



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

Date:
08/05/2024
Employer ID number:

Person to contact:

Release Number: 202444012
Release Date: 11/1/24
UIL Code: 501.03-00, 501.35-00

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
PO Box 2508
Cincinnati, OH 45201

Date: 06/06/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

D = Date

UIL:

501.03-00

501.35-00

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, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

You attest that you were incorporated on B in the state of C. 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 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 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.

On the Form 1023-EZ, you did not provide an activity description. In the activity description box, you provided your name and principal place of business.

Detailed information was subsequently requested. In your response you state you are a nonprofit corporation, and you exist perpetually to provide for the sale of burial plots, the digging of graves, maintenance and care of the real estate set aside for this purpose, and investment and reinvestment of funds to be used for this purpose. In D, you purchased some acres of land for future expansion to further your purpose.

You provide grave lots that are available for casket burials for people who seek traditional interment. For people who prefer cremation, you offer other options. Fees are charged for burials based on what other cemeteries charge for the same services. All your revenue and expenses are used for your purpose of operating and maintaining a cemetery.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious, or educational purposes, in which no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, for an organization to be exempt and described in IRC Section 501(c)(3), that 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 that accomplish one or more of such exempt purposes specified in Section 501(c)(3) of the Code. 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)(2) provides the term "charitable" is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

Revenue Ruling 79-359, 1979-2 C.B. 226, held that an organization whose purpose is to provide traditional burial services that directly support and maintain basic tenets and beliefs of a religion regarding burial of its member may qualify for exemption under IRC Section 501(c)(3). Through the provision of burial services to members of a religion in compliance with the detailed requirements of religious laws, the organization is preserving and perpetuating traditional religious customs and obligations. The organization is accomplishing a charitable purpose by contributing to the advancement of religion.

In Passaic United Hebrew Burial Association v. United States, 216 F. Supp. 500 (1963), the court held that a synagogue that provides Hebrew funerals and burials for fees to members of the Jewish religion may qualify for exemption under IRC Section 501(c)(3).

In Linwood Cemetery Association v. Commissioner, 87 T.C. 1314 (Tax 1986), the court held that cemetery activities such as selling plots, markers, evergreens, crypts, vaults, and perpetual and special care services have not been found to be charitable activities. These cemetery activities are far beyond what is required to protect public health and constitute a nonexempt set of activities that is substantial in nature which destroys the 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 of the United States interpreted the requirement in IRC Section 501(c)(3) that an organization be “operated exclusively” by indicating that an organization must be exclusively devoted to exempt purposes. The presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

Application of law

IRC Section 501(c)(3) sets forth two main tests for qualification of exempt status. Treas. Reg. Section 1.501(c)(3)-1(a)(1) states that an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3).

Your sole activity and purpose is the operation of a cemetery for the sale of burial plots, the digging of graves, maintenance and care of the cemetery, and investment and reinvestment of funds for the care of the cemetery. In Linwood Cemetery Association, the court held that these type of cemetery activities are not considered exempt activities under IRC Section 501(c)(3). Also, see Treas. Reg. Section 1.501(c)(3)-1(d)(2).

The organizations described in Rev. Rul. 79-359 and Passaic United Hebrew Burial Association were granted exemption under IRC Section 501(c)(3) even though their cemetery activities were like yours. However, these organizations were found to be operating exclusively for one or more exempt purposes. Specifically, these organizations’ primary purpose was the advancement of religion. Your primary purpose is operating and maintaining a cemetery. See Treas. Reg. Section 1.501(c)(3)-1(c)(1).

In Better Business Bureau of Washington D.C. Inc, the Supreme Court of the United States held that the presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption. Operating and maintaining a cemetery, absent any other purpose as described in IRC Section 501(c)(3), is considered a substantial non-exempt activity.

Conclusion

Based on the facts presented, you are not operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). Your only activity is the operation of a cemetery. Therefore, you do not qualify for exemption under Section 501(c)(3).

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