



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201205011**

Release Date: 2/3/2012

Date: November 7, 2011

UIL Code: 501.03-05

501.05-01

501.33-00

504.50-00

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 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since 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.

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, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

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,

Lois Lerner
Director, Exempt Organizations

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: September 20, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = individual
C = individual
D = individual
E = individual
F = individual
G = address
H = family
J = individual
K = individual
L = state agency
M = individual
N = state agency
P = state program
Q = state
x = dollar amount
y = date

UIL Nos:

501.03.05
501.05.01
501.33.00
504.50.00

Dear

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

ISSUES

Does the presence of inurement disqualify you from exemption under section 501(c)(3) of the Internal Revenue Code? Yes, for the reasons stated below.

Do your activities serve a substantial non-exempt purpose contrary to Section 501(c)(3) of the Code? Yes, for the reasons stated below.

FACTS

You were formed in Q on date y. Your Articles of Incorporation and Bylaws, signed by B, C, D, E and K, indicate you are organized exclusively for charitable purposes and have been established to negotiate, receive funds, organize and manage support for three special needs children of the H family, later identified in your Articles as C, D and E,

Your board of directors consists of B, C, D, E, F, K, and J. The following is a description of each:

- C, D and E serve as your Co-Chairs.
- B is your CEO, Executive Director, and the father of C, D and E.
- F and M are listed as vice chair and members at large. F is also the grandfather of C, D and E and the father of B.
- K is listed as a Member at Large.

B has been projected to receive compensation in the amount of x dollars plus fringe benefits such as health care, life and disability insurance, and retirement. B is your designated co-signatory for C, D and E.

You were established to support the H family and to assist them with planning and obtaining needed support for the three children of the H family who are C, D and E. C, D and E are referred to as "clients". You are further described as a single-family unit consisting of three minor children (C, D and E).

Your address is G, which is the home of the H family. Your day to day activities for C, D and E will be carried out at G. Your primary function is to provide home and community services to participants (clients) who need assistance in the retention, acquisition or improvement of living and/or working skills to avoid institutionalization.

Your day to day routine for your clients (C, D and E) would depend on the service needs of each. A client would receive personal, one on one assistance, in their daily activities. This assistance would consist of being accompanied into the community to perform daily activities similar to those of non-disabled individuals. This will include transportation required to carry out a client's goals and objectives plan such as going to medical

appointments, shopping, outings or educational activities. In addition, this assistance would involve personal hygiene, daily life skills and independent living training to enable each client to live as independently as possible while maintaining a living arrangement of their choice as opposed to residing in an institutional setting.

You have an application form for clients to complete for consideration into your program. C, D and E did not complete this form in relation to the services they receive.

Your first full operational year you intend to implement daily activities to provide direct home and community services to C, D and E. C, D and E are your original and first three clients.

Your second year of operations, depending on the needs of other individuals, you may begin to accept other clients.

Your third year of operations, you plan to implement community programs that will enable persons with developmental disabilities and their families in having community social resources, support groups and advocacy to enable persons with developmental disabilities in identifying their own personal needs and finding the resources to obtain those needs.

The following are the details of your project financial support and controls:

- You expect to receive your funding through government agencies L, N and P.
- You will also obtain other funding through writing for individual grants and through voluntary contributions.
- Your projected expenses consist primarily of salaries for B as well as client transportation.
- B is the approving authority for all expenses.

LAW

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal Income Tax for corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

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)(2) of the regulations provides 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(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states an organization must serve a public rather than a private interest and not be 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 of Internal Revenue, 855-85X.-In this case, thirty percent of the petitioner's income is expected to be expended for the benefit of Wendy L. Parker, the daughter of an officer and organizer of the corporation. An adverse determination was made because "a child of the founder and chief operating officer of the Foundation is a substantial beneficiary of the services contemplated by the organization. This constitutes inurement which is prohibited under Code Section 501(c)(3) and the Regulations there under." To qualify under 501(c)(3), an organization, inter alia, must operate exclusively for exempt purposes, and no part of its net earnings can inure to the benefit of any private individual.

Application of Law:

Based on our analysis you do not satisfy the organizational or operational requirements to be recognized as exempt under section 501(c)(3) of the Code. You have not established that your income will not inure to insiders and you have not shown that your operations will serve public rather than private purposes.

Your Articles of Incorporation failed to limit your purposes to those described in Section 501(c)(3) of the Code. Your Articles indicate you were formed for the purpose of three special needs children of the H family, who are C, D and E. These purposes describe the provision of services to private individuals rather than serving public purposes and are contrary to those described in section 501(c)(3) of the Code and you fail the organizational test.

To meet the operational test it must be shown you are furthering a 501(c)(3) exempt purpose. You are formed to provide personal care for members of your governing body which include family members. You will operate out of the family home of your governing body while providing these services. Your services are not advertised to the general public and will be available only to three named individuals, all of the same family. For these reasons you are not furthering an exempt purpose as you are formed to serve the private interests of one family rather than the interests of the general public. As you have failed

both the organizational and operational tests you do not qualify per section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations.

Section 1.501(c)(3)-1(c)(2) of the Regulations state that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure to individuals. Your activities consist of providing services directly for the benefit of B's children, C, D and E. As these services are paid through you for these individuals you are supplementing expenses that would otherwise need to be paid for by the H family resulting in excessive personal benefit and inurement.

Section 1.501(c)(3)-1(d)(1)(iii) of the Regulations states an organization must serve a public rather than a private interest and not be organized for the benefit of designated individuals. As your services are available only to three related individuals, and your organizing documents indicate you were formed for this purpose, you are serving private rather than public interests. Further, B is the parent of C, D and E, your clients. Therefore, B has a personal and private interest in your activities. Your activities will serve the private interests of your insiders B, C, D and E and you have been formed to benefit designated individuals. For these reasons you do not serve a public good and do not qualify.

Your activities are similar to those described in Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner. The government funding and donations you expect to receive will pay directly for the care of B's three children, C, D and E, and will allow them to remain in the H family home and receive living expenses associated with that care. As a result, your expenses for the first year of operations inure directly to the benefit of B, C, D and E.

Applicant's Position

You have indicated you will be serving the public in that you have plans to provide services to other needy children besides those of the H family.

Service Response to Applicant's Position

Although you have indicated that there exists the possibility that you may take on other children your statement to this effect has been inconsistent. In a letter provided with your application you initially indicated you would care for one child, which then became three children, which you have now indicated could be other children. As your Articles demonstrate you were formed not to benefit the community and children of the general public but rather three specifically designated children, all of the same family, all related to your creator. It was only in your success that you have indicated you might consider opening up your services; overall, you have been formed for private interests to benefit one family and for this reason you do not qualify.

Conclusion:

You do not meet the requirements under section 501(c)(3) because you fail the organizational and operational test. Your primary purpose is to privately benefit B, C, D and E who are insiders. We have determined that you have failed to establish that your activities further a tax-exempt purpose within the meaning of section 501(c)(3) and therefore you do not qualify for exemption as an organization described in section 501(c)(3) of the Code.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, based on the information that you have submitted, we find you are not entitled to exempt status under section 501(c) of the Code because you are operated for a significant non-exempt private benefit, rather than exclusively for exempt purposes.

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 the 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. If you want representation 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. You can find more information about representation in 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 file a protest within 30 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 appeal 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 30 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 the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may 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