

Internal Revenue Service

Appeals Office

300 North Los Angeles Street
MS LA-8000 Room 3054
LOS ANGELES, CA 90012Number: **201947020**

Release Date: 11/22/2019

DATE: AUGUST 29, 2019

A

B

Redaction legend:

A= taxpayer name

B= taxpayer address

C= taxpayer identification number

Department of the Treasury**Employer Identification Number:**

C

Person to Contact:

Employee ID Number: ****

Tel: ****

Fax: ****

UIL Index:

501.00-00

501.03-30

501.33-00

Certified Mail

Dear :

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Section 501(c)(3).

We made the adverse determination for the following reason(s):

You have not demonstrated that you are organized and operated exclusively for charitable, educational, or other exempt purposes and that no part of your net earnings inure to the benefit of private shareholders or individuals as required by section 501(c)(3) of the Internal Revenue Code. Treas. Reg. § 1.501(c)(3)-1(a)(1).

Contributions to your organization are not deductible under section 170 of the Code.

You're required to file Federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return, or 1041, U.S. Income Tax Return for Estates and Trusts. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in either:

- United States Tax Court,
- The United States Court of Federal Claims,

- The United States District Court for the District of Columbia.

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under section 7428 of the Code.

You also have the right to contact the Taxpayer Advocate Service (TAS). 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 you've tried but haven't been able to resolve your problem with the IRS. Please contact the Taxpayer Advocate for the IRS office that issued this letter. 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.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have any questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager



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

AUG 29 2019

Date:

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Country
C = Date
D = Individual
E = Individual
F = Corporation
y = Amount
z = Amount

UIL:

501.00-00
501.03-30
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 meet the organizational test under Section 501(c)(3) of the Code? No, for the reasons described below.
- Do you meet the operational test under Section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You were formed as a " " in the country of B on C. Your organizing document states you were formed for the advancement of education, science and research in the fields of business administration, economics, law, medicine, chemistry, physics and biology. You provide grants and pay stipends and allowances to qualified educational institutions and qualified academics and students for reasons listed above. You are seeking exemption as a private foundation.

D and E were husband and wife at the time of D's death. D's Last Will and Testament, under B law, caused your formation and indicates that you must provide adequate funds for the life support of E, in the amount of y annually, adjusted for inflation and capped at no more than one-third of your income. You will also provide E with the means to fulfill domestic and foreign tax liabilities. The Will states that as it relates to you, E is a member of the Executive Board, without restriction of her term of office until a specifically-named birthday, unless she remarries.

Your main source of support has been the bequest you received from D at the time of his death in the amount of z . No person other than E may make donations to you, and E does not expect to do so. E is a B national, residing in B, and is not a citizen or resident of the United States. Eighty-five percent or more of your non-investment income has been received from sources outside the United States.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable, educational, and other purposes, 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 for an organization to be exempt under Section 501(c)(3) of the Code, it 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 or operational test, it is not exempt.

Treas. Reg. Section 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 its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part of its activities, in activities which themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) states 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, if upon dissolution, such assets would by reason of a provision in the organization's articles of organization or by operation of law, be distributed for one or more exempt purposes.

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) of the Code. A single nonexempt purpose, if substantial in nature, will disqualify an organization from qualification under Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(c)(2) provides that 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) states that an organization is not organized exclusively for any of the purposes specified in Section 501(c)(3) of the Code unless it serves public, rather than private interests. 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.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 T.C.M. (CCH) 905 (1943), a trust established for the benefit of an aged clergyman and his wife was a private trust and not an exempt activity despite the fact that the two individuals served were needy.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the court held that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under Section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348 (1986), thirty percent of the petitioner's income is expected to be expended for the benefit of Wendy L. Parker, the daughter of an officer and organizer of the corporation. An adverse determination was made 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 Section 501(c)(3) and the Regulations. To qualify under Section 501(c)(3), an organization, inter alia, must operate exclusively for exempt purposes, and no part of its net earnings can inure to the benefit of any private individual.

Application of law

You are not described under Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the organizational or operational tests. If an organization fails either the organizational or operational test, it cannot qualify as an exempt organization under Section 501(c)(3).

Organizational test

Your organizing document does not limit your purposes to one or more exempt purposes as required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Also, the provision of the annuity for E violates the requirements of Treas. Reg. Section 1.501(c)(3)-1(b)(4) that assets of an organization exempt under Section 501(c)(3) be dedicated exclusively to charitable purposes. Accordingly, you fail the organizational test and do not qualify for exemption under Section 501(c)(3).

Operational test

You don't meet the operational test described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). You provide an annuity to E, your founder's wife, for her lifetime. This is a substantial non-exempt purpose which precludes you from exemption.

You are not operated exclusively for one or more exempt purposes because the payments you make to E inure to her benefit, as described in Treas. Reg. Section 1.501(c)(3)-1(c)(2). These payments serve a private, rather than a public, interest as prohibited in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

An exempt organization must not be operated for the benefit of a specific or designated few, as described in Carrie A. Maxwell Trust. Your activities are like those in Wendy L. Parker Rehabilitation Foundation, Inc. because a portion of your funds are given annually to E and you pay any of E's domestic and foreign tax liabilities.

Like the organization described in Better Business Bureau, your non-charitable purpose of providing an annuity to E and paying domestic and foreign taxes due is substantial in nature, regardless of other activities you may conduct which may be charitable or educational in nature. This substantial non-exempt purpose precludes you from exemption.

Your position

You indicate that you qualify as a foreign charity described in Section 4948(b) of the Code. To qualify under Section 4948(b), a foreign charity must have at least 85 percent foreign support since its creation. Gifts, grants, contributions, and unrelated business income count as support, along with debt financed income appears to count as support. Investment income that is not unrelated business income or debt financed income does not count. Your main source of support has been the bequest you received from D at the time of his death, which is B support in the amount of z

A couple of years ago you formed F, a corporation located in the United States that you assert is exempt under Section 501(c)(2) as title holding company. You stated that most of F's income is not unrelated business income and therefore does not count as U.S. support, except some debt-financed income that is nominal in relation to your foreign support. You are seeking a determination for tax exempt status because you have U.S. source income from F.

D's Will was prepared under B's laws and not U.S. laws. D named you as his residual beneficiary. You believe that this provision is analogous to a charitable remainder trust, with you serving as its own trustee, and with the power to invade corpus of its own benefit (Treas. Reg. Section 1.664-2(a)(4)), except that if D had owned any property at his death that was subject to U.S. estate tax (which was not the case), no estate tax deduction would have been available under IRC Section 2055 because the payments to E do not meet the requirements of Section 664(d)(1)(A).

You indicated that B law does not allow you to alter the purposes laid down by D, so you are unable to comply with our request to add language that references Section 501(c)(3) of the Code to the organizing document. You said there's no meaningful difference in the Section 501(c)(3) language and the language contained in the Stiftung, other than the Stiftung does not specifically refer to Section 501(c)(3).

You said a Treaty between the United States and B provides that you are tax-exempt in the U.S. even if you cease to be described in Section 4948(b).

Our response to your position

While you would satisfy the test under Section 4948(b) because substantially all of your support comes from sources outside the U.S. it does not provide an independent basis to be recognized as an organization described in Section 501(c)(3) of the Code.

To be recognized as an organization described in Section 501(c)(3), you must satisfy all requirements, whether or not some of the provisions in your formation document are analogous to requirements under U.S. law. As discussed above, we have determined that the Will that caused you to form includes provisions that prevent your assets from being exclusively used for and dedicated to charitable or educational purposes.

You argue that you are analogous to a charitable remainder trust. A charitable remainder trust may be tax exempt under Section 664 of Subchapter J, not under Section 501(a) of the Code. You are applying for tax exemption under Section 501(c)(3); therefore, Section 664 and the applicable regulations are not relevant. Further, you acknowledge that that you do not meet all the requirements to be an organization described in Section 664(d)(1)(A).

The tax treaty between the U.S. and B does not provide automatic recognition of exempt status to organizations which are exempt under the laws of B. Rather, it requires that an organization satisfy the relevant laws of **both**

[emphasis added] countries in order to receive recognition in the U.S. Because you do not meet the requirements of Section 501(c)(3), you are not exempt.

Conclusion

You are not organized or operated exclusively for exempt purposes under Section 501(c)(3) of the Code. You do not meet the organizational test because your organizing document does not properly limit your purposes to those described in Section 501(c)(3) and your assets are not dedicated to one or more exempt purposes. You also fail the operational test because your funds inure to the private benefit of E. Providing funds to E is a substantial non-exempt purpose and precludes you from exemption. Accordingly, 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892