



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

Date:
06/24/2024
Employer ID number:

Person to contact:

Release Number: 202438017
Release Date: 9/20/2024
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: 04/25/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

D = Date

E = State

F = Name

G = Number

H = Number

j percent = Percentage

m percent = Percentage

w dollars = Dollar Amount

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 submitted Form 1023-EZ, Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

You attest that you were incorporated on D in the state of E. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

You described your mission in Form 1023-EZ as to provide scholarship assistance to members of the staff, distribute staff Holiday Fund, act as a liaison between residents and the administration, and support residents' activities and services.

During review of your Form 1023-EZ, detailed information was requested supplemental to the above attestations.

You provide higher education scholarship assistance to F's staff members to encourage those who are furthering their education by reimbursing them for tuition and other costs. This occurs twice a year upon successful completion of coursework. To qualify for a scholarship, the staff member must have been in good standing for at least G months, and work full time, part time or on call. Applicant must be in an institute of higher learning or a professional certification program. Funds are awarded after successful completion of a program or course. A staff member can apply for a grant no more than twice a year. You spend m percent of your time and resources on this activity and the board approves a total of w dollars per course. Checks are paid directly to applicants.

You maintain and distribute F's Holiday Fund in appreciation of the services their staff provided to your members. These funds are contributed voluntarily by your members throughout the year. You create a database of employees based on status and length of service. An algorithm is used to determine what portion of these funds is given to a particular staff member. These distributions occur during the holiday season. You spend m percent of your time and resources on this activity. Checks are paid directly to employees.

You support your members' activities by providing a weekly woodwork shop with classes on techniques, safe practices, and the use of tools. Your art studio is open daily, and an instructor is available to assist beginners. You maintain a library for your members on an ongoing basis. You spend j percent of your time and resources on this activity. You also act as a liaison between your members and F's administration. The remaining j percent of your time and resources is spent on meetings to discuss your members' issues and needs. No fees are charged and all activities are conducted at F. There are around H residents at F, including both independent and assisted living residents.

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(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 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.

Revenue Ruling 67-367, 1967-2 C.B. 188, held that an organization that pays ‘scholarships’ to pre-selected, specifically named individuals designated by subscribers, the organization is serving private interests rather than public charitable and educational interests contemplated under IRC Section 501(c)(3), and does not qualify for exemption.

Rev. Rul. 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 held this organization served a private rather than a public interest and did not qualify for exemption under IRC Section 501(c)(3).

Rev. Rul. 75-286, 1975-2 C.B. 210, held that an organization whose membership is limited to the residents and business operators within a city block, and formed to preserve and beautify the public areas in the block, is organized and operated to serve the private interests of its members within the meaning of Treas. Reg. Section 1-501(c)(3)-1(d)(1)(ii). Although the activities benefited the community, they also provided private benefit by enhancing members’ property rights. The organization therefore did not qualify 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 held that the “presence of a single... [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly... [exempt] purposes.”

In Cap. Gymnastics Booster Club, Inc. v. Comm’r, 106 T.C.M. (CCH) 154 (T.C. 2013), IRC Section 501(c)(3) provides that, in order for an organization to qualify as tax-exempt, “no part of the net earnings of the organization may inure to the benefit of any private shareholder or individual”. This prohibition looks to benefits conferred on a “private shareholder or individual”, generally understood to mean an insider of the organization (such as a member or an officer).

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 IRC Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude you do not meet the operational test.

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities do not further an exempt purpose. Your activities benefit the staff members of F. By providing scholarship assistance and distributing holiday funds to F's staff members you are operating for their private interests.

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you serve a private, rather than a public interest. Specifically, you serve the private interests of your members and the staff members of F by providing scholarship assistance and distributing holiday funds to staff members of F.

You are like the organizations described in Rev. Rul. 67-367 and Rev. Rul. 69-175. You were formed to provide scholarship assistance and to distribute holiday funds to staff members of F. By paying scholarships and holiday funds to specifically named individuals, you are serving private rather than public charitable interests. This precludes you from qualifying for exemption under IRC Section 501(c)(3).

Similar to the organization in Revenue Ruling. 75-286, although you provide services to your members who are elderly residents of F, the majority of your activities are for the benefit of the staff members of F which therefore confer a substantial private benefit upon your members. As provided by the Supreme Court in Better Business Bureau of Washington, D.C., Inc., the presence of a single nonexempt purpose, if substantial, will destroy the exemption. You are operating for the private benefit of your members that constitutes a substantial non-exempt purpose, which precludes exemption under IRC Section 501(c)(3).

Your activities are like those described in Cap. Gymnastics Booster Club Inc. Inc., which held that private interests are prohibited. You are raising funds to provide bonuses and scholarships to the staff members of F which is a preselected group of individuals as opposed to an indefinite class of individuals. This shows you are operating for the private benefit of the staff members of F and your members.

Conclusion

Based on the above facts and analysis, you are not operated exclusively for exempt purposes as described in IRC Section 501(c)(3). You are organized and operated for the private interests of your members and the staff of F. Your major activity is providing scholarships and other monetary gifts to staff members of F. You are primarily operated for the private benefit of your members, which constitutes a substantial non-exempt purpose. 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 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