(1) states 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.

In Revenue Ruling 67-216, 1967-2 C.B. 180, a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products may qualify for exemption from federal income tax under IRC Section 501(c)(3). The organization’s activities and exhibits were planned and managed by or in collaboration with persons whose business it was to inform and instruct farmers and the general public on agricultural matters (i.e., home demonstration agents, county agricultural agents), and the resulting displays were designed to be instructive. The presence at the fair of recreational features such as midway shows, refreshment stands, and a rodeo are incidental to the fair’s overall educational purpose.

In Rev. Rul. 68-224, 1968-1 C.B. 262, a nonprofit organization that conducted an annual festival centered around regional customs and traditions was found to be qualified for exemption from federal income taxes under IRC Section 501(c)(4). The festival took place in an agricultural region where interest in horses and Western traditions ran high and enjoyed the broad involvement of local citizens. It typically featured a banquet or barbecue, a parade made up of local organizations and floats depicting community history, various contests relating to dress and costumes traditional of the area, and a rodeo. The ruling held that, in carrying on these activities, the organization provided recreation for the community and generally promoted civic betterments and social improvements.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under IRC Section 501(c)(3) regardless of the number or importance of statutorily exempt purposes.

Spanish Am. Cultural Ass'n v. Commissioner, T.C. Memo 1994-510 (1994), describes an organization which was created in order to foster the cultural heritage of the local Spanish-American residents. Except for modest charitable donations and scholarships, the organization primarily engaged in social activities designed to provide Spanish-American residents with a sense of community. They were granted exempt status under IRC Section 501(c)(4), but then applied for exempt status as a charitable organization described in Section 501(c)(3). It was found that they did not qualify under Section 501(c)(3) because their social activities were more than insubstantial in comparison to its charitable activities. The organization spent approximately 75% of their time preparing events, recruiting and carrying [on] our cultural activities and fund-raisers. Although the court did not wish to establish percentage thresholds for purposes of applying the operational test, the percentages in this case

are persuasive in demonstrating the insubstantiality of petitioner's charitable and educational activities in comparison with its social activities.

Application of law

You are not described in IRC Section 501(c)(3) because you fail the operational test as indicated in Treas. Reg. Section 1.501(c)(3)-1(a)(1). Your primary activity is organizing and holding an annual festival for the community, which consists of food and beverage sales, talent shows, pageants, parades, races, social tents, rides, and games. You are not operating exclusively for Section 501(c)(3) purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1), because you are operating for substantial social and recreational purposes. The contributions you make to local organizations does not override your substantial non-exempt purposes.

You are dissimilar to the organization discussed in Rev. Rul. 67-216. The organization in the ruling was found to be exempt under IRC Section 501(c)(3) because they offered substantial instructional and educational opportunities. Any charitable or educational elements of your activities are incidental to your social and recreational purposes.

You are similar to the organization described in Rev. Rul. 68-224, which was found to be exempt under IRC Section 501(c)(4) rather than Section 501(c)(3). That organization conducted an annual festival centered around regional customs and traditions. It typically featured a banquet or barbecue, a parade, and various contests. Like that organization, you provide recreation for the community and generally promote civic betterments and social improvements. Therefore, like that organization, you are best qualified under Section 501(c)(4) rather than Section 501(c)(3).

As noted in Better Business Bureau, the presence of a single nonexempt purpose, if substantial, will prevent an organization from being recognized for exemption under IRC Section 501(c)(3). Your social and recreational activities are substantial in nature. Thus, you are precluded from being recognized under Section 501(c)(3).

You are very similar to the organization described in Spanish American Cultural Ass'n. While you have a charitable element, you are operated substantially for non-exempt social and recreational purposes, which precludes you from exemption under IRC Section 501(c)(3).

Conclusion

You are not operated exclusively for charitable or educational purposes as described in Section IRC 501(c)(3). Any charitable activities you conduct are incidental to your overall non-exempt purpose of operating a social and recreational festival for the community.

Your exemption under IRC Section 501(c)(4) remains in effect.

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