



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

Number: **201508011**  
Release Date: 2/20/2015

Date: 11/26/2014

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.05-01

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section **501(c)(5)** 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.

Sincerely,

Director, Exempt Organizations

**Letter 4040 (Rev. 7-2014)**  
Catalog Number 47635Z

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*



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

**Date:** 9/25/2014

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

O =  
P =  
Q =

**UIL:**

501.05-01

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)(5) 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)(5) of the Code? No, for the reasons given below.

**Facts**

You were formed in the State of O on Q. Per your Articles of Incorporation, you were formed for the purpose of organizing and promoting a non-profit farmers' market in P, to serve P and the surrounding area.

Per your Bylaws, you were established to provide quality locally grown and produced agricultural products, prepared foods and crafts, all of which are to be bought, sold or bartered for the benefit of both consumers and producer; to stimulate economic growth and a greater variety of farm and home industry activities and products; to educate the public in the value of these products and activities. To promote the agricultural purpose of the market you will provide and maintain at least sixty percent agricultural or food products and forty percent craft products. You indicated 100% of your time and funds is spent on these activities.

**Letter 4034 (Rev. 7-2014)**  
Catalog Number 47628K

Your Bylaws provide for six different types of membership; Vendor, Shared Vendor, Substitute Vendor, Community Table, Fund-raisers, and Patrons. Voting is limited to Vendor Members, in good standing and Patrons who support you, if on record to vote. Vendors are allocated two votes and Patrons may be allocated one vote. Substitute Vendors, Community Table Vendors, and Fundraisers are not allocated a vote.

Per the financial information you submitted, you are supported by vendor fees. Your vendor agreement provides that vendor fees collected for rental of stalls are applied to cover rent and expenses for the market site, site liability insurance, market manager compensation, entertainment, advertising, sign expenses, and operation costs.

#### **Law**

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations.

Section 1.501(c)(5)-1 of the Income Tax Regulations describe organizations covered by Code section 501(c)(5) as labor, agricultural, and horticultural organizations that have no net earnings inuring to the benefit of any member and have as their object the betterment of the conditions of persons engaged in those pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Rev. Rul. 66-105, 1966-1 C.B. 145, held that an organization composed of agricultural producers whose principal activity is marketing livestock as an agent for its members does not qualify for exemption. The sale of members' products with the return to them of the sale proceeds is neither an object nor an activity within the ambit of section 501(c)(5) of the Code. Therefore, the organization does not meet the requirements of section 1.501(c)(5)-1 of the Regulations and is not exempt under section 501(c)(5) of the Code.

Rev. Rul. 74-195, 1974-1 C.B. 135, held that a nonprofit organization formed to manage, graze and sell its members' cattle did not of itself better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operations within the meaning of section 501(c)(5) of the Code. The principal purpose of the organization was to provide a direct business service for its members' economic benefit. The organization was denied exemption under section 501(c)(5) of the Code.

Revenue Ruling 77-153, 1977-1 C.B. 147, held that a nonprofit organization that owns and operates a livestock facility and leases it to local members of a nonexempt national association of farmers for use in implementing the association's collective bargaining program with processors does not qualify for exemption as an agricultural organization. The operation and leasing of a facility for collecting, weighing, sorting, grading, and shipping of livestock, the organization's principal activity, is the providing of a business service to those members who make use of the national association's collective bargaining program. This service merely relieves the members of the organization of work they would either have to perform themselves or have performed for them. Such activity does not serve an exempt purpose of an agricultural organization under section 1.501(c)(5)-1 of the Regulations. Accordingly, the organization does not qualify for exemption from federal income tax under section 501(c)(5) of the Code as an agricultural organization.

#### **Application of law**

You do not meet the qualifications under section 1.501(c)(5)-1 of the Income Tax Regulations as your activities are not aimed at the overall betterment of conditions within the farming industry. You operate to aid your

vendors to sell goods. You are providing, in return for a fee, promotion and a location for members to generate sales of their goods. Where members would otherwise have to promote and sell their goods themselves, you are relieving them of this responsibility by providing the service of operating the farmers' market. The earnings from the sale of products inures to benefit of the member/vendor of your organization. Providing a location and promotion for sale of products merely relieves your members of work they would either have to perform themselves or have performed for them, which precludes exemption under section **501(c)(5)**

You are similar to the organization in Revenue Ruling **66-105** in that you provide the market place for members to sell their wares where they in turn receive revenue from sales and the proceeds, which precludes exemption under section 501(c)(5) of the Code.

You are similar to the organization in Revenue Ruling 74-195. By providing a similar service (an outlet for sales of member products), you are not bettering the conditions of those engaged in agricultural pursuits, improving the grade of their products or developing a higher degree of efficiency in their operations. Your main activity of operating a market or providing a location for sales of members' products, precludes exemption under section 501(c)(5) of the Code.

You are similar to the organization in Revenue Ruling 77-153. The operation and leasing of a facility relieves your members of work they would either have to perform themselves or have performed for them, which precludes exemption under section 501(c)(5).

### **Conclusion**

Based on the facts above, we concluded you are not operating as an organization described in section **501(c)(5)** of the Code. You provide a service that benefits your members. The net earnings of the sale of member products inures to the benefit of your members. Your operations are not aimed at the overall betterment of conditions, improvement of the grade of products, or the development of a higher degree of efficiency within the farming industry, but provide a direct business service for your members' economic benefit. Therefore, we have determined that you do not qualify for exemption under section 501(c)(5) of the Code.

### **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*.

**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](http://www.irs.gov/formspubs). If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations

Enclosure:  
Publication 892