



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

Release Number: **201511026**
Release Date: 3/13/2015

Date: December 19, 2014

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Individual
C = Director/Trustee
D = Director/Trustee
O = State
Q = Date

UIL:

501.32-00
501.32-01
501.33-00

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis 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 described below.

Facts

You were incorporated under the laws of the state of O on Q. Per your initial Articles of Incorporation, you were formed for the following purposes:

- This non-profit corporation is formed specifically for health and educational financial assistance for B. All funds received will be used for his treatment, education, and therapies for his medical ailment condition of Autism.

C and D are your only two directors/trustees. They are the parents of B. You state there will be no compensation to any directors, as they are the parents of the child needing non-profit assistance.

You state that a conflict of interest policy is not applicable in your case since the wellness of the child is in both of the parents' interest.

B receives individual services paid for by you. Individual services that B receives funds for include: in-home speech therapy sessions, private behavioral institute and educational services (sometimes at home), and other learning and assistive devices.

You receive funding through solicitations. You mail and email solicitation letters describing you and the ailment/condition of B. You also make personal solicitations through verbal requests for funds for the ailment/condition of B.

Law

Section 501(c)(3) of the Code provides, in relevant part, exemption from federal income tax for corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations explains 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). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of Regulations explains the prohibition against private inurement as follows: 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 individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. It is necessary for an organization to establish that it is not organized or operated for the benefit of 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, states 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 Internal Revenue Code of 1954.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 325 U.S. 844, the Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purpose.

In Wendy L. Parker Rehabilitation Foundation, Inc., Petitioner 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.

In Easter House v. United States, 12 Cl.Ct. 476, 487 (1987), citing section 1.501(c)(3)-1(d)(1)(ii) of the regulations, aff'd without opinion, 846 F.2d 78 (Fed.Cir.1988) that an organization is not operated exclusively for exempt purposes if it serves a private rather than a public interest.

Application of law

Section 501(c)(3) of the Code sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). The Articles of Incorporation you provided states you were formed for the benefit of B. As a result, you have not satisfied the organizational test required by sections Section 1.501(c)(3)-1(b)(1)(i) of the Regulations.

In addition, you do not meet the requirements of section 1.501(c)(3)-1(c)(1) of the Regulations, which requires you to engage primarily in activities which accomplish one or more exempt purposes. Since you are operating for the substantial private benefit of B, you are not operating exclusively for charitable purposes.

All financial records provided by you show that substantially all your funds are paid out for the benefit of B. You provide a substantial private benefit to B. You are not "operated exclusively for one or more exempt purposes" as set forth in section 1.501(c)(3)-1(c)(2) of the Regulations because your net earnings inure in whole or in part to the benefit of private individuals. The facts show that your operations have and will continue to result in a substantial private benefit to B, which precludes exemption under 501(c)(3).

You are not organized and operated for exempt purposes as set forth in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. The language in your Articles of Incorporation shows you were formed with the intent of providing benefits for a designated individual, B. Your solicitations for funding states you are a fund for B. To date, funds have only been provided to B. This shows that your formation and operations are primarily for the private benefit of B, and your activities fulfill a substantial non-exempt purpose which precludes exemption.

You are similar to the organization in Revenue Ruling 67-367 because your sole activity is making payments to a pre-selected, specifically named individual. You serve the private interests of B rather than public interests.

You are like the organization in Better Business Bureau of Washington, D.C., Inc v. United States, 326 U. S. 279, in that you are not "operated exclusively" for exempt purposes. Your purposes include substantially furthering the private interests of B. Like the organization in this court case and Easter House, supra, this single nonexempt purpose destroys your claim for exemption under section 501(c)(3) of the Code.

Similar to Wendy L. Parker Rehabilitation Foundation, Inc., Petitioner v. Commissioner of Internal Revenue, a substantial amount of your funds will be expended for the benefit of B. You were created by the family of B, and your board consists of C and D, who are the parents of B. In addition, B was pre-selected as the sole recipient of funds throughout your formation, as evidenced by your name, Articles of Incorporation, and financial records. These facts show that your operations result in a substantial private benefit B, which precludes exemption under 501(c)(3).

Conclusion

Based on the facts presented above, you have failed both the operational test and the organizational test required of 501(c)(3) organizations. Your organizational document shows you were created for the substantial private benefit of B. Your operations show that you have operated for B's private benefit since formation, rather than for public purposes. Therefore, we are unable to determine that you qualify for exemption under section 501(c)(3) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office 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 at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

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

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892