



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: 202449016
Release Date: 12/6/2024
UIL Code: 501.03-00,
501.33-00, 501.36-00,
501.36-01

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

Date:
6/24/2024
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Legend:

B = Months
C = Name

UIL:

501.03-00
501.33-00
501.36-00
501.36-01

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*.

Your market is made up of local farmers, crafters and food vendors who sell their wares to the public on Sundays from B. The vendors sell fresh produce, bake goods, crafts, and artworks. There is a small vendor's fee charged to cover the expenses such as signage, supplies, trash bags, sunscreen, liability insurance, hiring musicians, and renting a port a potty. The fee is small to attract more vendors to participate in your market. The fees will be adjusted yearly, and any revenue exceeding expenses will be transferred to the following year's operating budget. C allows you to use their space at no cost and waives the parking fees for vendor and attendees.

Law

Section 501(c)(3) of the Internal Revenue Code (Code) exempts from federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or

Letter 4034 (Rev. 01-2021)
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international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, 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.

Section 1.501(c)(3)-1(c)(1) of the regulations 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations 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.

Rev. Rul. 61-170, 1961-2 C.B. 112, held that an association composed 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 entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Rev. Rul. 68-167, 1968-1 C.B. 255, held that a nonprofit organization created to market the cooking and needlework of needy women may be exempt from tax under section 501(c)(3) of the Code. The organization operated a market where it sold the cooking and needlework of these women who were not otherwise able to support themselves and their families. The organization provided a necessary service for needy women by giving them a market for their products and a source of income.

In Rev. Rul. 71-395, 1971-2 C.B. 228, a cooperative art gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under section 501(c)(3) of the Code. It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

Rev. Rul. 78-86 held denial of an organization formed by various merchants to provide customer parking. A parking arrangement whereby merchants join together to provide parking for their customers at a reduced rate serves the merchants' private interests by encouraging the public to patronize their stores. Thus it cannot be said to be operated exclusively for charitable purposes under section 501(c)(3) of the Code.

Rev. Rul. 80-287, 1980-2 C.B. 185, involved a nonprofit lawyer referral service that arranged, at the request of any member of the public, an initial half-hour appointment for a nominal charge with a lawyer

whose name was on an approved list maintained by the organization. As a general rule, providing services of an ordinary commercial nature in a community, even though the undertaking is conducted on a nonprofit basis, is not regarded as conferring a charitable benefit on the community unless the service directly accomplishes one of the established categories of charitable purposes. The organization's activities were directed toward assisting individuals in obtaining preventive or remedial legal services and, as such, were not specifically designed to confer a charitable benefit on the community. Although the lawyer referral service provided some public benefit, a substantial purpose of the program was promotion of the legal profession.

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 preclude exemption under section 501(c)(3) of the Code, 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 the scope of section 501(c)(3).

In American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court noted that education is a broad concept, and assumed that the organization had an educational purpose. The Court concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision, T.C. Memo. 1990-484, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify under section 501(c)(3) of the Code. The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including that the operations were presumptively commercial. The organization competed with restaurants and food stores, used profit-making pricing formulas consistent with the food industry, and incurred significant advertising costs.

Application of law

You are not organized and operated exclusively for charitable, educational, or religious purposes consistent with Section 501(c)(3) of the Code nor Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations and therefore you fail to meet the operational test. You help facilitate the sale of produce, baked goods, crafts, artworks, and other items for the benefit of the seller, advertise, promote, and inform potential buyers about your market, and your primary activities revolve around setting up the vendor spaces as a catalyst for facilitating the sale of goods for local farmers and other vendors.

Section 1.501(c)(3)-1(c)(1) of the regulations 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. You engaged in a substantial non-exempt activity similar to commercial enterprise by operating a market selling various goods to the public. Vendors participating in your market pay a fee to rent their space and then are free to set sales prices to maximize sales and profits for their own benefit. You therefore do not operate exclusively for exempt purposes.

Contrary to section 1.501(c)(3)-1(d)(1)(ii) of the regulations, you are operated for the substantial purpose of providing private benefit to vendors of the products at your market. More than an insubstantial part of your activities is in furtherance of the non-exempt purpose of being a profitable outlet for your vendors. You not only provided the outlet for them to sell their products, but you also provided marketing and cover overhead expenses that the vendors would otherwise have to expend.

You are similar to the organization described in Rev. Rul. 61-170. In your case, your primary purpose is to provide a commercial market for vendors. The overall purpose of your organization is to serve and benefit the vendors selling at the market and not the general public.

Unlike the organization described in Rev. Rul. 68-167 you do not serve needy individuals who are not otherwise able to support themselves and their families.

Your activities are, in effect, identical to those of the cooperative art gallery described in Rev. Rul. 71-395. You operate for the purpose of providing space to local farmers and vendors to exhibit and sell their products. Exhibiting and promoting the sales of products for the benefit of private individuals does not qualify for exemption under section 501(c)(3) of the Code.

Like the organization described in Rev. Rul. 80-287, your activities directly promote and facilitate the sale of products of by for-profit vendors.

As held in Better Business Bureau of Washington, D.C., Inc. v. United States, a single non-exempt purpose, if substantial, will preclude tax exemption under section 501(c)(3) of the Code. The operation of your farmers' market, a substantial part of your activities, is a non-exempt purpose.

You are similar to the organizations described in the American Institute for Economic Research v. United States and Living Faith, Inc. v. Commissioner. You are operating a market in competition with other commercial markets. Your sale of products such as produce, crafts, and artworks is indicative of a business. Your sources of revenues are mainly from vendor fees and your expenses are mainly for marketing, supplies, and insurance. Your market is a significant non-exempt commercial activity.

Conclusion

You do not qualify for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Code because you do not meet the operational test. Your activities are indistinguishable from the similar activities of an ordinary commercial enterprise, and these activities provide substantial private benefits to your vendors. Therefore, we conclude that you do not meet the operational test for exemption under section 501(c)(3) of the Code.

Based on the facts and information provided, you are not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. The provision of a marketplace for the sale of goods is not a charitable activity. You do not serve a public rather than a private interest. Therefore, you are not described in section 501(c)(3).

You help facilitate the sale of produce, crafts, and artwork for the benefit of the seller. We have concluded that you are not an organization described in section 501(c)(3) of the Code because you are not operated exclusively for one or more exempt purposes set forth in section 501(c)(3) of the code.

Based on the foregoing reasons, the organization does 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