



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Number: 202033006
Release Date: 8/14/2020

UIL Number: 501.00-00, 501.03-05,
501.03-30, 501.33-00, 501.35-00

Date:
May 19, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). 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 Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination Under IRC Section 501(a)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date:
March 23, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Name
E = Street
F = Business
G = Number

UIL:

501.00-00
501.03-05
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 seeking exemption under IRC Section 501(c)(3). You attested that you were formed as a corporation on C in the state of B. Your application described your mission or most significant activities as "to benefit the homeowners in the community of D Village" in a specific city in B.

You attest to have the necessary organizing document limiting your purposes to one or more exempt purposes within the meaning of IRC Section 501(c)(3). You also attest your organizing document does not empower you to engage, other than insubstantially, in activities that are not in furtherance of one or more exempt purposes. You attest your organizing document contains the dissolution provision required under Section 501(c)(3) and the provisions required (if necessary) by Section 508(e). You attest to be organized and operated exclusively to further charitable purposes and you have not and will not conduct prohibited activities under Section 501(c)(3).

During review of your Form 1023-EZ, detailed information regarding your activities was requested supplemental to the above attestations. We shared with you the Articles of Incorporation from the state of B which confirms that you were formed on C. However, it shows that you were formed as a mutual benefit corporation. In addition, your Articles of Incorporation state that your purpose is to represent and assist

homeowners in the D subdivision to resist environmental degradation and over-development that negatively impacts the D subdivision.

We asked for more details regarding your activities. You explained that you were formed in response to a developer expanding a storage facility situated under the powerlines directly adjacent to E, which is a street situated in the D subdivision. The storage facility, F, is a commercial facility that you say is located in a residential zone without proper zoning, without proper permits, and with disregard to county laws and guidelines. The state of B has fined F for destroying wetlands.

F is operational and serves hundreds of tenants. The only access to F is through E. You have filed complaints and entered into lawsuits against the County and F in an attempt to stop the project's expansion of an additional G acres. So far, your efforts have been unsuccessful, but you intend to exhaust all legal outlets. You said that your activities occur in response to the legal proceedings. This has been very regular as there are two lawsuits and many legal actions.

You have raised some funds from the general public, but a vast majority of your funding comes from your three board members, who write personal checks to cover all costs. All of the governing body members are residents of the D subdivision. Costs incurred include document preparation for court and legal defense attorney fees. No fees are charged to any of the residents of D or to the neighbors residing on E.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where 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) states that in order to qualify under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) states that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in IRC Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states 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) states that an organization is not operated exclusively for one or more 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.

Revenue Ruling 69-175, 1969-1 C.B. 149, describes an organization that was formed by the parents of pupils attending a private school. All control over the organization rested in the parents. The organization provided bus transportation to and from the school for those children whose parents belonged to the organization. The organization's income approximately equaled the expenses involved in its operations. The ruling found that

when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. Thus, the organization served a private benefit rather than a public interest. Accordingly, it is not exempt from federal income tax under IRC Section 501(c)(3).

Rev. Rul. 75-286, 1975-2 C.B. 210, ruled on an organization formed by the residents of a city block to preserve and beautify that block, to improve all public facilities within the block, and to prevent physical deterioration of the block. The restricted nature of its membership and the limited area in which its improvements were made, indicate that the organization was organized and operated to serve the private interests of its members. Accordingly, although the organization was primarily engaged in promoting the general welfare of the community, it was not organized and operated exclusively for charitable purposes and did not qualify for exemption from federal income tax under IRC Section 501(c)(3).

Rev. Rul. 78-85, 1978-1 C.B. 150, held that a nonprofit organization with membership open to the general public that was formed by residents of a city to help preserve, beautify, and maintain a public park located in the city and whose support is derived from membership dues and contributions from the general public is operated exclusively for charitable purposes and qualifies for exemption under IRC Section 501(c)(3).

In Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47, 1966, exemption was retroactively revoked from a corporation organized to conduct the dredging of certain waterways. It was held that the corporation was organized and operated primarily for the benefit of those persons owning property adjacent to the waterways dredged rather than for public or charitable purposes.

Application of law

As explained in Treas. Reg. Section 1.501(c)(3)-1(a)(1), to be exempt as an organization described in IRC Section 501(c)(3), you must be both organized and operated exclusively for one or more of the purposes specified in such section. You are neither organized nor operated exclusively for exempt purposes.

To demonstrate it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause as described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv). Your Articles of Incorporation state that your purpose is to represent and assist homeowners in the D subdivision to resist environmental degradation and over development that negatively impacts the D subdivision. This does not exclusively further charitable or educational purposes as described in IRC Section 501(c)(3) or corresponding regulations. Additionally, you are organized as a mutual benefit corporation, which means that you operate specifically for the benefit of your members. For these reasons, you do not meet the organizational test and do not qualify for exemption under Section 501(c)(3).

You are formed to represent and legally assist D subdivision homeowners in protecting and preserving their neighborhood. This provides a benefit to the D subdivision homeowners. Therefore, you are not operated exclusively for charitable and educational purposes under IRC Section 1.501(c)(3)-1(c)(1).

Your governing body consists of persons residing in the D neighborhood and your activities are primarily going to benefit the residents of the D neighborhood. Your net earnings are set to substantially benefit private individuals, which precludes exemption under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

The group of parents described in Rev. Rul. 69-175 provided a cooperative service for themselves and thus served their own private interests. Like that organization, you were formed to provide benefits to the homeowners of the D neighborhood.

You are dissimilar to the organization described in Rev. Rul. 78-85 because you not engaged in preserving or maintaining public property. Rather, you are like the organizations described in Rev. Rul. 75-286 and Benedict Ginsberg and Adele W. Ginsberg in that your activities serve private, rather than public, interests. Protecting the property values for the residents of the D neighborhood serves a private interest and precludes exemption under IRC Section 501(c)(3).

Conclusion

Based on the above facts and analysis, you are neither organized nor operated exclusively for purposes described in IRC Section 501(c)(3). You fail the organizational test because you are formed as a mutual benefit corporation and your purposes are not limited to those described in Section 501(c)(3). You fail the operational test because you are formed for the private benefit of the residents of the D neighborhood. Accordingly, you are not exempt 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 Decision 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
P.O. 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