



Date:
02/27/2025
Employer ID number:

Person to contact:

Release Date: 202521022
Release Date: 5/23/2025
UIL Code: 501.03-00,
501.33-00

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). 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 IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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 call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Letter 437
Redacted Letter 4034
Letter 4038



Department of the Treasury
Internal Revenue Service
PO Box 2508
Cincinnati, OH 45201

Date: 01/08/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Legend:

B = Date

C = State

D = Date

E = number range

x percent = percentage

y percent = percentage

UIL:

501.03-00

501.33-00

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 IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

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

Facts

You originally formed as a Limited Liability Company on B in the State of C, but converted to a nonprofit corporation on D. Your Articles of Incorporation state you are organized and operated exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under IRC Section 501(c)(3).

More specifically, you formed to provide support, education, and management skills for local artists and artisans, instill life-long learning in adults, facilitate artistic endeavors, enrich the quality of life, and strengthen community connections through artistic expression. To do so, you provide educational and visual arts related programming through the following activities:

- public art classes and demonstrations,
- monthly rotating art exhibits,
- an annual arts festival to celebrate visual, performance, and culinary arts,
- exhibition space for artists to display and sell their artwork, and
- social gatherings where people can connect and work on special arts projects.

Your exhibition space includes an artist gift shop where E artists offer their work for sale to the public. These artists must enter into a membership agreement with you. Each member artist pays a monthly membership fee as part of the agreement. Collectively, these fees cover the building rental, utilities, and operating costs. Your member artists are selected based on the uniqueness, creativity, and perceived quality of their art via an artist peer review group comprised of your other member artists.

Your member artists determine the sales price of their art. You track the artists' sales and pay them x percent of the sales price on a monthly basis, while you keep a y percent commission to cover the costs of sales materials, e.g., bags, tissue paper, and credit card processing fees. Many artists also volunteer to work in the shop and help with other events.

Information obtained for your organization's website lists your member artists and provides a copy of your membership agreement. The agreement includes detailed information on the membership fees, sales payments made to the artists monthly, and your y percent commission. The agreement goes on to provide additional information about discounted membership fees the shop staff receive for working in your shop.

You state that selling art is an essential part of your operations as it provides support for your organization, the artists, and the community you serve, and allows you to operate as a supportive group for regional artists to network, better their craft, and market their art. Additionally, you assert that the sale of artwork supports your charitable objectives, helping you to sustain your operations, fund community programs, and provide resources for local artists. Further, you stated that the revenue your member artists receive from the sale of their art enables them to continue creating, honing their skills, and making significant contributions to the artistic and cultural community in your area.

Your income is derived from admissions, merchandise sold, services performed, membership fees, and the y percent commission on each art sale. You have no paid employees.

Law

IRC Section 501(c)(3) 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, to be exempt as an organization described in IRC Section 501(c)(3), 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(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 IRC Section 501(c)(3). 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) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Revenue Ruling 66-178, 1966-1 C.B. 138, found that a nonprofit organization created to foster and develop the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are selected by a panel of qualified judges for viewing and are gratuitously displayed is exempt from federal income tax under IRC Section 501(c)(3).

Rev. Rul. 71-395, 1971-2 C.B. 228, found that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under IRC Section 501(c)(3) because the organization served the private interests of its members, even though the exhibition and sale of painting may be an educational activity in other respects.

Rev. Rul. 76-152, 1976-1 C.B. 151, found that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, while retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under IRC Section 501(c)(3). The organization is serving the private interests of those artists whose works are displayed for sale.

In Goldsboro Art League, Inc. v. Commissioner of Internal Revenue, 75 T.C. 337 (1980), the Court found that an organization that sold artwork in its galleries was entitled to exemption under IRC Section 501(c)(3). The corporation contended that the primary purpose of its sales and other activities was to further the public's appreciation of art and not to serve private interests. The Commissioner argued that since the corporation's activities were indistinguishable from activities required in operating a commercial art gallery for profit, the corporation was operated for a substantial commercial purpose and could not qualify for exemption despite the presence of any number of truly exempt purposes. The Court, however, found that the purpose of the art gallery and art market was primarily to foster community awareness and appreciation of contemporary artists and to provide a constant flow of art for students to study art and painting techniques. The corporation's sales activities were incidental to its other activities and served the same overall objective of art education.

Application of law

You are not described in IRC Section 501(c)(3) because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You do not meet the operational test under IRC Section 501(c)(3) because you are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are operating for the private interests of your members whose art you sell. Providing a display and retail space for your members, allowing each member to set the sales price and select the works for sale, and collecting a commission off your members' sales serves the private interests of your members and not the public interest. Moreover, the education of the public is secondary to the sale of artwork.

You are similar to the organization described in Rev. Rul. 71-395, because you were formed by a group of artists and are operating an artist gift shop open to the general public, which displays and sells members' artwork. In addition, like this organization, an artist review group chosen by you selects whose works will be offered for sale. Consequently, like the organization in the revenue ruling, you are a vehicle for advancing your members' careers and promoting the sale of their artwork. This serves the private interests of your members, even though the exhibition of paintings may be an educational activity in other respects.

Unlike the organization granted exemption in Rev. Rul. 66-178, you are a membership organization consisting of artists who select and sell members' artwork in a gift shop you operate. Therefore, you are operating for a substantial nonexempt purpose because you serve private interests rather than the public interest, precluding exemption under IRC Section 501(c)(3).

You are like the organization denied exemption in Rev. Rul. 76-152, because the artists whose works are displayed and sold are directly benefited by your operations. You are a membership organization consisting of artists who select and sell members' artwork in a gift shop you operate. Your member artists set the sales prices and receives x percent of the sale, while you retain the remaining y percent as a commission. Therefore, you have a substantial non-exempt purpose that precludes exemption under IRC Section 501(c)(3).

You are different from the organization granted exemption in Goldsboro Art League, Inc. Unlike this organization, the sale of artwork is a substantial part of your operations. In addition, all artists that display and sell artworks are your members who pay fees to utilize your space to market their art. Since the sale of artwork is an essential part of your operations, such activities are not incidental to your other activities and, therefore, do not further exempt purposes under IRC Section 501(c)(3).

Conclusion

Based on the information submitted, you are not operating exclusively for one or more purposes described in IRC Section 501(c)(3). You operate for a substantial nonexempt purpose because you serve private interests rather than the public interest. Even though some of your activities are educational, the sale of artwork is an essential part of your operations, and you are primarily operating to benefit your member artists. Any public purpose for which you may operate is incidental to your primary nonexempt purpose. Therefore, you do not qualify for federal tax exemption under Section 501(c)(3).

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 Determination 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
PO 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