

Internal Revenue Service
Appeals Office

Department of the Treasury

Employer Identification Number:

Date: October 16, 2020

Person to Contact:

Number: **202101006**
Release Date: 1/8/2021

Employee ID Number:
Tel:
Fax:
Uniform Issue List (UIL):
501.03-05

Certified Mail

Dear Sir or Madam:

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) of the Code.

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

You are not organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code (the "Code") and therefore you do not qualify for exemption from federal income tax under section 501(a) of the Code. Rather you are operated more than incidentally for private benefit and serve the private interests of individuals, rather than the public, in contravention of Treas. Regs. §1.501(c)(3)-1(c)(1) and § 1.501(c)(3)-1(d)(ii).

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 petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeals an IRS Determination on Tax -Exempt Status, for more information about the Appeals process.

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. Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You If you qualify for TAS assistance, which is always free. TAX 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

Enclosure: Publication 892



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

Date: **OCT 16 2020**

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Individual

UIL:

501.00-00
501.03-00
501.33-00

Dear Applicant:

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 were incorporated in the state of B on C. Your original Articles of Incorporation state that your purpose is to act as a fundraiser for D who has You amended your Articles to state that you are organized exclusively for charitable, religious, educational, and scientific purposes under Section 501(c)(3) of the Code.

To further your stated purposes, you will hold your first annual fundraiser. All proceeds from the event go to funding the care and personal and medical expenses of during their treatment and recovery. You plan to hold an annual event to raise money and awareness for

In your application you stated that following your first fundraiser, all proceeds will be donated to D, a All future fundraising activities will be directed towards as selected by the Board of Directors. Any member can nominate candidates for consideration by the Board.

Your website describes D's diagnosis and it states you were established to provide the helping hand and fighting chance that D needs to overcome, without further disrupting care and responsibilities. Your website also tells the readers that there are several ways to help D during time of need. In addition to the link to buy tickets to your fundraiser, there is also a crowdfunding site link, which gives the reader the option to donate to D directly.

The funds you raise will be used to pay for patient medical expenses associated with the treatment and recovery from _____, including any in-home aid that is necessary. Additionally, these funds will be used to subsidize normal living expenses while a

You said that anyone meeting the eligible purpose in either of _____ will be eligible to receive funds from you. First, a patient or a family member of a patient must submit a request for funds, along with any supporting documentation, including to medical bills, invoices, etc. Second, a committee selected by your Board of Directors will review each request for funds and make an eligibility determination and make recommendations to the Board based on several criteria: need, source of funds, other sources of funds, personal story and locality. Your Board will make the final decisions on which request for funds will be approved, which is done by a simple majority vote.

The committee will directly pay expenses based on the approved request for funds. Typically, you will only have the resources to work with one family at a time but will attempt to approve a request for funds from as many _____ as possible.

A _____ whose relative serves on the committee and/or the Board of Directors will still be eligible to receive approval for a request of funds. However, a Board of Director whose relative submits a request for funds must recuse him/herself from voting on said request of funds.

Since your inception, all of the funds you have raised have been distributed to D.

Law

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for educational or charitable purposes, 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) states that in order to qualify under 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 or 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(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Rev. Rul. 67-367, 1967-2 CB 188, states a nonprofit organization whose sole activity is the operation of a scholarship plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from federal income tax under Section 501(c)(3) of the Code.

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 L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348 (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 Parker'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 per Treas. Reg. Section 1.501(c)(3)-1(a)(1). You do not meet the provisions in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you were formed for the private purpose of raising funds to pay for the medical expenses of D. Likewise, you do not meet the requirements 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 a

Your website specifically requests funds for D and provides a link to a crowdfunding site, which you say provides funds directly to D. You are like the organization described in Rev. Rul. 67-367 because you serve private rather than public interests.

Although you indicate that you may also assist others, you have specifically been raising funds for D since your inception. You were formed to raise funds for a _____, which is not an exempt purpose. You are like the organization described in Better Business Bureau of Washington D.C., Inc., because a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of the exempt purposes it serves.

Like the organization described in Wendy L. Parker Rehabilitation Foundation, Inc., your benefits do not flow primarily to the general public. You were formed specifically to benefit D. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

Your position

When we asked for more information about how your funds will be distributed, you said your original purpose is for the payment of medical and related expenses for D. All efforts will be made to review and approve other requests for funds based on your selection process, which will depend on your current cash flow.

You later said that you like to amend that prior description of how you distribute your funds. You said that your purpose will be for the payment of medical and related expenses for anyone meeting your eligible purposes. All efforts will be made to review and approve requests for funds based on the recipient selection process, which will depend on current cash flow. D will be eligible to submit a request of funds. However, like everyone else who submits requests, D will be evaluated based upon the criteria you have established. You said that based on this amendment you should qualify for exemption under Section 501(c)(3) of the Code and the regulations. You also said to see Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner.

Our response to your position

Although that you now say that your funds will be available to both D and anyone else meeting your criteria, cash flow permitting, you have provided no evidence that you have really changed your purpose of providing financial assistance to one specifically-named individual, D. For example, your website tells the public that your purpose is to provide assistance to D and includes a link to contribute to D directly through a crowd-funding site. Although, in theory, you could provide assistance to others, you have not yet done so, and your activities provide a substantial private benefit to D. Therefore, you are precluded from exemption under Section 501(c)(3) of the Code.

Conclusion

Based on the information submitted, you are not operated exclusively for exempt purposes. You are operating for the private interests of one pre-selected individual, which is a substantial non-exempt purpose. Accordingly, you do not qualify for exemption under Section 501(c)(3) of the Code.

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.

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