



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release Number: **200926033**

Release Date: 6/26/09

Date: March 30, 2009

UIL: 501.03-02

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 45 days to file a protest. Since we did not receive a protest within the requisite 45 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, 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 Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: December 23, 2008

Contact Person:

Identification Number:

Contact Number:

UIL: 501.03-02

FAX Number:

Employer Identification Number:

LEGEND

You or Foundation =

Corporation =

Date =

Dear

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Facts

You were formed as a not-for-profit corporation and filed Form 1023, *Application for Recognition of Exemption*, within 27 months after the end of the month in which the Foundation was formed. Corporation is a for-profit private security firm. Officers of the Corporation incorporated the Foundation and acted as its initial board and officers. Corporation is the main contributor to the Foundation.

You stated in your Form 1023 that your activities are to: provide financial assistance to families of private security professionals injured or killed while on the job. You may also provide post-secondary educational scholarships to those same beneficiaries in the future. You define "private security professionals" as non-U.S. military individuals who offer security protection on a contract basis for civilians and others working in foreign countries. The Foundation may also award medals to those professional security professionals wounded and killed to acknowledge their "exceptional service in support of the United States and its allies."

You will base financial assistance to families of private security professionals injured or killed while on duty in part on financial need demonstrated in an application that details the nature of their circumstances and their financial resources. Applicants will need to demonstrate they have attempted to obtain assistance from other sources. You will also require other personal and subjective information to be submitted as part of the selection process. Your application requires information that does not relate to financial need such as employer, job duties, honors and prizes, and "additional information...to help us get to know the fallen hero and his family."

You anticipate awarding five to ten grants per year, with each grant capped at \$300,000. A selection committee will award the grants based on criteria stated above. Family members of the Foundation's Board of Directors will not be eligible for these hardship grants; however, the over 5,000 independent contractors of Corporation and their families will be eligible for such grants. In addition, private security professionals not associated with Corporation are also eligible for the grants. You have stated there may be up to 20,000 such professionals working for Corporation and other private companies. Thus, you anticipate that at least 25 percent of the charitable class will be those employed by Corporation and their families. These grants will be advertised through the Foundation's website (currently under construction) and word of mouth.

We requested a more detailed description of your activities by tax year, especially detail on the intended charitable class of beneficiaries and what percentage of recipients will be Corporation employees or contractors versus employees or contractors of other companies, and guidelines that define "in the line of duty" for purposes of qualifying for the hardship grant program. We also inquired about financial information for — you did not submit either expenses or schedules required. In addition, we requested information on grants, discrepancies between your application and information on your website, and suggested a change in the make up of the selection committee to make it independent.

In your response of date you supplied your filed Articles and amendment to the dissolution clause. You also agreed to change the composition of the selection committee to include the Chairman and Vice-Chairman of Foundation and three members who are not officers or directors of Foundation and/or Corporation. You stated the Foundation does not yet have a website and that website referenced in your application actually showed the worldwide humanitarian efforts carried out by Corporation, not the Foundation. You did not submit any financial information, stating the Foundation has not yet been funded. You did not supply additional information regarding activities and the charitable class and percentage of recipients connected by employment relationship to Corporation.

### Law

Section 170(c)(2)(B) of the Code provides that for purposes of section 170, the term "charitable contribution" means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for, among others, charitable purposes. Subparagraph (C) adds "no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations that are organized and operated exclusively for, among others, charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 4941 of the Internal Revenue Code ("Code") imposes an excise tax on each act of self-dealing, direct or indirect, between a disqualified person and a private foundation. The taxes are paid by any disqualified person (other than a foundation manager acting only as such) who participates in the act of self-dealing and a foundation manager who knowingly participates in the act of self-dealing.

Section 4941(d)(1)(E) of the Code refers to "any direct or indirect, transfer to, or use by or for the benefit of, a disqualified person" of a foundation's income or assets as an act of self-dealing. The Service has applied a strict construction of the exceptions to, as well as the definition of, self-dealing based on the congressional reasoning on the enactment of the self-dealing prohibition in section 4941. This was a substantive change from the prior usage of arm's-length standards to broad prohibitions on self-dealing transactions. As stated in S. Rep. No. 91-552, 91<sup>st</sup> Cong., 1<sup>st</sup> Sess. 28-29 (1969), 1969-3 C.B. 442-443:

....[T]he committee has concluded that even arms'-length standards often permit use of a private foundation to improperly benefit those who control the foundation...

To minimize the need to apply subjective arm's-length standards, to avoid the temptation to misuse private foundations for noncharitable purposes...the committee has determined to generally prohibit self-dealing transactions...

The committee's decisions, generally in accord with the House bill, are based on the belief that the highest fiduciary standards require that self-dealing not be engaged in, rather than that arm's-length standards be observed.

Section 4946(a)(1) of the Code in part defines disqualified person with respect to a private foundation to include: a substantial contributor to the foundation; a foundation manager; an owner of more than 20 percent of the total combined voting power of a corporation, the profits interest of a partnership, or the beneficial interest of a trust or unincorporated enterprise; or a family member of the forementioned.

Section 1.170A-4A(b)(2)(ii)(D) of the Income Tax Regulations ("regulations") defines needy as being a person who lacks the necessities of life, involving physical, mental, or emotional well-being, as a result of poverty or temporary distress.

Section 1.501(a)-1(c) of the regulations defines private shareholders or individuals within section 501 as persons having a personal and private interest in the activities of the organization.

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 of 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 exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides, in relevant part, that the term "charitable" is used in section 501(c)(3) of the Code (and, thus, in section 170(c)(2)(B)) in its generally accepted legal sense. Such term includes, among other things, relief of the poor and distressed or of the underprivileged.

Section 53.4941(d)-2(f)(2) of the Foundation and Similar Excise Taxes Regulations ("regulations") provides that the fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Examples (1) and (4) in that subsection of the Regulations provide situations of incidental or tenuous benefit which does not constitute self-dealing in which the general reputation or prestige of a disqualified person is enhanced by a public acknowledgement of some specific donation by him, in which the disqualified person receives some other relatively minor benefit of an indirect nature, or in which such a person merely participates to a wholly incidental degree in the fruits of some charitable program that is of broad public interest in the general community.

Rev. Rul. 68-14, 1968-1 C.B. 243: A nonprofit organization planting trees in public areas and assisting municipal authorities in their programs to plant trees and keep the city clean, is lessening the burdens of government. The organization's informational program directed to the public, architects, and builders is educational. The overall effect of these activities is to combat community deterioration. The organization had a broad program to beautify the city rather than one restricted to improving the area adjacent to the residence of its own members. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code. Any private benefit is incidental and "indirect."

In Rev. Rul. 70-186, 1970-1 C.B. 128, it was found that it would be impossible to accomplish the organization's charitable purposes without providing benefits to certain private property owners. In the quantitative sense, to be incidental, the benefit to private interests must not be substantial in the context of the overall public benefit conferred by the activity.

Rev. Rul. 73-407, 1973-2 C.B. 383, held that the benefit to a disqualified person was incidental and tenuous where a private foundation conditioned a grant to a public charity on the change of the public charity's name to that of the disqualified person.

In Rev. Rul. 74-600, 1974-2 C.B. 385, paintings owned by a private foundation placed in the residence of disqualified person constitutes an act of self-dealing under section 4941(d)(1)(E). Although the foundation's paintings were sometimes made available for public viewing,

placement in the residence of the disqualified person results in a direct use of the foundation's assets by or for the benefit of the disqualified person.

Rev. Rul. 75-286, 1975-2 C.B. 210 A nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, will not qualify for exemption under section 501(c)(3) of Code but may qualify under section 501(c)(4); Rev. Rul. 68-14 distinguished. The restricted nature of its membership and the limited area in which its improvements are made, indicate that the organization is organized and operated to serve the direct private interests of its members within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

In Rev. Rul. 77-160, 1977-1 C.B. 351, a private foundation paid a religious organization for tickets to worship services on behalf of a disqualified person. Although the religious organization had a policy of admitting person to worship services regardless of finances (as a practical matter virtually all attending the worship services had tickets), the payment for tickets on behalf of the disqualified person was determined to result in more than an incidental benefit to the disqualified person.

In Rev. Rul. 77-331, 1977-1 C.B. 388, a public charity guaranteed student loans of the children of employees of a private foundation which had provided substantial grants to the public charity. The benefit to the disqualified persons (the foundation employees) was more than incidental, even though an alternate guarantor (the federal government) was readily available.

Rev. Rul. 2003-12, 2003-1 C.B. 283 addresses disaster relief payments to individuals. This ruling holds that amounts paid to an individual by a state agency, a charity, or an employer to reimburse the individual for certain expenses the individual incurs as a result of a Presidentially declared disaster are excluded from the individual's gross income under the administrative general welfare exclusion, sections 102 and 139 of the Code, respectively. Rev. Rul. 53-131 modified.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), the Court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

In Wendy Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348, the organization was created by the Parker family to aid an open-ended class of "victims of coma." However, Wendy's selection as a substantial recipient of funds substantially benefited the Parker family by assisting with the economic burden of caring for her. The benefit did not flow primarily to the general public as required under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Therefore, the Foundation was not exempt under section 501(c)(3) of the Code.

IV A Scott, The Law of Trusts sec. 375 (4<sup>th</sup> ed. 1989) describes common law of charity.

## Rationale

### Lack of Exempt Purpose

In general, organizations described in section 501(c)(3) of the Code are exempt from taxation. Contributions to such organizations generally are tax deductible under section 170 of the Code. Section 501(c)(3) organizations must be organized and operated exclusively for exempt purposes and no part of the net earnings of such organizations may inure to the benefit of any private shareholder or individual. An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Section 1.501(c)(3)-1(d)(1)(ii), supra.

A basic principle of the law of charity is that the community, rather than designated individuals, is served. Thus, any organization seeking exempt status must show it benefits a charitable class that is sufficiently large or indefinite so the community as a whole is benefited. IV A Scott, The Law of Trusts sec. 375 (4<sup>th</sup> ed. 1989), supra.

Corporation is Foundation's sponsor and financial supporter. You are a private foundation controlled by Corporation, as all board members and officers of the Foundation are also corporate officers or managers of Corporation. Your primary purpose is to establish and administer a financial hardship plan for private security professionals and their families when such contractors employed by Corporation are injured or killed "in the line of duty." At some time in the future you may also provide scholarships to approved beneficiaries. In addition, you plan to award medals to honor the service of private security professionals.

You state that you may also consider applications from private security professionals employed by other for-profit companies. This may somewhat enlarge the potential charitable class; however, given the limited advertising of your program (your proposed website and word-of-mouth), the tie between employment with Corporation and the award of funds from Foundation's hardship plan is a significant connection. As stated in your application and noted above, at least 25 percent of your potential charitable class will be contractors of Corporation and their families.

A disaster relief or emergency hardship organization may be formed for the benefit of distressed individuals but may also overly serve the private interests of its founders, principals, or even contributors, thereby failing to achieve an exempt purpose despite otherwise good intentions. For example, in Wendy Parker Rehabilitation Foundation, Inc. v. Commissioner, supra, the organization was created by the Parker family to aid an open-ended class of "victims of coma." However, the organization stated that it anticipated spending 30 percent of its income for the benefit of Wendy Parker, significant contributions were made to the organization by the Parker family, and the Parker family controlled the organization. Wendy's selection as a substantial recipient of funds substantially benefited the Parker family by assisting with the economic burden of caring for her. The benefit did not flow primarily to the general public as required under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Therefore, the Foundation was not exempt under section 501(c)(3) of the Code.

Similarly, you have formed an organization to aid the families of private security professionals



injured or killed while working abroad. However, you were created by Corporation and are controlled and funded by Corporation. A substantial portion of your activities will benefit the contractors and employees of Corporation; the benefit will not flow primarily to the general public as required under section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

The Supreme Court has held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption. Better Business Bureau of Washington, D.C., Inc. v. United States, supra. Therefore, the Foundation is not exempt under section 501(c)(3) of the Code.

#### Substantial Private Benefit

By providing an employment related assistance program to provide relief to Corporation's private security professional contractors who have suffered financial hardship due to injury or death in connection with their employment by Corporation, the program is accomplishing two purposes. The program provides relief to persons who are distressed or otherwise proper objects of charity. Sec. 1.170A-4A(b)(2)(ii)(D), supra. However, the program also affords Corporation with a significant benefit. At least 25 percent of your proposed charitable class is employed by Corporation. Corporation benefits because the program provides contractors and their families with funds not otherwise available except by reason of their employment with Corporation as private security professionals. Thus, these contractors realize a real and significant benefit because they have recourse to funds in times of financial hardship as a result of their employment when other avenues have been exhausted. Potential private security professionals will consider the advantages of such a program and find it an enhancement to financial security and an incentive to continue employment with Corporation.

In this respect, the provision of financial assistance to Corporation's private security contractors in connection with injury or death as a result of their employment with Corporation, is a program akin to other employee benefit programs. Although a private security contractor would have no legal right to funds from this financial hardship fund, the contractor would be eligible for hardship benefits provided he is employed by Corporation upon the occurrence of a financial emergency related to carrying out his employment assignment and a showing of need of such assistance. Essentially, the contractor hardship assistance fund would operate to provide protection from events that cannot be readily guarded against. In this respect, it is a significant benefit of the job. Moreover, contractors employed by Corporation would have an important advantage over other similarly situated victims of employment-related hardship in having access to assured assistance. Thus, the presence of the equivalent of a benefits package, even if not availed of, would constitute a significant benefit derived from an employment relationship. The proposed fund dedicated to contractors' welfare is a significant employment benefit and is essentially an assistance benefit that provides protection and security whether or not used.

While your proposed program would benefit persons who may be needy or distressed, it would also serve the private interests of Corporation which can utilize this benefit program to recruit and retain a more stable and productive workforce. In this respect, Foundation's private security contractor assistance program accomplishes activities that are not exclusively in furtherance of one or more exempt purposes because they further the private purposes of Corporation more than insubstantially. Section 1.501(c)(3)-1(d)(1)(ii), supra. Through its control and funding, Corporation is able to direct Foundation's financial assistance program to serve its private purposes by limiting hardship assistance solely or primarily to Corporation's contractors. Any public benefit is significantly outweighed by the private benefit realized by rewarding

persons based on their employment with Corporation in terms of recruitment, retention, ensuring a stable workforce, and engendering goodwill and loyalty.

While there is some public benefit in ensuring that when individuals are killed or injured while working they and their families are provided for because of financial hardship due to such injury or death, there is no assurance that selection of beneficiaries solely or primarily among contractors of Corporation serves the best interests of the public. The public interest may very well be better served by providing resources to persons who may be in much more dire conditions than persons who are employed by Corporation. Because of the ties between Corporation and Foundation and Foundation's meager advertising plan, the general welfare of and benefits to the public are at a disadvantage compared with the significant benefit afforded contractors of Corporation.

Therefore, such a program by Foundation provides more than an insignificant private benefit to Corporation and does not further an exempt purpose under sections 501(c)(3) and 170(c)(2)(B).

#### Payments to contractors of related for-profit are self-dealing

Tax-exempt private foundations are a type of organization described in section 501(c)(3) and are subject to special rules. Private foundations are subject to excise taxes on acts of self-dealing between the private foundation and a disqualified person with respect to the foundation under section 4941 of the Code. For example, it is self-dealing if the income or assets of a private foundation are transferred to, or used by or for the benefit of a disqualified person, such as a substantial contributor to the foundation or a person in control of the foundation, and the benefit is not incidental or tenuous.

The word "incidental" in the context of private benefit with regard to self-dealing has both qualitative and quantitative connotations. In the qualitative sense, to be incidental, the private benefit must be a necessary concomitant of the activity which benefits the public at large, i.e., the benefit to the public cannot be achieved without necessarily benefiting private individuals. In the quantitative sense, to be incidental, the benefit to private interests must not be substantial in the context of the overall public benefit conferred by the activity. While private benefit which is incidental in the qualitative sense is referred to as "indirect," the Service has taken the position that, even if the private benefit is quantitatively insubstantial in the context of the overall public benefit conferred by the activity, any "direct" private benefit will prevent exemption. Sec. 4941(d)(1)(E); Rev. Rul. 74-600; Rev. Rul. 77-160; Rev. Rul. 77-331; supra.

Corporation is a disqualified person with respect to the Foundation, as Corporation is both a substantial contributor to the Foundation and controls the foundation. Sec. 4946(a)(1), supra. All board members and officers of the Foundation are corporate officers or managers of Corporation.

As discussed above, hardship payments by the Foundation to Corporation's private security contractors for injury or death in connection with assigned employment duties provide a private benefit to Corporation. Thus, the income or assets of Foundation would be used for the benefit of a disqualified person and constitutes self-dealing under Code section 4941. This self-dealing is neither incidental nor tenuous. While some benefits might be paid to private security professionals employed by other companies, since the program will be advertised only on the Foundation's website and by word of mouth, it is assumed that contractors connected to

Corporation would constitute a substantial number, if not the majority, of applicants and beneficiaries of the Foundation hardship program. Thus, quantitatively, the self-dealing between Corporation and the Foundation is substantial. The self-dealing is not indirect, because the private benefit is not a necessary concomitant of activity that benefits the public at large. The activity contemplated substantially benefits the private interests of Corporation.

While the Service in extraordinary circumstances has sometimes excused self-dealing activities between employer sponsored private foundations and employees in the context of natural disasters or "qualified disasters" as defined in Code section 139, the situation here does not fit that rubric. A "qualified disaster" includes a disaster that results from certain terroristic or military actions, a Presidentially declared disaster, a disaster that results from an accident involving a common carrier or any other event that the Secretary of the Treasury determines is catastrophic. As a result of such a qualified disaster, a foundation's payments will be treated as made for charitable purposes, will not result in prohibited self-dealing, and will not result in taxable compensation to the employees if the following conditions are met:

- The class of beneficiaries is large or indefinite
- The recipients are selected based on an objective determination of need, and
- The selection is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous. The foundation's selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer.

General Explanation of Tax Legislation Enacted in the 107<sup>th</sup> Congress (2003) Released January 24, 2003 Part Seven: Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) 2003 Bluebooks Pt. 7, II. Other Relief Provisions, B. Exclusion of Disaster Relief Payments (sec. 111 of the Act and new sec. 139 of the Code).

The Foundation's program under consideration is designed as a financial hardship fund tied to employment-related injury or death. It is not a program in conjunction with disaster relief nor does it fall within the requirements of Code section 139. The program does not meet the conditions set forth above. See, Rev. Rul. 2003-12, and Notice 2005-23, supra.

Therefore, the proposed employment-related hardship program by an employer sponsored private foundation consists of prohibited self-dealing activities under Code section 4941.

### Conclusion

The proposed financial hardship program of the Foundation does not further an exempt purpose under sections 501(c)(3) and 170(c)(2)(B) of the Code and does not qualify for exemption.

The proposed financial hardship program by Foundation provides more than an insignificant private benefit to Corporation and does not further an exempt purpose under sections 501(c)(3) and 170(c)(2)(B) of the Code.

The proposed financial hardship program Foundation consists of prohibited self-dealing activities under section 4941 of the Code.

Therefore, exemption of Foundation under section 501(c)(3) of the Internal Revenue Code is denied.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 45 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 45 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 45 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE ( )  
[ ] ( )  
1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements