

Internal Revenue Service
Appeals Office
1000 Liberty Avenue
Room 816
Pittsburgh, PA 15222

Release Number: 201331007
Release Date: 8/2/2013

Date: May 10, 2013

Department of the Treasury

**Taxpayer Identification
Number:**

Person to Contact:

Tel: ****
Fax: ****

Tax Period(s) Ended:

Certified Mail

**UIL Numbers: 0501.03-30,
501.33-00**

Dear ****:

We considered your appeal of the adverse action proposed by the Director, Exempt Organizations, Rulings and Agreements. This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in section 501(c)(3) of the Code.

Our adverse determination was made for the following reasons:

In order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be operated exclusively for one or more of the purposes specified in such section. You have not established that you are operated exclusively for exempt purposes described in section 501(c)(3) of the Code.

Your organization's activities are not conducted in a charitable manner and serve the private interests of your members. Your members are the substantial beneficiaries of your funds because your activities relieve them from the economic burden of **** and ****.

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

You are required to file Federal income tax returns on Forms 1120 for the tax period stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

You have waived your right to contest this determination under the declaratory judgment provisions of Section 7428 of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

/s/
Appeals Team Manager



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: December 21, 2011

ORG
ADDRESS
CITY, STATE

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL #:
501.03-30
501.03.31
501.33.00

LEGEND:

ORG - Organization name XX - Date Address - address City -
city State - state

Dear :

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

Issue

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below,

Facts

You were incorporated in State on March 1, 20XX. Your Articles of Incorporation state that you are "organized for charitable, religious, educational, and scientific purposes under §501(c)(3) of the Internal Revenue Code (Code)..."

Article II, Section 1 of your bylaws states that you are organized for the following purposes:

- To promote common familial interests of those individuals who are related by blood, marriage or other significant relationship to a common ancestors bearing the primary surname of your Family.
- To maintain, preserve and protect "family land", located primarily in City State that was first purchased by your ancestors over one hundred years ago. You will use any

proceeds from crops, timber or other resources extracted from the "family land" to encourage, facilitate and support the educational aspirations of family members,

- To support activities which enhance familial relationships and communications.
- To compile historical information regarding the common ancestry of the individuals who are members of the Association.
- To cooperate with other organizations and agencies in furtherance of genealogy and other family related activities.

The activities narrative submitted in your Form 1023 application states,

"Our primary activities will include the use of organization receipts to assist the educational endeavors of our members' children. We intend to create a scholarship fund to supplement other resources that the students will already be receiving. Conditions for eligibility will include enrollment in an accredited institution of higher learning, proof of a minimum grade point average and proof that the funds are used for qualified educational expenses."

In order to create and maintain your scholarship fund, you intend to use receipts obtained from harvesting timber from land that was purchased by your members' ancestors. You have and continue to document your ownership of the land. It is also your intent to protect your ownership of the land by paying property taxes when due. And, you will continue to expend funds for litigation to protect your ownership rights and prevent "poaching" of timber from family land.

You expect that:

- % to % of your activities will be directed to documentation of land ownership, protection of ownership of land and timber, coordination of the harvest and sale of timber and land management,
- % of your time will be spent planning and attending bi-annual family reunions,
- % of you time will be required to administer the scholarship programs, and
- % to % of your activities will be used to perform general administrative activities.

Your current board is related to each other through family relationships, and they are all cousins. You are a family association. Furthermore, all individuals who receive funds through your programs will have a family relationship. Your activities are only available to your family members and their children.

Your sources of revenue during your first three years of operation include contributions, membership fees and revenue from the sale of timber. Your expenses consist of fundraising, disbursements for the benefit of member, depreciation and depletion, professional fees, and other expenses. You expect to incur expense for your family reunion as well as for scholarships.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order

to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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 that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. 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(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and, specifically, 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 defines the term "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed or of the underprivileged. The term "charitable" also includes the advancement of education.

In Revenue Ruling 67-367, 1967-2 C.B. 188, an organization established a plan under which it enters into so-called "scholarship" agreements with subscribers. Under the agreement, a subscriber agrees to deposit, either in periodic payments or in a lump sum, a specified sum with a designated bank. At the same time, the subscriber nominates a named child not over a specified age at the time the agreement is entered into who will receive a "scholarship" from the organization if he matriculates at a college. The Service ruled that the organization's "scholarship" plan for making payments to pre-selected, specifically named individuals does not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 69-175, 1969-1 C.B. 149 describes an organization formed by the parents of pupils attending a private school exempt under section 501(c)(3) of the Code. The organization provides bus transportation to and from the school for those children whose parents belong to the organization. The ruling states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children to school, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school.

Revenue Ruling 80-302, 1980-2 CB 182 describes an organization that (1) limits its membership to descendants of a particular family, (2) compiles family genealogical research data for use by its members for reasons other than to conform to the religious precepts of the family's denomination, (3) presents the data to designated libraries, (4) publishes volumes of family history, and (5) promotes social activities among family members. The organization did not

qualify for exemption under section 501(c)(3) of the Code because the activities are primarily limited to one particular family. Therefore, these activities do not advance education to benefit the public interest.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. C.I.R., T.C. Memo. 1986-348, the Tax Court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The Court found that the family coma victim was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family from the economic burden of providing medical and rehabilitation care for their family member and, therefore, constituted inurement to the benefit of private individuals.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

Application of Law

Section 501(c)(3) of the Code and section 1.501(c)(3) -1(a)(1) of the regulations sets forth two main tests for qualification for exempt status. An organization must be organized and operated exclusively for purposes described in section 501(c)(3) of the Code. Because your Articles of Incorporation state purposes described in section 501(c)(3) of the Code and upon dissolution all assets will go to organizations that are exempt under section 501(c)(3) of the Code, you pass the organizational test.

You must, however, satisfy the operational test. This means that you must prove that you are an organization that operates exclusively for one or more purposes described in section 501(c)(3) of the Code and no part of your net earnings inure to the benefit of any private shareholder or individual. The fact is, however, that your operations are clearly directed to providing services to your family members.

1. When you conduct activities which manage and protect your land, harvest and sell your timber, and conduct family reunions, you are serving the private interests of your members in a manner similar to the organization described in Revenue Ruling 69-175.
2. Like the organization which was denied exemption in Revenue Ruling 67-367, you have established a plan to award scholarships to members of a preselected group of individuals: your family.
3. You expect to compile historical information regarding the common ancestry of your family members in furtherance of genealogy and family related activities. But, according to Revenue Ruling 80-302, genealogic activities do not advance education to benefit public interest when membership is limited to descendants of a particular family.
4. Finally, we point out that, in the same manner as the Wendy L. Parker Rehabilitation

Foundation, Inc., your family members are the substantial beneficiaries of your funds because your activities relieve the your members from the economic burden of providing services to protect your land and provide educational assistance to members and their children.

The Supreme Court in Better Business Bureau v. United States, 326 U.S. 279 (1945), held that the presence of a single non-educational purpose, if substantial in nature, will destroy exemption regardless of the number of truly educational purposes. In this case, every aspect of your enterprise is carried on to provide substantial benefit to your family, not the public.

Conclusion

Based on the facts provided, we hold that you do not meet the operational test for exemption under section 501(c)(3) of the Code because you serve the private interest of members of your family, rather than a public interest. Furthermore, a substantial part of your activities are not in furtherance of any exempt purpose under section 501(c)(3) of the Code.

Accordingly, we have found that you do not qualify for exemption as an organization described in section 501(c)(3) of the Code.

Appeal Rights

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 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal." These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, 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, Forms and Publications. 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 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

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

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance

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,

Lois Lerner
Director, Exempt Organizations

Enclosure: Publication 892