



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Number: **202109007**
Release Date: 3/5/2021

Date:
December 8, 2020
Employer ID number:
Form you must file:
Tax years:
Person to contact:
Name:
ID number:
Telephone:

UIL: 501.00-00, 501.03-05, 501.03-30, 501.33-00

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(x). 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 IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service

number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Notice 437
Redacted Letter 4034
Redacted Letter 4038



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

Date:
 October 20, 2020
 Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

E = Date
 F = State
 G = Individual
 H = Department
 j percent = Number

UIL:

501.00-00
 501.03-05
 501.03-30
 501.33-00

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 IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You were formed as a nonprofit corporation on date E in the state of F. Your filed Articles of Incorporation state you are organized for "any lawful purpose." You also submitted an unfiled document titled "Articles of Incorporation," which contains language limiting your activities to those described in IRC Section 501(c)(3). That document was not filed with the State; therefore, it is not part of your formation document.

You originally applied for and were granted exemption on the Form 1023EZ as a Private Foundation. You failed to file the required Form 990-PF for three consecutive years, causing your tax-exempt status to be automatically revoked. You are now seeking reinstatement of your exemption and have submitted Form 1023.

You were established to deliver living services which support the most challenging adults with profound disabilities in close alignment with families and local communities. To fulfill that purpose, you have contracted with a social services agency, H, to serve one client, G.

You are governed by an -person board of directors including G, who is listed as a member. All of your board members are related within the same family. You were established as a family effort to serve G who was

unserved for _____ years before your formation. No agency in the state of F would accept G as a client because of the difficulties and high demands of her care. You were licensed and awarded a contract with H to serve G. H audits your services annually for compliance. You have _____ employees certified by H as direct care professionals for G.

It is your intent to increase the number of the clients you serve, but since your inception several years ago, you have not accepted any new clients. You receive _____ requests for support from local families each month. You engage in problem solving and guide the families on the path to establishing eligibility for services from H in the state of F and help them create visions for care for their family member with a severe disabling condition. Part of your mission is to help develop local, micro agencies to serve clients in their communities.

H informs you quarterly of eligible clients. You review and consider each potential client and assist by coaching family and service teams towards the development of achievable supported living services plans. You have not accepted any of these clients into your own program that G is currently enrolled in.

You are in the process of establishing services for a family with twin daughters who have support needs similar to G. The family has established a living setting and has experienced staff who wish to continue working with these clients. You will accept the contract with H to provide supported living services when housing and staffing are ensured. You indicate that finding the right persons as caregivers for the clients is difficult and is further exacerbated by the low rate of funding provided by H for staff salaries.

You also conduct community outreach. You serve disenfranchised developmentally disabled persons and their families by sharing knowledge and experience as well as providing guidance for those attempting to establish a micro-agency like yours.

You receive all your funding from H for your contracted services assisting G. You indicated that j percent of these resources are dedicated to G's care/staff salaries while the remaining percentage is allocated to business operations. Volunteer hours are used to support your mission of advocacy within the community. Your expenses include compensation of directors, other salaries and wages, professional fees, payroll taxes, insurance, travel, printing, filing fees, and a settlement to H.

Law

IRC Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, education 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 describes 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 organization test or the 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, in activities which in themselves are not in furtherance of one or more exempt purposes.

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 or 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 IRC Section 501(c)(3) because it was serving private rather than public or charitable interests.

In Better Business Bureau of Washington, D.C. Inc v. U.S., 326 US. 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, 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 states 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 IRC Section 501(c)(3) because you fail both the organizational and operational tests under Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You do not meet the requirements in Treas. Reg. Section 1.501 (c)(3)-1(b)(1)(i). Your Articles of Incorporation state that you were formed for any lawful purpose. Because your purposes are not limited to those which are exempt you do not meet the organizational test under Section 501(c)(3).

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. Caring for G, one of your eight board members and currently your only client, accounts for j percent of your time and resources. Your net earnings inure in part or in whole to the benefit of G and her family. You do not, therefore, meet the operational test under IRC Section 501(c)(3).

Likewise, you do not meet the requirement of Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) because you are operating for the private interests of your board member, G, and her family rather than public interests. The majority of your services and payments are used for the benefit of G and her family. All of your income is derived from a contract with H to provide services to G.

You are like the organization described in Rev. Rul. 67-367 because you serve a private rather than the public interest, having been formed to benefit G, a preselected individual. In fact, you receive quarterly referrals from H but have not accepted any new clients.

Although you do conduct educational activities and you have plans to assist other individuals with conditions similar to G, you have been operating primarily for the non-exempt purpose of assisting G since your inception. According to the court in Better Business Bureau of Washington D.C., Inc., 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.

You closely resemble the organization described in Wendy L. Parker Rehabilitation Foundation, Inc. because you were formed by G and her family primarily to pay her supported living expenses, relieving them of their economic burden. Although you may, at some point, provide services to others, since your inception you have not accepted any other clients. Your activities primarily benefit a single family and not the general public, which precludes you from exemption under IRC Section 501(c)(3).

Conclusion

Based on the facts presented above, you fail the organizational and operational tests under IRC Section 501(c)(3). Your formation document doesn't limit your purposes to those which are exempt, which causes you to fail the organizational test. You fail the operational test because your funds inure to G and her family. You are operating for private rather than public interests. Therefore, you do not 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