



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201830023**
Release Date: 7/27/2018

Date:
May 1, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.33-00, 501.36-00, 501.36-01

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:

January 4, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

LEGEND:

C = service

D = program

F = city

G = breed

H = breed

J = website

n dollars = amount

q dollars = amount

t dollars = amount

UIL:

501.33-00

501.36-00

501.36-01

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

Per your Articles of Incorporation, your purpose is to conduct an annual all-breed futurity to recognize positive conformational traits through the breeding of quality halter horses while promoting the offspring of participating stallions enrolled in the program. The futurity program shall be specifically designed for non-professionals and limited open exhibitors while also recognizing owners that raise and show their own. You also intend on building, owning and operating facilities for said purposes.

You state in your activities description that the program is focused on rewarding non-professionals, youth, special needs and handicapped exhibitors with additional recognition to mare owners who raise and show their own horses. People who want to participate with their horse or promote their stallion pay entry fees which are then awarded back at the futurity through trophies, ribbons, awards and cash prizes. Your committee oversees the event.

Your website defines a futurity as a horse race usually for two-year-olds in which competitors are nominated at birth or before, or a race or competition for which entries are made in advance of the event. Your site lists confirmation standards for judging, links to various program enrollment forms, news, event results, show and class information. Additionally, you list all the sponsors and sponsorship tiers, all prize payouts from the prior year and who received them, and the listing of nominated stallions, including personalized ads and contact information for each horse and their owner/breeder. One breeder/trainer had links to his full web site listed, including stallions available, sales and breeding information.

Your program is described as a multi-breed halter futurity program for specific registered horses with special incentives for Color, Owner Breeder Exhibitor, and youth participants. You offer a venue to promote the breeding of good conformation, soundness, and athletic ability in the F, G and H breeds while offering levels of competition. In addition to the show competition you also offer participants the added benefits of an owner pay back program (D) and an auction (C).

The enrollment form for participation in your competition states the enrollment fee of t dollars. Ten percent of money from fully nominated stallions is allocated to the D. You retain ten percent of each stallion's fee for expenses. Each owner receives one discounted entry fee of q dollars. For F and G stallions, twenty percent of the nomination gets allocated to a separate purse with only those horses eligible to compete within this division. Each stallion owner determines the amount of their own stallion's stud fee, which is also indicated on this form.

The stud fee is presented as information relative to C – the auction program you offer to owners participating in your futurity. C is conducted online. Buyers view and bid for an available stallion service. Buyers can also purchase through a "Buy It Now" button. You receive no direct proceeds from any sales, however, you do receive services donated from owners to participate in the futurity. When an owner donates a breeding service, or two if the service is less than the t dollars minimum required, you provide "extensive nationwide advertising that the stallion is participating" in your program and when the breeding service is sold all of the stallion's offspring are eligible to participate in your program. The listings and websites of owners promoting stallions are the sole ownership of stallion owners. You link their personal sites to your own to assist them in participating in your program.

In terms of your involvement in C, you only sign up and promote these stallions. Another entity, J, a professional online auction company, conducts the actual auction. Any transactions at this point are done between the owner and J and you are "no longer involved". However, in addition to expenses incurred for advertising, promotion, reaching out to stallion owners and your website maintenance, J charges you n dollars for each stallion listed.

You also offer D, when a percentage of your nomination fee is set aside and allocated for payback to owners whose offspring excel in the futurity. The purpose is to help offset some of the expense that owners have in promoting their stallions to participate. All of the funds collected for D will be paid back to owners with the exception of the cost paid to J for auction services, with minimum guaranteed payback to the top four placings in each non-pro class. If someone other than the owner pays the nomination fee that person would receive any proceeds from D.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided 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, in order for an organization to be exempt under Section 501(c)(3) of the Code, it 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 or operational test, it is not exempt.

Treasury Regulation 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 such exempt purposes specified in 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 the benefit of private interests.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides, in part, that the term “charitable” as used in Section 501(c)(3) of the Code includes the relief of the poor and distressed or of the underprivileged. The term “charitable” also includes the advancement of education.

Treas. Reg. Section 1.501(c)(3)-1(e) provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of Section 501(c)(3) of the Code if the trade or business furthers an exempt purpose, and provided the organization's primary purpose does not consist of carrying on an unrelated trade or business.

Rev. Rul. 65-2, 1965-1 C.B. 227 describes an organization that was formed to teach children a specific sport. In so doing, it provides free instruction, equipment, and the facilities necessary to carry out its program. All children of the community may participate provided they are physically able and have reached the age commensurate with participation in such sport.

Rev. Rul. 80-215 held that an organization formed to develop, promote, and regulate a sport for individuals under 18 years of age by organizing local and statewide competitions, promulgating rules, organizing officials, presenting seminars, distributing a newsletter and otherwise encouraging growth of the sport qualified for exemption under IRC 501(c)(3).

Application of law

You are not described under Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the operational test.

You are not as described in section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial part of your activities are devoted to non-exempt purposes. Your primary activity is conducting a multi-breed halter futurity program of various horse breeds. This activity does not further exclusive purposes under Section

501(c)(3) of the Code.

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you serve private interests, namely, the business interests of the breeders of the horses, more than incidentally. In addition to promoting the horses they have available in listing their website you are promoting their breeding business. You are providing a benefit in allowing them to coordinate the auction and sale of their horses. Further, you allow them to share in your funds through a payback program. The provision of these services is not providing any benefit to a charitable class described in Treas. Reg. Section 1.501(c)(3)-1(d)(2) but is instead benefitting private individuals.

Under Treas. Reg. Section 1.501(c)(3)-1(e) operating a trade or business as a substantial part of an organization's activities does not meet the requirements of section 501(c)(3) if the trade or business does not further an exempt purpose. You advertise stud services for a fee and coordinate an auction for breeder sales. Providing these services is a substantial part of your activities and does not further an exempt purpose.

You differ from the organizations in Revenue Rulings 80-215 and 65-2, where sports were offered to children under the age of 18. Although youth participate in your program, it is not dedicated exclusively for the development of children. You will focus your activities more than insubstantially on the promotion, sales and/or auctions of horses for breeders.

Conclusion

You do not qualify for exemption under Section 501(c)(3) of the Code because you serve private rather than public interests, more than an insubstantial part of your activities are in furtherance of non-exempt purposes, and you fail the operational test.

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