



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

Number: **202125023**  
Release Date: 6/25/2021

UIL Number: 501.03-00 501.33-00

Date: March 30, 2021

Employer ID number:

Form you must file:

Tax years: All

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](http://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: January 12, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date

C = State

D = Type

Z = Number

**UIL:**

501.03-00

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 were incorporated on B in C as a D Corporation. Your purpose as stated in your organizing document is to collect funds for private road improvements. Further as a D Corporation in C, assets can only be distributed to members upon dissolution. Additionally, D corporations in C are formed for the benefit of members.

Your activities consist of collecting funds from property owners for private road repairs and maintenance. Your membership consists of approximately Z property owners who reside on one of \_\_\_\_\_ private roads.

No annual fees are charged. Repair and maintenance expenses are determined as needed and when incurred are divided among the members/property owners. These activities usually occur once or \_\_\_\_\_ a year. You also obtain road work proposals from contractors for all needed repairs and maintenance.

You indicated that the private roads are not located in a gated community and that there are no barriers. All roads are open and available to the general public. However, there is a posted sign which reads, "Private Road-Residents only" at the corner of \_\_\_\_\_ of the roads.

**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 IRC Section 501(c)(3), 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 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. To meet the requirement of this subsection, the burden of proof is on the organization to show that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 69-175, 1969-1 C.B. 149 describes a nonprofit organization, formed by parents of pupils attending a private school, that provided school bus transportation for its members' children. It was found that the organization served a private rather than a public interest and did not qualify for exemption under IRC Section 501(c)(3).

Rev. Rul. 70-186, 1970-1 C.B. 128 describes an organization that was formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake. It was financed by lake front property owners, by members of the community adjacent to the lake, and by municipalities bordering the lake. It was further explained that the benefits to be derived from the organization's activities flowed principally to the general public and it would be impossible to for the organization to accomplish its purposes without providing benefits to the lake front property owners. The organization qualified for exemption under IRC Section 501(c)(3).

**Application of law**

IRC Section 501(c)(3) 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 tests, as explained below.

You are incorporated as a D in C with the nonexempt purpose of maintaining and improving private roads for members. Further, because you are incorporated as a D in C, assets can only be distributed to members upon dissolution. As a result, you have not satisfied the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

You do not meet the operational test under IRC Section 501(c)(3) because you are not operating exclusively for exempt purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your only activity consists of collecting funds from your members who are residents/property owners on one of private roads in order to pay for any needed maintenance and repairs to the private roads. This illustrates that you have a substantial non-exempt private purpose. Therefore, you are precluded from exemption under IRC Section 501(c)(3).

Like that organization described in Rev. Rul. 69-175, you were formed to provide benefits to your members. You are collecting funds from them to repair and maintain private roads on which your members reside. This serves a private rather than a public interest. Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

You are not like the qualifying organization described in Rev. Rul. 70-186. You maintain and repair private roads which allow members access to their properties. The posted sign alerts the public to the fact that the roads are for residents only. This shows that the benefits derived from your activities flow principally to your Z members and precludes you from qualifying for exemption under IRC Section 501(c)(3).

**Conclusion**

Based on the information submitted, you are not organized and operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). You do not meet the organizational test because you are organized as a D Corporation in C. You also do not meet the operational test for IRC Section 501(c)(3) because you are operated for substantial nonexempt private purposes. Accordingly, you do not qualify for exemption under IRC 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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements