



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

Number: **202118022**  
Release Date: 5/7/2021

UIL Number: 501.03-00, 501.32-00, 501.33-00

Date: February 10, 2021

Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

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)(3). 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](http://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: December 8, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

- B = Name
- C = Name
- D = Name
- E = State
- F = Name
- G = Date

**UIL:**

- 501.03-00
- 501.32-00
- 501.33-00

x dollars = Amount

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**

Your Articles of Incorporation filed on G in E indicate you were formed to treat veterans with \_\_\_\_\_. You plan to focus on veterans, members of military services, public safety-first responders, and/or civilians with \_\_\_\_\_.

Your activities consist of providing funding for any eligible individual in order for them to receive D therapy at C for the treatment of \_\_\_\_\_. The primary criterium used to determine eligibility is if the individual's insurance either falls short or does not cover the treatment. Your board members are responsible for selecting recipients based on whether the treatment is deemed medically necessary and whether their insurance covers the treatment. However, you did not explain how you determine whether it is medically necessary. Additionally, you did not explain if there is an application process.

You further explained that your founder and board member, B is the sole owner of C which provides D therapy

for those with

. C is also the only provider of D therapy in E. Moreover, you indicated that D therapy is not typically covered by insurance, Medicare, Medicaid and the VA because it has not been approved by the FDA as a treatment for

Other than E, your board consists of F who is C's chief operating officer and other unrelated board members. All board members will be compensated x dollars each, but you did not provide job descriptions. You further stated volunteers conduct your activities.

You only submitted last year's financial information although we requested budgets for future years. The submitted information shows you are supported by donations and grants. Your expenses consist of salary expenses as well as outlays for fundraising and occupancy, but you did not provide a lease agreement even though one was requested numerous times.

We also requested the following information multiple times that you failed to provide.

- A listing of medical procedures and amounts you have paid for the treatment of C's patients;
- Details concerning the selection process and if all who are eligible receive funding;
- A description of how you determined the x dollars compensation for each of your board members.

Finally, you stated that you are lessening the burdens of the government by treating military veterans with who would otherwise depend upon government assistance for their welfare and treatment.

#### **Law**

IRC Section 501(c)(3) 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 IRC 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)(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 IRC Section 501(c)(3). 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(c)(2) states that an organization whose net earnings inure to the benefit of private shareholders or individuals or which is operated for the benefit of private interests is not operated exclusively for exempt purposes.

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.

Revenue Ruling 85-1, 1985-1 C.B. 177, holds that an activity is a burden of government only if there is an objective manifestation by a governmental unit that it considers the activity to be its burden. The ruling also provides that little weight should be given to government officials that merely praise or express approval of an organization and its activities. Instead, the government must formally recognize the organization and its operations as relieving its burdens.

Revenue Ruling 85-2, 1985-1 C.B. 178, holds that an organization lessens the burden of government if it engages in activities that a governmental unit considers to be its burden and such activities actually lessen such governmental burden. An organization must demonstrate through all the relevant facts and circumstances that a governmental unit considers the organization to be acting on its behalf, thereby freeing up the government assets that would otherwise be devoted to the particular activity.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. 1974), the court held that an organization has the burden of proving that it satisfies the requirements of the particular exemption statute. The court noted that whether an organization has satisfied the operational test is a question of fact.

In Church by Mail, Inc. v. Commissioner, 765 F. 2d 1387 (9<sup>th</sup> Cir. 1985), affg. TCM 1984-349, Tax Court concluded that the extent of the integration between the operations of a non-profit entity and related for-profit entities controlled by the non-profit directors precluded exemption. Furthermore, the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9<sup>th</sup> Circuit Court of Appeals, in affirming the Tax Court's decision, stated: "The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church."

In International Postgraduate Medical Foundation v. Commissioner, 56 T.C.M. 1140, 1989-36, the court ruled as non-exempt under IRC Section 501(c)(3) an organization formed to sponsor medical seminars and symposia that was founded and run by an individual who was a shareholder and officer in a for-profit travel agency that provided travel arrangement services to the nonprofit. Finding that the nonprofit was formed to obtain customers for the for-profit's business, the court concluded that the nonprofit had, as a substantial purpose, increasing the for-profit's income. When a for-profit organization benefits substantially from the manner in which the activities of a related nonprofit organization are carried on, the court reasoned, the nonprofit organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if the nonprofit furthers other exempt purposes.

#### **Application of law**

You do not meet the operational requirements for recognition of tax exemption under IRC Section 501(c)(3) because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You are not operating per Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your activities consist of providing funding for any individual who does not have adequate insurance to receive D therapy

Furthermore, D therapy for

is typically not covered by insurance, Medicare or

Medicaid so substantially all individuals seeking treatment from C would qualify for your services.

Additionally, D therapy is only offered by C in the state of E and is owned by B your founder and president.

This shows you are operated for a substantial private purpose furthering C, a for profit business owned by B, your founder and president, which precludes exemption under IRC Section 501(c)(3).

As described in Treas. Reg. Section 1.501(c)(3)-1(c)(2), you are not operated exclusively for exempt purposes because you have not established that your net earnings do not inure to the benefit of private shareholders or individuals. You are funding D therapy for patients of C which is owned by B, your founder and board member. C is the only provider of D in E. This shows that B is profiting from your relationship with C.

You are not as defined in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you are operating for the private interests of B, and C. This is evidenced by the fact that the recipients of funding for D therapy can only obtain it from C in E which is owned by B. Your primary criterion is that insurance does not fully cover the treatment. All patients not covered are eligible for your program to pay C owned by B. These facts indicate that you are serving private interests causing you to fail to qualify under IRC Section 501(c)(3).

You are not like the organizations described in Revenue Rulings 85-1 and 85-2 because you have not demonstrated that your activities lessen the burdens of government. As noted in the revenue rulings, there must be an objective manifestation that the government considers an activity to be its burden. The mere fact that a governmental agency has a policy or program to promote a certain outcome does not mean that the government has assumed the burden of engaging in that activity.

You are like the organization in Church by Mail because you are funding therapy only available at C owned by B, your founder and board member. You are essentially providing a market for C's services which precludes exemption who is the only provider of such services in your state.

You are similar to the organization in International Postgraduate Medical Foundation because your activities will produce a substantial amount of revenue for C which is owned by your founder, B. Therefore, you were formed for the substantial non-exempt purpose of providing a related commercial entity with business revenue.

Similar to the organization in Harding Hospital, Inc. v. United States, you have failed to provide sufficient information to prove to us that you are operating exclusively for purposes described in Section 501(c)(3).

### **Conclusion**

Based on the information submitted, you have not established that you are operating exclusively for one or more purposes described in IRC Section 501(c)(3). The information shows that you are operating for substantial nonexempt private purposes. Your net earnings are inuring to B and C; you are also serving substantial private interests. Accordingly, you do not qualify for exemption as an organization described in IRC 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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

This supersedes our letter dated December 23, 2019.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements