DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201219029**
Release Date: 5/11/2012
Date: February 13, 2012
UIL Code: 501.03-00
501.03-03
501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:
All Years

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please 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, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: December 20, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Individual (Grantor)
C = Individual (Grantor's grandchild)
D = Individual (Grantor's grandchild)
E = Individual (Grantor's grandchild)
F = Individual (Grantor's sister)
M = State
N = Date

UIL:

501.03-00
501.03-03
501.33-00

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

1. Do you meet the organizational test under section 501(c)(3) of the Code? No, for the reasons stated below.

2. Do you meet the operational test under section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You were formed by a revocable trust agreement executed by B on N in the State of M.

The trust agreement states in pertinent part, "The Grantor creates this Family Charitable Trust Agreement for the health, education, welfare and religion for the Grantor's three grandchildren, namely, C, D, and E."

It further states, "The Grantor creates a Family Charitable Trust within the purview of a private foundation under the [sic] of Section 501(c)(3) of the Internal Revenue Code for the benefit of all those individuals related to the Grantor by blood or marriage for the beneficial interest related to health, education, welfare and religion."

The trust agreement also states "This Trust is created for the benefit of the Grantor's sister, F, who is currently in need of health and welfare benefits. The Trustees are authorized to expend income before the invasion of principal in administering benefits to the Grantor's sister F and any other beneficiary under this Family Charitable Trust Agreement."

You did not submit an activity description with your application for exemption. During case processing, we asked you to submit a narrative description explaining your specific activities in detail. You failed to submit a detailed description but instead stated "The charitable trust, for the most part, contains language that is clear, definite and unambiguous. The charitable trust in its entirety speaks for itself. The trust is patterned after what a good government would render to its citizens."

You also did not provide projected revenues and expenses with your initial application for exemption. We asked you to submit financial information that corresponds to your proposed activities. You failed to submit financial information but instead stated "The trust has been in existence for less than a year and has only the $10 consideration. Additional and future proceeds will be added to the trust corpus when claims are paid and satisfied as stated on Schedule A of the trust instrument. This trust will terminate when the last charitable transaction occurs." Schedule A of the trust agreement indicates the trust plans to receive additional funding from "...the pursuit of the Grantor's claims for back pay, interest and penalties, federal and state refunds with accrued interest, and any insurance claims for proceeds to fund this Family Charitable Trust Agreement within the purview of the U.S. Constitution, the Internal Revenue Code, and the Rule of Law."

Law

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Regulations provides that the terms "private shareholder or individual" in Section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that, in order to be exempt as an organization described in 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 test or the operational test, it is not exempt.

Section 1.501(c)(3)–1(b)(1)(iv) of the Regulations provides that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the Regulations 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 in not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations 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 as defined in Section 1.501(a)-1(c).

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an exempt organization must serve a public rather than a private interest. The organization must establish that it is not organized or operated to benefit 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."

Revenue Ruling 67-367, 1967-2 C.B. 188, holds that 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.

Revenue Procedure 2011-9, section 4.03 states that exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed.

(1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(2) The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

(3) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling.

In Better Business Bureau of Washington, D.C., Inc v. United States, 326 U. S. 279 (1945), the Supreme Court of the United States interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 477 F2d 344 (4th Cir. 1973) cert. denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo. 1986-348, the tax court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The court found that the family coma victim was a substantial beneficiary of the foundation's activities.

Application of Law

You are not described in section 501(c)(3) of the Code because you are not organized or operated exclusively for charitable purposes. Instead, you were formed for the benefit of private individuals, namely relatives of B.

Organizational Test

Your trust agreement does not contain the appropriate provisions to meet the organizational test of section 501(c)(3) of the Code. The agreement does not limit your purposes exclusively to those specified in section 501(c)(3). Your purposes are to benefit individuals related to B by blood or marriage. Therefore, you do not satisfy section 1.501(c)(3)-1(b)(1)(iv) of the Regulations. Likewise, your trust agreement does not contain an adequate provision to distribute your assets exclusively for 501(c)(3) purposes upon your dissolution. Therefore, you do not meet the organizational test and fail meet the requirements of Section 1.501(c)(3)-1(a)(1) of the Regulations

Operational Test

You are not described in sections 501(c)(3) of the Code and 1.501(c)(3)-1(a)(1) of the Regulations because you fail the operational test. Specifically the facts show you are operated not exclusively for 501(c)(3) purposes but for the substantial private benefit of family members of B.

You are not as described in section 1.501(c)(3)-1(c)(1) of the Regulations because you are not engaged primarily in activities which accomplish one or more purposes specified in section 501(c)(3) of the Code. You were created to engage primarily in activities for the benefit of family members of B.

You are not as described in section 1.501(c)(3)-1(c)(2) of the Regulations because your earnings inure in whole or in part to the benefit of private individuals. Specifically your earnings inure to the benefit of family members of B.

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you serve a private interest rather than a public interest. The facts show that your sole purpose is to pay the health, education, welfare and religion expenses of the four individuals specifically named in your trust agreement who are all family members of your grantor, B. Therefore, you are organized for the private benefit of "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

You are similar to the organization described in Rev. Rul. 67-367 because you were formed to benefit pre-selected, specifically named individuals. By paying funds to or on behalf of pre-selected, specifically named individuals designated by the trust agreement, you are serving private interests rather than public interests contemplated under section 501(c)(3) of the Code.

You have not provided adequate details to prove that you are operating in an exclusively exempt manner as required by Rev. Proc. 2011-9, section 4.03. Although, you have not described your specific activities in detail, the trust agreement makes it clear that your activities are directed solely toward providing benefits to the family members of B.

Like the organization in Better Business Bureau of Washington, D.C., Inc. v. United States, supra, you have a substantial non-exempt purpose. Your purpose is to benefit individuals related to B by blood or marriage. Any expenses paid on behalf of these individuals would create private inurement, which destroys your claim for exemption.

Similar to the organization described in Old Dominion Box Co., Inc. v. United States, a substantial portion of your activities serve private interests. Your trust agreement states that you were created for the benefit of all those individuals related to B by blood or marriage for the beneficial interest related to health, education, welfare and religion. As such, a substantial portion of your activities benefits private interests, which is a substantial non-exempt purpose.

Like the organization in Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, you were formed to benefit specifically named family members of your creator. Each family member benefiting from your activities would be considered a substantial beneficiary. In fact, your purposes and activities are even more contrary to exemption under section 501(c)(3) than the entity described in the court case. The facts show that 100% of your net income will benefit designated family members.

Applicant's Position

You state that you are applying for tax exempt status since the trust is created for charitable purposes. You state numerous courts have decided that the criteria of health, education, welfare, and religion is an ascertainable standard for establishing charitable transactions. You state the trust, for the most part, contains language that is clear, definite, and unambiguous; and, the trust in its entirety speaks for itself.

In reference to our additional information request letter, dated May 17, 2011, you state that all the provisions of the law, with the exception of section 501(c)(3) of the Code, are inapplicable and not apropos to the application and trust instrument and are without merit or substance.

Relating to section 1.501(a)-1(c) of the Regulations, you state there are no “private shareholders” or “individuals” and nobody possesses a private interest; and, any individual can be the recipient of a charitable bequest.

Pertaining to section 1.501(c)(3)-1(d)(1)(ii) of the Regulations, you state that the trust agreement stipulates that the trust will be operated exclusively by established charitable criteria of health, education, welfare, and religion most of the standards that are expressed in section 2055 of the Code and existing court decisions.

You state that Rev. Rul. 67-367 is not applicable to you because you do not award scholarships to any pre-selected individuals. You state that the trust instrument does permit proceeds for educational purposes which is an established charitable criteria under section 2055 of the Code.

You state that you are distinguishable from the organization in Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner because the trust instrument has no restrictions as to any percentage of net earnings used for charitable purposes.

Service Response to Applicant's Position

Based on the purposes described in your trust agreement, you were not created for charitable purposes as described in section 501(c)(3) of the Code. Your trust agreement clearly states that you are created for the benefit of all those individuals related to B by blood or marriage for the beneficial interest related to health, education, welfare and religion. The promotion of health, education, welfare, and religion can qualify for exemption under section 501(c)(3) of the Code. However, as evidenced by the law cited above, these purposes must be directed to benefit the public at large and not specifically named private individuals related to your creator.

Although you claim you do not award scholarships, your trust agreement makes it clear that you plan to pay the educational expenses of C, D, and E. Whether you define this as a scholarship or not, you are similar to the organization described in Revenue Ruling 67-367 because you plan to pay the educational expenses of specifically named, pre-selected individuals.

Although your application does not name a specific percentage of your net income that will be paid to or for the benefit of designated individuals, it is evident from your trust agreement that your entire purpose (100%) is to benefit C, D, E, and F, who are all relatives of your creator and grantor, B. Therefore, we disagree with your conclusion that you are not similar to Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner.

Conclusion

You do not meet the organizational test because your organizing document does not limit your purposes exclusively to purposes described in section 501(c)(3). In fact, your purpose is to benefit specifically named private individuals which is in direct contradiction to section 501(c)(3) of the Code. Also, your organizing document does not dedicate your assets exclusively to 501(c)(3) purposes upon dissolution.

You also do not meet the operational test. The facts show that you are not operated for a public purpose, but instead for the direct benefit of private individuals; namely the family members of B. Accordingly, we conclude that you do not qualify for exemption under Section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues.*

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative,* if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney.* All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008 P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892