



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201816011**
Release Date: 4/20/2018

Date: January 23, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00, 501.03-30

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). 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 Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: November 30, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

r dollars = dollar amount
t dollars = dollar amount
w dollars = dollar amount
x dollars = dollar amount
y dollars = dollar amount
z dollars = dollar amount

UIL:

501.03-00
501.03-30

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You will operate an apartment housing facility which will provide accessible housing for homeless, disabled veterans, and civilians. You do not require residents to leave after a specified time of stay with you.

Your Form 1023, Schedule F, *Homes for the Elderly or Handicapped and Low-Income Housing*, was missing some information. In our second request for additional information, we requested the missing information concerning the type of housing you offer, who qualifies for your housing, the criteria for who is eligible for your housing and how you ensure the housing remains affordable. You did not respond to these questions.

Your monthly rental rate will be r dollars. You provided a statement that this is fair market rate but provided no additional documentation to substantiate this claim. We requested additional information on how you determined the rate was fair market value. You did not provide a response to the question.

You stated you own the facility in your initial application. Your response to a request for additional information stated you lease the facility from your CEO and Vice President. We requested additional information about the lease with your officer. You responded Not Applicable on all requested details related to the lease.

You will pay the CEO t dollars annually, pay the Vice President t dollars annually, pay one owner w dollars annually, and pay another owner w dollars annually. The compensated individuals appear to be related. You were asked to provide additional details on the compensation to related parties. You responded Not Applicable to the request.

You provided financial information that represents you project to receive x dollars of income from gifts, grants and contributions over the next three years. You project that you will incur y dollars of fundraising expenses over the next three years, which are your only expenses. The instructions to page 9 of Form 1023 request you provide a reasonable and good faith estimate of future finances. The projections you provided do not appear to be reasonable for the following reasons:

- Your additional information represents you will pay annual salaries totaling z dollars;
- Your attachments represent you will receive rental income, which is not reflected in your financial data projections; and
- Your projections include no projected expenses for the provision of housing.

Law

Section 501(c)(3) of the Code 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 Section 501(c)(3) of the Code, 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 Section 501(c)(3) of the Code. 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)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes lessening of the burdens of government.

Revenue Procedure 1996-32, 1996-1 C.B. 717, provides guidelines for providing low-income housing that will be treated as charitable. (At least 75% of the units are occupied by low-income tenants or 40% are occupied by tenants earning not more than 120% of the very low-income levels for the area.)

Revenue Procedure 2017-5, 2017-1 I.R.B. 2321, Section 6 (and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 3 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application.

Revenue Ruling 72-16, 1972-1 C.B. 143, states an organization providing a residence facility and therapeutic “group living program” for individuals recently released from a mental institution qualifies for exemption under Section 501(c)(3) of the Code.

Revenue Ruling 1979-19, 1979-1 C.B. 195, states a nonprofit organization that provides specially designed housing to physically handicapped persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code.

In Universal Life Church v. United States, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that “one seeking a tax exemption has the burden of establishing his right to a tax-exempt status.”

Pius XII Academy v. Commissioner, T.C. Memo. 1982-97 provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization’s request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service’s denial, stated “It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant.” The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261, states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

Application of law

A ruling on exempt status is based solely on facts and representations in the administrative file. You have not provided supporting documentation to establish you meet the requirements of Section 501(c)(3) of the Code. Section 501(c)(3) sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3).

You do not meet the operational test under Section 501(c)(3) of the Code because you are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). You state you will provide housing to disabled and low-income parties. While the provision of housing may further an exempt purpose under Section 501(c)(3), you have not shown that you engage primarily in activities that accomplish an exempt purpose. As noted above, you did not provide details to establish that you are operating housing in a manner that furthers a charitable purpose as defined in Treas. Reg. Section 1.501(c)(3)-1(d)(2). As provided in

Treas. Reg. Section 1.501(c)(3)-1(d)(2), you have not established that your operations accomplish exclusively charitable purposes.

Your activities are not within Revenue Ruling 72-16, as you stated you do not require tenants to leave within a certain timeframe.

You have not demonstrated that you are operating (or will be operating) within Revenue Ruling 1979-19.

You have not demonstrated that you are operating (or will be operating) within Revenue Procedure 1996-32.

You have not submitted sufficient information establishing you are operated exclusively for exempt purposes under Section 501(c)(3) of the Code. (See Universal Life Church, Pius XII Academy, La Verdad, New Dynamics Foundation and Ohio Disability Association.) You did not provide us with information regarding your handicapped and low-income housing program; the pricing structure of your rent charges; the related party leases; nor the related party compensation. Therefore, there is not sufficient documentation to establish that you are exempt from taxation as required by Section 501(c)(3) and Revenue Procedure 2017-5. As in Universal, you have the burden of establishing that you qualify for tax exemption.

In Pius, La Verdad, and New Dynamics, it was established that an organization must establish, through its administrative record, that it meets the requirements for exemption. Because you failed to provide sufficient details in your initial application and the additional documentation you provided did not meet the statutory and regulatory requirements for exemption, you have not established that you meet the requirements for exemption under Section 501(c)(3) of the Code. As provided in New Dynamics, any gaps in the administrative record will be resolved against the applicant. Similarly, in Ohio Disability Association, the court found that even when additional information was provided, but it contained generalizations and failed to clarify purposes, denial is justified. You did not provide supplemental information; therefore, we are unable to determine that you qualify for exemption.

Conclusion

Based on the information submitted, you have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and the related income tax regulations. Therefore, based on the administrative record, you fail to qualify for exemption under Section 501(c)(3).

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on

- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892