

INTERNAL REVENUE SERVICE
District Director
2 Cupania Circle
Monterey Park, CA 91755

DEPARTMENT OF THE TREASURY
Western Key District

CERTIFIED MAIL

Date: FEB 10 1999

[REDACTED]

Employer Identification Number:

Case Number:

Person to Contact:

Identification Number:

Telephone Number:

Refer Reply to:

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code (Code).

FACTS:

The information submitted with your application shows that you were incorporated under the "[REDACTED] Nonprofit Corporation Act" on [REDACTED].

Your Articles of Incorporation state that your purpose is to raise funds for charitable purposes related to cancer treatment for individuals whose treatment is not covered or only partially covered by medical insurance.

You state in your application that you were formed solely for the purpose of raising funds to help pay for medical treatment for cancer patients.

In response to our inquiry for additional information, you responded that your organization was set up to pay the hospital bills of [REDACTED] [REDACTED] was in need of a medical treatment that was not covered by Medicare. You stated that if there are any funds remaining, they will be donated to a cancer research charity. You raised approximately \$ [REDACTED] during

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Code	EP/EO:TB:REV: _____	EP/EO:TB:REV _____	EP/EO:TB _____	EP/EO _____	DD _____	EP/EO:TB:REV _____
SURNAME	[REDACTED]	[REDACTED]	X	X	X	X
DATE	[REDACTED]	[REDACTED]	X	X	X	X

Form 1537 Correspondence Approval and Clearance

Department of the Treasury/Internal Revenue Service

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██████████ and all of this money has been used to pay the medical bills of ██████████ which are now in excess of \$██████████ The letters you mail to potential donors state that contributions will be used to pay the medical bills of ██████████

The majority of your officers and trustees are relatives of ██████████

ISSUE:

Is the organization organized and operated exclusively for charitable purposes described section 501(c)(3) of the Code?

LAW:

Section 501(c)(3) of the Code describes certain organizations exempt from income tax under Code section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office."

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

Regs section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one of more of the purposes of section 501(c)(3) unless it serves a public rather than a private interest. The Regs provide that, "to meet the requirements 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."

In Better Business Bureau of Washington, D.C., Inc. v. The United States, 326 U.S. 279 (1945), the Supreme Court interpreted the requirement that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted exclusively to exempt purposes. The Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Comm., 36 TNT 155-115, the court held that the organization was not exempt because the Foundation's selection of a family member as a substantial beneficiary of its disbursements violated the prohibition against using the funds of a tax-exempt organization to inure to the benefit of private individuals.

In Puritan Church of America v. Comm., (1953, Dist Col) 209 F2d 3-6, 53-2 USTC section 9601, 45 AFTR 119 cert den (1954) 347 US 975, 9898 L ED 1115, the court found that an organization is disqualified from exemption if it serves private rather than a public interest. It must therefore establish that it is not organized and operated for the benefit of private interests such as designated individuals, the creator of the organization or his family, shareholders, or persons controlled (directly or indirectly) by such private interest, and the accomplishment of the exempt purposes must not be accompanied by personal, private, or selfish consideration.

In Charleston Chair Company v. United States, 203 F. Supp. 126 (E.D.S.C. 1962), exemption was lost by a foundation that spent a large part of its funds on a scholarship grant to the son of a foundation trustee.

Revenue Ruling 67-367, 1967-2 C.B. 188, held that a non-profit organization whose sole activity was the operation of a "scholarship fund" plan for making payments to pre-selected, specifically named individuals, did not qualify for exemption under section 501(c)(3) of the Code.

ANALYSIS AND CONCLUSION:

All of the preceding Code sections, Regulation sections, Revenue Ruling and Court cases describe the criteria under which an organization may be exempt under section 501(c)(3) of the Code. They also describe the basis for which exemption was denied because of private benefit to members and their families or designated individuals.

Our analysis of your application indicates that your organization was established to raise funds to pay the medical

Because you have a substantial non-exempt purpose of raising funds to pay for the medical expenses of a relative of your board members you are operated for more than an insubstantial purpose of serving the private interests of your members. You are not operated for the benefit of the public but for the benefit of your members and their families. By failing to meet the operational test for exemption, you are not exempt under section 501(c)(3) of the Code.

CONCLUSION:

To be considered for tax exempt status under section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that Code section. Also, its activities must be restricted to those permitted a section 501(c)(3) organization. Based on the information submitted, it is the position of the Internal Revenue Service that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3), inasmuch as you are not organized and operated exclusively for any of the specified purpose within that Code section but are operated exclusively for the private benefit of your members and their families..

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

If you are in agreement with this proposed determination, we request that you sign and return the enclosed Form 6018. Please note the instructions for signing on the reverse side of the form.


If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange for a hearing. The hearing may be held at the office of Regional Director of Appeals, or if you request, at a mutually convenient District office.

If we do not hear from you within 30 days from the date of this letter, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgement 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."

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If you have any questions, please contact the person whose name appears on the heading of this letter.

Sincerely,



Steven A. Jensen
District Director

Enclosure(s):
Form 6018
Publication 892