



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities

Date:  
07/10/2025  
Employer ID number:

Form you must file:

Tax years:

Person to contact:  
Name:  
ID number:  
Telephone:

Release Number: 202540023  
Release Date: 10/3/2025  
UIL Code: 501.03-00, 501.03-30

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](http://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**

**Date:**  
05/23/2025  
**Employer ID number:**

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

**Legend:**

B = Date  
C = State  
D = Name

**UIL:**  
501.03-00  
501.03-30

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 formed on B as a Limited Liability Company (LLC) in the state of C. Your Articles of Organization do not specify any membership interest in the LLC; however, your Operating Agreement allocates % of your membership interest to D who is recognized as your founder. You are governed by a board of directors who are appointed by D. Your Articles of Organization are silent as to your purpose, and do not include provisions in the event of dissolution.

Your operating agreement stipulates that your purpose is to provide space for small enterprises, including artists, creators, makers, and curators to sell their wares, and that you extend complimentary marketing and consulting support to your members. Your Operating Agreement further states that your assets will be distributed to your LLC members, including D.

In order to offer merchandise for sale to the public through your facility, one must possess a valid membership, which is accessible to any individual who owns a small business. Members are required to pay fees that correspond to the size of their allocated space, and your objective is to ensure that substantially all of your members fulfill their payment obligations. Furthermore, when requested, you extend space to various exempt

organizations without imposing a membership fee for the area. In return for the payment of fees, you actively market your facility to the public through various channels, and within your venue, you foster a vibrant atmosphere filled with music, food, beverages, and entertainment to draw in the public, thereby creating a marketplace where they can potentially buy the goods and services offered by your members. Your facility is open three days over the weekend except for significant holidays. Your services are advertised through your website, which encompasses fundamental information pertaining to your location and operational hours, accompanied by products offered by your members.

Your budget includes expenses for salaries and wages, occupancy, professional fees and miscellaneous operating expenses. The facility you rent is owned by a Trust, of which D is a governing body member. You employ two compensated staff members and do not utilize any volunteers.

### **Law**

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious, or educational purposes, in which 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, for an organization to be exempt and described in IRC Section 501(c)(3), that 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 limit the purposes of such organization to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that, for an organization to be exempt and described in IRC Section 501(c)(3), its assets must be dedicated to an exempt purpose by operation of the law, a provision in the organization's articles of incorporation, or to the federal government, to federal, state, or local government for a public purpose, or distributed by a court to another organization that would meet similar purposes as the dissolved organization was organized to meet. An organization will not be considered exempt if its assets are not dedicated to an exempt purpose.

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, it is necessary for an organization to establish that it is not organized or operated for private interests.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes such purposes as relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; and lessening of the burdens of Government.

Revenue Ruling 61-170, 1961-2 C.B. 112, held that an association comprised of professional private duty nurses and practical nurses, which operated and managed a nurses' registry for its members, failed to satisfy the requirements for exemption under IRC Section 501(c)(3) because by operating an employment service principally for the benefit of its members, the organization served private interests more than insubstantially and consequently was not organized and operated exclusively for charitable or other exempt purposes.

Rev. Rul. 68-167, 1968-1 CB. 255, held that a nonprofit organization created to market the cooking and needlework of needy women may be exempt from tax under IRC Section 501(c)(3). The organization operated a market, where it sold the cooking and needlework of these women who were not otherwise able to support themselves and their families. The organization provided a necessary service for needy women by giving them a market for their products and a source of income.

Rev. Rul. 71-395, 1971-2 C.B. 228, held that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under IRC Section 501(c)(3). It was held that it served the private purposes of its members.

Notice 2021-56, 2021-45 I.R.B. 716, 2021, sets forth current standards that a limited liability company (LLC) must satisfy to receive a determination letter recognizing it as tax-exempt under section 501(a) of the Internal Revenue Code and described in section 501(c)(3).

Notice 2021-56, Section 3.02 provides the required provisions that an LLC must have in their articles of organization and operating agreement. To qualify, both the LLC's articles of organization and its operating agreement must include:

- (1) Provisions requiring that each member of the LLC be either (i) an organization described in section 501(c)(3) and exempt from taxation under section 501(a) or (ii) a governmental unit described in section 170(c)(1) (or wholly owned instrumentality of such a governmental unit).
- (2) Express charitable purposes and charitable dissolution provisions in compliance with Treas. Reg. Sections 1.501(c)(3)-1(b)(1) and (4).
- (3) The express chapter 42 compliance provisions described in section 508(e)(1), if the LLC is a private foundation.
- (4) An acceptable contingency plan (such as suspension of its membership rights until a member regains recognition of its section 501(c)(3) status) in the event that one or more members cease to be section 501(c)(3) organizations or governmental units (or wholly owned instrumentalities thereof).

Notice 2021-56, Section 3.03 provides required provisions regarding representation on enforceability. The LLC must represent that all provisions in its articles of organization and operating agreement are consistent with applicable state LLC law and are legally enforceable.

In Better Business Bureau of Washington, D.C. Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. The Petitioner's activities were largely animated by non-exempt purposes directed fundamentally to ends other than that of education.

In Aid to Artisans Inc. v. Commissioner, 71 T.C. 202 (1978), the court held that an organization that marketed handicrafts made by disadvantaged artisans through museums and other non-profit organizations and shops operated for exclusively charitable purposes within the meaning of IRC Section 501(c)(3). The organization, in cooperation with national craft agencies, selected the handicrafts it would market from craft cooperatives in communities identified as disadvantaged based on objective evidence collected by the Bureau of Indian Affairs or other government agencies. The organization marketed only handicrafts it purchased in bulk from communities of craftsmen. The organization did not market the kind of products produced by studio craftsmen, nor did it market the handicrafts of artisans who were not disadvantaged. The court concluded that the overall purpose of the organization's activity was to benefit disadvantaged communities. The organization's commercial activity was not an end in itself but the means through which the organization pursued its charitable goals. The method the organization used to achieve its purpose did not cause it to serve primarily private interests because the disadvantaged artisans directly benefited by the activity constituted a charitable class and the organization showed no selectivity with regard to benefiting specific artisans. Therefore, the court held that the organization operated exclusively for exempt purposes described in Section 501(c)(3).

#### **Application of law**

You seek recognition of tax-exempt status under IRC Section 501(c)(3), which requires an organization to be both organized and operated exclusively for purposes described in Section 501(c)(3) as set forth in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You fail both the organizational and operational tests.

#### **Organizational Test**

Your Articles of Organization state no exempt purpose; therefore, they do not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). They also do not dedicate your assets, upon dissolution to an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(b)(4). Moreover, neither your Articles of Organization nor your Operating Agreement meet the organizational requirements for an LLC outlined in Notice 2021-56 as they don't:

- Limit your membership to organizations exempt under IRC Section 501(c)(3) or governmental units,
- Limit your purposes to one or more exempt purposes under IRC Section 501(c)(3), and limit the distribution of your assets upon dissolution for one or more exempt purposes, or
- Contain a contingency plan if one or more of your members cease to be an exempt organization under IRC Section 501(c)(3) or a governmental unit (or wholly owned instrumentalities thereof).

As a consequence, you fail to meet the criteria of the organizational test set out in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 150(c)(3)-1(b)(4). Furthermore, it is the operational test, as defined in Tres. Reg. Section 1.501(c)(3)-1(c)(1), that stipulates that an organization will be deemed as "operated exclusively" for one or more exempt purposes solely if it primarily engages in pursuits that fulfill one or more of the exempt objectives articulated in IRC Section 501(c)(3).

### **Operational Test**

Your objective, as a membership organization, is to offer space for small businesses to exhibit and sell their products or services. To achieve your mission, you require your members to pay a fee for leasing space within your venue. In return, you actively market your facility to the public through various channels and, within your venue, you foster a vibrant atmosphere filled with music, food, beverages, and entertainment to draw in the public, thereby creating a marketplace where they can potentially buy the goods and services offered by your members. Although you maintain a marketplace for your members to showcase their products to the public, as did the organizations in Rev. Rul. 68-167 and Aid to Artisans Inc., you are not like those organizations because they specifically selected individuals of a charitable class to participate in their programs as sellers of goods; specifically, needy women who were unable to otherwise provide for themselves and their families and communities identified as disadvantaged based on objective evidence. Therefore, by establishing a marketplace for persons of a charitable class the organizations provided them with an opportunity to generate income through the sale of their creations, which enabled them to use the funds from the endeavor to support themselves and their loved ones. In doing so, the organizations operated exclusively for a charitable purpose as provided in Treas. Reg. Section 1.501(c)(3)-1(c)(1) and IRC Section 501(c)(3) as the organization's commercial activity was not an end in itself but the means through which it promoted the public interest in reducing the impact of poverty on the poor, distressed, or underprivileged.

You, conversely, provide membership to individuals hailing from various economic and social strata of society who have products and services to sale. In this regard, you are like the organization in Rev. Rul. 71-395, as your main objective is to create a marketplace that allows your members to interact with the public, to enhance their financial circumstances. As a result, like the organization in Rev. Rul. 71-395, the benefits arising from your efforts are not focused on the pursuit of charitable purposes as detailed in Treas. Reg. Section 1.501(c)(3)-1(d)(2) and as demonstrated by the organizations in Rev. Rul. 68-167 and Aid to Artisans Inc. Moreover, the allocation of space in your facility for charitable endeavors does not diminish the reality that your primary focus is on serving the private or commercial interests of your members, who do not fall within a charitable class. Therefore, you are like the organizations in Rev. Rul. 71-395 and Rev. Rul. 61-170 in that you were formed for the purpose of fostering commercial opportunities to your members, which would directly benefit them and in doing so your activity prioritizes their private commercial interests over the public's interest as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

As a consequence, you do not satisfy the requirements of the operational test provided in Treas. Reg. Section 1.501(c)(3)-1(c)(1) since you do not primarily engage in activities that advance one or more of the exempt purposes specified in IRC Section 501(c)(3). Consequently, as in the case of Better Business Bureau, your significant non-exempt purpose of serving the private interests of your members prevents you from achieving tax exemption under Section 501(c)(3).

### **Conclusion**

Based on the information submitted, you are neither organized nor operated exclusively for one or more purposes described in IRC Section 501(c)(3). Your organizing document does not limit your purposes or dedicate your assets to one or more exempt purposes described in Section 501(c)(3). You operate for the benefit of your members by providing a commercial forum for them to sell their products to the public.

### **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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements