



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

Release Number: **201615014**
Release Date: 4/8/2016
UIL Code: 501.04-00
501.04-03

Date: January 8, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(4) 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.

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.

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*

cc:



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

Date:
November 9, 2015
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

UIL:
501.04-00, 501.04-03

Legend:

Date1 =
State =
City =
Date2 =
County =
Amount1 =
Date3 =
Year1 =
Year2 =
Year3 =
Date4 =
Political Party1 =
Political Party2 =
Politicians =

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 do not qualify for exemption under Section 501(c)(4) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Facts

You incorporated on Date1 in State. Your Articles of Incorporation state that your purpose is "[t]o facilitate an environment in which to _____ in City and surrounding areas; to increase awareness of issues and initiatives impacting _____ ; to encourage local residents to become active in supporting issues or initiatives which serve to _____ in City and surrounding areas." You submitted a Form 1024 Application for Recognition of Exemption under Section 501(a) on the postmark date of Date2.

In Part II, Line 1 of Form 1024, you describe your activities and operations. You state that you:

In Part II, Line 15 of Form 1024, you checked yes that you have in the past or intend to in the future spend money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office or to an office in a political organization. In response, you state that you "mailed postcards and purchased radio time to educate the public on the stances of candidates and officeholders that

Approximately Amount1 in independent expenditures was spent on those activities." You provided representative copies of the mailed communications, discussed in detail below, and no samples of the radio ads.

As stated, your primary expense in Year1 was funding radio and print advertisements that were distributed in advance of the City's public election on Date3. There is no information as to whether the communications continued after the election on Date3. You provided representative samples of your print advertisements that were distributed in City. The content of the print advertisements includes the following, which are attached as exhibits:

On Date4 we sent you a letter requesting more information. We asked you whether, in addition to the political activity you engaged in during Year1, you also engaged in political activity in Year2 and Year3. If yes, we asked you to describe these activities in detail and estimate total expenditures and time allocated to this activity; and if no, we asked you to describe your activities for Year2, Year3, and beyond in greater detail. In response, you stated that in Year2 and Year3, you did not spend any funds or time to influence an election. In addition, you stated that "[i]n years beyond, we do not plan to engage in influencing elections or participate in any direct political activity." You state that in Year2 and Year3, you spent significant volunteer hours on "educational campaigns," including time spent meeting with other community groups, monitoring publicly financed construction jobs, and advocating for legislation that supports increased jobs for the unemployed and increased job training. You state that "[t]he educational campaigns are not political" and that "We have not advocated for the election or defeat of any candidate since Year1 and do not intend to do so in the future."

You state that you spent no money on the educational campaigns to date and that this activity is performed wholly by volunteers. You state that you do not intend to spend money on salaries and the work is to be performed for free by volunteers. You state that you will initiate fundraising as necessary to finance your community activities. To this end, you state it is your goal "to continue to create community awareness through radio and print advertising, which is our primary expense."

Law

I.R.C. § 501(c)(4) provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare. I.R.C. § 501(c)(4) does not provide a definition of political campaign activities; instead, the definition and interpretation of terms used has occurred principally under § 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) provides that activities that constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include publishing or distributing written or printed statements or making oral statements on behalf of or in opposition to such candidate.

Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within § 501(c)(4) is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii) provides that the promotion of social welfare does not include direct or indirect participation in political campaigns on behalf of or in opposition to any candidate for public office.

Rev. Rul. 67-368, 1967-2 C.B. 194 holds that an organization whose primary activity is rating candidates for public office does not qualify for exemption under § 501 (c) (4) because such activity does not constitute the promotion of social welfare.

Rev. Rul. 68-45, 1968-1 C.B. 259 and Rev. Rul. 74-361, 1974-2 C.B. 159 provide that whether an organization is primarily engaged in promoting social welfare is a facts and circumstances determination. Relevant factors include the manner in which the organization's activities are conducted; resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the purposes furthered by various activities; and the amount of funds received from and devoted to particular activities.

Rev. Rul. 81-95, 1981-1 C.B. 332 provides that because an organization's primary activities promoted social welfare, its lawful participation or intervention in political campaigns on behalf of or in opposition to candidates for public office would not adversely affect its exempt status under § 501(c)(4).

Rev. Rul. 2007-41, 2007-41 C.B. 1421, analyzes 21 situations to determine whether the organization described in each has directly or indirectly participated in a political campaign on behalf of or in opposition to a candidate for public office. All facts and circumstances are considered when making this determination. When determining whether a communication results in political campaign intervention, key factors include:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election;

- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election;
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Rev. Proc. 2015-9, 2015-2 I.R.B. 249, § 4.01, 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. 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.

Application of law

Based on our analysis of the information you submitted with your application, we have determined that you are not operated exclusively for the promotion of social welfare within the meaning of § 501(c)(4) because you are not primarily engaged in activities that promote social welfare. Therefore, you do not qualify for exemption from federal income tax as an organization described in § 501(c)(4).

Section 1.501(c)(4)-1(a)(2) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. You have not established that in Year1 you were primarily engaged in promoting the common good and general welfare of the people of the community.

Applying the facts and circumstances test described in Rev. Rul. 68-45, 1968-1 C.B. 259 and Rev. Rul. 74-361, 1974-2 C.B. 159, we conclude that in Year1 you primarily engaged in activities intended to directly or indirectly intervene in the political process and to directly or indirectly influence the election of candidates who reflect your views. Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii). While an organization exempt under § 501(c)(4) may engage in political campaign activities, those activities may not be the organization's primary activity. Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).

In Year1, you spent 100% of your expenditures on the production and distribution of mailers and radio advertisements that encouraged the defeat or election of candidates for public office. Applying the factors described in Rev. Rul. 2007-41, 2007-41 C.B. 1421, the facts and circumstances of the communications you distributed meet the definition of political campaign intervention within the meaning of the Code and Regulations. The representative samples of communications you provided (Exhibits 1 through 6) specifically identify one or more candidates for the public office of City, State city council. The statements express approval or disapproval of one or more candidates actions, specifically against PoliticalParty1 and in favor of PoliticalParty2. The statements were delivered in close timing of the publicly held election in

City, State on Date3 for the public office of city council, as you formed in Date1 and the election was held a few months later. The timing of the communications coincided with an electoral campaign, as the statements reference voting and/or the election on Date3. The mailers indicate that you raised the issue of as an issue distinguishing candidates for the public office at issue. There is no evidence in the administrative record to show that the communications provided are part of an ongoing series of communications by you on the same issue that are made independent of the timing of any election. Finally, there is no evidence in the administrative record to show that the timing of the communications are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office. Your production and distribution of the mailers and radio advertisements constituted direct political campaign intervention in support or in opposition to candidates for public office. Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii); see also, Rev. Rul. 67-368, 1967-2 C.B. 194.

In Year2 and Year3, you expended 100% of your volunteer time on activities that further social welfare within the definition of § 1.501(c)(4)-1(a)(2)(i), by bringing about civic betterments and social improvements through your "educational campaigns" for job promotion and job training for residents of City, State. However, in contrast, you spent 0% of your funds on this activity and you state that you do not intend to expend money on these activities in the future. To date, you have expended money exclusively on the production of materials and advertisements designed to engage in political campaigns on behalf of or in opposition to candidates for public office in City, State. Further, you state that you intend to make expenditures to produce print and radio communications in the future and that this will constitute your primary expense. Up to this point, the only representative samples of your radio and print advertisements that are in the administrative record meet the definition of political campaign intervention and do not further social welfare purposes.

Unlike the organization described in Rev. Rul. 81-95, 1981-1 C.B. 332, you have not established that you are primarily engaged in activities designed to promote social welfare. You have not demonstrated you are operated exclusively for the promotion of social welfare under § 501(c)(4) as required by Rev. Proc. 2015-9, 2015-2 I.R.B. 249, § 4.01.

Conclusion

Based on our analysis of the information you provided in connection with your application, we have determined that you are not operated exclusively for the promotion of social welfare within the meaning of § 501(c)(4) because you have not established that your primary activities promote social welfare. Accordingly, you are not exempt under § 501(c)(4).

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. You also have a right to a conference after you submit your statement. If you want a conference, you must request it when you file your protest statement.

You can also ask the Office of Appeals to review your application for tax-exempt status. Your right to request Appeals review is in addition to your right to a conference, as outlined in Revenue Procedure (Rev. Proc.) 2015-4 and Rev. Proc. 2015-9. You must notify us in writing if you want us to forward your case to the Appeals Office. You can find more information about the process and the role of the Appeals Office in Section 7 of Rev. Proc. 2015-9 and Publication 4227, *Overview of the Appeals Process*.

If the person representing you in this process is not an officer, director, trustee, or other official who is authorized to sign for the organization, he or she must file Form 2848, as explained above, and otherwise meet the requirements in Publication 216, *Conference and Practice Requirements*.

Where to send your protest

Please send your protest statement, any request for consideration by the Office of Appeals, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Street address for delivery service:

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Jeffery I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892

cc: