



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

Release Number: **201822032**
Release Date: 6/1/2018

Date:
March 8, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-30, 501.32-01, 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,

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:
December 12, 2017
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

S = Business 1
T = Business 2
R = Taxi company
W = City
Y = Date
Z = State

UIL:

501.03-30
501.32-01
501.33-00

b dollars = Plan benefit 1
c dollars = Plan benefit 2
d dollars = Plan benefit 3
f dollars = Plan benefit 4
x dollars = Plan fee
g cents = Fare deduction for driver's plan

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 were incorporated on Y in the State of Z. You did not submit a copy of your Articles of Incorporation and any amendments thereto, but you attested that:

- Your organizing document does not expressly empower you to engage, other than as an insubstantial part of your activities, in activities that do not further one or more of those purposes.
- Your organizing document does not empower you to directly or indirectly participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office.
- Your organizing document permanently dedicates your assets for Section 501(c)(3) purposes.

You did not attest that your organizing document limits your purposes to one or more purposes described in Section 501(c)(3).

You stated that your purpose is to help taxi drivers in W. You provide taxi drivers with a social club where they can interact and network with other drivers. You provide guidance on exam road tests, and driving applications. You offer free finance courses. You operate a social plan of a one-time fee membership of x dollars and you state this fee is only charged to those who wish to be enrolled in the social plan. You state the social plan works as life insurance for independent taxi drivers (not including R). The plan breaks down as follows:

- If the beneficiary dies, the family will receive f dollars worth of compensation.
- If the beneficiary's spouse/partner dies, the beneficiary will receive b dollars worth of compensation.
- If the beneficiary's child/children die, the beneficiary will receive c dollars worth of compensation.
- If the beneficiary (taxi driver) is in a car accident or is hospitalized, the beneficiary will received dollars weekly worth of compensation for a month only.

You work with companies S and T, and drivers with a taximeter. You state g cents are deducted from the fare charged and goes towards the social plan. The fee is deducted every 3 months and is only for the members of the social plan.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, 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) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its articles) as defined in subparagraph (2) of this paragraph:

(a) Limit the purposes of such organization to one or more exempt purposes

Treas. Reg. Section 1.501(c)(3)-1(b)(2), provides that for purposes of this section, the term articles of organization or articles includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created. The term "articles" means "the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created." Accordingly, the organizational test cannot be met by reference to any document that is not the creating document. In the case of a corporation, the by-laws cannot remedy a defect in the corporate charter. A charter can be amended only in accordance with State law which generally requires filing of the amendments with the chartering authority. In the case of a trust, operating rules cannot substitute for the trust indenture. In the case of an unincorporated association, the test must be met by the basic creating document and the amendments thereto, whatever that instrument may be called. Subsidiary documents that are not amendments to the creating document may not be called on.

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)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, even if an organization has many activities which further exempt purposes, exemption is precluded if it serves a private interest.

Revenue Ruling 67-367, 1967-2 C.B. 188, describes an organization whose sole activity was the operation of a scholarship plan for making payments to pre-selected, specifically named individuals. The organization established a plan whereby it entered into agreements with subscribers. The subscribers deposited a certain amount of money with a designated bank. The subscriber also named a specific child to be the recipient of the scholarship money. The recipient received the scholarship around the time he or she were to begin college. The organization did not qualify for exemption under Section 501(c)(3) of the Code because it was serving the private interests of its subscribers rather than serve public charitable and educational interests.

Revenue Ruling 69-175, 1969-1 C.B. 149, describes an organization which was formed by parents of pupils attending a private school. The organization provided bus transportation to and from the school for those children whose parents belong to the organization. The organization did not qualify for exemption under Section 501(c)(3) of the Code because it served a private rather than public interest.

Revenue Ruling 76-205, 1976-1 C.B. 226, describes an organization formed to aid immigrants in overcoming social, cultural, and economic problems by providing personal counseling, referrals to helpful agencies, social and recreational activities, instruction in English, and distributing a newsletter containing information on attaining citizenship, securing housing, and obtaining medical care is operated exclusively for charitable and educational purposes and qualifies for exemption under Section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), the Supreme Court determined that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under Section 501(c)(3) regardless of the number or importance of any other exempt purposes.

Application of law

Treas. Reg. Section 1.501(c)(3)-1(a)(1) provides that in order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section.

Your organizational document does not limit your purpose to one that is exclusively exempt in nature as required by Treas. Reg. Section 1.501(c)(3)-1(b)(1). You did not attest that your organizing document limits your purposes to one or more purposes described in Section 501(c)(3). As a result, you do not satisfy the organizational test requirement to be recognized as exempt under Section 501(c)(3) of the Code, and are not as described in Section 501(c)(3) of the Code.

You also fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are primarily operated for the non-exempt, private benefit of your members and not exclusively for exempt purposes.

In order to qualify for exemption under Section 501(c)(3) you must serve a public, rather than a private, interest as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). You are similar to the organization described in Rev. Rul. 67-367. Like that organization, your activities serve to benefit the private interests of your members rather than the public.

Like the organization described in Rev. Rul. 69-175, you were formed to provide benefits to your members. In your case, a substantial portion of your activities consists of providing death, catastrophic illness or injury benefits to members. The payment of these benefits serves private interests, precluding you from exemption.

You are distinguished from the organization described in Revenue Ruling 76-205 because you are not operated exclusively exempt purposes. A substantial portion of your activities consists of providing death benefits to your members. The payment of these benefits serves private, rather than a public interest and are not in furtherance of one or more exempt purposes.

The Supreme Court held in Better Business Bureau of Washington, D.C. v. United States that a single nonexempt purpose, if substantial in nature, would preclude an organization from qualifying under section 501(c)(3) no matter the number or importance of truly exempt purposes. Despite the other qualifying activities that you conduct, the activity of providing benefits to your members in the event of a family death or accident is serving private, non-exempt purposes.

Conclusion

Based on the above facts and analysis, you do not qualify for exemption under Section 501(c)(3) of the Code. You are not operated exclusively for a Section 501(c)(3) purpose. You further the interests of your members which serves private interests. Therefore, you do not 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 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892