



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

Release Number: **201637017**
Release Date: 9/9/2016
UIL Code: 501.03-00
501.32-00

Date: June 16, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00, 501.32-00

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) 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.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. 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.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

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,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



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

Date: April 28, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

D = President/Board Member

E = Vice President/Board Member

UIL:

501.03-00

501.32-00

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)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

1. Do you meet the organizational test under Section 501(c)(3) of the Code? No, for the reasons described below.
2. Do you meet the operational test under Section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You were incorporated on B in the state of C. Your organizing document states your purpose is "to assist adolescent children and families in coping with undiagnosed and/or debilitating diseases." You have no dissolution clause.

Your two incorporators are D and E. D and E are also your President and Vice President and are related by marriage. Three of your four board members have a family relationship.

You formed more than 27 months before applying for exemption. You submitted Page 1 of Form 1024 and are seeking exemption under Section 501(c)(4) from your formation date to the date you filed Form 1023.

You were formed by D and E and named after their minor son, who suffers from an unidentified illness. Your activities consist primarily of conducting various fundraising events to provide financial support to designated recipients. Your fundraising material specifically requests funds to help D and E's son. The funds are made available to recipients to assist with unexpected and unreimbursed medical, travel and other related expenses. Since your inception the only individual that has received funds from you is the minor child of D and E. You said you intend to make future distributions to other individuals and unrelated non-profit organizations that exist for a purpose similar to yours that provide assistance to individuals and families that have undiagnosed or genetic disabilities.

Your financial information reports that in your first two years of operations 100% of the funds you distributed were given for the benefit of the minor child of D and E. In the third year of your operations, 96% of your total funds distributed were given for the benefit of the child of D and E. The 4% that was not given for the benefit of D and E's child was given to a public charity. For the year that you filed the Form 1023 application you had not yet reported any funds raised or distributed.

You indicated that selected recipients will be required to provide a detailed explanation of the needy recipients' medical condition. Your governing body or designated committee will review the request for assistance submitted by any needy individual, organization and/or the family of a needy individual to determine if the distribution meets your qualification as a charitable purpose. However, to date no individual has been a recipient other than D and E's child.

Law

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

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that in order to be exempt as an organization described under Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization: (a) Limit the purposes of such organization to one or more exempt purposes; and (b) Do not expressly empower the organization to engage otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, if upon dissolution, such assets would by reason of a provision in the organization's articles of organization or by operation of law, be distributed for one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states 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) of the Code. A single nonexempt purpose, if substantial in nature, will disqualify an organization from qualification under Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(c)(2) states regarding the distribution of earnings 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states 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, to meet the requirement of this subdivision, 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.

Rev. Rul. 67-367, 1967-2 CB 188 states a nonprofit organization whose sole activity is the operation of a scholarship plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from federal income tax under Section 501(c)(3) of the Code.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943) a trust established for the benefit of an aged clergyman and his wife was a private trust and not an exempt activity despite the fact that the two individuals served were needy.

In Wendy Parker Rehabilitation Foundation, Inc. v. Commissioner, 52 T.C.M. (CCH) 51 (1986), 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 Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). Therefore, the Foundation was not exempt from federal income tax under Section 501(c)(3) of the Code.

Application of law

You are not described under Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the organizational or operational tests. If an organization fails either the organizational or operational test, it cannot qualify as an exempt organization under Section 501(c)(3).

Your organizing document does not limit your purposes to one or more exempt purposes as required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Your organizing document is also silent regarding the disposition of your assets upon dissolution, in contradiction to Treas. Reg. Section 1.501(c)(3)-1(b)(4). Accordingly, you fail the organizational test and do not qualify for exemption under Section 501(c)(3).

You don't meet the operational test described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). Since your inception, the only individual that has received funds has been the minor child of D and E. As described in Treas. Reg. Section 1.501(c)(3)-1(c)(2), you are not operated exclusively for one or more exempt purposes because your net earnings have inured to private shareholders or individuals. The payments made for the benefit of the minor child of D and E inure to their benefit. The prohibition on inurement under Section 501(c)(3) of the Code is absolute, precluding you from exemption.

You are similar to the organization described in Rev. Rul. 67-367 that made distributions to pre-selected individuals. You are also like the organization described in Carrie A. Maxwell Trust, which was found to not be exempt because the trust benefited private individuals rather than the general public.

You are almost identical to Wendy Parker. The benefit does not flow primarily to the general public, as required under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), but to the child of D and E, who created you. Your primary purpose is to pay for the medical expenses that would otherwise have to be paid by D and E, were it not for you. Therefore, your net earnings inure to the benefit of D and E.

Inurement also precludes you from exemption under Section 501(c)(4) from your formation date to the date you filed the Form 1023.

Your position

You believe that you qualify for exemption under Section 501(c)(3) of the Code because you are helping other families with children who are suffering from undiagnosed and/or genetic disabilities. You are also donating to other established charities.

Our response to your position

You were formed for the purpose of raising funds for the benefit of the child of D and E. Therefore, you are not operating for a public purpose and fail the operational test for exemption under Section 501(c)(3) of the Code.

Conclusion

You are not organized or operated exclusively for exempt purposes under Section 501(c)(3) of the Code. You do not meet the organizational test because your organizing document does not properly limit your purposes to those described in Section 501(c)(3) and your assets are not dedicated to one or more exempt purposes upon your dissolution. You also fail the operational test because your funds inure to the benefit of D and E. Accordingly, you do not qualify for exemption under Section 501(c)(3).

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*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

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. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892