



Department of the Treasury
Internal Revenue Service
Independent Office of Appeals

Date: JAN 11 2022

Person to contact:
Name:
Employee ID number:
Telephone:
Fax:
Hours:
Employer ID number:

Number: 202214013
Release Date: 4/8/2022

Uniform Issue list (UIL):
501.04-00

Certified Mail

Dear _____ :

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") Section 501(a) as an organization described in Section 501(c)[] of the Code.

We made the adverse determination for the following reasons:

You are not operated for the promotion of social welfare within the meaning of section 501(c)(4) and are operated as a tax avoidance scheme for the private benefit of the employees and employers who participate in your program.

You're required to file federal income tax returns on Forms 1120. . Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Section 6110 of the Code after deleting certain identifying information. We provided to you, in a separate mailing, Notice 437, Notice of Intention to Disclose. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court	US Court of Federal Claims	US District Court for the District of Columbia
400 Second Street, NW	717 Madison Place, NW	333 Constitution Avenue, NW
Washington, DC 20217	Washington, DC 20005	Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under Section 7428 of the Code.

You also have the right to contact the Taxpayer Advocate Service (TAS). 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 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.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have questions, contact the person at the top of this letter.

Sincerely,

Enclosures:



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

Date: **JAN 11 2022**

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

M = State

B = Date

x dollars = Amount

UIL:

501.04-00

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)(4). 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)(4)? No, for the reasons stated below.

Facts

You incorporated in the state of M on B. Your Certificate of Incorporation and bylaws state that your purpose is to provide benevolent support services to individuals financially burdened by participating in their employer's IRC Section 105 plan, allowing opportunity to support the continuation of Social Security and Medicare programs and benefits.

You were formed to accomplish a dual-purpose mission. First, you provide benevolent support to employees of employers that offer IRC Section 105 employee benefit plans, which are use-it-or-lose-it plans for employees to set monies aside to cover medical expenses, that choose to participate in your program. In a Section 105 plan, the employee's take-home pay is reduced by the amount they contribute. Due to the need to devote funds for their medical needs, the employee's other life needs may become more challenging to meet. You assist employees experiencing financial distress as a result of their participation in the plan.

You will have an application process and will evaluate each applicant based on need. For qualified applicants, you will provide a loan to fill the financial gap created by the employee's participation in the employer's IRC Section 105 plan. Borrowing employees will not be required to repay the loan in their lifetime. Instead, you will purchase a 30-year term life insurance policy covering that individual for an amount comparable to the loan principle, and you, as the beneficiary, will be paid back upon the death of the participating employee via the life insurance policy proceeds. The loan proceeds to the employee will be net of a single, up-front premium

Letter 4034 (Rev. 11-2018)
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payment of x dollars covering a portion of the term life policy. You will pay the annual premium of the term life insurance policy.

It is possible that the same employee could be eligible, due to ongoing need, to participate in the loan program for multiple years. In such cases, multiple loans could be made, and multiple life insurance policies could be taken out for one person. You state that these services will allow beneficiaries not to have to choose between paying for their health care needs and their daily living expenses.

The second purpose of your mission, which involves most of your projected revenues and expenses, is to support the future solvency of Social Security and Medicare. At the end of the IRC Section 105 plan year, the employer is responsible for using the unused set-aside funds to benefit all employees. Employers participating in your lending program will donate their excess funds to you. You will then contribute the funds to the Social Security Administration, to the credit of the employer, using the employer's Employer Identification Number. Funds will be evenly divided among the employer's employees' Social Security accounts for the timeframe the funding was allocated to the plan. You state that the goal is to encourage employers across the country who have Section 105 plans to participate in this program, or others like it, to provide a supplemental stream of revenue to ensure the ongoing solvency of the Social Security system.

Beyond donations from unused funds in IRC Section 105 plans, you expect to receive revenues related to investment returns, interest income, fees paid by loan recipients, and life insurance payouts.

Law

IRC Section 501(c)(4) provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare.

Treasury Regulation Section 1.501(c)(4)-1(a)(1) states that an organization may be exempt under IRC Section 501(c)(4) if it is not organized or operated for profit and it is operated exclusively for the promotion of social welfare.

Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within IRC Section 501(c)(4) is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

Revenue Ruling 54-394, 1954-2 C.B. 131, stated that a nonprofit organization that provided antenna services only to its members to enable them to receive television reception was not exempt as a social welfare organization because the benefits were only available to members and not the community in general.

Revenue Ruling 73-349, 1973-2 C.B. 179, noted that an organization formed to purchase low-cost groceries for its members was not exempt as a social welfare organization even though membership was open to all individuals in the community. The members paid for the cost of the food and a monthly service charge to cover operating costs. It operated primarily for the private benefit of its members; any benefits to the community were not sufficient to meet the requirement that it operate primarily for the common good and general welfare of the people of the community.

Revenue Ruling 75-199, 1975-1 C.B. 160, describes a nonprofit organization that restricts its membership to individuals of good moral character and health belonging to a particular ethnic group residing in a stated geographical area and provides sick benefits to members and death benefits to their beneficiaries. The organization's income is derived principally from membership dues. Since the benefit from the organization was for its members and there was only minor and incidental benefit to the community as a whole, the organization did not qualify for exemption under IRC Section 501(c)(4).

Revenue Ruling 81-58, 1981-1 C.B. 331, held that a nonprofit police officer association whose primary activity is to provide a lump-sum payment to each member upon retirement or a lump sum payment to beneficiaries upon the member's death did not qualify for exemption under IRC Section 501(c)(4). The association was deemed to be essentially a mutual, self-interest type of organization that provides primary benefits to its members.

In Police Benevolent Association of Richmond v. U.S., 661 F. Supp. 765 (1987), the court held that the organization did not qualify under IRC Section 501(c)(4) because a substantial purpose of the association and its activities were intended to serve the pecuniary interests of its members.

Application of law

To qualify for exemption under IRC Section 501(c)(4), an organization must primarily engage in activities that benefit the community as a whole rather than select individuals or groups. You are not operated exclusively for the promotion of social welfare within the meaning of Treas. Reg. Section 1.501(c)(4)-1(a)(1) because you are primarily engaged in activities that confer direct economic benefits to select individuals and groups. You contribute, on behalf of employers who participate in your program, funds to the Social Security Administration to be evenly divided among the specific employer's employees' Social Security accounts.

An activity that confers non-incidental benefit on select individuals or groups does not promote the common good and general welfare of the people of the community within the meaning of Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i). Your activity of contributing, on behalf of employers who participate in your program, funds to the Social Security Administration to be evenly divided among the specific employer's employees' Social Security accounts confers non-incidental benefit to the employers and employees.

Like the organizations described in Revenue Rulings 54-394, 73-349, 75-199, and 81-58, your activities primarily serve the private interests of participants in your Social Security solvency program rather than the common good and general welfare of the community as a whole.

You are similar to the organization described in Police Benevolent Association of Richmond in that most of your revenues and expenses are dedicated to serving the pecuniary interests of participants in your Social Security solvency program.

Conclusion

You do not qualify for exemption under IRC Section 501(c)(4) because you are not operated exclusively for the promotion of social welfare. Your activities primarily benefit select employers and their employees rather than promoting in some way the common good and general welfare of the people of the community.

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