



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

Number: **201931011**
Release Date: 8/2/2019

Date:
May 8, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.33-00, 501.35-00, 501.03-30, 501.03-31, 508.04-00

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:
March 6, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Document 1
C = Document 2
K = Sole trustee
M = First beneficiary

UIL:
501.33-00
501.35-00
501.03-30
501.03-31
508.04-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons 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 state that your purpose is to help disabled persons "exit" from Social Security and related assistance thereby reducing the burden on governmental programs. Your goal is to attempt to "unhook the words 'permanently' and 'totally' from the disabled individuals medically diagnosed Social Security assistance applied title."

You claim to be formed as a trust, but you have declined to submit a copy of a trust document. You state that you have been making confidential trust submissions to the Social Security Administration (SSA), which will not be submitted to the IRS. We sent three requests for a conformed copy of your organizing document along with information regarding your planned operations. You have yet to provide a complete, signed copy of your organizing document.

You assert that the trust is in existence, however, and an individual account for your first beneficiary, whom we will call M, has been funded. You were established by K, its sole trustee, to hold property and disburse income to disabled beneficiaries, including M.

Currently, you have only a single beneficiary, M, but intend to have other beneficiaries at some unspecified time. We concluded that we need to know the identity of M, but you refused to provide that information on the

ground that M's identity is confidential under Medicaid rules. You plan to establish a "pooled income fund" for this purpose, but you have not explained the nature of the activities to be carried out by means of it.

Your quest for exemption is mixed up somehow with K's efforts to obtain the SSA's approval of M's "trust." You have not explained the nexus. However, you mention the SSA's PASS program in a couple of places, without explaining its relevance to your programs.

You submitted a document titled B, which is a compilation of multiple statutes, excerpts from various legal texts, court cases and comments from your founder. A second document entitled C was also submitted. This document provides that your general purposes are: 1) research, demonstrate and facilitate long term disability assistance exit strategy; 2) assist with implementation of plans to achieve self-support and similar; 3) consider evident impeding activities; 4) assist with appropriate legal remedies; 5) selectively take on new cases; 6) optionally implement allowable associated managed investment fund(s); 7) accomplish the purposes without materially diminishing existing financial assistance provided by the State and Agencies to the "second beneficiary". Every one of these items demanded an explanation. You provided none.

You stated that your founder and sole trustee K devoted a large amount of time to the discovery of causes and the development of controls, treatments and preventative measures related to medically diagnosed human physical and mental diseases and impairments. K discovered in the course of his research that modifications to the living environment were necessary to maintain progress towards self-support, and that a disabled individual's specific needs may include custom requirements that he would otherwise neither be able to facilitate or accommodate. You have furnished no explanation how you will utilize this discovery, other than the cryptic statement that the trust document is based on Social Security Law which enables certain facilitation, accommodation and investment activities to be conducted on behalf of the disabled individual.

The sole source of continuing funding identified for the trust will be awards from civil and criminal cases on behalf of your disabled beneficiaries. We requested information about your litigation on behalf of your disabled beneficiaries. You stated only that numerous filings have been made over many years with local law enforcement, federal enforcement and other government agencies including filings with federal court with respect to an unidentified first disabled beneficiary, and that, in addition, criminal charges are anticipated. No further explanation was provided.

Your initial funding came about because of a Social Security law that enabled the management of inheritance received through a will of a deceased parent/guardian. An unidentified disabled beneficiary's place of residence, to which many disability modifications had been added was jeopardized somehow by the passing of the parent/guardian. A specifically tailored trust was needed to ensure that progress towards self-support was not disrupted. You provided no explanation of the pertinence of the facts described to your activities.

You have also made the following statements for which you have provided no explanations:

- Tax exempt status is not being sought for individual disabled beneficiary accounts but for the "pooled portion".
- If a conflict arises between IRS regulations and other agencies such as Social Security you will proceed in favor of the statutes of Social Security and other involved agencies.
- The trust is being created in connection with a specific Social Security disability plan to achieve self-support.
- You will likely take on no new second beneficiaries until the Trust is in its final form.

- The pooled trust will be primarily responsible for the construction and management of individual accounts. Selection of disabled individuals will likely be based on a compatible intent between the disabled individual and you as well as past successes.
- Substantial intellectual property anticipated to be applicable to your activities is held by the trustee/first beneficiary. As new intellectual properties are discovered or created ownership will be determined at that time.
- You indicated that you will accept donor advice on the use and distribution of funds.
- You anticipate that both disabled Social Security recipients and military veterans will be future beneficiaries of the trust, receiving housing assistance tailored to the needs of the disabled individual.

Your responses to our third request for additional information did not provide the specific information we requested. The 18-page response included of an extensive analysis of multiple individual income tax concepts and how they impact the disabled individual, and included personal tax documents of K and a customized Form 990 for the trust. You stated that the trust will be able to assist other disabled individuals with their plans to achieve self-support via the “pooled and special needs portion.” You did not explain how this “portion” would accomplish this or what it is a portion of. Finally, you did not provide the requested contact phone number, making it impossible for us to contact K for clarification of your activities and explanation of our needs. .

Financial data provided indicates that you have had expenses thus far for law books, two post office boxes, one safety deposit box and the IRS application fee. To date all expenses were covered by way of contributions resulting from the death of a parent/guardian of the beneficiary.

Law

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states 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. 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

Limit the purposes of such organization to one or more exempt purposes; and
Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization’s assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization’s articles or operation of law, be distributed for one or more exempt purposes.

Treas. Reg. 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. 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively charitable purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish 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.

Revenue Procedure 2018-5, 2018-1 I.R.B. 2321, Section 6 (and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 3 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application.

In *Universal Life Church v. United States*, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that “one seeking a tax exemption has the burden of establishing his right to a tax-exempt status.”

Pius XII Academy v. Commissioner, T.C. Memo. 1982-97 provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In *La Verdad v. Commissioner*, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization’s request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service’s denial, stated “It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant.” The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

Application of law

Revenue Procedure 2018-5 provides that a ruling on exempt status is (Section 3) based solely on facts and representations in the administrative file and (Section 6) that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. You have not provided supporting documentation sufficient to establish you meet the requirements of Section 501(c)(3) of the Code.

Section 501(c)(3) sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have not established through the administrative record that you have met the particular requirements of organizational test described in Treas. Reg. 1.501(c)(3)-1(b)(1)(i) and Treas. Reg. 1.501(c)(3)-1(b)(4). You refused to submit a complete copy of the trust agreement that is your purported organizing document. The drafts that have been submitted do not contain either a valid purpose or dissolution clause. Without an organizing document in the administrative record you cannot establish that you meet the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

With regard to the operational test described in Treas. Reg. 1.501(c)(3)-1(c)(1), although you have not provided a clear explanation of your program as a whole, it is nevertheless clear that you are not operated exclusively for exempt purposes. Currently you have only a single beneficiary, M, whose relationship to you have not explained. A trust that has a single particular beneficiary such as you do at present will not qualify for exemption under section 501(c)(3) because it serves a private interest, that of M, rather than a public interest. Furthermore, it is more or less clear that when you have established the "pooled income fund" you will maintain within it individual accounts for specified beneficiaries. You are like the organization described in Rev. Rul. 67-367. You do not therefore meet the requirement of Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) that you establish you are not operated for the benefit of private individuals.

Furthermore, as regards your program as a whole, a favorable determination letter or ruling could not be issued to you because it cannot be established through the administrative record that it meets the particular requirements of the operational test of Treas. Reg. 1.501(c)(3)-1(c)(1) as required by Revenue Procedure 2018-5, Section 6. The description you have provided of your activities is persistently incoherent, full of gaps and omissions, and lacking in necessary explanatory matter, frustrating all attempts to attain an understanding of them sufficient to support a determination that you are operated exclusively for exempt purposes under Section 501(c)(3). Detailed information regarding your planned activities was requested multiple times, but the requested information was not submitted. You have not provided detailed descriptions of your plans to assist disabled beneficiaries of Social Security to exit from assistance programs. Your plans to continue your founder's research have not been described in detail. While some of the purposes and/or activities could be conducted in a charitable manner, without the detailed information regarding your operations it is unclear if your activities are charitable. Consequently, even if the evidence in the administrative record that you are operated for the benefit of private individuals could be set aside, you still would not meet the organizational test because you have failed to clearly show that your operations accomplish exclusively charitable purposes as required by Treas. Reg. 1.501(c)(3)-1(c)(1), because you have not submitted sufficient information establishing you are operated exclusively for 501(c)(3) purposes. Like Universal Life Church you have not carried the burden of establishing your right to a tax-exempt status. Like Pius XII Academy you failed to provide information describing in adequate detail how the operational test will be met. Like La Verdad your administrative record does not demonstrate that you would operate exclusively in furtherance of an exempt purpose. Like New Dynamics, you have numerous gaps in your administrative record which you did not repair in the course of the administrative process. Like Ohio Disability Association your responses to our requests for additional information failed to supplement the initial application or clarify purposes and activities. Therefore, there is not sufficient documentation to establish that you are exempt from taxation as required by Section 501(c)(3) of the Code and Revenue Procedure 2018-5.

Conclusion

Based on the information submitted, you have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and the related income tax regulations. Therefore, based on the administrative record, you fail to qualify for exemption under Section 501(c)(3).

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.

If you don't agree

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

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

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

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information 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 later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

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

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements