



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

Date:
09/12/2022
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Release Number: 202249018

Release Date: 12/9/2022

UIL: 501.36-00

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 - Rulings, 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
 PO Box 2508
 Cincinnati, OH 45201

Date: July 25, 2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

UIL:

501.36-00

Legend:

B = Date

C = State

D = Date

E = Payment System

w games = Number

x dollars = Amount

y dollars = Amount

z dollars = Amount

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 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 the state of C. Your exempt status was automatically revoked for failure to file your required annual returns/notices for _____ consecutive years, as of D. Prior to that date you were recognized as exempt under IRC Section 501(c)(3). You applied for reinstatement of your exempt status by filing Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

Your Articles of Incorporation do not specifically describe your corporate purposes. The document also makes no specific provisions for your remaining assets in the event of the dissolution of your organization. In your response to the development letter we sent you dated _____, you attested to the fact that you amended your Articles of Incorporation to include a proper purpose and dissolution clause as requested in the letter. In our development letter dated _____, we requested a conformed copy of your Amended Articles of Incorporation. You were not able to supply a conformed copy, so we are unable to confirm that you actually filed an amendment with the state of C. We reviewed the State Corporation Commission's website for C, but as of the date of this letter, the website has no evidence that you filed any amendment as requested.

According to your submission, you are a local baseball umpire association who assigns umpires to youth sports organizations, schools, and baseball leagues for baseball games through a scheduling system called E. At the time of your application for exemption, you had w games in the system scheduled for the current year.

Your members must pay dues, and teams pay a booking fee. Members are expected to attend all meetings and clinics as continuing education for the umpires. Fines for missed meetings beyond the first are x dollars for the second missed meeting, y dollars for the third, and z dollars for the fourth and beyond. All members are required to participate in at least two scrimmage games. Failure to attend an assigned scrimmage will result in fines. Members are not paid for scrimmages. Members are required to wear uniforms. Failure to wear the proper uniform will result in a fine of _____ of the game fee. The umpires are not allowed to work on different sites in one day without permission and you describe the fines that will be imposed if the rules are not followed.

The E assigning system generates invoices for the teams to pay for your services, and the teams make payment to your Treasurer. The E system also generates pay sheets for the umpires for approval before being paid. The umpires are paid through the E pay system and issued a Form 1099.

Your sole source of income comes from membership dues and fees associated with providing umpires for local baseball leagues and games.

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)(a) states an organization is organized exclusively for exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) states an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states that in order to meet the operational test, 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) states 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. It must not be operated for the benefit of designated individuals or the persons who created it.

In Revenue Ruling 55-656, 1955-2 C.B. 262, a community nursing bureau operated as a community project, which maintains a nonprofit register of qualified nursing personnel, including graduate nurses, unregistered nursing school graduates, licensed attendants and practical nurses, for the benefit of hospitals, health agencies, doctors and individuals, which received its primary financial support from various community organizations and public contributions, was granted exemption under IRC Section 501(c)(3).

Revenue Ruling 61-170, 1961-2 C.B. 112, states that an association of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not exempt as an organization described in section 501(c)(3).

Revenue Ruling 77-365, 1977-2 C.B. 192, states that an organization that conducts clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport is operated exclusively for educational purposes and qualifies for exemption under section 501(c)(3) of the Code.

Revenue Ruling 80-215, 1980-2 C.B. 174, held that an organization that develops, promotes, and governs a sport for individuals under 18 years of age by organizing local and statewide competitions, promulgating rules, organizing officials, presenting seminars, distributing a newsletter, and otherwise encouraging growth of the sport qualifies for exemption under IRC Section 501(c)(3).

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court determined the activities of the organization were aimed at promoting the prosperity and standing of the business community, and therefore served a substantial private purpose. It concluded that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under IRC Section 501(c)(3) because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Your organizing document does not include language that limits your purposes to one or more exempt purposes. Accordingly, you do not satisfy the organizational test required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i)(a), and you are not organized exclusively for purposes described in IRC Section 501(c)(3). Additionally, your organizing document is silent regarding the disposition of your assets upon your dissolution, which also precludes exemption as described in Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You are also not described in IRC Section 501(c)(3) because you fail the operational test. Specifically, you are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are operated to promote umpires and their work. You operate mainly to provide umpires for baseball games for a fee and to provide umpires with employment. These activities show more than an insubstantial part of your

activities furthers business purposes.

You do not receive your income from the general public, but rather rely on membership dues and fees for services. Your income comes from collecting fees from baseball leagues and providing umpires. This provides your umpire members with employment, for which they get paid as subcontractors. This situation does not resemble the organization granted exemption in Rev. Rul. 55-656, but instead is similar to the organization denied exemption in Rev. Rul. 61-170. You are also different from the organizations described in Rev. Rul. 77-365 and Rev. Rul. 80-215 in that your sports activities are not exclusively educational.

By matching member umpires to jobs where they are paid, you are engaging in a business. As noted in Treas. Reg. Section 1.501(c)(3)-1(c)(1), you are not “operated exclusively” for one or more exempt purposes. You serve a private rather than a public interest by providing employment opportunities to the umpires in exchange for fees paid to you. See Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), above.

As discussed in the court case Better Business Bureau of Washington, D.C., Inc. v. United States, a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. In addition, an organization that operates in a commercial manner similar to that of commercial businesses will not meet the exemption requirements under IRC Section 501(c)(3) (see B.S.W. Group, Inc. v. Commissioner). Though you provide the umpires with continuing education which improves job skills, and you indirectly support youth sports competition, your main activity is providing umpires to leagues for a fee. Therefore, like the organization described in Better Business Bureau of Washington, D.C., Inc. v. United States, you do not meet the qualifications for exemption under Section 501(c)(3).

Your position

You reiterated that you do not operate for profit and all game fees charged are paid to the membership. All dues and booking fees collected go to covering ongoing costs and operational expenses. You mentioned that you were exempt in the past. You also pointed to another organization similar to yours that was granted federal tax exemption.

Our response to your position

Regarding your statement that you do not operate for profit and all game fees charged are paid to the membership, the booking of baseball umpires for fees constitutes a commercial activity normally carried on for profit. This is your only activity, and all revenue comes from this activity.

The fact that you were exempt in the past does not guarantee exemption during a reinstatement application after an automatic revocation. Each application is treated as a new application for exemption.

You state you qualify for exemption under IRC Section 501(c)(3), because other similar organizations are exempt under Section 501(c)(3). You referenced a specific example of one of these organizations. However, each determination is based on its own individual facts. Qualification or operations of another organization have no bearing on the determination of your exempt status. You have not proven that you independently qualify for exemption under Section 501(c)(3).

Conclusion

You have not demonstrated any exempt purpose which would qualify you for exemption under IRC Section 501(c)(3). You are not organized and operated exclusively for exempt purposes as set forth in Section 501(c)(3).

You do not meet the organizational test because your organizing document does not limit your purpose or dedicate remaining assets upon dissolution to one or more exempt purposes described in Section 501(c)(3). You also do not meet the operational test for Section 501(c)(3) because you are operated for the substantial nonexempt purpose of promoting umpires and their work. Thus, you do not meet the standards of exemption 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 Determination 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
PO 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