



Department of the Treasury

Internal Revenue Service

P.O. Box 2508

Cincinnati, OH 45201

Number: **201701021**
Release Date: 1/6/2017

Date: October 11, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

501.00-00, 501.32-00

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: August 22, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State

C = Date of formation

D = Board member

F = County

G = Specific disease

h dollars = Amount

j dollars = Amount

UIL:

501.00-00

501.32-00

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 Code? No, for the reasons described below.

Facts

You were formed in the State of B on C. You are formed to provide financial support to children diagnosed with a specific form of lymphoma, G, who live in F County, as well as adjacent counties, and are actively receiving treatment.

Your Bylaws state that there shall be no less than three seats on the Board of Directors. At least 33% of the Directors of the Board shall be persons associated with G lymphoma.

The financial support you provide includes assisting (in partial or full) with travel, co-payments of doctor visits or pharmaceuticals, day care for siblings, rent or mortgage payments of legal residence, lodging expenses of immediate family members during hospitalization and vehicle payments. You do not provide funds to other foundations or organizations.

Your governing body consists of three Board Members. One of your three Board Members, D, has a child that is impacted by G lymphoma. Your name includes the name of D's child. D's family requested your financial assistance last year. Your Board of Directors accepted D's family's request for assistance with travel and other authorized expenses. You indicated the vote was unanimous and was not weighted or influenced by D as a

Board Member. D's child met all of the requirements within the application and your Board could not find just cause to deny the request for financial assistance.

D's family received j dollars, which accounts for over half of the total funds you raised. D's family received the only funds paid out to individuals last year.

Your Board Members may receive future dispositions of funds because at least one-third of your Board must have a family member affected by G lymphoma. You indicated another Board Member is eligible to apply for financial assistance because he also has a family member affected with G lymphoma.

Your activities will be supported by donations and fundraisers. Social media will be utilized to spread awareness and identify potential candidates for support. You have already conducted a benefit specifically to raise funds for D's family. This benefit included silent auctions, live auctions, shirt and wristband sales, food sales, and general donations to you.

Your future activities include various fundraisers. Profit from these types of events will roll over to cover costs of future events and a portion will go to the benefitting family. A portion of the funds received will also be set aside to provide financial support to one other family within the calendar year that meets the application criteria.

Your website says you are a small group of people supporting D's daughter and family as she brings inspiration to children battling cancer. You sell merchandise such as t-shirts and wristbands on your website. Your website also provides a link for a crowd funding site specifically for D's daughter. The crowd funding site has raised over h dollars for D's daughter. You said that funds raised through the crowd funding site went directly to D's daughter and did not pass through you. The crowd funding link for D's daughter is the only such link on your website.

You have an application form available on your website. The applicant must meet certain criteria. They must be a parent or guardian to a child that is 0-17 years old who has been diagnosed with B lymphoma. The applicant must live in F County or adjacent county, and must be actively receiving treatment (including post treatment such as monthly bloodwork, scans and doctor visits).

Your Board of Directors reviews applications and determines if they meet your criteria. You will take into consideration the level of support the applicant has received from other organizations. Your Board ensures families meeting the criteria gain priority over those families already receiving financial support from other organizations. You focus on distributing funds to those families with the greatest need.

You will grant funds to the applicants via check. The check is payable to the parent/legal guardian of the child. At this time you do not have a policy in place to verify that the funds were used for the intended purposes. You assume the funds go toward the identified expenses in the application. The Board views this as an acceptable assumption. Real life experience and interaction with families with children suffering from childhood cancer support the Board's assumption, as this firsthand experience places the financial burden into perspective.

You later said your safeguard includes having a Board composition which requires at least one-third of the members acting as a "subject matter expert" and by having family member affected by G lymphoma. Additionally, you said a gift card with set amounts will be issued to families with a request for families to turn

in all receipts and you will work with credit card companies to ensure that you can monitor or limit the expenditures on the card.

Law

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational and other 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 Regulation 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) provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities that 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(c)(2) 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) 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.

Rev. Rul. 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. U.S., 326 U.S. 279 (1945) the court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of statutorily exempt purposes.

In Wendy Parker Rehabilitation Foundation, Inc. v. Commissioner, 52 T.C.M. (CCH) 51 (1986), the organization was created by the Parker family to aid an open-ended class of “victims of coma.” However, the organization stated that it anticipated spending 30 percent of its income for the benefit of Wendy Parker, significant contributions were made to the organization by the Parker family, and the Parker family controlled the organization. Wendy's selection as a substantial recipient of funds substantially benefited the Parker family by assisting with the economic burden of caring for her. The benefit did not flow primarily to the general public as required under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). Therefore, the Foundation was not exempt from federal income tax under Section 501(c)(3).

In Easter House v. United States, 12 Cl.Ct. 476, 487 (1987), citing section 1.501(c)(3)-1(d)(1)(ii) of the regulations, *aff'd without opinion*, 846 F.2d 78 (Fed.Cir.1988), that an organization is not operated exclusively for exempt purposes if it serves a private rather than a public interest.

Application of law

You are not described in Section 501(c)(3) of the Code because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). As described in Treas. Reg. Section 1.501(c)(3)-1(c)(1), you are not operating exclusively for exempt purposes because your funds inure to D, a Board Member. When funds inure to the benefit of private individuals, an organization is not operating exclusively for an exempt purpose. Treas. Reg. Section 1.501(c)(3)-1(c)(2).

You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you are operating for private interests rather than public interests. You have only provided financial assistance to D's family. Over half of your total funds raised last year were distributed to D for his child's medical expenses. No other families received a distribution.

You are like the organization described in Revenue Ruling 67-367 because you were formed and are operated to benefit a preselected individual. Your website illustrates this by showing a prominent picture of D's child. The fact that you are named after D's child also substantiates you were formed to benefit a preselected, designated individual which shows you are serving private interests precluding exemption under Section 501(c)(3) of the Code.

You are like the organization described in Better Business Bureau in that you are not operated exclusively for exempt purposes. Your purposes include furthering the private interests of D's family. Although you indicated that you will accept applications from others in F County and adjacent counties, you have specifically been raising funds since inception for D's family. Your website includes a link for a crowd funding for D's family as well. Using your resources to only raise funds for a Board Member since your inception has caused inurement which cannot be cured by offering funds to others. As one-third of your Board, at all times, must have a family member affected by B lymphoma, and your board is eligible to receive your benefits, there is a likelihood of inurement in the future as well. Like the organization in this court case and Easter House, this single non-exempt purpose of raising funds for your governing body members destroys your claim for exemption under Section 501(c)(3) of the Code.

You are similar to the organization described in the court case Wendy L. Parker Rehabilitation Foundation because you were formed to pay the medical expenses for a preselected individual. You are assisting D's family with their economic burden by providing these funds. Like this organization, your payments inure to D and his family, which is fatal to exemption under Section 501(c)(3) of the Code.

Conclusion

Based on the facts presented above, you fail the operational test under Section 501(c)(3) of the Code because your funds inure to D and potentially to other board members. Therefore, you do not qualify for exemption under Section 501(c)(3).

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