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

Release Number: **201714030**
Release Date: 4/7/2017

Date: January 13, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00, 501.33-00

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,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

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: November 23, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:
B = State
x dollars = amount
y dollars = amount

UIL:
501.03-00
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 (the 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.

Issue
Do you qualify for exemption under section 501(c)(3) of the Internal Revenue code? No, for the reasons given below.

Facts
You incorporated in the state of B as a non-profit corporation. Your organizing document states the specific purpose for which you formed is "the preservation, collection and appreciation of recorded music."

You described your activities in your application for tax exemption as a club that has monthly meetings and once a year you have a record collectors show. Your membership criterion is open to any and all that want to join. The membership application allows for lifetime and yearly membership dues. "The record and CD show allows sellers and buyers to come together for the purpose of buying and selling records." You also make donations to local charities.

The upcoming record and CD show is promoted on your website as your "best ever." The record and CD show has "… increased table space to accommodate well over 100 tables …" and will have " … over 80 dealers from around the world with tens of thousands of LPs, 45s, CDs and other memorabilia." De minimis ticket prices allow the general public to attend the record and CD show. However, on the first day of the show after the dealers are allowed to set up you "… will open the doors to club members only." "This will give members a chance to have first look and hopefully give you (the dealers) a chance to earn a few extra bucks." Your website promotion to the dealers and members also states the show "... will be promoted on over 20 Radio and TV stations, every daily, weekly, and monthly news publications, cable TV stations, over 5,000 flyers and over 2,500 mailing to record collectors." The show is promoted "... on the internet for over 11 months." "Just for you!!!"

Your annual financial statements report a majority of your income and expenses are from the record and CD show. Dealer table rentals at x dollars per table is your largest source of income. A net profit was reported in each of the tax years provided in the Form 1023 application. Donations to charitable organizations were reported in each year except for one where the net profit was less than y dollars. The average charitable donation reported in the other years was approximately y dollars.

Law

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(3)-1(a)(1) states 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.

Treas. Reg. § 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 which 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 in not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an exempt organization must serve a public rather than a private interest. The organization must establish that it is not organized or operated to benefit private interests such as "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

In Revenue Ruling 66-179, 1966-1 C.B. 139, and Rev. Rul. 67-139, 1967-1 C.B. 129, the Service held hobby clubs that may achieve service recognition as exempt under 501(c)(3) are ones that conduct structured educational programs for member and the public, issue newsletters or bulletins containing educational material, maintain reference libraries and prepare displays and exhibits for the public.

In Rev. Rul. 67-139, 1967-1 C.B. 129, depending on its form of organization and method of operation, a gem and mineral club may qualify for exemption as an educational organization under section 501(c)(3) or as a social club under section 501(c)(7). In qualifying under section 501(c)(3), the organization conducted lectures, discussions, field trips and shows. These activities were educational within the meaning of the regulations even though they serve recreational interests.

In Rev. Rul. 71-395, 1971-2 C.B. 228, a cooperative art gallery that was formed and operated by a group of artists for the purpose of exhibiting and selling their works did not qualify for exemption under IRC § 501(c)(3). The cooperative gallery in this case was engaged in showing and selling only the works of its own members and was a vehicle for advancing their careers and promoting the sale of their work. It served the private purposes of its members, even though the exhibition and sale of paintings may have been an educational activity in other respects. Accordingly, it was held that the organization was not organized and operated exclusively in furtherance of exempt purposes and is not exempt under the provisions of section 501(c)(3) of the Code.

In *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279 (1945), the Supreme Court held that a better business bureau was not exclusively educational or charitable, its activities were in part aimed at promoting the prosperity and standing of the business community, even though there was also benefit to the public. The Court stated that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Application of Law

You are not described in section 501(c)(3) of the Code because you are not operating exclusively for charitable purposes as required under sections Treas. Regs. §§ 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1). As stated above you operate and promote an annual record and CD show that allows sellers and buyers to come together for the purpose of buying and selling records. The show is conducted in a manner usually promoted by business leagues or trade associations composed of members of a particular industry or line of business. Although the show is held annually, the sponsors and promoters undertake the planning promotion and direction of the show throughout the year. You are not described in Treas. Reg. § 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities is devoted to non-exempt purposes.

Your website promotion of the record and CD show demonstrates that you are operating for the benefit of private individuals which is prohibited under Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). The record and CD show is promoted to dealers from around the world that can secure the necessary space and facilities to participate in the exhibit and sale of their merchandise. The show is promoted on over 20 radio and TV stations and over 5,000 flyers and 2,500 mailings are sent to record collectors who are potential buyers.

Although your activities also include monthly meetings and donations to local charities the majority of your receipts, expenses and operations are geared towards the promotion and operation of the record and CD show. You are unlike the organizations described in Rev. Ruls. 66-179 and 67-139 who prepared educational displays and exhibits for the public. In contrast, you provide a venue for dealers from around the world to sell their merchandise. You are more similar to the gallery described in Rev. Rul. 71-395 that was formed and operated for the purpose of exhibiting and selling their works which promoted individuals economic interests rather than achieving an educational or public purpose.

Because a substantial amount of your activities and receipts are for promoting and operating the record and CD show, you are not operated for one or more exempt purposes. To be exempt under section 501(c)(3) of the Code, an organization must be both organized and operated for one or more exempt purposes specified in the section. Although "exclusively" does not mean "solely" or "without exception," the presence of a single nonexempt purpose, if substantial, will preclude exemption regardless of the number or importance of exempt purposes, see *Better Business Bureau*, above. 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 purposes specified in section 501(c)(3) of the Code.

Applicant's Position

The record and CD show is attended by hundreds of people throughout the United States and some from overseas circle that date on their calendars to be sure they will attend. Collectors come to find rare copies of some lost 45 RPM song of their youth, or a particular genre of music. Others collect certain artists or eras that interest them. Not unlike a coin collector's or stamp collector's show it offers the opportunity to gather with like-minded people, discuss the trivia and renew friendships.

The function of your "Club" is to facilitate this social gathering and allow the exchange of items prized by the members and collectors who attend. Tables must be rented for the exhibitors to offer the items they are willing to part with, the meeting hall must also be rented for the event.. A minimal charge for admission is charged only to keep the crowds limited to truly interested people and not those just looking for a place to wander through. Down through the years you have offered a free lunch to all sellers as a courtesy. Once advertising and other expenses are paid any profit made is applied to making the show larger for following years. An example of this is the relocation of the show to a larger venue in order to expand to over 100 tables due to demand by more collectors wanting to participate.

You also donate each year to various charities across B including the B Music Hall of Fame which features B natives who have contributed to the field of music of all types. In addition you have inducted local and state music related individuals into your own Hall of Fame. Members and fans alike have had the opportunity to meet many of their idols through this program. You also produce hour long radio programs featuring varied music themes where members share some of their own rare and collectable songs. These programs are available for listening at no cost worldwide through the internet.

The activities related to the record and CD show - securing a location for the exhibitors and the collection of admission fees - directly serve two charitable purposes of the organization: extolling the educational and social benefits of record collection and preservation and making donations to other charitable entities.

In summary the Purpose Statement best describes who and what the dub is: "

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Service Response to Applicant's Position

Although you donate to various charities and have inducted individuals into your own hall of fame you have not demonstrated that the record and CD show achieves an exempt purpose as described in IRC § 501(c)(3). The show is operated for the benefits of the dealers and your members, therefore, you do not serve the public interest as required by Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). The popularity and growth of the show only emphasizes that any public purposes for which you may operate are incidental to this primary nonexempt purpose.

Conclusion

Based on the facts and information provided, you are not operated exclusively for exempt purposes as required by Treas. Regs. §§ 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1). You have not established that your organization is operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Furthermore, you failed to establish that your activities further a public charitable purpose rather than the promotion of private interests.

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,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892