



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

Date:
05/02/2025
Employer ID number:

Person to contact:

Release Number: 202530016
Release Date: 7/25/2025
UIL Code: 501.00-00, 501.32-01, 501.33-01

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
Redacted Letter 4038



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

Date:
01/30/2025
Employer ID number:

Person to contact:

Name:
ID number:
Telephone:
Fax:

Legend:

W = Date
X = State
Y = Development
Z = Date
b dollars = Amount

UIL:

501.00-00
501.32-01
501.33-01

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 submitted Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

You attest that you were incorporated on W, in the state of X. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of the IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under Section 501(c)(3).

You attest that you are organized and operated exclusively to further the purposes of testing for public safety.

You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

Your 1023-EZ states you maintain gravel roads and culvers of association.

During Review of your 1023-EZ, we sent a request for information regarding your activities to supplement the above mission. We also sent you a copy of your Articles of Incorporation which state your purpose is to provide for repair and maintenance of private roads of Y within a certain tract of the Y development. Upon dissolution, the roads shall be dedicated to an appropriate public agency, to be used for purposes for which you were created. All other assets other than roads will be sold and distributed to members as allowed by law.

Your response explains that your primary purpose is to operate as a road maintenance association similar to a homeowner's association. You are a membership organization. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject by contracts of sale to assessment by you and/or individual lot owner of plats who use the road is a member of yours. Further, membership is attached to each lot and may not be separated from ownership of any lot which is subject to assessment by you.

You explained that you inspect your roads for safety per the science and technology of road repair and technically evaluate them for public safety. Specifically, you fill potholes on gravel roads and grade these roads to provide an even surface, clean out ditches, cut tree branches that effect traffic, and replace/repair/add culverts under or beside the roads to ensure proper drainage for public safety. You also educate the community on the technical aspects of road maintenance for free. You explained that the public in general has access to the roads.

You have no employees, pay no wages, collect, and pay no taxes of any kind, have no assets, get no grants, have no investments, and have no income. You charge dues of b dollars per homeowner and your expenses consist of purchasing gravel and grading the roads.

You believe you qualify under IRC Section 501(c)(3) or (c)(4) because you discuss road issues with county maintenance supervisors, provide free education to the community on these items, and your roads and community can be accessed by the general public.

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, in order 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(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes.

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) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement of this subsection, the burden of proof is on the organization to show that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treas. Reg. Section 1.501(c)(3)-1(d)(4) "testing for public safety," as used in IRC Section 501(c)(3), includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

Revenue Ruling 65-61, 1965-1 C.B. 234, describes an organization organized for the purpose of testing for safety of certain products normally used aboard pleasure boats by the boating public which was held exempt from tax. The activities included testing of various items, including galley stoves, metallic fuel tanks, flame arresters, battery charging devices, navigation lights, fuel filters, life preservers, and other products used aboard pleasure craft.

Rev. Rul. 69-175, 1969-1 C.B. 149, describes a nonprofit organization, formed by parents of pupils attending a private school, that provided school bus transportation for its members' children. It was found in this ruling that when a group of individuals associate to provide a service for themselves, they are serving a private rather than a public interest. Thus, the organization did not qualify for exemption under IRC Section 501(c)(3).

Rev. Rul. 71-395, 1972-2 C.B. 228, holds 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). The ruling concluded that the cooperative gallery served the private purposes of its members, even though the exhibition and sales of paintings may be an educational activity in other respects.

Benedict Ginsburg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47 (1966), held that in order to qualify for exemption under IRC Section 501(c)(3) an organization must serve a public rather than a private interest. Although an incidental private benefit will not destroy the qualification of an otherwise religious and educational organization, where an organization is serving both public and private interests, the private benefit must be clearly incidental to the overriding public benefit.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have failed to meet both tests, as explained below.

You do not meet the organizational test.

You do not meet the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4). The purpose in your Articles of Incorporation is to provide for repair and maintenance of private roads known as the Y development. Because your Articles of Incorporation do not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), you fail the organizational test under IRC Section 501(c)(3).

Furthermore, your Articles of Incorporation do not contain an appropriate dissolution clause as required by Treas. Reg. Section 1.501(c)(3)-1(b)(4). Specifically, they state upon dissolution, the roads shall be dedicated to an appropriate public agency, to be used for purposes for which you were created. All other assets other than roads will be sold and distributed to members as allowed by law. Therefore, this also causes you to fail the organizational test under IRC Section 501(c)(3).

You do not meet the operational test.

You are serving private interests.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purpose unless it serves a public rather than a private interest. Your activities consist of collecting dues from members who are lot owners in Y development to pay for road maintenance. Although the road is open to the public and you have some educational activities, your members are the primary beneficiaries of your operations. This illustrates you are serving a private interest rather than a public which is a substantial nonexempt purpose. Because you are serving a substantial nonexempt purpose, you are not operated exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are like the organizations described Benedict Ginsburg and Adele W. Ginsberg, Rev. Rul. 69-175, and Rev. Rul. 71-395. You were formed to maintain roads for your member lot owners who share the costs associated with road maintenance through the payment of annual dues. This shows that you are operating for the convenience and private interests of your members.

You are like the organization described in Better Business Bureau. Although you may have some educational and charitable purposes, you are operated for a substantial nonexempt purpose. The presence of this substantial non-exempt purpose prevents exemption under IRC Section 501(c)(3).

You are not operated for the purpose of testing for public safety.

You do not meet Treas. Reg. Section 1.501(c)(3)-1(d)(4) because you are not operating for the testing of consumer products to determine whether they are safe for use by the general public. You are providing road maintenance for private roads in Y development for the benefit of your members.

You are not like the organization described in Rev. Rul. 65-01, because you are not operated for the testing of consumer products. Rather, you are operated to maintain roads on behalf of your members.

Your position

You have stated that the wrong EIN was used, and the correct EIN is exempt under Section 501(c)(4). You further explained that you qualify under IRC Section 501(c)(4).

Our response to your position

We have updated the EIN, and there is no evidence that you are tax exempt. We left you a message on D explaining the reasons for the proposed adverse decision in that you do not qualify for exemption under IRC Section 501(c)(3). We also explained the options available to you. You have decided to pursue exemption under Section 501(c)(3).

Conclusion

Based on the information submitted, you do not qualify for exemption under IRC Section 501(c)(3). You do not meet the organizational test because your organizing document does not limit your purposes to those in Section 501(c)(3) or dedicate remaining assets upon dissolution to one or more exempt purposes described in Section 501(c)(3). You also do not meet the operational test for Section 501(c)(3) because you are serving the private interest of your members which is a substantial nonexempt purpose. Accordingly, you do not qualify for 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.

This letter supersedes our letter dated 09/03/2024.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements