



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 4508
Cincinnati, OH 45201

Date:
05/14/2025
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Release Number: 202532013
Release Date: 8/8/2025
UIL Code: 501.00-00, 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Letter 437

Redacted Letter 4034

Redacted Letter 4038

cc:



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

Date:
03/28/2025
Employer ID number:

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

Legend:

B = State
C = Date
D = Number
x dollars = Amount
y dollars = Amount

UIL:
501.00-00
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 were incorporated in B on C. Your bylaws state your primary purpose is to develop and manage an annual fine arts and crafts festival that promotes and supports the visual arts and art education through interactive presentation and financial contributions to selected organizations.

You state your sole activity is the organization and operation of this fine art and fine craft show and sale that provides for independent artists and artisans to interact with the public and sell their artwork. You further state that the presence of your event provides an educational opportunity for the community to learn directly from artists about their art and art process in addition to being able to purchase the art.

You describe your art and craft fair and sale as an art show run by artists for artists, and indicate your goal is to provide a venue for artists to market and sell high quality art to a knowledgeable community of art patrons. You do not allow any loud music, children's areas, non-art booths, or selling of show souvenirs at your event.

This event is held one weekend per year. You anticipate approximately D vendors annually and this figure will include some board members but you did not specify how many.

Prospective vendors submit an application including images of their art and an artist statement. A panel of jurors who are professionals with experience in various art fields select vendors through a competitive blind jury process. Returning artists are selected if they were prior year award winners or are current board members. Selected vendors pay booth fees based on the size of their booth, either x dollars or y dollars. At the show, all sales are handled by the individual vendors and all prices are determined by the artists.

You plan to provide opportunities for artists to connect directly with schools in your community to teach about their art and process, but this program has not commenced.

You are funded solely through booth fees. Your expenses include professional fees, occupancy, website hosting fees, website costs, materials, credit card processing fees, marketing, accounting/bookkeeping, graphic design, storage rental, insurance, honorarium, printing, office supplies, software, P.O. Box, and legal fees. You indicate that all of your expenses are a result of producing your show and sale and that your model is to spend all funds received as income on the event leaving only seed funds to carry over for the following years activities.

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(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 exempt purposes unless it serves a public rather than a private interest. To meet this requirement, an organization must establish 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)(3)(i) defines the term educational as the instruction or training of the individual for the purpose of improving or developing his capabilities or instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 66-178, 1966-1 C.B. 138, describes an organization created to foster and develop the arts by sponsoring a public art exhibition at which works of unknown but promising artists are selected by a panel of qualified judges for viewing and are gratuitously displayed, and qualified for exemption under Section 501(c)(3) of the Code.

Rev. Rul. 71-395, 1971-2 C.B. 228, describes a cooperative art gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under Section 501(c)(3) of the Code. It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

Rev. Rul. 76-152, 1976-1 C.B. 152, held that an organization formed by art patrons to promote community understanding of modern art trends does not qualify for exemption under IRC Section 501(c)(3). The organization exhibited and sold the artwork of local artists, who received 90 percent of sales proceeds. This provision of direct benefits served the private interests of the artists and could not be dismissed as being merely incidental to its other purposes and activities, and therefore the organization was not operated exclusively for educational purposes.

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

In American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court noted that education is a broad concept and assumed that the organization had an educational purpose. The Court concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In Goldsboro Art League, Inc. v. Commissioner of Internal Revenue, 75 T.C. 337 (1980), the organization exhibited in its two public galleries, "an artists more daring works in a part of the country where there were no nearby art museums or galleries." Due to the "difficulty attracting artists to exhibit their work," the organization offered the displayed works for sale. Moreover, the organization conducted numerous arts education activities and displayed its own permanent collection of art throughout various public buildings. Under these specific circumstances, the tax court found that the private benefit to the artists for the sale of their artwork was secondary and incidental to the primary purpose of educating the public on art.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information provided, you fail the operational test.

You do not meet the operational test under IRC Section 501(c)(3) because you are not operated exclusively for educational purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your art and craft show and sale may serve some educational purposes through discussions with artists, but your event also provides a direct monetary benefit to your vendors. Your activities are not exclusively dedicated to educating the public, but rather to encourage sales by your vendors. As provided in Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i), you have not established that your operations accomplish exclusively educational purposes.

Based on the facts presented, you serve a private rather than a public interest because you confer benefits primarily to the artists, including your board members, selected to be vendors in your art and craft show and sale. You have not demonstrated that these artists belong to a charitable class. To qualify for exemption under IRC Section 501(c)(3), you must serve a public, rather than a private interest as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

Like the organization described in Rev. Rul. 66-178, your art and craft show and sale has a panel of jurors who select high quality art to be included in the event. Unlike this organization, however, the intent of this event is to encourage the sale of this art to benefit your vendors. This is a substantial benefit to your members that would preclude exemption under Section 501(c)(3).

Like the artists in Rev. Rul. 76-152 and Rev. Rul. 71-395, who directly benefited by the exhibition and sale of their artwork, your vendors directly benefit from the exhibition and sale of their artwork at your art and craft show and sale. Your art and craft show and sale is your sole activity and is serving the private interests of your vendors, including some of your board members. This direct monetary benefit to your vendors and board members is substantial and cannot be considered merely incidental.

Although patrons do receive some education on the art pieces, you are operated primarily for the non-exempt purpose of increasing the sales of your vendors. Similarly to Better Business Bureau of Washington, D.C., Inc. and American Institute for Economic Research, such a single non-exempt purpose, being substantial in nature, precludes exemption, regardless of the number or importance of the exempt purposes served.

You are not like the organization described in Goldsboro Art League. You have not established that the private benefit received by the artists from your activities is incidental to any exempt purpose. The sale of art by vendors furthers a substantial non-exempt purpose and precludes exemption under IRC Section 501(c)(3).

Conclusion

Based on the facts and circumstances presented, you do not qualify for exemption from federal income tax as an organization described in IRC Section 501(c)(3). You are not operated exclusively for exempt purposes as set forth in Section 501(c)(3). By providing a venue for artists to sell their products you confer an impermissible amount of private benefit to the artists, therefore, you are operating for a substantial non-exempt purpose.

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements