



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

Date: November 23, 2021

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

Release Number: **202207010**

Release Date: 2/18/2022

UIL: **501.03-22, 501.33-00**

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 Letter 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 Letter 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:

Letter 437

Redacted Letter 4034

Redacted Letter 4038



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

Date: October 5, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

D = Date
X = State
Y = Cooperative
Z = Individual

UIL:

501.03.22
501.33-00

:

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 formed in the state of X. According to your Articles of Incorporation, you were formed exclusively for charitable, religious, educational, or scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under IRC Section 501(c)(3), or the corresponding section of any future federal tax code. You filed your Form 1023 application on D with the purpose of providing college scholarships to children of employees of Y. The scholarship program is your sole purpose.

In your response to our additional information request you state you have no scholarship criteria or requirements for your scholarship other than (1) being the child of Y employee, (2) graduating from high school and (3) registering for college or technical school. You also indicated that you agreed to change your foundation status to private foundation since you requested advance approval of your grant-making program under IRC Section 4945(g)(1).

The purpose of the scholarship is to honor the memory of Z, who was the daughter of a retired employee of Y, by assisting with the higher educational expenses of children of employees of Y. Y currently employs -
full-time and part-time employee.

You state there is no selection process, all children of employees of Y are awarded scholarships. The member Board of Directors consist of elected board members of Y, plus the Y General Manager/CEO and Human Resources Director. The Bylaws of Y prohibit employees from being board members of that organization, therefore only two board members might indirectly benefit from scholarship funds would be the children of the Y General Manager and the children of the Y Human Resources Director. This is a moot point since all children of Y employees are awarded a scholarship upon graduation from High School and registration for college or technical school (the required criteria).

Law

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for: religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states 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 that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Sec. 1.501(c)(3)-1(c)(1) provides an organization is operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). It is not so operated if more than an insubstantial part of its activities does not further those purposes.

Treas. Reg. Sec. 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests

Rev. Proc. 76-47, 1976-2 C.B. 670, discusses an employer-related grant or loan program that treats some or all of the employees, or children of employees, of particular employer as a group from which grantees of some or all of the foundation grants or loans will be selected. The Rev. Proc. states the grant program must satisfy seven conditions and meet a percentage test. If it does not satisfy all seven conditions plus the percentage test, the Service will not issue a favorable letter in regard to the grant or loan program.

Application of law

You are not described in IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1). You fail the operational test for exemption under Section 501(c)(3) because your scholarship program is not based on need or merit which is required for scholarship programs to be exempt. Your sole activity is to provide scholarships for individuals of a certain company.

Your activities are to benefit children of employees of Y, which indirectly benefits the employees. Student aid does not further exclusively educational purposes if it is provided as compensation. Allowing all children of employees to qualify for your grants without some objective criteria such as need or merit indicates your grants are more compensatory than need or merit-based grants. This indicates a substantially non-exempt purpose inconsistent with IRC Section 501(c)(3) and Treas. Reg. Sec. 1.501(c)(3)-1(c)(1).

You operate for the private interests of Y's employees and the children of Y's employees. Therefore, you are not organized or operated exclusively as described in Treas. Reg. Sec. 1.501(c)(3)-1(d)(1)(ii).

You do not satisfy the guidelines of Rev. Proc 76-47 because you must meet all seven conditions stated in the Rev. Proc., plus a percentage test. Of the seven conditions, one is that the selection committee must consist of individuals totally independent and separate from the private foundation. Since you do not have any type of selection committee, among other reasons, you do not meet the requirements of the Rev. Proc. Because your employer-related grants do not meet the criteria of Rev. Proc. 76-47, they are considered to be taxable expenditures. Because your only activity consists of taxable expenditures, your scholarship program is inconsistent with IRC 501(c)(3) purposes.

Your position

You state that the scholarship program is separate from Y and Y is only involved because it's the employees of the company whose children will receive the scholarship.

Our response to your position

Providing scholarships for the purpose of serving a private interest of Y and providing extra compensation, an employment incentive, or an employee fringe benefit does not qualify you for exemption under section 501(c)(3) of the Internal Revenue Code. If your scholarship program would have been otherwise acceptable, you still will not meet the requirements of section 501(c)(3) of the Internal Revenue Code because the program is not based on need or merit.

Conclusion

Your scholarship program does not meet the requirements for exemption under IRC Section 501(c)(3) because your scholarships are not for need or merit. Further, even if your scholarship program was generally acceptable, it will not meet the requirements for exemption because it is an employer related program, which has additional requirements to qualify for exemption as outlined in Rev. Proc 76-47, which you have not met.

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