



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201651016**
Release Date: 12/16/2016
UIL Code: 501.33-00

Date: September 21, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: July 29, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

M = Name

N = Last Name

P = Location

W = Date

X = State

Y = Date

z dollars = Amount

UIL:

501.33-00

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under section 501(c)(3) of the Internal Revenue Code? No, for the reasons described below.

Facts

You were formed as a nonprofit corporation on Y in the state of X. Although you formed as a nonprofit corporation, you repeatedly referred to yourself as an LLC in your application and responses.

You were originally formed to provide financial assistance solely to the N family. Your activities consist of raising funds to assist the family of M, a child diagnosed with cancer, with medical expenses related to cancer preventive treatments that are not covered by the family's medical insurance. Your board reviews the medical expenses and distributes funds to the medical provider administering care. One of your board members shares the same last name as the recipient, M. Although you indicated on Form 1023 that your officers or directors are related through family or business relationships, you did not provide an explanation of the relationships.

You revised your activities during the processing of your application by stating you will provide financial assistance to other families in the P area with children that have been diagnosed with cancer or other life threatening illnesses. You will provide financial support to several families annually to help defer medical expenses including hospital visits/stays not covered by medical insurance. Families must submit a request for

assistance in writing and include the name and age of the dependent child, the nature of the child's medical condition, the treatments the child is undergoing at the time of the request, and proof of residence in the P area. The families must also provide proof that all qualified insurance claims have been exhausted and/or denied for coverage of medical expenses, treatments, or stays incurred in the treatment of the child. All medical expenses will be reviewed by your board and funds will only be distributed in the name of the medical provider administering care. You will advertise the availability of these funds during all of your fundraising events and on social media.

Your revenue comes from public donations as well as fundraisers that are attended by family, friends, and the general public. Your fundraising activities include year round t-shirt sales and football pools during football season. You also hold blood drives.

As of W, you had raised z dollars that was distributed among M and two other recipients. A breakdown of the amount of funds distributed to each recipient was not provided. However, you stated that up to 50% of your total funds raised will be made available to the N family for M and the other 50% will be available to other qualifying families who request assistance.

Law

Section 501(c)(3) of the Internal Revenue Code ("Code") provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable and educational purposes, including the prevention of cruelty to children or animals provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Treasury Regulations Section 1.501(c)(3)-1(a)(1) 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.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states 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.

Treas. Reg. 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 an exempt purpose unless it serves a public rather than a private interest. The organization must demonstrate 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term charitable is used in its generally accepted legal sense. The term includes, among other activities, organizations established to assist in the advancement of education, promotion of health and the promotion of social welfare.

Revenue Ruling 67-367, 1967-2 C.B. 188 describes a nonprofit organization whose sole activity was the operation of a 'scholarship' plan for making payments to pre-selected, specifically named individuals. The

organization did not qualify for exemption from federal income tax under section 501(c)(3) of the Code because it was serving private rather than public or charitable interests.

In Better Business Bureau of Washington, D.C. Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number of importance of truly exempt purposes.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo. 1986-348, the tax court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family member of the founders who was a coma victim with medical and rehabilitative. The court found that the family coma victim was a substantial beneficiary of the foundation's activities.

Application of law

You are not described in section 501(c)(3) of the Code because you do not meet the operational test as described in Treas. Reg. Section 1.501 (c)(3)-1 (a)(1). You have failed to establish that you exclusively further a charitable purpose as defined in Treas. Reg. Section 1.501(c)(3)-1(d)(2).

You are like the organization described in Revenue Ruling 67-367 because you were formed and are operated to benefit a preselected individual. You were formed to provide financial assistance to the N family for M's medical expenses. You expanded your activities to include providing assistance to other families whose children have been diagnosed with cancer or other life threatening illnesses. However, up to 50% of your funds raised will still be given to the N family for M, thereby resulting in substantial private benefit to the N family. Per Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), you are not operated exclusively for an exempt purpose because you serve a private rather than a public interest.

Similar to Wendy L. Parker Rehabilitation Foundation, Inc., Petitioner v. Commissioner of Internal Revenue, a substantial amount of your funds will be expended for the benefit of the N family for M. While the extent of your board's relationship to the N family and M is not clear, one of your board members does share the same last name as the N family and M and you clearly indicate that you were formed for the sole purpose of providing financial assistance to the N family for M.

You are similar to the organization in Better Business Bureau of Washington, D.C. Inc. v. United States in that you are not operated exclusively for exempt purposes. While you did expand your activities to include providing financial assistance to other families whose children have been diagnosed with cancer or another medical illness, you still have the non-exempt purpose of raising funds for and providing funds to the N family for M. Up to 50% of your funds will go to the N family for M. Per Treas. Reg. Section 1.501 (c)(3)-1 (c)(1), you are not operated exclusively for one or more exempt purposes because more than an insubstantial part of your activities is not in furtherance of an exempt purpose.

Conclusion

Based on the facts presented above, you have failed the operational test because more than an insubstantial amount of your activities is not in furtherance of an exempt purpose. You are operated for the substantial private benefit of the N family rather than for public benefit. Accordingly, you do not qualify for exemption as

an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892