



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

Number: **201827014**
Release Date: 7/6/2018

Date:
April 12, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.00-00, 501.09-00

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(9) 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.

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*



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date:
January 30, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = State
x dollars = Amount

UIL:

501.00-00
501.09-00

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

Facts

You were formed as a corporation on B in C. Your Articles of Incorporation state that your purpose is to provide security services. Your Bylaws state that you were formed to:

- Support and defend the constitution of the United States
- To improve the individual proficiency of your members in the performance of their duties
- To cultivate a spirit of fraternization and mutual helpfulness among your members and community, and
- To increase the efficiency of the law enforcement profession and to establish the confidence of the public.

Any Law Enforcement Officer may apply for membership. A Law Enforcement Officer is any person, active or retired, sworn or appointed, of any Law Enforcement Agency in the State of C in good standing. Your members must pay you for liability insurance, life insurance, as well as general membership dues.

Initially you requested exemption under Section 501(c)(4) of the Code. In that application, you said you were established to further the interests of your membership by seeking improved terms and conditions of employment, to render moral and material aid to members in need, to provide representation and/or counsel in legal proceedings, and to promote social and fraternal activities. You will also provide members with benefits such as liability insurance and life insurance.

You later changed your exemption request from Section 501(c)(4) of the Code to Section 501(c)(9) as a Voluntary Employees' beneficiary Association (hereafter, "VEBA"). You are providing life insurance to your members but you did not specify what type(s) of life insurance you offer. You did not submit copies of your plan documents.

We asked for details regarding the insurance you provide your members, including a full description of the benefits available the members, each benefit amount, duration eligibility requirements, and the circumstances that will cause payments of the benefit. In response to this request you submitted a copy of the certificate of your liability insurance which covers law enforcement liabilities, up to x dollars per incident. You indicated that all members are covered under your liability insurance.

We requested more information regarding the security services your members provide, how you seek improved terms and conditions of employment for your members, details of the insurance benefits, and how you promote social and fraternal activities. We asked whether you provide term coverage life insurance or whole-life and for a copy of the plan documents. We also asked if you were a separate entity from the employer with a separate Employer Identification Number (EIN). You did not respond to our request for these details.

Law

Section 501(c)(9) of the Code provides for the exemption from federal income tax of Voluntary Employees' Beneficiary Associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(9)-1 provides that for an organization to be described in Section 501(c)(9) of the Code, it must be an employees' association; membership in the association must be voluntary; the organization must provide for the payment of life, sick, accident, or other benefits to its members or their dependents, and substantially all of its operations must be in furtherance of providing such benefits; and no part of the net earnings of the organization can inure (other than by payment of permitted benefits) to the benefit of any private shareholder or individual.

Treas. Reg. Section 1.501(c)(9)-2(c)(1) requires that a VEBA must be an entity, such as a corporation or trust established under applicable local law, having an existence independent of the member-employees or their employer(s).

Treas. Reg. Section 1.501(c)(9)-3(a) provides that substantially all of a VEBA's operations must be in furtherance of providing permissible benefits. This means that a VEBA will not qualify for exemption if it systematically and knowingly provides nonqualifying benefits of more than a de minimis amount.

Treas. Reg. Section 1.501(c)(9)-3(b) states that the term "other benefits" includes only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if:

- (1) It is intended to safeguard or improve the health of a member or a member's dependents, or
- (2) It protects against a contingency that interrupts or impairs a member's earning power.

Revenue Procedure 2018-5, 2018-1 I.R.B. 233, Section 3 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application. Section 6

(and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed.

In Universal Life Church v. United States, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that “one seeking a tax exemption has the burden of establishing his right to a tax-exempt status.”

Pius XII Academy, Inc. v. Commissioner, T.C. Memo. 1982-97, affd. 711 F.2d 1058 (6th Cir. 1983), provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization’s request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service’s denial, stated “It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant.” The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 (2009), states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

Application of law

Based on the information submitted, you have failed to establish that you are operated for exempt purposes within the meaning of Section 501(c)(9) of the Code and the related income tax regulations. As such, we are unable to determine you are primarily engaged in providing for life, sick, accident, or other benefits to members as required by Treas. Reg. Section 1.501(c)(9)-1.

You have not established that you exist independent of your employer, as required under Treas. Reg. Section 1.501(c)(9)-2(c)(1), or that substantially all of your operations are dedicated to providing permissible benefits as required under Treas. Reg. 1.501(c)(9)-3(a). You have also not provided sufficient detail regarding the “other benefits” payable as required under Treas. Reg. 1.501(c)(9)-3(b).

A ruling on exempt status is based solely on facts and representations in the administrative file. You did not provide sufficient facts in your application and the additional information you provided did not establish that you are entitled to exempt status. It is unknown if you conduct substantial non-qualifying activities or whether the benefits you provide qualify under Section 501(c)(9). Therefore, there is not sufficient documentation to establish that you meet the requirements of Section 501(c)(9) as required by Rev. Proc. 2018-5. As in Universal Life Church, you have the burden of establishing that you qualify for tax exemption.

In Pius XII Academy, Inc., La Verdad, and New Dynamics Foundation, it was established that an organization must establish, through its administrative record, that it meets the requirements for exemption. Because you failed to provide sufficient details in your initial application and the additional information you provided did not meet the statutory and regulatory requirements for exemption, you have not established that you meet the requirements for exemption under Section 501(c)(9) of the Code. As provided in Ohio Disability Association, the court found that even when additional information was provided, but it contained generalizations and failed to clarify purposes, denial is justified. You did not provide supplemental information; therefore, we are unable to determine that you qualify for exemption.

Conclusion

Based on the information submitted, you have failed to establish that you are operated for exempt purposes within the meaning of Section 501(c)(9) of the Code and the related income tax regulations. Therefore, based on the administrative record, you fail to qualify for exemption under Section 501(c)(9).

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.

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

Enclosure:
Publication 892