



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

Date: April 2, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-30; 501.33-00

Number: **201526021**
Release Date: 6/26/2015

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,

Director, Exempt Organizations

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

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: January 22, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

D = Town

F = Survey Section

UIL:

501.03-30

501.33-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

- Do you meet the organizational test provided in section 501(c)(3) of the Code? No, for the reasons set forth below.
- Do you meet the operational test provided in section 501(c)(3) of the Code? No, for the reasons set forth below.
- Does your operation provide private benefit to your members in a manner that precludes exemption under section 501(c)(3) of the Code? Yes, for the reasons set forth below.

Facts

You were formed as a corporation on B in the state of C. Your organizational document states your purpose is "to provide vehicular and pedestrian access over the entity's easement to its members for social purposes."

In order to fulfill your purpose, you intend to acquire a road easement and construct a road on the easement. The road will be private and access to the road will be restricted to your members. You will also maintain the road for the benefit of your members.

In order to become one of your members, one must own property in D on F. All members will be charged (and must pay) a road construction/maintenance initiation fee and other assessments to maintain the road. Members will meet annually for road easement social purposes.

Your governing body will consist of members only.

You provided no actual or proposed financial data but indicated that all income will come from membership assessments and all expenses will be for maintenance of the road and social purposes.

Law

Section 501(c)(3) of the Code 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.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("Regulations") states that in order to qualify under section 501(c)(3) of the Code, 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.

Section 1.501(c)(3)-1(b)(1)(iv) of the Regulations 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 section 501(c)(3).

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

Rev. Rul. 69-175, 1969-1 C.B. 149 -A nonprofit organization, formed by parents of pupils attending a private school, that provides school bus transportation for its members' children served a private rather than a public interest and did not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 75-286, 1975-2 C.B. 210 -A nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, will not qualify for exemption under section 501(c)(3) of Code. By enhancing the value of the roadway sections abutted by property of its members, the organization is enhancing the value of its members' property rights. The restricted nature of its membership and the limited area in which its improvements are made, indicate that the organization is organized and operated to serve the private interests of its members within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

In Ginsberg v. Commissioner, 46 T.C. 47 (1966), the court considered a collective organization created to dredge waterways. The majority of the funds for this activity came from owners of property adjacent to the waterways. The court found that the primary beneficiaries were the adjacent property owners. Any benefit to the general public because the dredged waterways would be a safe harbor for boats during a storm was secondary. Therefore, the organization was not exempt because of the significant private benefit provided.

Application of law

You are not organized and operated exclusively for any specific exempt purpose. Therefore, you do not meet the standards of exemption under section 501(c)(3) of the Code.

Your organizational document does not limit your purpose to one that is exclusively exempt in nature as required by section 1.501(c)(3)-1(b)(1)(iv) of the Regulations. Rather, your purpose is to benefit your membership by providing exclusive access to a road you construct. Therefore, you fail to meet the organizational test under section 1.501(c)(3)-1(a)(1) of the Regulations.

You also fail to meet the operational test under section 1.501(c)(3)-1(a)(1) of the Regulations. Per section 1.501(c)(3)-1(d)(1)(ii) of the Regulations, 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. Your operations are for the benefit of your members. You intend to acquire a road easement and construct a road on the easement and access to the road will be restricted to your members.

Like the organization in Rev. Rul. 69-175, you are formed specifically to provide a benefit to your members. Your membership is limited to individuals living in D on F and only members will be allowed access to the public road over the private easement.

Similar to the organization in Rev. Rul. 75-286, your membership is restricted and the area you will enhance and maintain is limited to a road abutting the members' properties. By operating in this manner, you are enhancing your members' property rights and serving their private interests. As noted in the Rulings, this is contrary to exemption under section 501(c)(3) of the Code.

Additionally, you are like the organization in Ginsberg v. Commissioner. Your funds come from your members whose property is adjacent to the road. The road will be private and access to the road will be restricted to your members. Therefore, your activities result in significant private benefit. There is no public benefit resulting from your activities.

Conclusion

You do not meet the organizational or operational tests under section 501(c)(3) of the Code. Further, the facts show the private benefit afforded your membership precludes exemption. Accordingly, we find that you do not meet the standards of exemption under section 501(c)(3) of the Code. Contributions to your organization are not deductible under section 170 of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on

- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office 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 at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892