



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
P.O. Box 2508
Cincinnati, OH 45201

Date:
03/13/2025
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202523006
Release Date: 6/6/2025
UIL Code: 501.35-00, 501.36-00

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

Redacted Letter 4038



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

Date:
01/21/2025
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Legend:

B = State
C = Date of Conversion
d percent = Time
f percent = Revenue
G = President
h dollars = Compensation
j dollars = Compensation
K = Association
L = District
M = School

UIL:
501.35-00
501.36-00

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 were originally formed as a limited liability company in the state of B. However, on C you converted to a nonprofit corporation. You are formed to build, promote and own carbon free electrical generation facilities. Your goal is to make power from carbon free generation available to everyone through partnerships with public and private entities.

Carbon free electrical generation includes using hydro, solar, wind and nuclear sources paired with battery storage. You will facilitate the design, positioning, financing and construction of carbon free electrical generating facilities.

You educate individuals on carbon free energy sources and encourage governmental units to invest in community carbon free projects. You provided your educational materials and projected d percent of your ongoing time and resources will be focused on education.

The educational materials you submitted are proposals to K and L on how your program is beneficial to their specific needs. The proposals analyze the entity's need for a solution to their current energy issues and suggests ways to fund solutions. The solutions suggested include applying for grants from US government agencies, like the Department of Energy and the Renewable Energy for America Program. You propose the entities apply for this funding with your assistance. The grant recipients would be responsible to retain the installers. You are one of the installers. However, the presentations also indicate the entity should get multiple quotes and compare prices. You expect that if you are chosen to perform the work necessary, you would obtain the grant money and then apply it to the K and L projects. You would use your experience to help K and L, with no clean energy project experience to take advantage of funding opportunities, as well as environmental and economic benefits of such projects.

You coordinate the purchase and assembly of carbon free components such as solar panels, inverters, electrical transmission equipment, transformers, and batteries. Initially, you will generate electricity through photovoltaic systems which uses solar panel and stores it in batteries. In the future, you may also generate electricity through other carbon free sources like hydro, wind or kinetic processes but that is not in your immediate plans.

You will build the plants and other energy facilities that will provide the energy. You gather the components, which will be assembled by local technicians. Your broad vision is to replace all fossil fuel generation on the United States electrical grid with non-carbon-based sources.

Currently, G, one of your governing body members, has done the majority of what would be considered billable work. G has worked in the engineering field and is currently a governing body member of a manufacturing company utilizing solar energy. He has been involved with energy project for the last five years and owns one of the largest non-utility owned carbon free generating facilities where he resides in a rural community of B. You will pay G normal market rate for the work when you are financially able to do so. You plan to have other contractors or employees in the future. However, currently you have no assets or cash flow so there is not an opportunity for compensation. The range of compensation is G is from h dollars to j dollars as his role transitions from part-time to full-time.

After you successfully build your facilities, you intend to sell the electricity that is produced. You will provide carbon free energy or electricity to the public through various means. You will sell to electrical utilities, electrical cooperatives, public entities and private individuals. Electricity will be sold on a per kilowatt hour (kwh) basis. In places where you are unable to charge by kwh, such as recharging stations in parking lots, you will charge a management or rental fee.

Your projects are funded through fees and grants. However, recent legislation allows for certain tax-exempt entities to receive a cash payment for building or operating carbon free electrical generation facilities. Therefore, initially most of your revenue will be derived from tax credits. The other large portion of revenue will be from competitive grants through US agencies (like the Department of Energy or the Department of Agriculture). To obtain these grants from US agencies, you will partner with universities, local government, and other public and private groups to develop projects for these grants. Most of the capital you generate in the first several years will be a combination of grant money and fees for the carbon free generation equipment installed.

Initially, electricity sales to project partners and utilities will comprise a small amount of revenue (f percent). Electricity sales to project partners will always be below retail market rates to provide a benefit to project partners and the public at large. Over time, energy sales will become the sustaining source of revenue and fewer grants will be sought.

You intend to sell electric and energy in various ways to different entities. You will sell power to local utilities through a power purchase agreement, where you would own or co-own a site with carbon free generating equipment like a solar array. Power produced from the solar array would be sold to the local utility under applicable tariffs at a wholesale rate. In this case, you will not be selling directly to the public. However, there is no material difference in where the energy is being transferred. The utility would still manage transmission of the power to the public. Another scenario is where you will sell power to a public, private company or municipality which owns the site where you build the carbon free generating equipment. In this case, power would be sold directly to the entity which will use some portion of the power generated by your equipment. You also intend to sell power to the public through electrical vehicle (EV) charging stations. In all the scenarios, you will generate the electrical power through carbon free generation and then transfer the power to the customer via wire to their site or home or vehicle.

The financial projections you submitted include some fees income and unusual grants from US governmental grant programs as revenue sources. The expenses shown are for the K and L projects and professional fees. However, it appears that the K and L programs are not happening currently.

You defined the role each type of entity will have in your operations. Banks, non-banks and donors will provide financing for your activities. Equipment manufacturers will provide equipment. Electric customers (public, et al.) will be purchasing and using the electric energy produced. Electrical utilities, regional transmission operators and independent system operators will interconnect your projects to the users and provide engineering oversight. This last group will also purchase electricity from you which will be extended to the users.

Law

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

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides 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 or 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.

Treas. Reg. Section 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of IRC Section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

Treas. Reg. Section 1.501(c)(3)-1(f)(1) provides that an organization applying for recognition of exemption under IRC Section 501(a) as an organization described in section 501(c)(3) must establish its eligibility under this section. The Commissioner may deny an application for exemption for failure to establish any of section 501(c)(3)'s requirements for exemption.

In Revenue Ruling ("Rev. Rul."). 68-14, 1968-1 C.B. 243 an organization formed to promote and assist in city beautification projects and to educate the public in the advantages of street planting was approved for exemption from Federal income tax under IRC Section 501(c)(3). The instant organization planted trees in public areas for which the city did not have sufficient funds to accomplish; cooperated with municipal authorities in all phases of street tree planting and in programs to keep the city clean. They also educated the public on the advantages of tree planting through various methods and encouraged developers to include planting in their building projects. These activities were found to support other charitable and educational purposes.

In Rev. Rul. 72-560, 1972-2 C.B. 248, an organization that provided information to the public concerning environmental problems caused by solid waste materials and the advantages of recycling such materials, was found to be instructing the public on subjects useful to the individual and beneficial to the community.

It sponsored workshops, conferences, and exhibits to inform the public of the environmental problems caused by solid waste materials and the advantages of recycling such materials. It also had established centers staffed entirely by volunteers, where members of the public may bring solid waste materials such as old newspapers, glass containers, and metal cans for disposal. The waste materials collected at the centers were sold to commercial companies for recycling. Any excess of income over expenses from the sale of waste materials is used by the organization in its other activities. Any income derived from the sale of the waste materials to the recycling companies is merely incidental to the accomplishment of the exempt purposes of the organization. The recycling of the waste materials was an essential element in the organization's efforts to combat environmental deterioration, since it prevented the pollution of the environment caused by the usual disposition of these materials.

In Better Business Bureau of Washington, D.C., v. U.S., 326 U.S. 279 (1945), the Court held an organization qualifying for exemption under IRC Section 501(c)(3) must be exclusively devoted to furthering Section 501(c)(3) purposes and the presence of a single substantial non-exempt purpose will prohibit exemption qualification regardless of presence of any exempt purposes. Noting an activity can have more than one purpose, the Court also held that once a substantial non-exempt purpose is established, it is unnecessary to determine whether there are exempt purposes because exemption is unavailable.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under IRC Section 501(c)(3) because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses.

In Colorado State Chiropractic Soc. V. Commissioner, 93 T.C. 487 (1989), the Tax Court held that a substantial part of the organization's activities promoted individual members' businesses, therefore the organization did not qualify for exemption under IRC Section 501(c)(3). Illustrative activities include using organizational assets for promotional events thrown by the organization's members' individual chiropractic practices. The promotional activities did not convey information to the public concerning chiropractic health care and did not further an exempt purpose.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the court affirmed that Living Faith did not qualify for exemption under Section 501(c)(3) of the Code as it operated its restaurants and health food stores for a substantially commercial purpose, in direct competition with other restaurants and health foods stores. Its underlying religious purposes did not mitigate the clear commercial purpose of its operations.

In Geisinger Health Plan v. Commissioner, 30 F.3d 494 (3rd Cir. 1994) ("Geisinger II"), the Court of Appeals noted that the electric company described in Treas. Reg. Section 1.502-1 (b) served a charitable purpose solely because it provided an essential service (electric power) exclusively to a tax-exempt university. Providing electric power to paying customers is not, in itself, an exempt purpose. However, the power company described in the Treasury Regulation possessed an exclusive relationship with the university. The power company was a wholly owned subsidiary of the university to which it supplied power. Supporting the university's educational mission effectively became the mission of the power company.

In Airlie Foundation v. Internal Revenue Service, 283 F. Supp. 2d 58 (D.D.C., 2003), the district court evaluated the commerciality of the organization's activities when applying operational test. The court determined the organization was operated for non-exempt commercial purposes rather than for tax-exempt purposes. "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."

Application of law

IRC Section 501(c)(3) sets forth two tests to qualify for tax-exempt status. As stated in Treas. Reg. 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3). You do not meet the operational test under IRC Section 501(c)(3) because you are not operating exclusively for charitable, educational, or scientific purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your primary activity is generating and selling energy. You expect revenue from this activity to comprise a significant portion of your income.

Although Treas. Reg. Section 1.501(c)(3)-1(e)(1) indicates that an organization can satisfy the requirement for exemption under IRC Section 501(c)(3) if the organization operates a business as a substantial part of its activities, such business must be in the furtherance of an exempt purpose. Your primary purpose and operations are in furtherance of generating and selling energy.

You are like the organizations described in B.S.W. Group, Inc., Living Faith, Inc., and Airlie Foundation because you are operating for a substantial nonexempt commercial purpose rather than for a tax-exempt purpose.

You have not demonstrated you operate exclusively for an exempt purpose. Electrical energy sales, or the provision of electrical energy, are activities often carried out by energy utility companies. As stated in Geisinger

Health Plan, the provision of electrical power is not, in of itself, an exempt purpose. Thus, your activities further a non-exempt purpose.

You have stated that you will educate the public on carbon free energy sources. To support this, you provided copies of presentation slides that you identified as educational material. However, the materials you provided were similar to a solicitation to provide services. As stated in Colorado State Chiropractic Soc., when potential educational materials are used in this manner that align with a commercial purpose, this does not further an exempt purpose within the meaning of IRC Section 501(c)(3).

Therefore, as noted in Better Business Bureau of Washington, D.C., once a non-exempt purpose is established, it is unnecessary to determine whether there are exempt purposes because exemption is unavailable. You have not demonstrated that you are operated for an exempt purpose, therefore your request should be denied.

Your Position

You revised your mission statement which indicates:

“[Your] purpose is to educate individuals, businesses, communities, governments entities, and other non-profit groups through programs which focus on lowering energy costs through on-site carbon free energy generation and storage systems.”

You also submitted a presentation that was created for M. The presentation discusses the current costs of M’s energy and a potential solar option to lower costs. It explains a government grant program and how it can be used to assist M in making the suggested changes. It also discusses financing options, the current tax credit incentive programs which are available and how to take advantage of them by using you to install and generate solar energy on M’s site.

Our response to your position

You have not provided any information indicating you meet the requirements of IRC Section 501(c)(3). Your educational program is not a substantial part of your plans. You claim that you operate to educate the public on the benefits of carbon-free energy. However, the educational materials you submitted include a proffer of services to L to pursue funding to provide the carbon-free energy. This is unlike the organization recognized as exempt in Rev. Rul. 68-14. The organization in the ruling assisted city projects, educated the public on advantages of tree planting, planted trees where the city did not have funding and cooperated with municipal authorities in all phases of street tree planting and in programs to keep the city clean. You have no similar relationship with the local municipal authorities and intend to be compensated for any assistance you provide. Your circumstances resemble commercial operations rather than characteristics of a charitable program. The examples of educational materials you submitted includes a proffer of your services to capitalize on prospective funding sources to further your primary activity.

You stated your goal was to educate individuals and other entities as to the benefits of carbon free energy sources, but the materials you provided only covered switching energy costs with debt service and how projects could be financed. The examples of educational material you submitted contains substance similar to a commercial advertisement. In Rev. Rul. 72-560, the educational program included workshops, exhibits and conferences. The organization recognized as exempt also provided a recycling program to further their educational program and to combat environmental deterioration. The organization’s recycling program involved voluntary labor and any income derived from sales of recyclables was incidental. You intend to combat environmental deterioration as well. However, unlike the organization in the revenue ruling, you will operate

like a commercial utility company.

Your primary purpose is energy generation and energy sales. Similar to the court's finding in Better Business Bureau, the presence of a single substantial non-exempt purpose will preclude exemption.

Conclusion

Based on the information you provided you are not operated exclusively for exempt purposes. You do not meet the operational test because a substantial portion of your activities have a commercial purpose. Therefore, you do not qualify for exemption under IRC 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