



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **201951011**
Release Date: 12/20/2019

Date: September 23, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.04-00, 501.05-00, 501.06-00

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Sections 501(c)(4), 501(c)(5) or 501(c)(6) 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.

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: July 10, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

D = Date

UIL:

501.04-00

501.05-00

501.06-00

Dear :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under Code Sections 501(c)(4), 501(c)(5) or 501(c)(6). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

1. Do you qualify under Section 501(c)(4) of the Code? No, for the reasons described below.
2. Do you qualify under Section 501(c)(5) of the Code? No, for the reasons described below.
3. Do you qualify under Section 501(c)(6) of the Code? No, for the reasons described below.

Facts

On B, you submitted a Form 1024 requesting exemption under Section 501(c)(6) of the Code. You subsequently requested exemption under Sections 501(c)(4) of the Code and 501(c)(5) of the Code. You were formed on D in the state of C as a mutual benefit corporation with members.

Your constitution states that your purposes are:

- To provide baseball umpiring services;
- To provide education and training to umpires and umpiring organizations; and
- To stimulate interest in the game of baseball.

According to your Form 1024, you are a membership organization of baseball umpires whose purpose is to provide qualified umpires to baseball leagues and/or colleges and universities in your geographic area. You accomplish this by assigning your member umpires to appropriate games in which they are qualified and collect their fees as well as scheduling fees for the provision of these services. In turn, the member umpires receive payment from you and are issued a Form 1099.

Membership is available to any person, who engages in baseball umpiring who wishes to ally themselves with your goals and is at least 18 years of age, regardless of race, religion or gender. To be considered for membership, interested individuals must complete an application detailing their education and experience and provide umpiring references. All applications are reviewed by your Executive Council for approval. A person is deemed an active member after their payment of annual dues and the successful completion of any required examinations. You also ensure that your members know they are independent contractors and must provide their own insurance to receive umpiring assignments.

You are governed by The Executive Council which is responsible for transacting all business and acts as your representative in all formal dealings. It is composed of the President, Vice President, Secretary, Treasurer, and three Members-At-Large. You also indicated that your treasurer's duties involve keeping an accurate and up-to-date account of all monies received and writing all checks including payroll checks. The treasurer may be compensated at the Executive Council's discretion.

In addition, The Executive Council selects the Commissioner who is responsible for assigning umpires for the regular season games including the possible _____ and all post-season competition. The Commissioner may also be a holder of an elective office concurrent with their service as your Commissioner and is compensated.

Your bylaws state that your duties are:

- To provide competent umpires to officiate for client organizations;
- To supervise and evaluate umpires at various levels of ability to ensure they are qualified to umpire games at the collegiate level;
- To conduct clinics and provide training to members at your annual meeting;
- To participate in other baseball related activities as appropriate. In all instances, you shall retain the right to render decisions on all matters pertaining to umpires' activities under its jurisdiction.
- To annually compile a list of umpires who are superior in ability and capable of working games at the _____ level.

You are funded by game scheduling fees, member dues and sales of association hats and polo shirts. Your expenses are for compensation to your members for services rendered and for compensation of your commissioner and treasurer.

Law

Issue 1

Section 501(c)(4) of the Code provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare. Further, exemption shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(4)-1(a)(1) states a civic league or organization may be exempt as an organization described in Section 501(c)(4) of the Code if it is not organized or operated for profit and it is operated exclusively for the promotion of social welfare.

Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this Section is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

The court case, Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F. 2d 684 (2nd Cir. 1973), cert. denied, 419 U.S. 827, describes an organization whose purpose was to ensure the efficient repair of "cuts" in city streets which resulted from its members' plumbing activities did not qualify for exemption under Section 501(c)(4) of the Code. The Court concluded that there were several factors which evidenced the existence of a substantial nonexempt purpose. The factors included, but were not limited to, the members' substantial business interest in the organization's formation and the fact that each member of the cooperative enjoyed economic benefits precisely to the extent they used and paid for restoration services.

Issue 2

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

Treas. Reg. 1.501(c)(5)-1(a) provides that the labor organizations contemplated by Section 501(c)(5) of the Code are those which have no net earnings inuring to the benefit of any member and have as their objects the betterment of the conditions of those engaged in labor, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Rev. Rul. 78-288, 1978-2 C.B describes an organization whose members are engaged in harness racing in a specific geographic area as drivers, trainers, and horse owners, most of whom are independent contractors or entrepreneurs. The organization negotiated with operators of area raceways for larger purses, better hours, and safer operating conditions. The organization did not qualify for exemption as a labor organization under Section 501 (c) (5) of the Code because it the economic interests served by the organization's activities are not those of employees. The term "labor" is commonly accepted as meaning the performance of service as employees.

Issue 3

Section 501(c)(6) of the Code provides exemption from federal income tax for business leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. Section 1.501(c)(6)-1 defines a business league as an association having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business of a

kind ordinarily carried on for profit. Its activities are directed to the improvement of business conditions of one or more lines of business rather than the performance of particular services for individual persons.

Rev. Rul. 61-170, 1961-2 C.B. 112 describes a nurses' association which maintained an employment registry primarily for the employment of members. It was held that the organization was not entitled to exemption as a business league since its primary purpose was the operation of a regular business of a kind ordinarily carried on for profit and was engaged in rendering particular services for individual persons rather than promoting the general business conditions of the nursing profession.

Indiana Retail Hardware Assn., Inc. v. United States (1966), 177 Ct. Cl. 288 describes an organization whose activities such as informational meetings but it also supplied to each of its members as wished to pay for them managerial services, weekly bookkeeping, quarterly audits, yearly preparation of Federal income tax returns, and other similar services. In this case, the Court held that when conducting particular services for members is a substantial activity of an organization, the organization will be precluded from exemption under Section 501(c)(6) of the Code.

Application of law

Issue 1

You are not as described in Section 501(c)(4) of the Code and Treas. Reg Section 1.501(c)(4)-1(a)(1) because your activities do not primarily promote civic betterment or social welfare; you are primarily operating for the benefit of your members. For example, you negotiate umpiring assignments on your member's behalf with schools, collect payments on their behalf and then pay them as independent contractors. These facts illustrate you are serving the private interests of the member umpires and not the people of a community.

Moreover, you do not meet the provisions of Treas. Reg. Section 1.501(c)(4)-1(a)(2)(i) because your activities are focused on providing employment services to member umpires and do not primarily promote civic betterment or social welfare.

You are like the organization in Contracting Plumbers Cooperative Restoration Corp. v. United States, in that your members have a business interest in your formation and your existence. Your services benefit your members rather than the public at large.

Issue 2

Your operations are not those of a labor organization described in Section 501(c)(5) of the Code nor are you described in Treas. Reg. 1.501(c)(5)-1. You do not have as your primary objectives the betterment of conditions of those engaged in labor, the improvement of the grade of your products and the development of a higher degree of efficiency. Your primary activity is providing umpiring services to the school leagues with which you contract as well as providing employment services to your member umpires. You provide these services in exchange for a fee which makes it a commercial type activity. Even if the activities you conducted were described in Section 501(c)(5) of the Code, your membership is open only to independent contractors. Based on the ruling in Rev. Rul. 78-288, you would fail to meet the requirements for exemption under Section 501(c)(5) of the Code.

Issue 3

You are not described in Section 501(c)(6) of the Code because you are not organized and operated as a business league.

You are not described in Treas. Reg. Section 1.501(c)(6)-1 because your activities are directed to perform services for the benefit of your member umpires rather than to the improvement of business conditions of one or more lines of business.

You are similar to the organization in Rev. Rul. 61-170 because you were formed to provide employment services for your members. For example, you assign your member umpires to appropriate games in which they are qualified and collect their fees as well as scheduling fees for the provision of these services. In turn, the member umpires receive payment from you and are issued a Form 1099. This illustrates that you are providing particular services to members as well as engaged in a regular business of a kind ordinarily carried on for profit precluding exemption under Section 501(c)(6) of the Code.

You are like the organization in Indiana Retail Hardware Assn., Inc. v. United States. Your activities are primarily the provision of services for members. Because providing particular services for members is your primary activity, you fail to qualify for exemption under Section 501(c)(6) of the Code.

Conclusion

You do not qualify under Section 501(c)(4) of the Code because your activities are primarily for the benefit of your members, and there is little or no benefit to the community. You do not qualify under Section 501(c)(5) of the Code because you do not have as your objectives, the betterment of conditions of those engaged in labor, the improvement of the grade of your products and the development of a higher degree of efficiency. You do not meet Section 501(c)(6) because you are primarily providing particular services for members and you are engaged in a regular business of a kind ordinarily carried on for profit.

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.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative

- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:
Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information 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 later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements