

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - TE/GE
Cincinnati, OH 45201

Date: DEC 28 2001

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED] - [REDACTED]

Contact Telephone Numbers:
[REDACTED]

Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed 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 Claims Court, 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.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven P. Miller
Director, Exempt Organizations

- Enclosures:
Enclosure 1, Adverse Determination Letter
Form 6018 (2)
Publication 892
Envelope

Enclosure 1

FACTS:

The information submitted discloses that you were incorporated under the nonprofit Corporation Laws of the State of [redacted] and filed your articles of Incorporation with the proper State authority on [redacted]

Your purposes as stated in your articles of incorporation are to raise awareness and monies to support the legal defense of [redacted]. Such expenses shall include, but not be limited to attorney fees, phone expenses, correspondence, private investigators and other professionals, and related expenses.

In furtherance of your purposes, you have mailed correspondence to approximately [redacted] friends and business associates in an effort to raise funds for the legal defense of incarcerated [redacted]. The financial information submitted shows you have received approximately \$ [redacted]. After minor bank charges and postal expense, the remaining is paid to the appropriate attorney. You intend to continue sending other letters of request for donations and to notify friends and associates as to [redacted]'s trial date.

ISSUE:

Whether this Corporation is operated exclusively for a charitable purpose and qualifies for exemption under section 501(c)(3) or any other subsection of section 501(c) of the Internal Revenue Code?

LAW:

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

"Corporations, and any community, chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or education 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); 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(d)(2) of the Regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and includes such terms as relief of the poor and distressed or of the underprivileged; advancement of

religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), 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 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 501(c)(3)-1(d)(1)(ii) of the regulation states that an organization is not organized or operated exclusively for charitable purposes unless it serves a public rather than a private interest. Thus to meet the requirement of 501(c)(3), 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. *Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner*, T.C. Memo 1986-348.

A nonprofit organization whose sole activity is the operation of a scholarship plan for making payments to pre-selected, specifically named individuals served private rather than public interests and thus did not qualify for exemption under section 501(c)(3). *Rev. Rul. 67-367, 1967-2 C.B. 188.*

A trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust. *Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner*, 2 TCM 905 (1943).

A trust set up to pay a certain sum to all the individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust. The beneficiaries were a group of identifiable individuals. *Rev. Rul. 57-449, 1957-2 C.B. 622.*

ANALYSIS:

Your sole purpose and activity is to raise funds from the general public to help pay all legal expenses on behalf of [REDACTED]. Based on the regulations under 501(c)(3), your activities do not serve a public interest, but rather the private interest of a designated individual.

CONCLUSION:

Based on the information provided in your application for exemption, we conclude you do not qualify for tax exemption under section 501(c)(3). For this same reason, you also would not qualify for exemption under any other subsection of section 501(c).

We discussed our adverse determination and your right to appeal during a telephone conversation with your executive director, [REDACTED]. No additional information was presented. She stated however, that although most of your donations came from [REDACTED]'s close friends and relatives, she wanted us to issue our written adverse letter to substantiate our basis for denial and non-deductibility of contributions.