



**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**  
TE/GE EO Examinations  
1100 Commerce Street M/C 4920 DAL  
Dallas, TX 75242

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

Date: **SEP 15 2015**

Number: **201552034**  
Release Date: 12/24/2015

Person to Contact:  
Identification Number:  
Telephone Number:  
In Reply Refer to:

**LAST DATE FOR FILING A PETITION  
WITH THE TAX COURT:**

UIL: 501.03-00

**CERTIFIED MAIL- Return Receipt Requested**

Dear :

This is a Final Adverse Determination Letter that your organization was not exempt from taxation under section 501(a) as described under section 501(c)(3) of the Internal Revenue Code (IRC). The denial of your tax exempt status is effective July 1, 20XX.

Our adverse determination was made for the following reasons:

You have not established that you are operated exclusively for an exempt purpose or that you have been engaged primarily in activities that accomplish one or more exempt purposes.

You have not established that no part of your net earnings inure to the benefit of any private shareholder or individual.

Contributions to your organization are not deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending June 30, 20XX and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date this

determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit [taxpayeradvocate.irs.gov](http://taxpayeradvocate.irs.gov) or call 877-777-4778.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,  
John A. Koskinen  
Commissioner  
By

Margaret Von Lienen  
Director  
EO Examinations

Enclosures:  
Publication 892

**Internal Revenue Service**

**Department of the Treasury**

2525 Capitol Street #217  
Fresno, CA 93721-2227

Date: April 30, 2015

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number: Contact Numbers:

Telephone:

Fax:

**Certified Mail - Return Receipt Requested**

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the IRC provides, in part "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 its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,



Margaret Von Lienen  
Director, Exempt Organizations Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer:		Year/Period Ended 06/30/XX

### **Issues**

**Issue 1** – Should the (Foundation) tax exempt status under Internal Revenue Code (Code) section 501(c)(3) be revoked on the grounds that inurement exists?

**Issue 2** – Should the Foundation's tax exempt status under Code section 501(c)(3) be revoked on the grounds that it did not demonstrate it is operated for a charitable purpose?

### **Facts**

The Foundation submitted Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, (attachment 1) to the Internal Revenue Service (Service) on February 20, 20XX. An attachment to Part II, *Activities and Operational Information*, states in part:

*The Foundation serves as both the fiscal and supportive intermediary service organization which better serves that individual, the family and the county with a fighter level of autonomy and control. The foundation is centered around plan of care which provides vocational, and daily living supports. The Foundation allows to grow in relationships, contribute to his community, take responsibility for his decisions and actions, be treated with dignity and respect and have control over and manage his budget...*

A copy of the Foundation's Articles of Incorporation or Bylaws was not found in the Determination File.

The Foundation provided additional information to the Service in subsequent correspondence to secure tax exempt recognition and provided a Mission Statement (attachment 2, item 1a):

*It is the aim of the Foundation to provide for the highest quality supports to enrich the lives of persons with disabilities... We have a strong desire to provide a safe and compatible environment in which any individual can progress to their full potential... We aim to develop an individual plan of care to help promote skill development and assist any individual... We hope to promote a stress free environment and help individuals live as independently as possible... Our role as a support system is to assist any individual... It is our aim as an agency to continue to promote choices and independence for people...*

In other correspondence (attachment 3, item 1d) the Foundation stated it was seeking non-profit status as a health service agency dedicated to the promotion or lifestyle of choice and independence for persons with disabilities.

In other correspondence (attachment 4, item 4a) the Foundation stated it was an Independent Support Coordination unit and was to receive referrals from County and State agencies.

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
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In other correspondence (attachment 5, item 11a) the Foundation stated it would provide another option for persons with disabilities... all disabled individuals receive the individualized care... all disabled persons wishing to use the Foundation...

In letter dated May 21, 20XX (attachment 6) the Foundation stated it was microboard organization set up to service persons with disabilities. Currently, the organization is providing services for the care of . The organization receives funding to provide 24 hour care for .

The Commonwealth of Department of Public Welfare provided a Developmental Programs Bulletin, dated July 1, 20XX, (attachment 7) states a microboard is a small, non-profit corporation which is created with the specific intent of supporting an individual with developmental disability, and is committed to the individual's needs and desires for self-determination. A microboard works to address an individual's planning and support needs now and into the future. Such boards are created based upon the person-centered planning philosophy and are designated specifically to support one individual.

The Microboard Association website (attachment 8) states that a microboard is a legal nonprofit organization but not a 501(c)(3).

### **Law**

Code section 501(c)(3) provides for exemption from income tax for 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 propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

### **Federal Tax Regulations**

Section 1.501(c)(3)-1(a) states in part that in order to be exempt as an organization described in Code section 501(c)(3), the 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. The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

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Name of Taxpayer:		Year/Period Ended 06/30/XX

In *Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner*, the US Tax Court held that a substantial amount of the organization's funds were expended for the benefit of Wendy Parker. Wendy Parker was pre-selected as the sole recipient of funds throughout your formation. The result of the operations is a substantial private benefit Wendy Parker, which precludes exemption under 501(c)(3).

### **Government's Position**

**Issue 1** – The Foundation's tax exempt status under Code section 501(c)(3) should be revoked on the grounds that inurement exists.

The Foundation's sole purpose is to provide services to one person, . All of the Foundation's earnings inure to benefit because all the Foundation's activities and incurred expenses relate to care. All funds received are used and future funds will be used to provide services for benefit. The Foundation's selection of as a substantial beneficiary of its disbursements the detrimental factor resulting in inurement. Because is the only beneficiary of the Foundation's activities the inurement amount is 100% of the Foundation's earnings.

**Issue 2** – The Foundation's tax exempt status under Code section 501(c)(3) should be revoked on the grounds that it did not demonstrate it is operated for a charitable purpose. The Foundation's proposed activities were to provide services to individuals, presumably a charitable class, but no documentation has been provided to substantiate the proposed activities. Providing services to one or a few individuals results in inurement and precludes the Foundation from being regarded as operating for a charitable purpose.

### **Taxpayer's Position**

The taxpayer has not provided a definitive position; once a position is provided it will be incorporated into this report.

### **Conclusion**

A conclusion will be made once the taxpayer provides a response.