

Internal Revenue Service

Department of the Treasury

District Director

CERTIFIED

Date:

Key District:

Person to Contact:

Telephone Number:

Dear Applicant:

This is a final adverse determination letter indicating that your organization does not meet the requirements of section 501(c)(3) of the Internal Revenue Code for tax years beginning after [redacted]. The adverse determination is being made according to the enclosed technical advice received from the National Office of the Internal Revenue Service sent to the [redacted] Key District office on [redacted].

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Form 1041 for all years as stated in the thirty day letter mailed on [redacted]. You should file the return with your key District Director, EP/EO Division, within thirty days from the date of this letter unless a request for an extension of time is granted. Processing of income tax returns and assessments of any taxes due will not be delayed because you have filed a petition of declaratory judgment under section 7428 of the Code. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgment provisions of section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the District Court of the United States for the District of Columbia must be filed within ninety days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

We will notify the appropriate State officials of this action, as required by section 6104(c) of the Code.

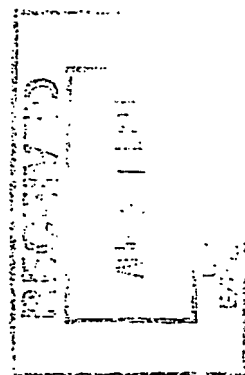
If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

[redacted signature]  
District Director

[redacted]  
3/1/95

[redacted]  
3/1/95

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM



District Director  
[REDACTED]

Taxpayer's Name: [REDACTED]

Taxpayer's Address: [REDACTED]

Taxpayer's Identification Number: [REDACTED]

Years Involved: All

Date of Conference: [REDACTED]

Issue:

Whether a trust, which was created solely to provide supplemental retirement benefits to a named employee of an organization exempt under section 501(c)(3) of the Internal Revenue Code, qualifies for exemption under section 501(c)(3)?

Facts:

[REDACTED]  
[REDACTED] (the "[REDACTED]") was formed under a Trust Agreement on [REDACTED] between [REDACTED], the Trustee, and [REDACTED] (the "[REDACTED]") an organization which had been recognized as exempt from federal income tax under section 501(c)(3) of the Code. [REDACTED] has the right to remove the trustee and appoint a successor trustee.

Subsequent to the date of the [REDACTED]'s exemption application, [REDACTED] and its primary subsidiary, [REDACTED] ("[REDACTED]") merged into another health care system effective [REDACTED]. The new entity resulting from the merger is [REDACTED] ("[REDACTED]"). The term "[REDACTED]" will be used in this memo to refer to both [REDACTED] before the merger and [REDACTED] after the merger.

[REDACTED] is exempt from federal income tax under section 501(c)(3) of the Code. It serves as the parent corporation of a multi-corporate health care system. [REDACTED] owns and operates [REDACTED] hospitals and [REDACTED] nursing homes. [REDACTED] additional hospitals have affiliation arrangements with [REDACTED]. [REDACTED] provides certain financial planning, marketing, human resources and administrative services to the affiliates. [REDACTED] and [REDACTED]

[REDACTED]

its affiliated hospitals have [REDACTED] licensed beds. [REDACTED] also owns and operates [REDACTED] separately incorporated physician clinics, and manages [REDACTED] additional clinics. [REDACTED] and its subsidiaries also own and operate over [REDACTED] diversified health care businesses. [REDACTED]'s projected operating revenue for [REDACTED] is \$ [REDACTED] million. Entities which now make up the [REDACTED] system had assets of approximately \$ [REDACTED] million for the year ending [REDACTED].

[REDACTED] was created for the purpose of giving [REDACTED] a funding vehicle to provide supplementary retirement benefits for [REDACTED] under the [REDACTED]. He also participates in a qualified pension plan described in section 401(a) of the Code. It is a defined benefit plan under section 401(a) and the benefit is calculated based on the employee's final pay, social security payments, and length of service. The tax rules applicable to such trusts prevent the distribution of the full formula amount to persons compensated at [REDACTED]'s level. Accordingly, [REDACTED] agreed to provide a benefit to [REDACTED] under a non-qualified retirement program, the principal purpose of which is to provide a benefit which, when added to the benefit under the 401(a) qualified plan, is equal to the full formula amount.

[REDACTED] participates in another plan called the [REDACTED] (the "[REDACTED]"). [REDACTED] is a defined contribution type of benefits plan which requires [REDACTED] to contribute \$ [REDACTED] each year until [REDACTED] ceases employment with [REDACTED]. [REDACTED] (the "[REDACTED]") was created simultaneously with the [REDACTED] for the purpose of giving [REDACTED] a funding vehicle to provide these additional retirement benefits for [REDACTED]. [REDACTED] has also filed an application for recognition of exemption under section 501(c)(3) of the Code and has yet to receive a ruling on its application.

[REDACTED], age [REDACTED], is currently the Chief Executive Officer of [REDACTED]. Until [REDACTED], [REDACTED] was President of [REDACTED] and Chief Executive Officer of [REDACTED]. As Chief Executive Officer of [REDACTED], [REDACTED] is responsible for overseeing the operation of the [REDACTED] system and its [REDACTED] employees. [REDACTED], an experienced hospital administrator, works more than [REDACTED] hours per week for [REDACTED]. He has held offices in a number of health care professional organizations and is a member of the board of directors of a

[REDACTED]

number of organizations. He is a member of the [REDACTED]-person Board of Directors of [REDACTED].

On [REDACTED], you issued an initial adverse determination in connection with the [REDACTED]'s exemption application. In a letter dated [REDACTED], the [REDACTED] submitted its protest to your adverse ruling. Upon review, the [REDACTED] Appeals Office suggested that you withdraw your adverse ruling and forward this matter for technical advice to us since a companion application, the [REDACTED], was under consideration by this office. Your adverse determination has not been withdrawn.

Applicable Law:

Section 501(c)(3) of the Code provides exemption to organizations organized and operated exclusively for educational, charitable, or other exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations provides the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

In Russell v. Allen, 107 U.S. 163, 167 (1982), the Supreme Court stated that charitable trusts "may, and indeed must, be for the benefit of an indefinite number of persons; for if all the beneficiaries are personally designated, the trust lacks the essential element of indefiniteness, which is one characteristic of a legal charity." See also Thomason v. Commissioner, 2 T.C. 441, (1943); Davis v. Commissioner, 55 T.C. 416, 424 (1979); Scott The Law of Trusts § 375 (4th ed. 1989).

Rev. Rul. 56-138, 1956-1 C.B. 202, held that a trust organized and operated by an employer for the primary purpose of paying pensions to its retired employees was not organized exclusively for charitable purposes to be entitled to exemption under section 501(c)(3) of the Code.

Rev. Rul. 68-422, 1968-2 C.B. 207 held that an organization created pursuant to the will of a stockholder of a company to pay pensions to all retired employees of that company did not qualify for exemption under section 501(c)(3) of the Code. The pension benefits were paid to all retired employees age 65 or over, regardless of their economic resources. Although the company did not have a pension plan, its retired employees generally received social security payments. The company did not contribute funds to the organization nor did the company have any control over its affairs. The organization in this case did not pay pensions on the basis of need. It did not show that the retired employees of the company as a class lack the necessities or comforts of life. Accordingly, the organization did not qualify for exemption from Federal income tax as a charitable organization under section 501(c)(3) of the Code.

Rev. Rul. 72-147, 1972-1 C.B. 147, held that an organization formed to provide low income housing to families (but gave preference to employees of the individual who created and controlled the organization), was not described in section 501(c)(3) of the Code, because the organization served the private interests of the creator rather than the public interest.

Rev. Rul. 73-126, 1973-1 C.B. 220, held that an exempt organization's payment of reasonable pensions to retired employees at the discretion of its Board of Directors does not adversely affect its exempt status. The organization carried out its charitable program through a staff of salaried employees. It had no established retirement plan for these employees but has followed a general practice of paying pensions to retired employees at the discretion of its Board of Directors. The recipients had no enforceable rights to payment. The pensions are not gratuities but represent extra compensation for past services, are reasonable in amount as compensation for such services, and would be deductible for Federal income tax purposes if incurred in the conduct of trade or business. The payment of pensions to retired employees is an accepted method of employee compensation used by many public and private organizations. Since the payments for the pensions in this case were reasonable compensation in the light of the surrounding circumstances, they are a proper expense in the operation of the organization's charitable program and did not constitute the improper use of the

organization's charitable resources, nor do they constitute inurement of the organization's net earnings to private individuals within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 78-41, 1978-1 C.B. 148, held that a trust created by an exempt hospital for the sole purpose of accumulating and holding funds to be used to satisfy malpractice claims against the hospital, and from which the hospital directs the bank-trustee to make payments to claimants, was operated exclusively for charitable purposes and is exempt from tax under section 501(c)(3) of the Code. By serving as a repository for funds paid in by the hospital, and by making payments at the direction of the hospital to persons with malpractice claims against the hospital, the trust was operating as an integral part of the hospital. Of equal importance is the fact that the trust was performing a function that the hospital could do directly.

Rationale:

██████████'s primary objective is to provide ██████████ with a supplemental retirement benefit in accordance with his employment agreement with ██████████. ██████████'s primary activity is to hold and invest funds to provide deferred compensation benefits to a single person who is not a member of a charitable class.

While a charitable organization may pay reasonable retirement benefits to its retired employees (Rev. Rul. 73-126), and a tax-exempt hospital may create a subsidiary exempt trust to satisfy its liability insurance claims (Rev. Rul. 78-41), these rulings do not suggest, nor does any other legal authority indicate, that a trust created by a charitable organization to benefit a single employee may be exempt as a charitable trust under section 501(c)(3) of the Code. By engaging primarily in activities not in furtherance of an exempt purpose, ██████████ is not operated exclusively for one or more exempt purposes pursuant to section 1.501(c)(3)-1(c)(1) of the regulations.

Further, because the ██████████ serves the benefit of a designated private individual, it fails the public interest requirement of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. In this regard, the sole purpose of this trust is to provide one individual with a supplemental retirement benefit. Any benefit to the public is minor or incidental. The trust is organized for the benefit of a single beneficiary and not for a charitable class. The trust's representatives assert that the provision of retirement benefits to the chief executive officer

[REDACTED]

of its controlling hospital furthers the exempt purposes of the hospital. In our view, the relationship between the compensation of one individual and the furtherance of a hospital's exempt purposes is not a compelling one and does not overcome the fact that the primary purpose of the trust is to provide substantial retirement benefits to a private individual.

We conclude that [REDACTED] is operated for the substantial benefit of one individual contrary to the requirements for exemption under section 501(c)(3) of the Code. Compare Rev. Ruls. 56-138 and 68-422. Rev. Rul. 73-126 is not relevant to the disposition of this matter since the applicant trust under review has been established for one individual.

We also find that [REDACTED] is distinguishable from the trust described in Rev. Rul. 78-41. Whereas that trust was formed by a hospital to be operated to defray claims against the hospital or its doctors, and thus benefitting the hospital, the applicant Trust was operated to defray a specific expense for the benefit of a single person.

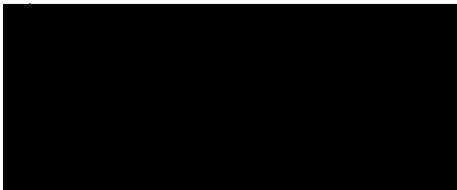
Conclusion:

Based on the foregoing, [REDACTED] which was created to provide supplemental retirement benefits to a single employee of an organization described under section 501(c)(3) of the Code does not qualify for exemption under section 501(c)(3). We concur with your adverse ruling.

Internal Revenue Service

Department of the Treasury

District  
Director



Employer Identification Number:



Person to Contact:



Telephone Number:



Refer Reply to:

Internal Revenue Service



CERTIFIED

Date: NOV 17 1994

Dear Applicant:

We have considered the application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code filed by [REDACTED] (the "Trust").

The information submitted indicates that the Trust was formed under a Trust Agreement on [REDACTED] between [REDACTED], the Trustee, and [REDACTED] ([REDACTED]), an organization which had been recognized as exempt from federal income tax under section 501(c)(3) of the Code.

Subsequent to the date of the Trust's exemption application, [REDACTED] and its primary subsidiary, [REDACTED] ("[REDACTED]") merged into another health care system effective [REDACTED]. The new entity resulting from the merger is [REDACTED] ("[REDACTED]"). The term "[REDACTED]" will be used in this letter to refer to both [REDACTED] before the merger and [REDACTED] after the merger.

[REDACTED] serves as the parent corporation of a multi-corporate health care system. [REDACTED] owns and operates [REDACTED] hospitals and [REDACTED] nursing homes. [REDACTED] additional hospitals have affiliation arrangements with [REDACTED]. [REDACTED] provides certain financial planning, marketing, human resources and administrative services to the affiliates. [REDACTED] and its affiliated hospitals have [REDACTED] licensed beds. [REDACTED] also owns and operates [REDACTED] separately incorporated physician clinics, and manages [REDACTED] additional clinics. [REDACTED] and its subsidiaries also own and operate over [REDACTED] diversified health care businesses. [REDACTED]'s projected operating revenue for [REDACTED] is \$ [REDACTED] million. Entities which now make up [REDACTED] system had assets of approximately \$ [REDACTED] million for the year ending [REDACTED].

[REDACTED] 10/25/94

[REDACTED]

[REDACTED]

11-10-94

11-10-94



The preamble to the Trust Agreement indicates that the Trust was created for the purpose of giving [REDACTED] a funding vehicle to provide supplementary retirement benefits for [REDACTED]. The Trust holds deferred compensation funds that will be paid to [REDACTED].

[REDACTED], age [REDACTED], is currently the Chief Executive Officer of [REDACTED]. Until [REDACTED], [REDACTED] was President of [REDACTED] and Chief Executive Officer of [REDACTED]. As Chief Executive Officer of [REDACTED], [REDACTED] is responsible for overseeing the operation of the [REDACTED] system and its [REDACTED] employees.

The Trust will continue to be used for [REDACTED]'s deferred compensation arrangement with [REDACTED]. As Chief Executive Officer of [REDACTED], [REDACTED] will continue to serve under the same employment agreement that was in force immediately prior to the merger.

Sections 1.1 and 1.4 of the Trust Agreement indicate that the Trust Agreement is a "combined trust and deferred compensation arrangement" which forms a part of the supplemental retirement benefits provided under the Employment Agreement between [REDACTED] and [REDACTED]. The Trust Agreement sometimes refers to the Trust as the "Fund" and the Deferred Compensation Arrangement as "Arrangement."

Section 1.3 of the Trust Agreement provides that the Trust is formed exclusively for charitable purposes and in connection therewith exclusively for the benefit of, and to assist in carrying out the purposes of [REDACTED], an organization described in Section 501(c)(3) of the Code, by providing retirement benefits to an employee of [REDACTED].

Section 2.2 of the Trust Agreement provides that the Trustee shall maintain an "Account" to reflect the interest of [REDACTED] in the Fund. The Account shall be debited or credited, as the case may be, (i) for the entire amount of every contribution received by the Trustee under the terms of the Arrangement on behalf of [REDACTED], (ii) every distribution or expense payment made to or on account of [REDACTED], and (iii) the income, gain or loss allocable to the Account.

Section 2.4 of the Trust Agreement requires [REDACTED] to contribute an amount equal to \$[REDACTED] to the Trust on behalf of [REDACTED] each year after [REDACTED], until such time as

[REDACTED] ceases employment with [REDACTED]. It also provides that the Trust also requires [REDACTED] to contribute an amount equal to the total amount of contributions that would have been made if an obligation to contribute at the rate of \$[REDACTED] had been in effect from [REDACTED] through [REDACTED], plus an amount of interest that would have been credited on such contributions had the rate of interest been equal to [REDACTED] %.

Section 3.1 of the Trust Agreement provides that the Trustee shall disburse monies and other properties from the Fund on direction of [REDACTED] at the time or times to the payee or payees specified by [REDACTED] in directions to the Trustee, subject to the following: when [REDACTED]'s employment with [REDACTED] ceases for any reason, including death, the Account shall be distributed to [REDACTED] or his Beneficiary in [REDACTED] annual payments. In the

event that [REDACTED] dies after he had terminated employment and begins to receive payments from the Trust, all unpaid amounts to which [REDACTED] would have been entitled if he had lived shall be distributed to the beneficiary designated by [REDACTED] at such time or times and in such manner as LifeSpan in its sole discretion shall determine.

Section 7.2 of the Trust Agreement, in part, states that the "Fund shall be for the exclusive purpose of providing benefits to [REDACTED] under the Arrangement and his beneficiaries. Prior to satisfaction of all liabilities with respect to [REDACTED] or his beneficiaries, no part of the corpus or income of the Fund attributable to said Arrangement may be used for, or diverted to, purposes other than for the exclusive benefit of [REDACTED] or his beneficiaries". In addition, this section also provides that any surplus property remaining after the payment of all benefits under the Arrangement shall be transferred to [REDACTED], provided it is exempt under section 501(c)(3) at that time or to another section 501(c)(3) organization in the event [REDACTED] would not be exempt at the time of the transfer.

The Trust, as of [REDACTED], had assets in the amount of \$[REDACTED]. In response to our inquiry as to why it appears that the Trust is over funded, it was explained that the \$[REDACTED] annual rate of contribution provided for in Sec. 2.4 of the Trust Agreement is the amount of deferred compensation that was over and above the cash compensation otherwise payable to [REDACTED] and that in addition to the \$[REDACTED] deferral, some of what was otherwise payable as cash compensation (base salary and incentive compensation) was agreed by [REDACTED] and [REDACTED] to be deferred under the terms governed by the [REDACTED]. (For income tax purposes, it was further stated that [REDACTED] took the additional contributions into income as if paid in the form of cash compensation.)

In addition to the Trust's deferred compensation plan, [REDACTED] also participates in two other deferred compensation arrangements. The first is the [REDACTED], which was stated as "a so-called 401(a) qualified plan" covering approximately [REDACTED] other employees of [REDACTED] and its affiliates. The plan is a defined benefit type of plan. The benefit formula provides a benefit equal to [REDACTED]% of final pay, minus [REDACTED]% of Social Security, pro-rated downward for service less than [REDACTED] years. The tax rules applicable to 401(a) qualified plans prevent the full amount of the formula benefit from being provided to persons compensated at [REDACTED]'s level and, for that reason [REDACTED] provides a benefit under a non-qualified retirement program, the principal purpose of which is to provide a benefit which (when added to the benefit from the 401(a) qualified plan) is equal to the unreduced formula amount set out above.

The second plan is called [REDACTED] (the "[REDACTED]") Like the Trust, the [REDACTED] solely provides retirement benefits to [REDACTED]. The [REDACTED] has also filed an application for recognition of exemption under section 501(c)(3) of the Code and has yet to receive a final determination of its application.

For the year [REDACTED], [REDACTED]'s total compensation was \$[REDACTED]. [REDACTED] was paid by [REDACTED], but part of the compensation was allocated to

██████████'s base salary and incentive compensation was \$██████████ and contributions to employee benefit plans was \$██████████. ██████████, an experienced hospital administrator, works more than ██████████ hours per week for ██████████. He has held offices in a number of health care professional organizations and is a member of the board of directors of a number of organizations. He is a member of the ██████████-person Board of Directors of ██████████.

The average total compensation in ██████████ of the three highest paid ██████████ employees other than ██████████ was \$██████████ with an average salary of \$██████████ and an average benefit contribution of \$██████████. The highest ██████████ employee benefit compensation for anyone other than ██████████ in ██████████ was \$██████████.

Section 501(c)(3) of the Code provides exemption for organizations which are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(c)(1) of the regulations 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations provides the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

In Russell v. Allen, 107 U.S. 163, 167 (1982), the Supreme Court stated that charitable trusts "may, and indeed must, be for the benefit of an indefinite number of persons; for if all the beneficiaries are personally designated, the trust lacks the essential element of indefiniteness, which is one characteristic of a legal charity." See also Thomason v. Commissioner, 2 T.C. 441, (1943); Davis v. Commissioner, 55 T.C. 416, 424 (1979); Scott The Law of Trusts 375 (4th ed. 1989).

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employees age 65 or over, regardless of their economic resources. Although the company did not have a pension plan, its retired employees generally received social security payments. The company did not contribute funds to the organization nor did the company have any control over its affairs. The organization in this case did not pay pensions on the basis of need. It did not show that the retired employees of the company as a class lack the necessities or comforts of life. Accordingly, the organization did not qualify for exemption from Federal income tax as a charitable organization under section 501(c)(3) of the Code.

Rev. Rul. 72-147, 1972-1 C.B. 147, held that an organization formed to provide low income housing to families (but gave preference to employees of the individual who created and controlled the organization), was not described in section 501(c)(3) of the Code, because the organization served the private interests of the creator rather than the public interest.

Rev. Rul. 73-126, 1973-1 C.B. 220, held that an exempt organization's payment of reasonable pensions to retired employees at the discretion of its Board of Directors does not adversely affect its exempt status. The organization carried out its charitable program through a staff of salaried employees. It had no established retirement plan for these employees but has followed a general practice of paying pensions to retired employees at the discretion of its Board of Directors. The recipients had no enforceable rights to payment. The pensions are not gratuities but represent extra compensation for past services, are reasonable in amount as compensation for such services, and would be deductible for Federal income tax purposes if incurred in the conduct of trade or business. The payment of pensions to retired employees is an accepted method of employee compensation used by many public and private organizations. Since the payments for the pensions in this case were reasonable compensation in the light of the surrounding circumstances, they are a proper expense in the operation of the organization's charitable program and did not constitute the improper use of the organization's charitable resources, nor do they constitute inurement of the organization's net earnings to private individuals within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 78-41, 1978-1 C.B. 148, held that a trust created by an exempt hospital for the sole purpose of accumulating and holding funds to be used to satisfy malpractice claims against the hospital, and from which the hospital directs the bank-trustee to make payments to claimants, was operated exclusively for charitable purposes and is exempt from tax under section 501(c)(3) of the Code. By serving as a repository for funds paid in by the hospital, and by making payments at the direction of the hospital to persons with malpractice claims against the hospital, the trust was operating as an integral part of the hospital. Of equal importance is the fact that the trust was performing a function that the hospital could do directly.

The Trust's primary objective is to provide [REDACTED] with a supplemental retirement benefit in accordance with his employment agreement with [REDACTED]. Its primary activity is to hold and invest funds to provide deferred compensation benefits to a single person who is not a member of a charitable class.

While a charitable organization may pay reasonable retirement benefits to its retired employees (Rev. Rul. 73-126), and a tax-exempt hospital may create a subsidiary exempt trust to satisfy its liability insurance claims (Rev. Rul. 78-41), these rulings do not suggest, nor does any other legal authority

indicate, that a trust created by a charitable organization to benefit a single employee may be exempt as a charitable trust under section 501(c)(3). By engaging primarily in activities not in furtherance of an exempt purpose, the Trust is not operated exclusively for one or more exempt purposes pursuant to section 1.501(c)(3)-1(c)(1) of the regulations.

Further, because the Trust serves the benefit of a designated private individual, it fails the public interest requirement of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. In this regard, the sole purpose of this trust is to provide one individual with a supplemental retirement benefit. Any benefit to the public is minor or incidental. The trust is organized for the benefit of a single beneficiary and not for a charitable class. The Trust's representatives assert that the provision of retirement benefits to the chief executive officer of its controlling hospital furthers the exempt purposes of the hospital. In our view, the relationship between the compensation of one individual and the furtherance of a hospital's exempt purposes is not a compelling one and does not overcome the fact that the primary purpose of the Trust is to provide substantial retirement benefits to a private individual.

We conclude that the applicant Trust is operated for the substantial benefit of one individual contrary to the requirements for exemption under section 501(c)(3) of the Code.

Compare Rev. Ruls. 56-138 and 68-422. Rev. Rul. 73-126 is not relevant to the disposition of this matter since the applicant trust under review has been established for one individual.

We also find that the Trust is distinguishable from the trust described in Rev. Rul. 78-41. Whereas that trust was formed by a hospital to be operated to defray claims against the hospital or its doctors, and thus benefitting the hospital, the applicant Trust was operated to defray a specific expense for the benefit of a single person.

Therefore, we conclude that the Trust does not qualify for exemption under section 501(c)(3) of the Code.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 292, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code

provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

Sincerely yours,

[REDACTED]  
District Director

Enclosures:  
Publication 892  
Form 6018