



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

Date:
05/22/2025
Employer ID number:

Person to contact:

Release Number: 202533010
Release Date: 8/15/2025
UIL Code: 501.03-00, 501.33-00, 501.35-00,
501.36-00, 501.36-01

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
Letter 4038



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

Date:
04/02/2025
Employer ID number:

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

Legend:

B = Date

C = State

D = County

x dollars = dollar amount

UIL:

501.03-00, 501.33-00

501.35-00, 501.36-00

501.36-01

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 formed as a corporation on B, in the state of C. 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 charitable purposes. 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

On your Form 1023-EZ, you stated you were formed to promote health and wellness in your area for residents and tourists through providing accessible local food options and education.

Detailed information was subsequently requested. You stated that you are a farmers market located in D. You are dedicated to promoting health and wellness in all domains through providing a sustainable platform to support local producers, shop owners, and creators in the way they see best fit and engage the community in these educational efforts. You've been engaged in the sale of locally grown produce and handcrafted items, while providing educational materials to the public.

You stated that you currently accept Supplemental Nutrition Assistance Program (SNAP) benefits. Also, you have a vendor eligible to participate in the Senior Farmers Market Nutrition Program which gives funds to recipients of WIC and low income seniors (at 185% of the poverty line) to spend at farmers markets. Each of these sale avenues benefits the customer, through providing nutritious, affordable food to those in need. They also benefit the individual or business making sales, as this brings in another avenue for revenue creating a reliable source of income. You intentionally include information about health promotion for individuals and the environment at your events, through community partner presence, family-friendly activities, and vendors sharing information regarding their practices.

You invite vendors within a -mile radius to participate. You asserted that no fee was charged to the vendors during your 1st season of operations. However, in your season of operations, a fee of x dollars a day was instituted. There are volume discounts to the vendors if they purchase half or full season fee packages. If a vendor is unable to afford to pay, you stated that there are provisions to accommodate such vendors. There's a fee refund policy whereby if the vendor fails to produce at least x dollars a day in sales, then the vendor will be refunded. This same fee structure carried over to your 3rd season.

Your fees are determined based on recognizing the amount of funds that would be needed to sustain a market manager position, create marketing materials, and obtain supplies such as snacks and waters for the vendors. All fees collected go toward helping run the market in a way aligned with your mission. There are no fees for your community partners providing services.

You have community partners that participate in your activities. Your community partners:

- Teach how to plant, prepare, store and preserve foods.
- Host read-aloud events and educational activities (crafts and movement games) for families.
- Promote safety and mental health.
- Provide free giveaways from community gardens.
- Occasionally provide free general health screenings to the public and teach about the impact of food on health.

You are open weekly on Saturdays in the morning at alternating locations in the Spring, Summer, and Fall. One location is used on the 1st and 3rd Saturday of the month, and the other location is used on the 2nd and 4th Saturday of the month. You recently changed locations and to better meet the needs of your vendors and customers. The new locations increase visibility and the ease of unloading/loading merchandise. Additionally, the new locations have a cooler temperature than your previous locations. Occasionally, you will attend other nearby community events to educate the public about the benefits of being involved in local food systems.

Law

IRC Section 501(c)(3) provides for the recognition of exemption of organization that are organized and operated exclusively for religious, charitable, educational, prevention to cruelty to children or animals, or to foster national or international amateur sports competition, or other purposes as specified in the statute. No part of net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that in order to qualify for exemption as described in IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt 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) states 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)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes described in IRC Section 501(c)(3) 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 the term "charitable" is used in IRC Section 501(c)(3) in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides that the term "educational," as used in IRC Section 501(c)(3), relates to the instruction or training of the individual for the purpose of improving or developing his/her capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling. 61-170, 1961-2 C.B. 112, held that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Rev. Rul. 67-216, 1967-2 C.B. 180, established that a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products may be exempt from tax under section 501(c)(3) of the Code.

Rev. Rul. 68-167, 1968-1 C.B. 255, held that a nonprofit organization created to market the cooking and needlework of needy women may be exempt from tax under section 501(c)(3) of the Code. 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 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. 73-127, 1973-1 C.B. 221, held that an organization that operated a cut-price retail grocery outlet and allocated a small portion of its earnings to provide on-the-job training for the hard-core unemployed did not qualify for tax-exemption under IRC Section 501(c)(3). The operation of the store and the operation of the training program were two distinct purposes. Since the former purpose is not a recognized as a charitable purpose, the organization was not operated exclusively for charitable purposes.

Rev. Rul. 73-128, 1973-1 C.B. 222, held that an organization did not fail to qualify for tax-exemption under IRC Section 501(c)(3) merely because its education and vocational training of unemployed and under-employed individuals was carried out through the manufacturing and selling of toy products. The manufacturing and merchandising operation was the means of accomplishing the organization's declared charitable objectives.

Rev. Rul. 77-111, 1977-1 C.B. 144, held that an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations didn't qualify for exemption under IRC Section 501(c)(3). Similarly, an organization whose purpose was to revive retail sales in an area of economic decline by constructing a shopping center didn't qualify for exemption. Their overall thrust was to promote business rather than to accomplish exclusively Section 501(c)(3) objectives. The organization did not limit its aid to businesses that were owned by members of a minority group or to businesses that would only locate within the area because of the existence of the center.

Rev. Rul. 2006-27, 2006-1 C.B. 915, Situation 2, held that an organization did not qualify under IRC Section 501(c)(3). To finance its down payment assistance activities, it relied on sellers and other real estate related businesses that stood to benefit from the transactions it facilitated. The organization's reliance on these payments for most of its funding indicated that the benefit to the home seller is a critical aspect of its operations. The business purpose of the organization was its primary goal and overshadowed any education or charitable purposes.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of Section 501(c)(3).

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under Section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical Section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were Section 501(c)(3) exempt organizations.

In American Campaign Academy v. C.I.R., 92 T.C. 1053 (1989), the court held that an organization that operated a school to train individuals for careers as political campaign professionals, but that could not establish that it operated on a nonpartisan basis, did not exclusively serve purposes described in IRC Section 501(c)(3) because it also served private interests more than incidentally. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve a private interest. The court concluded that the organization would bear the burden of proving that its activities benefited members of a charitable class in a non-select manner.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision, T.C. Memo. 1990-484, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify under Section 501(c)(3) of the Code. The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including that the operations were presumptively commercial. The organization competed with restaurants and food stores, used profitmaking pricing formulas consistent with the food industry and incurred significant advertising costs.

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). Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in Section 501(c)(3).

You are like the organizations described in Rev. Rul. 61-170 and Rev. Rul. 71-395 that were denied exemption under IRC Section 501(c)(3) because they substantially served private interests rather than public interests. See Treas Reg. Section 1.501(c)(3)-1(d)(1)(ii). You substantially serve the private interest of your vendors. For example, you recently changed locations to better meet the needs of your vendors and customers. The new locations increased visibility and eased the unloading/loading of merchandise. Additionally, the new locations have a cooler temperature than your previous locations. Changing your locations was not motivated by your charitable and educational purposes. It was motivated by improving the sales of your vendors.

Like the organization described in Rev. Rul. 2006-27, Situation 2, you primarily finance your activities by charging your vendors a fee to sell their goods. Your vendors benefit from the transactions you facilitate. Your

reliance on these fees for most of your funding indicate that the benefit to your vendors is a critical aspect of your operations.

Like the organization described in American Campaign Academy, you do not exclusively serve purposes described in IRC Section 501(c)(3) because you serve private interests more than incidentally. Although your vendors are not “insiders,” you have not shown your activities benefit members of a charitable class in a non-select manner. There are no special requirements you use to select vendors. Anyone within a -mile radius who has goods to sell can be a vendor. You do have programs to help the vendors if they can’t afford the daily fee and one vendor is eligible to participate in the Senior Farmers Market Nutrition Program, but this does not mean most of your vendors are considered a charitable class.

You are like the organizations described in Rev. Rul. 77-111, B.S.W. Group, Inc., and Living Faith, Inc. that were denied exemption under IRC Section 501(c)(3) because they had the substantial purposes of either acting in a commercial manner or promoting businesses. You determine your fees based on recognizing the amount of funds that would be needed to sustain a market manager position, create marketing materials, and obtain supplies such as snacks and waters for your vendors. All fees collected go toward helping run the market in a way aligned with your mission. You do accommodate vendors who cannot pay the x dollars daily fee and you do have a refund policy for vendors who do not sell at least x dollars of merchandise on a given day, however, you also have volume discounts for vendors if they purchase half or full season fee packages. You are competing with other for-profit businesses that sell similar merchandise.

You are not like the organization described in Rev. Rul. 67-216 that was granted exemption under IRC Section 501(c)(3) because it was determined this organization’s exclusive purpose was educational. See Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i). You do have some educational activities, but this is not your exclusive purpose. Generally, you only provide educational activities during the hours that you operate. You have substantial non-exempt purposes of serving the private interests of your vendors, promoting businesses, and acting in a commercial manner.

You are not like the organization described in Rev. Rul. 68-167 that was granted exemption under IRC Section 501(c)(3) because it was determined this organization’s exclusive purpose was charitable. See Treas. Reg. Section 1.501(c)(3)-1(d)(2). Even though this organization operated a market for vendors to sell merchandise like you, you have not demonstrated your vendors are a charitable class. You invite vendors within a -mile radius to participate. You do have programs to help the vendors if they can’t afford the daily fee or do not sell enough merchandise to cover the daily fee, but this does not mean most of your vendors are considered a charitable class. Accepting SNAP and having a vendor eligible to participate in the Senior Farmers Market Nutrition Program does not make your purpose exclusively charitable.

You are like the organization described in Rev. Rul. 73-127 because the operation of your Farmers Market and the operation of your charitable and educational activities are two distinct purposes. The operation of a farmers market is not recognized as a tax-exempt purpose under IRC Section 501(c)(3), and this is your substantial purpose.

You are not like the organization described in Rev. Rul. 73-128 because the operation of your Farmers Market is not a means to accomplish your charitable and educational purposes which are incidental to your substantial purpose. Your substantial business purpose of operating your Farmers Market is your primary goal and overshadows any educational or charitable purposes. See Rev. Rul. 2006-27, Situation 2.

You are like the organization described in Better Business Bureau of Washington D.C., Inc. Although you do have some charitable and educational purposes, you have substantial non tax-exempt purposes of serving the private interests of your vendors, promoting businesses, and acting in a commercial manner. The presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Conclusion

Your substantial purposes of serving the private interests of your vendors, promoting businesses, and acting in a commercial manner overshadow any educational or charitable purposes. Therefore, you do not qualify for IRC Section 501(c)(3) because you fail the operational test.

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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements