



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: 201428026
Release Date: 7/11/2014

Date: August 3, 2007

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.32-00; 501.32-01

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.

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.

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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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

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: June 18, 2007

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

M = Name of Organization
N = Name of State
O = Date
P = Name of Individual
Q = Name of Individual
R = Name of Individual
S = Family Name

UIL Numbers:

501.32-00

501.32-01

Dear

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

Does M meet section 501(c)(3) of the Code requirement that no part of its net earnings inure to the benefit of a private individual?

Facts:

The evidence submitted indicates that you were incorporated under the laws of the state of N on Q under the name of M. Your purposes as stated in your original Articles of Incorporation are:

- a. To promote and conduct charitable fund-raisers and other charitable purposes;
- b. To pay for medical expenses and other losses sustained by [P] and the family of [P] due to an automobile accident;

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c. After all losses the corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

d. For all legal powers not specified herein, but permitted General Not For Profit Corporations.

Part V, question 5a of the Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, asks whether your organization has adopted a conflict of interest policy. The attachment to this question states:

This is a simple charitable trust that primary purpose is to conduct charitable fund raisers and other charitable activities and to pay the medical bills and other losses sustained by [P] and the family of [P] due to an automobile accident. All bills are approved by the board for payment.

The financial data attachment submitted with the application explains where funds have been expended, as of October 29, 20'. The attachment shows expenses of:

\$ for a ramp access for van; \$ for a chair for P's room; \$ for sales tax on van purchase; \$ for loan payments on Chrysler mini van; \$ for bathroom addition and special needs room.

Total expenses paid out of foundation funds to, or for the benefit of P as of the date of October 29, 20' were \$. Total expenses listed on Page 9 of the Form 1023 for the years 20' and 20' total \$. Total revenues listed on Page 9 of the Form 1023 for the years 20' and 20' total \$.

LAW:

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty of animals and children. **No part of the net earnings may 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 Income Tax Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its **net earning 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 provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision

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(i) of this subparagraph unless it serves a public rather than 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.**

Wendy L. Parker Rehabilitation Foundation v. Commissioner, T.C. Memo., 1986-348 is a Court case which describes an organization formed to aid victims of coma, resulting from motor vehicular accidents, strokes, drowning and other related causes; to provide such coma victims, who are in various stages of rehabilitation and recovery, with funds and therapeutic equipment and devices used in conjunction with accepted coma recovery programs; to run fund raising affairs and social functions in aid of coma victims; to exchange and disseminate information concerning the care and treatment of coma victims in all stages of recovery.

The organization's expected source of income is from contributions. Disbursements are for contributions to other coma recovery organizations; purchase of related equipment and devices; and payments to nurses and physicians. Twenty percent of the income will be distributed to organizations and 80 percent to coma patients. **Thirty percent of petitioner's income is expected to be expended for the benefit of Wendy L. Parker.**

Wendy Parker is one of an unspecified number of recovering coma patients. She is the daughter of both the organizations President and the Secretary/Treasurer, and the sister of the Vice President. The distribution of funds for the benefit of Wendy Parker assists the Parker Family in providing for her care. These funds will be used to pay for the medical and rehabilitative care of Wendy Parker. This relieves the Parker family of the economic burden of providing such care.

Petitioner's selection of Wendy Parker as a substantial beneficiary of its disbursements is the determining factor in this case. Inurement of a benefit to "private individuals" whether monetary or not, as a result of contributions made to a purportedly exempt organization is proscribed. **Therefore, the organization was denied exemption under Section 501(c)(3) of the Code due to inurement and private benefits to board members of the organization.**

Church of the Transfiguring Spirit v. Commissioner, 76 T.C. 1 is a court case where the organization's primary purpose is to operate a church for religious purposes. The governing body of the organization consists of Mr. and Mrs. Thayer, their daughter, and two other persons. The services are held in the Thayers home where they live. The organizations source of financial support was from "Tithes or regular donations by members of the Church" and "Offerings from interested persons who attend services or classes". More than 90% of the total revenues were paid to the Thayers for the use of their home as a church meeting place.

The Court states the housing allowance paid to the Thayers inures to the benefit of shareholders of the organization or individuals and thus, petitioner is not operated exclusively for exempt purposes.

APPLICATION OF LAW:

Section 501(c)(3) of the Code sets forth two main tests for qualification for tax exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Our analysis of the information you submitted does not allow us to conclude that you meet the organizational requirements necessary to show that you are organized exclusively for charitable purposes. Moreover, you do not satisfy the operational requirements to be recognized as exempt under section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income tax Regulations provides that an organization is not organized or operated exclusively for charitable purposes if the organization is organized or operated to serve private interests of designated individuals. As your Articles of Incorporation states that part of your purposes is ***"To pay for medical expenses and other losses sustained by [P] and the family of [P] due to an automobile accident;"*** you are formed for the purpose of benefiting designated individuals, namely P and his family. Therefore, you do not meet the organizational test under Section 501(c)(3) of the Code.

To satisfy the operational test, you must be operated exclusively for one or more exempt purposes. You will not be "operated exclusively for one or more exempt purposes" as set forth in sections 1.501(c)(3)-1(c)(2) and 1.501(c)(3)-1(d)(1)(ii) unless your net earnings do not inure in whole or in part to the benefit of any private shareholders or individuals. Further you must establish that you are serving public rather than private interests.

Inurement results from benefits being conferred to insiders (individuals with control or significant influence over the operations of an organization.)

You have not shown that you operate for exclusively charitable purposes rather than for purely private purposes. Your activities consist mainly of raising funds for the purpose of providing assistance to the family of P, to pay P's medical bills and other expenses pertaining to his disability due to an automobile accident. According to the application and information provided in the attachments, your organization has raised \$ from the date of formation until October 29, 20 and \$ has been disbursed to the family of P by that same date. **Q and R, the parents of P, are members of your board of directors.** Since more than 50 percent of your income and 98 percent of your expenditures have been distributed to Q and R, your founder/ board members, **your net earnings have inured to the benefit of private individuals who have significant influence over your operations, in direct contravention to Section 501(c)(3) of the Code.**

Furthermore, you have demonstrated that you are formed for the purpose of serving private rather than public interests. Instead of providing benefits for all coma victims as whole, your operations have provided substantial private benefits to the family of P. Even the name of your organization, P's Foundation, suggests that you are formed to benefit a designated individual. Thus, you do not meet the requirements for tax exemption as provided in of **Section 1.501(c)(3)-1(d)(1)(ii) of the Income tax Regulations.**

Your Articles of Incorporation and statement for Part V of the Form 1023 state your main purpose is, ***"To pay for medical expenses and other losses sustained by [P] and the family of [P]"***

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due to an automobile accident" and "After all losses the corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code". By your own statements, you have acknowledged that your primary purpose is to provide funding to the family of P first and secondarily to other persons in need, if any funds remain. Therefore, we hold that you do not meet the "Operational Test" as required in **Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations**.

You are remarkably similar to the organization described in the Court case **Wendy L. Parker Rehabilitation Foundation v. Commissioner**, *supra*, in which the organization was denied exempt status under section 501(c)(3) of the Code as the earning of the organization was found to have inured to the benefit of its board members. The Wendy L. Parker Rehabilitation Foundation was organized to provide funding to the family of Wendy Parker for the purpose of paying for expenses incurred by her disability. The board of directors for that organization was composed of members of her family, including her mother and father. Your board of directors, like the Wendy L. Parker Rehabilitation Foundation, also consists of the parents of your designated beneficiary, P, and you have provided substantial benefits to your founders/board members to pay for the medical costs of P. This distribution of funds for the benefit of P assists the P family in providing for his care. These funds will be used to pay for the medical and rehabilitative care of P. This relieves the P family of the economic burden of providing such care. This substantial direct benefit derived by your board members, parents of P, constitutes inurement and precludes tax exemption under Section 501(c)(3) of the Code.

In the Court case **Wendy L. Parker Rehabilitation Foundation v. Commissioner**, *supra*, the organization provided evidential documentation that they would disburse 70 percent of their funds to other persons, and would only disburse 30 percent of their funds to the family of Wendy Parker. In your Form 1023 application, you have documented that the funds you have disbursed were for the addition of two rooms on the Founder/President's home, the purchase and payments of a special van to accommodate P's disability, and to install ramp access. You have disbursed more than 50 percent of your funds and 98 percent of your expenditures to the family of P, and have not documented that any funds were disbursed for any other purpose. Based on the legal analysis and precedent set by **Wendy L. Parker Rehabilitation Foundation v. Commissioner**, *supra*, you do not qualify for tax exemption under Section 501(c)(3) of the Code because you are substantially involved in serving the private interests of your board members and designated individuals rather than serving the interests of the general public as a whole.

You are also like the organization described in the Court case, **Church of the Transfiguring Spirit v. Commissioner**, *supra*, in which 90 percent of the organization's funds were being disbursed to controlling board members. In this case, the court also ruled the organization was organized for the purpose of providing inurement to the board members. Like the Church of the Transfiguring Spirit, you are also formed for the purpose of providing inurement to your board members, who are the parents of P. Hence you do not meet the qualifications for tax exemption under Section 501(c)(3) of the Code.

APPLICANT'S POSITION:

In your correspondence dated November 12, 2006, you stated that you disagreed with the Service's conclusion. You claim that your purpose "includes raising funds for the benefit of anyone who has medical costs and is in need of financial assistance including P, a comatose individual".

You also stated, "The foundation continues to maintain funds raised from the previous fund-raiser awaiting petitions for financial support. All costs of operating the foundation, to date, have been donated by the individuals managing the charity foundation and the only use of the funds has been for reimbursement of medical related costs of petitioners."

Furthermore, you indicated that "To date, the activities of the foundation meet the guidelines of the case, 'Wendy L. Parker Rehabilitation Foundation vs. C.I.R.'"

SERVICE'S RESPONSE TO APPLICANT'S POSITION:

The administrative record demonstrates that the majority of yours expenditures have been expended for the benefit of P, the son of your board members, Q and R. Your Articles of Incorporation and statements in your Form 1023 attest to the fact that one of your main purposes is to provide for P, and then for anyone else if funds are available. Hence, we assert that your purpose, despite your claims to the contrary, is to serve the private interest of designated individuals, your founders/board members rather than the public as whole.

Although it is uncertain the number of petitions you have had thus far, your income as of October 29, 20 however, has been primarily expended for the care of P. Thus, it is evident that your primary focus is to benefit the family of P. You also acknowledge that you meet the guidelines of the case Wendy L. Parker Rehabilitation Foundation v. Commission, supra. Please be mindful that the organization described in this Court case was denied on the grounds of inurement to the board members and the pre-selection of a disabled recipient of benefits. We agree that you are astonishingly like the Wendy L. Parker Rehabilitation Foundation in that you are formed to benefit a pre-select recipient, P, the son of your board members, Q and R. The substantial direct benefit derived by your board members, parents of P, constitutes inurement and precludes tax exemption under Section 501(c)(3) of the Code.

CONCLUSION:

Based on the information provided, your purpose as discerned from your activities and your statements is to a private individual, P and his family rather than serve the public interest. You therefore, do not meet the organizational or operational tests of Section 501(c)(3) of the Code. You are operating in the same manner as the cited Court cases because you are operating to distribute funds to board members for personal or familial use. Granting exemption on your request for exemption would be for the sole purpose of relieving the S family of the economic burden of providing the needed medical care for their son, P. Hence, it is clear that your net earnings inure to your board members, Q and R, which bars you from tax exemption under Section 501(c)(3) of the code. Therefore, we have concluded that you do not qualify for

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exemption under 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. We have also concluded that you do not qualify under another subsection.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

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.

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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
Attn:

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7008
Cincinnati, OH 45202
Attn:

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure:

- Publication 892
- Copy of Court Case, **Wendy L. Parker Rehabilitation Foundation v. Commissioner**, Supra.

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