



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities

Date:
04/25/2024
Employer ID number:

Person to contact:

Release Number: 202429019
Release Date: 7/19/2024
UIL Code: 501.03-00,
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 - 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
Letter 4038



Department of the Treasury
Internal Revenue Service

Date: 02/26/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = State

C = Date

D = Name

E = Name

F = Name

G = Name

H = Name

J = Name

K = Name

L = Name

M = Name

N = Name

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 formed in the state of B on C. Your Articles of Incorporation state that you are dedicated to advancing clean hydrogen development in educational programs, policy support, and project development. Your Articles of Incorporation do not contain a dissolution clause.

Your activities consist of awareness, policy support and project development of green hydrogen. You increase awareness by educating the public about the benefits of green hydrogen, including the production and use of hydrogen as a zero-emissions energy resource that can be used for transportation and buildings in B and throughout the nearby region. You support any state or local policy initiative related to the adoption of green energy in B. You also assist your member companies build green hydrogen projects in B.

You believe the best way to increase awareness is through real-world projects that people can easily visit either in person or online. As a result, you pursue partnerships with companies and organizations looking to build green hydrogen projects in and around B. You seek out companies that have technologies useful for projects in B and solicit these companies to become members of your alliance. Your membership consists of public and privately held companies. These companies can be operated for-profit or non-profit if they are involved in the green hydrogen economy. Your current members are D, E, F, G, H and J. You invited K, L, and M to become members, but have not received an acceptance yet. Benefits your members will receive are newsletters and press releases, exclusive B-based project partnerships, and corporate and product marketing.

You promote green hydrogen via social media, working groups, and forums. You promote the usage of green hydrogen in the transportation industry and through the usage in commercial buildings. You have not produced any publications; however, you do promote your industry by in person events, online speaking engagements, and N related promotions.

You expect to receive grants and your expected income will be used for social media and website maintenance.

Law

Internal Revenue Code (IRC) Section 501(c)(3) describes a corporation organized and operated exclusively for religious, charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual and which does not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that to be 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. 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 limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. Assets will be considered dedicated if, upon dissolution, assets would 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 regarded as exempt if more than an insubstantial part of its activities furthers a non-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).

Revenue Ruling 69-632, 1969-2 C.B. 120, describes an organization whose products resulted in new products and processes that benefit the general public, but such benefits are secondary to that derived by the association's members.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside of the scope of Section 501(c)(3).

In Colorado State Chiro v. Commissioner, 93 TC 487 (1989), were the court held that the promotion of the practices of the organization's members is a commercial rather than an exempt purpose disqualifying them under IRC Section 501(c)(3). Activities related to members' individual chiropractic practices were found to be connected to the promotion of the services of petitioner's members. Such uses were not related to the general imparting of information to the public about the importance of chiropractic health care.

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 fail to meet the organizational test as your purpose clause does not expressly limit your purposes to those that are exclusive under Section 501(c)(3). Further, your Articles of Incorporation do not contain a sufficient dissolution clause. 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 activities consist of helping/soliciting for member companies to place their products in projects in your state. You formed an alliance of businesses to (in part) further the cause of promoting their products, such as in the transportation industry and commercial building sector. Like the organization described in Rev. Rul. 69-175, you were formed to provide benefits to your members; here you are serving their business interests. 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.

The promotion of innovative products such as green hydrogen and related projects may result in new products that will offer a public benefit but this does not override the substantial benefits to the companies encouraged to join your alliance. Along with the promotion of green energy products you also operate to secure business project opportunities for your member companies. Like the organization described in Rev. Rul. 69-632, benefits to the public are secondary to those received by members. Members receive substantial business benefits by joining, such as the promotion of their business through your industry events. Activities related to the promotion of the member services, such as in Colorado State Chiro v. Commissioner, are not necessarily related to the

conveyance of information to the public about clean hydrogen. The public benefit is incidental to the private benefit your members receive; any substantial non-exempt purpose will preclude exemption regardless of the number or importance of truly exempt purposes as seen in Better Business Bureau of Washington, D.C v. US.

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 fail the organizational test because your organizing document doesn't limit your purposes to those described in Section 501(c)(3). You fail the operational test because you are operated for substantial nonexempt private purposes. Accordingly, you do not qualify for 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