



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

Date:
03/11/2025
Employer ID number:

Person to contact:

Release Number: 202523007

Release Number: 6/6/2025

UIL Code: 501.03-00, 501.03-30, 501.33-00, 501.36-01

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:
01/14/2025
Employer ID number:

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

Legend:

B = State
C = Date
K = Company
L = Product
x dollars = Dollar Amounts

UIL:

501.03-00
501.03-30
501.33-00
501.36-01

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 incorporated in the State of B on C. According to your Article of Incorporation, you are organized, in part, to promote pediatric skin disease research and patient support, and to donate the majority of your funds to other non-profits that support pediatric skin disorder research and patient support, particularly with respect to genetic and inflammatory skin disorders.

Your activities, as described in your application, further your purposes of promoting pediatric skin disease research and patient support in two ways:

1. by providing consulting services to the pharmaceutical industry for compensation, with the goal to aid in the development of treatments for pediatric skin disorders and to facilitate research into the origins and treatment of pediatric skin disorders; and

2. by donating the proceeds from such paid consulting to other non-profit organizations that support pediatric skin disorder research and patient support, particularly with respect to genetic and inflammatory skin disorders.

Specifically, your consulting services to the pharmaceutical industry for compensation are limited to the following activities:

- a. composing and giving balanced educational presentations at physician meetings that educate physicians about the treatment and management of pediatric skin diseases,
- b. consulting with pharmaceutical companies by serving on physician advisory boards to explain to pharmaceutical companies – with other physicians – the needs of pediatric patients with skin diseases, the real-world impact of pharmaceutical products aimed at treating pediatric skin diseases, and the opportunities for future physician education with respect to the pediatric skin diseases, thus helping to improve the pipeline of new therapeutics for children with skin disorder, and
- c. consulting one-on-one with pharmaceutical companies about the needs of pediatric patients to improve the future opportunities for developing new therapies for patients.

You will decline any other types of consulting work that do not fall within the scope of the above limitations. Further, you will not consult with any pharmaceutical company unless it intends to educate physicians, without commercial influence, about the treatment and management of pediatric skin diseases and/or is developing or marketing a product with the potential to have a major impact on improving skin health in pediatric patients.

Volunteers will provide your consulting services over the phone and at meetings with pharmaceutical company personnel at a rate of x dollars per hour. Thus far, you have provided consultation to K and its affiliations. K is a major pharmaceutical company that manufactures and markets L, a patented treatment with specific benefits for pediatric skin disorders. Your consultation services provided educational sessions and presentations on pediatric skin disorders to physicians from the United States and around the world. Your educational content included information on L and compared the results of utilizing L to other medications for skin disorders. You also served on physician advisory boards.

You state these activities further your purpose of promoting pediatric skin disease research and patient support. Your consulting work aids others engaged in pediatric skin work, and the fees you charge allow you to make donations to support pediatric skin research and provide patient support.

After the payment of the expenses of your lawyers, accountants, and various filing fees, and the creation of a small reserve for future expenses, one hundred percent of the fees from your consulting services will be donated to organizations that qualify for federal tax exemption under IRC Section 501(c)(3) as provided above. No compensation will be paid to your directors, officers, or volunteers.

Law

IRC Section 501(c)(3) exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to qualify under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. 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 that 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.

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.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Callaway Family Association, Inc. v. Commissioner of Internal Revenue, 71 T.C. 340 (1978), the Court held that an organization whose activities focused on the historical studies of the genealogy of their family was not exempt under IRC Section 501(c)(3). Although the organization conducted some educational activities, as the term is defined in Section 501(c)(3), the Court found that those activities primarily served the private interests of the family members and, therefore, were not exclusively dedicated to exempt purposes as required under Section 501(c)(3) and the accompanying regulations.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court held that an organization conducted its activities to serve the private interests of partisan entities and candidates, and therefore did not qualify for exemption under IRC Section 501(c)(3). The organization’s primary activity was to operate a school (“the Academy”) to train individuals for careers as political campaign professionals. The academy was an outgrowth of programs operated by a partisan congressional committee to train candidates and subsequently place campaign professionals in partisan campaigns. The committee contributed physical assets to the academy, faculty members, directors, and was exclusively funded by a partisan trust.

Application of law

IRC Section 501(c)(3) sets forth two main tests for qualification of exempt status. Per Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization cannot be recognized as exempt under Section 501(c)(3) unless it shows that it is both organized and operated exclusively for exempt purposes.

Based on the information you provided, you are not operated exclusively for exempt purposes under IRC Section 501(c)(3) as required by Treas. Reg. Section 1.501(c)(3)-1(c)(1). You provide paid consulting services to contracted pharmaceutical companies. Although your activities may include educational content, it remains that your activities are directed by and for the benefit of the contracted pharmaceutical companies to which you

provide paid consulting services. Therefore, your activities provide a nonincidental private benefit to, and serve the private interests of, contracted pharmaceutical companies, contrary to the provisions in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). Thus, you have failed to meet the operational test under IRC Section 501(c)(3).

You are like the organization described in Rev. Rul. 71-395, where members formed to sell their work by selecting the pieces for sale and conducting special showings for individual members. Similarly, you choose the companies to which you provide paid consulting services. Even though certain aspects of the consulting services may be an educational activity in some respects, similar to the organization in Rev. Rul. 71-395, your paid consulting services are designed to further the private interests of entities within the pharmaceutical industry. This serves a substantial private interest that is not incidental to your educational activities. As stated in Better Business Bureau of Washington, D.C., Inc., the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under IRC Section 501(c)(3).

You are also similar to the organization described in American Campaign Academy, in which an academy was operated to serve the private interests of a partisan congressional committee by training partisan political campaign professionals. Similarly, you provide consulting services to specific pharmaceutical companies. In fact, your first client, K, paid for your consulting services, and received, in exchange, two of your three services. Within the educational sessions you provided for K, you embedded content about K's product, L, and presented this information to one of K's target audiences, i.e., physicians, who directly influence the prescribing rate – and, thus, the sales – of L. Even though the content was educational in other respects, you would not have engaged in these specific activities without payment of your consulting fees by K. Accordingly, your activities primarily serve the private interests of contracted pharmaceutical companies, which is not incidental to your educational purposes, contrary to the provisions in Treas. Reg. Section 1.501(c)(3)-1(c)(1) and Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

Analogous to the organization described in Callaway Family Association, Inc., your activities serve substantial and nonincidental private interests, which is distinguished from your educational activities. Similar to the organization in Callaway Family Association, Inc., which was focused on the historical studies of the genealogy of their family, you do not conduct fundraising to provide educational content to healthcare professionals on pediatric skin disorders; rather, you charge x dollars to consult with pharmaceutical companies, which, with your first client, resulted in the promotion of a patented treatment to an audience that influences the prescriptions necessary for your client's product to sell. Without payment of your consulting fees, you would not have created the educational content in which you embedded information on L. Accordingly, your activities primarily serve private interests, which is not incidental to your educational activities. Again, as stated in Better Business Bureau of Washington, D.C., Inc., the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under IRC Section 501(c)(3).

Conclusion

Based on the above facts and law, we conclude that you do not qualify for exemption under IRC Section 501(c)(3). By providing paid consulting services to the pharmaceutical industry, you are operating to serve the private interests of contracted pharmaceutical companies. Donating your net income does not alter the substantial private interests you serve in the conduct of your activities. Therefore, you are not operating exclusively for exempt purposes within the meaning of 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