



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

Date:  
05/22/2023  
Employer ID number:

Form you must file:  
1120  
Tax years:  
All  
Person to contact:

Release Number: 202333003  
Release Date: 8/18/2023  
UIL Code: 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)(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 Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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:  
Letter 437  
Redacted Letter 4034



**Department of the Treasury**  
**Internal Revenue Service**  
PO Box 2508  
Cincinnati, OH 45201

Date: 03/28/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

**Legend:**

B = Date of Incorporation

C = State of Incorporation

D = Address

E = Placement Service

F = People Assisted

x dollars = Contribution

y dollars = Contribution

UIL:

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 submitted Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*.

You attest that you were incorporated on B, in the state of C. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of IRC Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under IRC Section 501(c)(3).

You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

During review of your Form 1023-EZ, detailed information was requested supplemental to the above attestations.

Your response states the founder's \_\_\_\_\_ aged out of his former facility and was placed in D by E. You wish to form an IRC Section 501(c)(3) organization to provide supplemental equipment and services supplementing the state for all the residents in the house that the founder's grandson lives with at D. The residence can house up to F people. The founder will contribute to you to assist with administrative functions at D. The recipients of these contributions will be severely autistic and special needs people at D. Your planned list of improvements are exercise equipment and landscaping. You have already contributed x dollars and plan to contribute up to y dollars per year. You are the only contributor to the founder's grandson's residence at D. You have stated you are organized to help all disabled people not just the residents of D.

## **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.

Revenue Ruling 67-367, 1967-2 C.B. 188, describes an 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 under IRC Section 501(c)(3) because it was serving the private interests of its subscribers rather than public or charitable interests.

Rev. Rul. 69-175, 1969-1 C.B. 149, describes an organization formed by the parents of pupils attending a private school exempt under IRC Section 501(c)(3). The organization provides bus transportation to and from the school for those children whose parents belong to the organization. The ruling states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children to school, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school.

Rev. Rul. 80-302, 1980-2 CB 182, describes an organization that (1) limits its membership to descendants [\*7] of a particular family, (2) compiles family genealogical research data for use by its members for reasons other than to conform to the religious precepts of the family's denomination, (3) presents the data to designated libraries, (4) publishes volumes of family history, and (5) promotes social activities among family members. The organization did not qualify for exemption under IRC Section 501(c)(3) because the activities are primarily limited to one particular family. Therefore, these activities do not advance education to benefit the public interest.

In *Better Business Bureau of Washington, D.C., Inc. v. United States (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 Parker Rehabilitation Foundation, Inc. v. Commissioner*, T.C. Memo 1986-348, 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'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 organization did not qualify for exemption under IRC Section 501(c)(3).

In *Capital Gymnastics Booster Club, Inc. v. Commissioner*, T.C. Memo 2013-193, it was found that the organization established and awarded "points" to member parents that chose to fundraise to offset their financial responsibility to have their children participate in a gymnastics program. The parent-members were found to be "insiders" that exerted direct or indirect control over the organization. It was found the organization allowed substantial private inurement to the parent-member-insiders who fundraised by providing relief from an economic burden. The organization's exemption under IRC Section 501(c)(3) was subsequently revoked.

In *Educational Assistance Foundation for the Descendants of Hungarian Immigrants in the Performing Arts, Inc. v. United States* 111 F. Supp. 3D 34 (2015), the revocation of the organization's tax-exempt status under IRC Section 501(c)(3) was withheld. It was found that while the foundation indicated that it was created to provide scholarships to individuals who were the descendants of Hungarian immigrants who participated in the performing arts, it was found after examination, the organization provided scholarships only to members of the founders' family. The court concluded that the organization operated in a manner that inured to the benefit of one family, precluding it from having tax-exempt status

#### **Application of law**

As explained in Treas. Reg. Section 1.501(c)(3)-1(a)(1), to be exempt as an organization described in IRC Section 501(c)(3), you must be both organized and operated exclusively for one or more of the purposes specified in such section. Because you are not operated exclusively for exempt purposes, you are not exempt.

You do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are not operating exclusively for public purposes; rather, you are operated for the substantial private benefit of the founder's disabled . You give funds to provide the founder's and other residents that share the home with equipment and services. Although all the residents of D are disabled, your benefits more than incidental from the equipment and services you provide. Your payment of equipment and services for the residents at D is a private benefit to your family member, which precludes exemption under IRC Section 501(c)(3).

You are like the organization described in Rev. Rul. 67-367. Your sole activity is to make donations to a pre-selected individual family member. Thus, serving a private interest rather than a public interest and does not qualify for exemption under IRC Section 501(c)(3).

You are like the organization described Rev. Rul. 69-175. You were established to fulfill a need of your family member rather than a public interest and does not qualify for exemption under IRC Section 501(c)(3).

You are like the organization described in Rev. Rul. 80-302. Your activities are primarily limited to you family member and the benefits to the other residents at D is incidental. Therefore, your activities do not benefit the public interest.

You are like the organizations described in *Better Business Bureau*. Although the other four residents of the home do receive benefits this is inconsequential since you were formed to assist the founder's disabled grandson. Your operations result in benefit to private parties more than incidentally and constitutes a substantial non-exempt purpose.

You are like the organizations described in *Wendy Parker Rehabilitation Foundation, Inc.* You were created by family members to help disabled people. However, the aid you provide is more than insignificant to benefit your family member, by assisting your family with the economic burden of caring for the founder's disabled . The benefit does not flow primarily to the general public. Therefore, you do not qualify for exemption under IRC Section 501(c)(3).

You are similar to the organizations described in *Capital Gymnastics Booster Club, Inc* and *Educational Assistance Foundation*. You founder exerts direct control over your activities and any funds that are raised by you. He is thus considered an insider. And while others may benefit some from your purpose, a family member of your founder is receiving a substantial benefit from your activities. As these cases conclude, activities conducted in this manner constitute inurement. Therefore, you do not meet the requirements for exemption under IRC Section 501(c)(3).

### **Your position**

Your response states you will also help other disabled people not just the residents of the founder's grandson's home.

### **Our response to your position**

Your response provided no explanation of how your activities would change to a public benefit rather than a private benefit of providing funds for the founder's grandson.

### **Conclusion**

Based on the information submitted, you are not organized or operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3). You are not operating exclusively for exempt purposes and your earnings inure to the benefit of your relative. Accordingly, we conclude you do not qualify for exemption under 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 Determination 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  
PO 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.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements