



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

Number: **201843013**
Release Date: 10/26/2018

Date:
August 1, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.32-00, 501.35-00

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,

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:
May 24, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = State
D = Name 1
E = Name 2
G = Name of Scholarship
H = Public high school 1
J = Public high school 2

UIL:

501.32-00
501.35-00

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 were incorporated in C on B. Your Articles of Incorporation and Bylaws state that you are organized exclusively for charitable, religious, educational, and scientific purposes under Section 501(c)(3) of the Internal Revenue Code. You were formed by your President, D, and his wife, E, after D was hit by a drunk driver and had both legs amputated.

Your Bylaws states that you will "conduct various fundraising efforts and awareness campaigns with the sole purpose of providing support and guidance for individuals and families who are suffering due to unexpected tragedies and also to assist organizations that focus on serving disabled or wheelchair bound individuals and amputees".

You were created in direct response to D's near-death accident. The unforeseen medical expenses that his family incurred and will continue to incur due to the need for prosthetics and the maintenance of the prosthetics

will require extensive funds. Therefore, the family will rely on the generosity and support from individuals and corporations for monetary and in-kind support. You not only plan to support D's needs, but also want to connect with other disabled and/or wheelchair bound individuals to offer assistance and guidance to them.

Your Form 1023 also states your mission is to provide support and guidance to individuals and families who are suffering due to unexpected tragedies and also to assist organizations that focus on serving disabled or wheelchair bound individuals and amputees. You will engage in various fundraising and activations, in hopes of generating much-needed funds, community awareness and long term support. You plan to hold a 5K Run/Walk, a Baseball Tournament, a Domino Tournament, a Golf Tournament and ultimately a Gala/Silent Auction to raise funds for D and others in need. You plan to launch, the G Scholarship to award one partial-scholarship to a student from H and J each year.

Your proposed budgets show receipts from donations and fundraising events and disbursements for salaries and wages, professional fees and other expenses.

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)(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).

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).

Treas. Reg. Section 1.501(c)(3)-1(a)(1) provides that an organization described in Section 501(c)(3) must be operated exclusively for one or more of the purposes specified in such section. 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. Your net earnings inure in part or in whole to the benefit of D and his family. You do not, therefore, meet the operational test under Section 501(c)(3).

Likewise, you do not meet the requirement of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you are operating for private interests rather than public interests in providing financial assistance to designated individuals, your creator D and his family.

You are like the organization described in Revenue Ruling 67-367 because you serve a private rather than the public interest, having been formed to benefit D, a preselected individual.

You closely resemble the organization described in Wendy L. Parker because you were formed by D and his family in part to pay his medical expenses, relieving them of their economic burden.

Although you indicate that you will also assist other disabled persons, you have specifically been raising funds since inception for the non-exempt purpose of aiding D and his family. According to the court in Better Business Bureau, such a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of the exempt purposes it serves.

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 E, and are operating for private rather than public interests.. 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892