



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201808019**
Release Date: 2/23/2018
UIL Code: 501.03-00
501.32-00

Date: October 19, 2017

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,

Stephen A. Martin
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:

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date of formation

C = State

F = Individual

g dollars = Amount

UIL:

501.03-00

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 stated below.

Facts

You incorporated on B in the state of C as a Nonprofit Public Benefit Corporation. According to your Articles of Incorporation you are organized for charitable purposes, specifically to help people with limb differences.

Your Bylaws state your specific purpose is

You stated in your application that you intend to develop open source technology that helps people with hand amputations transition from disabled to fully-abled. This includes creating open source, highly dexterous bionic hands for both adults and children. In addition to creating hardware, you will also develop sophisticated open source control software to control the proposed hands. You will also develop any related technology required to create a bionic hand with the human hand functionality.

Your core technology will be developed through collaboration with domain experts throughout the world, running guided development programs at universities, and holding open source hackathons. Consequently, the development work will be done by teams of people around the world, largely in academic contexts.

You also intend to use technology developed in the creation of the bionic hands to develop other artificial and bionic limbs.

According to your website and the links provided within, F, your President, recognized an unmet need for an open source bionic hand with the functionality of a human hand. In response, a team of designers, developers, and engineers was put together to use technological advances to solve the problem of helping , and ultimately, all people with hand amputations, transition from disabled to fully-abled.

Information you provided through a blog states that your mission is to
 . You will start by creating
 . You will then use technology
 , making it look and behave like an actual bionic hand.

The system allows people to explore the range of possible motions of the bionic hand and, when tuned to an individual's unique muscular and behavioral patterns, can be used to control an actual, mechanical bionic hand.

The first phase of the project entails
 throughout the process of development. The next phase entails scaling up the business and creating larger models that fit older children, teens, and adults, so that anyone who needs a bionic hand can have one, at the lowest possible cost.

The blog also contains a link to your fundraising campaign where you have a page set up to receive donations, with a goal to raise g dollars. The site states your mission is to create an open source bionic hand sized for a . Funds raised will help cover startup costs, including the incorporation and 501(c)(3) set up fees, and the hardware needed to develop an alpha model of the bionic hand.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes where no part of the net earnings of which inures 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) of the Code, 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 which accomplish one or more of such exempt purposes specified in Section 501(c)(3) of the Code. 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) states 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides that the term "educational" relates to: (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(ii), Example 2 provides that an educational organization includes an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Rev. Rul. 66-255, 1966-2 C.B. 210, describes an educational organization that qualified for providing public information. In this ruling, the organization educated the public as to a particular method of painless childbirth. The organization utilized meetings, films, forums, and publications to educate the public. The organization carried out its purpose through (a) public programs of films followed by discussions with doctors and members of the organization; (b) presentations on local radio stations; (c) meetings conducted by a doctor or a registered nurse for expectant parents; and (d) pamphlets, manuals, and books which are distributed to libraries, hospitals, and obstetricians.

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.

Rev. Rul. 69-545, 1969-2 C.B. 117, holds that a non-profit hospital that benefits a broad cross section of its community by having an open medical staff and a board of trustees broadly representative of the community, operating a full-time emergency room open to all regardless of ability to pay, and otherwise admitting all patients able to pay (either themselves, or through third party payers such as private health insurance or government programs such as Medicare) may qualify as an organization described in Section 501(c)(3) of the Code.

Rev. Rul. 72-369, 1972-2 C.B. 245, concerns an organization formed to provide managerial and consulting services to unrelated organizations exempt under Section 501(c)(3) of the Code. The organization enters into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The ruling states that providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of Section 501(c)(3). Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable. Accordingly, the ruling holds that the organization's activities are not charitable and, consequently, the organization does not qualify for exemption under Section 501(c)(3).

In Rev. Rul. 98-15, 1998-1 C.B. 718, the IRS noted that "not every activity that promotes health supports tax exemption under Section 501(c)(3) of the Code. For example, selling prescription pharmaceuticals certainly promotes health, but pharmacies cannot qualify for recognition of exemption under [Section] 501(c)(3) on that basis alone."

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), aff'd, 625 F.2d 804 (8th Cir. 1980), the court held that, while selling prescription pharmaceuticals to elderly persons at a discount promotes health, the pharmacy did not qualify for recognition of exemption under Section 501(c)(3) of the Code on that basis alone. Because the pharmacy operated for a substantial commercial purpose, it did not qualify for exemption under Section 501(c)(3).

Wendy L. Parker Rehabilitation Foundation Inc. v. Commissioner, T.C. Memo 1986-348, 52 T.C.M. (CCH) 51 (1986), states the organization was issued an adverse ruling for their exempt status under Section 501(c)(3) of the Code 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 thereunder." The organization anticipated disbursing 30 percent of its funds for the benefit of Wendy Parker, a recovering coma patient.

In Salvation Navy, Inc. v. Commissioner of Internal Revenue, T.C. Memo 2002-275 (2002), the Tax Court found that one of the reasons why the organization did not qualify for exemption from federal income tax was because it could not prove that it was not organized to serve the private interests of its founder.

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 your officer, F. 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)(ii) because you are serving the private interests of F. Although you intend to expand your operation, you were formed in order to create a bionic hand for

You are like the organization described in Rev. Rul. 67-367 because you were formed and are operated to benefit a preselected individual. Your website illustrates this by stating that you were formed to create a bionic hand for

Like the organization described in Wendy L. Parker, you are not exempt because your selection of an officer's family member as a substantial beneficiary of your disbursements violates the prohibition against using the funds of a tax-exempt organization to inure to the benefit of private individuals.

While you intend to expand your operations to benefit a larger class of individuals, your current focus is on . Although your activities, in part, further a charitable purpose, you do not qualify for exemption because more than an insubstantial part of your activities benefit F personally. As in Salvation Navy, Inc., you have not proven that you were not organized to serve the private interests of your President, F.

Per Better Business Bureau of Washington D.C., Inc., the presence of a single non-exempt purpose, if substantial in nature, will destroy the claim for exemption regardless of the number or importance of truly

exempt purposes. Your purposes include furthering the private interests of F's family. Your website provides links for a crowd funding website for this purpose as well. Using your resources to raise funds for a private purpose has caused inurement, which can't be cured by offering the funds to others.

You also have a substantial nonexempt purpose because you develop open source software that any person can use for any purpose, including nonexempt purposes, such as commercial or personal purposes. See Better Business Bureau of Washington, D.C., Inc. Open source software is published under licenses that allow any person to use the software, or parts of the software, for any purpose including nonexempt purposes such as commercial or personal purposes. The development of the bionic hand relies on your development of open source software. The development of the hand with related software is your primary activity. Therefore, this is a substantial nonexempt purpose.

You are not described in Section 501(c)(3) of the Code as an educational organization for the development, promotion and distribution of open source web applications. The term "educational," as used in Section 501(c)(3) relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community. See Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i). The regulations provide several examples of organizations that qualify as educational organizations, including "organizations whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs." See Treas. Reg. Section 1.501(c)(3)-1(d)(3)(ii), example (2). One such educational organization was described in Rev. Rul. 66-255, which describes an organization formed to educate the public as to a particular method of painless childbirth. The organization carried out its purpose through (a) public programs of films followed by discussions with doctors and members of the organization; (b) presentations on local radio stations; (c) meetings conducted by a doctor or a registered nurse for expectant parents; and (d) pamphlets, manuals, and books which are distributed to libraries, hospitals, and obstetricians.

You do not conduct any educational activities that instruct or train individuals for the purpose of improving their capabilities. Your activities are best described as providing information about a product, similar to a product manual, which does not rise to the level of educational as required under Section 501(c)(3) of the Code.

The promotion of health has long been recognized as a charitable purpose under common law. However, not every activity that generally promotes health furthers exclusively charitable purposes under Section 501(c)(3) of the Code. For example, selling prescription pharmaceuticals promotes health, but pharmacies cannot qualify for recognition of exemption under Section 501(c)(3) on that basis alone. See Federation Pharmacy Services, Inc. and Rev. Rul. 98-15. Nor does a hospital primarily further a charitable purpose solely by offering health care services to the public in exchange for a fee. See Rev. Rul. 69-545. You contemplate scaling up your business and creating products to be sold at the lowest possible cost. Providing services or selling products even at cost does not alone qualify an organization for exemption under Section 501(c)(3). See Rev. Rul. 72-369.

Conclusion

Based on the information provided, you do not qualify for exemption under Section 501(c)(3) of the Code. You are not operated exclusively for one or more purposes as specified in Section 501(c)(3) and are operated for substantial nonexempt purposes. You fail the operational test under Section 501(c)(3) because your funds inure to F. The fact that you were formed to create a product specifically for _____ 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).

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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892