



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

Date: September 13, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201749017**  
Release Date: 12/8/2017

**UIL: 501.03-00, 501.33-00, 501.36-01**

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.

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

Sincerely,

Stephen A. Martin  
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:** July 18, 2017

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = Date

C = State

D = Organization

E = Individuals

F = City

G = Location

**UIL:**

501.03-00

501.33-00

501.36-01

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)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

**Issues**

Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons stated below.

**Facts**

You are a non-profit corporation formed on B under the laws of the State of C. Your Articles of Incorporation state in Article II that your purpose is: "to provide, equip and maintain the Club's property to include all buildings, structures and grounds for the moral and social benefit of the D, other E men and E families of F and G ... and to raise money for charitable, beneficial and eleemosynary purposes through the conduct of gaming, social, fund raising or any other enterprises or activities." Furthermore, Article X provides that "upon dissolution of this corporation for any reason, all assets shall be transferred to and become the possession of D."

You are a membership organization. Your Bylaws state in Article III that your members are all members of D that are in good standing. A seven member board of directors governs you and are elected by your members.

Your Form 1023 indicates you have taken over 100% of the fair market value of the assets of D which consists of a hall and grounds. D is a section 501(c)(8) tax exempt organization. Your activities consist of providing the hall and grounds primarily to D for meetings and other activities. The facility is reserved for D one day each week and any other date requested at least 3 months in advance so long as the date is not already committed.

The hall and grounds are also made available to the public for rent for not more than 3 days at a time.

Your income is currently from investments and the hall rental fees. Expenses are for maintenance of the hall.

The hall was used in 2016 as follows:

|                                                                           |   |
|---------------------------------------------------------------------------|---|
| Club meetings                                                             | % |
| D's meetings/activities                                                   | % |
| Other non-profits                                                         | % |
| Club members                                                              | % |
| General public events such as parties, weddings, meals and other meetings | % |

In addition, you plan on conducting bingo activities in the future to raise funds to maintain the facility. Your members will operate the bingo on a volunteer basis. Your board will appoint a bingo manager who is also a volunteer. The excess funds raised from gaming will be donated to charitable, beneficial and eleemosynary purposes through scholarships and grants.

#### **Law**

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 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. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes.

Treas. Reg. Section 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 is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes lessening of the burdens of government.

Rev. Rul. 64-182, 1964-1 C.B. 186 - A corporation organized exclusively for charitable purposes derives its income principally from the rental of space in a large commercial office building which it owns, maintains and operates. The charitable purposes of the corporation are carried out by aiding other charitable organizations,

selected in the discretion of its governing body, through contributions and grants to such organizations for charitable purposes. Held, the corporation is deemed to meet the primary purpose test of section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations, and to be entitled to exemption from Federal income tax as a corporation organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954, where it is shown to be carrying on through such contributions and grants a charitable program commensurate in scope with its financial resources.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision 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 for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

### **Application of law**

A ruling on exempt status is based solely on facts and representations in the administrative file. You have not provided supporting documentation to establish that you meet the requirements of Section 501(c)(3) of the Code. Section 501(c)(3) of the Code sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3) of the Code.

Your purpose is to maintain a facility for the benefit of a section 501(c)(8) entity as well as for other community members. Upon dissolution your assets will be distributed to a section 501(c)(8) entity. Thus, you have not satisfied the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

You do not meet the operational test under Section 501(c)(3) of the Code because you are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your sole activity is the operation of a facility for use by D, a section 501(c)(8) exempt entity and other members of the general public for various events including parties, meals and weddings. Rental fees are paid by anyone using the hall other than D. As provided in Treas. Reg. Section 1.501(c)(3)-1(d)(2), you have not established that your operations accomplish exclusively charitable purposes.

The courts have developed guidelines intended to help discern whether an organization has a substantial nonexempt commercial purpose. See e.g., B.S.W. Group, *supra*; Easter House, *supra*; Airlie, *supra*; Living Faith, *supra*. Generally, the factors proffered by courts focus on the nature of the activities and how an organization conducts its business. Your facility is reserved for use by D, the related section 501(c)(8) entity and is rented out for a fee to the general public at all other times. Renting out a facility for use by members of the general public for their personal use is a commercial activity. Like the organizations in Easter House, *supra*, Airlie, *supra*, and Living Faith, *supra*, you are in direct competition with commercial businesses because you conduct activities generally conducted by a for a profit business. In fact, you conduct the same activities as a commercial venue and many of your activities are conducted in the same manner as commercial enterprises. Accordingly, your commercial activities evidence a substantial nonexempt commercial purpose.

Unlike the organization in Rev. Rul. 64-182 you do not restrict the rental of your facility to other section 501(c)(3) exempt organizations. Maintaining a facility for use by a Section 501(c)(8) exempt organization does not further a recognized Section 501(c)(3) purpose. While you plan to make grants and provide scholarships in the future, which may be a Section 501(c)(3) purpose, you are not currently conducting this activity. In addition, your primary activity would remain the operation of a facility for rent by the general public. As the court found in Better Business Bureau of Washington, D.C. v. U.S., the presence of a single, substantial non-exempt purpose will preclude exemption regardless of the number of other exempt activities.

### **Your Position**

You wrote that you believe you qualify under Section 501(c)(3) of the Code. You stated that because your Articles of Incorporation state your purpose is to raise money for charitable, beneficial and eleemosynary

purposes through the conduct of gaming, social, fund raising or any other enterprises or activities you are covered. Your purpose is not to just maintain a facility for D.

### **Our Response to your Position**

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in Section 501(c)(3) of the Code. Your primary activity is to operate and maintain a building for D and for use by members of the public for a fee. You are operated for a substantial nonexempt purpose rather than a tax-exempt purpose as specified under Section 501(c)(3) of the Code. You fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

### **Conclusion**

Based on the information submitted, you have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and the related income tax regulations. Your primary activity is renting out your facility for use by the general public which is a commercial activity. In addition, the fact that you maintain the facility for the benefit of a section 501(c)(8) entity and your members (individuals) is further evidence of the non-exempt nature of your activities. Thus, based on the administrative record, you fail to qualify for exemption under Section 501(c)(3) 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/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](http://www.irs.gov/formspubs). If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892