



IRS, Private Letter Ruling, Section 501 - Exemption from Tax on Corporations,
Certain Trusts, etc, PLR 202416014

Printed By: DJONES520 on Fri, 19 Apr 2024 20:50:26 -0400

Department of the Treasury
Internal Revenue Service
Private Letter Ruling

PLR 202416014 - Section 501 - Exemption from Tax on Corporations, Certain Trusts, etc

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

Box 2508
Cincinnati, OH 45201

Release Number: 202416014
Release Date: 4/19/2024
UIL Code: 501.00-00, 501.33-00, 501.35-00

Date:

01/22/2024

Employer ID number:

Form you must file:

1120

Tax years:

All

Person to contact:

Dear [redacted data]:

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

Redacted Letter 4038

Department of the Treasury

Internal Revenue Service

PO Box 2508

Cincinnati, OH 45201

Date: 11/8/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend: UIL: B = State 501.03-00 C = Date 501.33-00 501.35-00

Dear [redacted data]:

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 incorporated in the state of B on C. According to your Articles of Incorporation, you were formed to provide aspiring first-time home buyers with a free financial and mortgage literacy program and to provide counseling to meet mortgage lending guidelines. Your goal is to help individuals and families improve their financial position and credit history in order to purchase homes. You will offer budgeting, financial literacy and credit review programs to families at no cost. You offer your services to any potential client who seeks your types of services.

The public is aware of your services through your website. Your services are explained to potential clients at an initial interview and if the client agrees, you will meet subsequently with the client. You begin with a budget and financial literacy review and to ensure your client understands the various terms and processes involved in home ownership. You request the client provide copies of two years of tax returns, two most recent pay stubs, two months of bank statements, 401 k quarterly statement, and proof of residency to determine the client's credit worthiness. You will provide a detailed budget analysis which involves current and potential debt to income, monthly net gain/loss. You also provide annual projections and highlight their overall net worth. You estimate a minimum of two-three conversations will need to take place prior to suggesting an approach. You explained that these meetings serve as your educational component. You use the Fair Credit Reporting Act to ensure the information stated on the client's major credit bureau reports is accurate and complete. While you typically dispute erroneous accounts and balances in writing, it is possible the client will need to communicate with creditors to confirm the validity of certain information. After their credit worthiness is ascertained, you determine whether a client should lease or purchase a property.

Once an approach is agreed upon by the client to lease or purchase a home, they would interact with your co-director, who is a licensed realtor in B and a nearby state. The client would sign a "Working with Real Estate Agents Disclosure" if they choose to do so. At that point the co-director would represent the clients regarding lease or purchase contracts and negotiations. If a client needs assistance entering a lease agreement for a property not owned or controlled by you, it is reasonable to presume there would be interactions with the property owner or assignees. Both of your officers would be present at the signing/closing to assist in the transaction.

You and your co-director will share the responsibility of soliciting grants, donations, and prospecting homes to acquire that fall in the budget range for low-income families. If a property needs rehabilitation, you will hire contractors to make the repairs. If you are unable to obtain sufficient grants and donations to carry-out all activities, small business loans will be considered as alternative funding sources.

Your governing body consists of two related individuals who are both compensated. Your director has a B.S. degree in accounting, worked as a mortgage loan originator and is currently a notary public. Your co-director is a licensed realtor with several years practice as a licensed realtor, has experience as a mortgage processor, is a licensed housing counselor and property manager. Your co-director will receive the commissions that are usual and customary compensation for real estate sales and leases and is listed as the preferred realtor on your website.

You have not yet obtained any fixed assets and will rely on donations of property, government grants, or loans.

Your highest expenses consist of directors' compensation, real estate acquisition, rehab expenses, and occupancy. Your financial information does not show that you dedicate any revenues to activities involving educational or counseling programs or allocate any expenses to the training of employees to provide educational or counseling programs.

Your website states that:

- You are there to relieve first time home buyers of the stress by providing financial literacy along with several years of real estate experience.
- You want individuals/families to be as prepared as possible for their home buying adventure.
- You will provide individuals/families with the common terminology and guidelines to make sure they buy their new home with confidence and comfort.
- Through understanding budget, credit, employment, and mortgage criteria will give them a head start on the qualification process with one of your lending partners.
- Once an individual/family has been approved for a mortgage, your preferred realtor will work for to find the home that meets their family's needs for the best price.

Your website further states you will provide other services consisting of

- General Notary & Witness
- Loan Closing Agent
- Apostille Processing
- Courier

In the future, when you are in the financial position to do so, you will solicit existing real estate, and funding to purchase and rehabilitate real estate, to provide affordable housing to families whose household income is less than the county median. You will maintain ownership of said properties until individuals are in a position to purchase. They would be responsible for the cost to acquire the homes plus the cost of rehabilitation, closing costs, appraisals, etc. You explained that you would not seek to profit from the sale of homes.

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.

IRC Section **501(q)** provides that organizations which provide "credit counseling services" as a substantial purpose shall not be exempt from taxation under Section **501(a)** unless they are described in Sections **501(c)(3)** or **501(c)(4)** and they are organized and operated in accordance with the following requirements:

(1)(A) The organization-

- (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
- (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
- (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
- (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(1)(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(1)(C) The organization establishes and implements a fee policy which—

- (i) requires any fees charged to a consumer for services are reasonable,
- (ii) allows for the waiver of fees if the consumer is unable to pay, and
- (iii) except to the extent allowed by state law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(1)(D) At all times the organization has a board of directors or other governing body-

- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons

having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly, or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly, or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

Section **501(q)(4)(A)** defines, for purposes of Section **501(q)**, the term "credit counseling services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described above.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, 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 one or more exempt purposes unless it serves a public rather than a private purpose. 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) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, advancement of education and science, 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(3) provides that the term "educational" refers to:

- a. The instruction or training of the individual for the purpose of improving or developing his capabilities; or

b. The instruction of the public on subjects useful to the individual and beneficial to the community.

In Revenue Ruling [69-441](#) , 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under Section [501\(c\)\(3\)](#) . Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

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, the requirements under Section [501\(c\)\(3\)](#) because you fail the operational test.

In *Consumer Credit Counseling Service of Alabama, Inc. v. United States*, [78-2 U.S.T.C. 9660](#) (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

Application of Law

Operational Test

IRC Section [501\(a\)](#) provides for the exemption from federal income tax for organizations described in Section [501\(c\)\(3\)](#) . 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 requirements under Section [501\(c\)\(3\)](#) because you fail the operational test as explained below.

To satisfy the operational test, an organization must be operated exclusively for one or more 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\(c\)\(1\)](#) . You do not meet [Treas. Reg. Section 1.501\(c\)\(3\)-1\(d\)\(1\)\(ii\)](#) which provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private purpose. You offer your credit counseling services to any potential client who wishes to qualify to purchase a home. This shows you serve the private interests of the clients. Therefore, you are not operated exclusively for an exempt purpose as provided in Section [501\(c\)\(3\)](#) and you fail the operational test as provided in [Treas. Reg. Section 1.501\(c\)\(3\)-1\(c\)\(1\)](#) .

You offer your credit counseling services to any potential client who wishes to qualify to purchase a home. This shows you serve the private interests of the clients. Therefore, you are not operated exclusively for an exempt purpose as provided in Section [501\(c\)\(3\)](#) and you fail the operational test as provided in [Treas. Reg. Section](#)

1.501(c)(3)-1(c)(1) .

You are operated for a substantial nonexempt purpose in contravention of the requirements of **Treas. Reg. Section 1.501(c)(3)-1(c)(1)** . In *Better Business Bureau of Washington, D.C., Inc.*, the United States Supreme Court provided that "the presence of a single [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] purposes".

Your Activities Are Not Exclusively Charitable

You have not demonstrated that your activities further a charitable purpose within the meaning of **Treas. Reg. Section 1.501(c)(3)-1(d)(2)** . Your activities do not further a charitable purpose because you do not limit your services to a specific charitable class. You provide credit counseling services to anyone who requests your assistance in order to assist them in qualifying to buy a home. Accordingly, you are unlike the organizations described in *Consumer Credit Counseling Service of Alabama* and **Rev. Rul. 69-441** , which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

Your Activities Are Not Educational

You do not operate a substantive, ongoing counseling, or public educational program. You state you begin with a budget and financial literacy review to ensure your client understands the various terms and processes involved in home ownership. You estimate a minimum of [Redacted data] will need to take place prior to suggesting an approach. These meetings you explained serve as your educational component.

You are not like the organizations in *Consumer Credit Counseling Service of Alabama* and **Rev. Rul. 69-441** because you have not shown that you provide educational programs that are structured to improve the borrower's understanding of their financial problems or their skills in solving them. Your goal is to help individuals and families improve their financial position and credit history in order to purchase homes.

You have not shown that your activities are designed to provide instruction or training "useful to the individual and beneficial to the community" within the meaning of **Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i)** . Thus, you are not operated exclusively for educational purposes within the meaning of **IRC Section 501(c)(3)** .

You Do Not Meet IRC Section 501(g)

You do not meet the requirements of **IRC Section 501 (q)** because of the following:

- You do not meet **IRC Section 501(q)(1)(A)(i)** because you do not provide credit counseling services tailored to the specific needs and circumstances of consumers. You do not conduct initial or follow-up meetings with potential borrowers to gather information to understand their particular financial situation

or needs, or to counsel individuals on how to improve their financial situations. Your goal is to gather financial information only to the extent to assist any individual to qualify for a mortgage.

- You do not meet IRC Section **501(q)(1)(A)(iii)** . You only provide credit counseling services for the purpose of improving a client's credit record, credit history, or credit rating so the client can qualify to buy a home.
- You do not meet IRC Section **501(q)(1)(D)(ii)** because both your board members are compensated. Your governing body does not comply with this Section because it requires that at all times the organization must have a board of directors or other governing body not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly, or indirectly, from the organization's activities, because both your board members will benefit financially from your operations.

Therefore, had you established that you otherwise met the requirements of IRC Section **501(c)(3)** , your failure to satisfy the requirements of Section **501(q)** would prevent you from being exempt from taxation under Section **501(a)** .

Conclusion

You have not shown that you meet the requirements for recognition of tax exemption under IRC Section **501(c)(3)** . You are not operated exclusively for a tax-exempt purpose as specified under Section **501(c)(3)** . Your primary purpose is to help individuals and families improve their financial position and credit history in order to purchase homes. You are also serving private interests. Furthermore, you do not meet the requirements of Section **501(q)** because you do not operate a substantive, ongoing program of public education or counseling, and your entire board is compensated. Therefore, you fail to qualify for exemption under Section **501(c)(3)** .

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:

Street address for delivery service:

Internal Revenue Service

Internal Revenue Service

EO Determinations Quality Assurance

EO Determinations Quality Assurance

Mail Stop 6403

550 Main Street, Mail Stop 6403

PO Box 2508

Cincinnati, OH 45202

U.S. mail:

Street address for delivery service:

Cincinnati, OH 45201

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