



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

Date:
09/09/2024
Employer ID number:

Form you must file:

Tax years:
All
Person to contact:

Release Number: 202449015
Release Date: 12/6/2024
UIL Code: 501.03-30, 501.33-00, 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



Department of the Treasury
Internal Revenue Service

Date: July 16, 2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = Date

C = State

D = Name

E = Number

w dollars = Amount

x dollars = Amount

y dollars = Amount

z dollars = Amount

UIL:

501.03-30, 501.33-00, 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 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 indicated on Form 1023-EZ that your mission is to provide financial assistance to your members' families to cover funeral expenses in the event of your members' deaths. The financial assistance is collected from membership fees of w dollars.

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

You provided Articles of Incorporation confirming you were incorporated on B, in the state of C, as a nonstock corporation with one or more classes of membership. Your articles did not contain any limitations as to your purposes or explain how your assets will be distributed in the event of your dissolution.

Your membership is limited to individuals of D descent (or the spouses of such individuals) who are 18 years of age or older and reside in C. To become a member, individuals must:

- Submit an application form and pay a one-time application fee.
- Show a valid government-issued identification card.
- Agree to and abide by the rules and obligations noted in your bylaws.

You have no further membership requirements, such as religious or spiritual affiliation. Parents may apply for their children under the age of 18 who otherwise meet the above membership requirements.

Applicants must provide the names of designated beneficiaries on your application form. Designated beneficiaries, upon the deaths of your members, are entitled to receive a one-time lump sum death benefit in the approximate amount of x dollars to cover the costs of your deceased members' burial expenses.

To receive the death benefit, a designee must submit proof of the member's death to your executive committee who will, at the time of the confirmed death, collect w dollars from each member and pay the total amount to the designee. You do not require designees to show proof of any financial hardships or need to receive death benefits. You also have no oversight procedures; you trust that designees will use the funds for their intended purposes. After a payout, your members will be asked to remit an additional y dollars to replenish the funds to pay future death benefits.

No death benefits will be paid until your membership equals at least E members. If this is not achieved within six months, you may dissolve or continue operating; if you dissolve, z dollars will be returned to each of your existing members.

Your only sources of revenue are membership dues and contributions. A majority of your previous, as well as future, expenses pay, or will pay, death benefit claims.

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) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- a) Limit the purposes of such organization to one or more exempt purposes; and
- b) Do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

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. It must not be operated for the benefit of designated individuals or the persons who created it.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the advancement of religion.

Revenue Ruling 67-367, 1967-2 C.B. 188, described an organization whose sole activity was the operation of a scholarship plan for making payments to pre-selected, specifically named individuals. The organization established a plan whereby it entered into agreements with subscribers who deposited a certain amount of money with a designated bank. The subscribers named specific children to be the recipients of the scholarship money. The organization did not qualify for exemption under IRC Section 501(c)(3) because it was serving the private interests of its subscribers, who pre-selected which children would receive the scholarship funds, which was contrary to public interests that must further charitable and educational purposes.

Rev. Rul. 79-359, 1979-2 C.B. 226, described an organization formed by the elders of a particular religion to comply with the religious requirements regarding the religion's burial rites by providing burial services for

members that directly supported and maintained the basic tenets and beliefs of the religion. The organization qualified for exemption under IRC Section 501(c)(3) by furthering exclusively charitable purposes through the advancement of religion.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), the Supreme Court determined that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under IRC Section 501(c)(3) regardless of the number or importance of any other exempt purposes.

In The Korean-American Senior Mutual Association, Inc. v. Commissioner, T.C. Memo 2020-129 (2020), the Tax Court held that a membership organization, which collected dues and additional fees to pay out burial benefits to the families of its deceased members, was operating in a fee-for-service manner and, therefore, failed to qualify for exemption under IRC Section 501(c)(3), as its activities served private rather than public interests; it operated in a commercial manner; and it did not serve a charitable class.

Application of law

IRC Section 501(c)(3) sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You fail both the organizational test and the operational test.

As 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 organizational test under IRC Section 501(c)(3) because your organizing document does not limit your purposes or dedicate your assets to one or more exempt purposes. Further, you failed to provide the required signature on our information request attesting that your organizing document was amended to include the necessary language needed to pass the organizational test under Section 501(c)(3).

Contrary to the provision of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), you serve a private rather than a public interest by operating exclusively for the benefit of designated individuals; namely, your members' designated beneficiaries, who are eligible to receive monetary benefits upon the deaths of your members. Further, your death benefits are paid without regard to charitable intent, such as financial hardship or religious affiliation, which is contrary to the provision of Treas. Reg. Section 1.501(c)(3)-1(d)(2). Thus, you do not pass the operational test under IRC Section 501(c)(3) because your activities are not directed toward any charitable classes; you do not further charitable or religious purposes; and you serve private rather than public interests.

Similar to the organization denied exemption in Rev. Rul. 67-367, you provide monetary support to specifically named individuals, pre-selected by your members, for a future event (i.e., the deaths of the members). This serves a private rather than a public interest, which precludes exemption under IRC Section 501(c)(3).

You are not like the organization granted exemption in Rev. Rul. 79-359 because there are no religious aspects to your activities. You do not require your members to share a religious affiliation; therefore, your activities do not provide for, or provide funds for, any religious purposes related to, or required for, the burials of your members. Instead, you serve the private interests of your members through death benefits paid to their designated beneficiaries with no oversight as to how the funds are spent, which does not further exempt purposes under IRC Section 501(c)(3).

As noted in Better Business Bureau of Washington, D.C., the presence of a substantial non-exempt purpose is sufficient to preclude exemption under IRC Section 501(c)(3). By providing funds to your members' designees upon their deaths, without regard to financial hardship or religious affiliation, you are serving the private interests of your members and, therefore, operating for a substantial non-exempt purpose, similar to the organization in The Korean-American Senior Mutual Association, Inc.

Conclusion

You do not qualify for exemption under IRC section 501(c)(3) because you are not organized or operated exclusively for exempt purposes. By collecting membership fees and distributing them to designated beneficiaries to cover your deceased members' burial costs, you are serving the private interests of your membership, of which you do not place any requirements that may further charitable or religious purposes, such as financial hardship or religious affiliation. Therefore, you do not qualify for exemption.

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