



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

Date: April 27, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.05-01

Number: **201729021**
Release Date: 7/21/2017

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(5) 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.

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.

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

This supersedes our letter dated March 17, 2017

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*

cc:



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: January 23, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

X = State
Y = Date
Z = Harbor

UIL:

501.05-01

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)(5) 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)(5) of the Code? No, for the reasons stated below.

Facts:

You were formed in the State of X on date Y. Per your Articles of Incorporation, you were formed for the purpose of ensuring a permanent presence of the commercial fishing fleet in city Z.

Your bylaws state that any berth holder in good standing at the state pier is a voting member. A berth holder is defined in your bylaws as an individual owner of a fishing vessel or the principal agent of a corporation that owns a fishing vessel.

According to the information you submitted, you purchase fish products from local fishermen at a price higher than they would receive in the open market. You then sell products in a retail outlet in order to generate funds for the purchase of fish products from local fishermen. Products are sold to the general public in two ways. In an uncooked state, which you stated is no different than purchasing fish by the pound at a local seafood store or supermarket. You also sell the product as a cooked lunch or dinner.

Law:

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations.

Treasury Regulation § 1.501(c)(5)-1(a) describe organizations covered by Code section 501(c)(5) as labor, agricultural, and horticultural organizations that have no net earnings inuring to the benefit of any member and have as their object the betterment of the conditions of persons engaged in those pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Rev. Rul. 66-105, 1966-1 C.B. 145, held that an organization composed of agricultural producers whose principal activity is marketing livestock as an agent for its members does not qualify for exemption. The sale of members' products with the return to them of the sale proceeds is neither an object nor an activity within the ambit of section 501 (c) (5) of the Code. Therefore, the organization does not meet the requirements of Treas. Reg. § 1.501(c)(5)-1 and is not exempt under section 501(c)(5) of the Code.

Rev. Rul. 74-195, 1974-1 C.B. 135, held that a nonprofit organization formed to manage, graze and sell its members' cattle did not of itself better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operations within the meaning of section 501(c)(5) of the Code. The principal purpose of the organization was to provide a direct business service for its members' economic benefit. The organization was denied exemption under section 501(c)(5) of the Code.

Rev. Rul. 75-287; 1975-2 C.B. 211, held that a nonprofit organization, whose members are involved in the commercial fishing industry, publishes a monthly newspaper of commercial fishing technical information and news and that derives its income primarily from membership dues and sale of advertising does not qualify as an agricultural organization under section 501(c)(5) of the Code. The scope of the term "agricultural" for purposes of section 501 (c) (5) of the Code should be confined to its ordinary and commonly accepted meaning. *Webster's Third New International Dictionary* (3rd ed. 1961) defines "agricultural" as "the science or art of cultivating the soil, harvesting crops, and raising livestock." Thus, commercial fishing falls outside the scope of the term "agricultural" when that term is used in its commonly accepted sense.

Application of law:

You do not meet the qualifications under Treas. Reg. § 1.501(c)(5)-1 as your activities are not aimed at the overall betterment of conditions within the farming industry, the improvement of the grade of products, or the development of a higher degree of efficiency in your occupation. You operate to sell your members products thereby relieving the members of their responsibility of selling their own products. The earnings from your sales inures to the benefit of your members, which precludes exemption under section 501(c)(5).

You are similar to the organization in Rev. Rul. 66-105 in that you purchase your members products at a higher price than they could achieve individually and sell those products to the general public at a profit, which precludes exemption under section 501(c)(5) of the Code.

You are similar to the organization in Rev. Rul. 74-195 in that you sell seafood from your members to the general public. In this manner you are not bettering the conditions of those engaged in agricultural pursuits, improving the grade of their products or developing a higher degree of efficiency in their operations. You are acting in a way similar to that of a seafood store or supermarket, which precludes exemption under section 501(c)(5) of the Code.

Similar to the organization in Rev. Rul. 75-287 your members are involved in the commercial fishing industry. For that reason you are not furthering an agricultural purpose which precludes exemption under section 501(c)(5) of the Code.

Conclusion:

Based on the above facts, we conclude you are not operating as an organization described in section 501(c)(5) of the Code. You provide a service to your members by selling their products to the general public. The net earnings from those sales inures to your members in the form of a higher purchasing price. In addition, the term commercial fishing is not considered within the meaning of agricultural as that term is used within the purposes of section 501(c)(5) of the Code. Accordingly, your activities are not directed at bettering the conditions of those engaged in agricultural pursuits, improving the grade of their products or developing a higher degree of efficiency. Therefore, we have determined that you do not qualify for exemption under section 501(c)(5) 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,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892

cc: