



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: December 20, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201911008**
Release Date: 3/15/2019

UIL: 501.03-02, 501.32-00, 501.32-01

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). 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 Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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, 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.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



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

Date: October 4, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date
C = Name
D = Name

UIL:

501.03-02
501.32-00
501.32-01

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

FACTS

You were formed as a corporation on date B in the state of C. Your Articles of Incorporation state you are organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under the Section 501(c)(3) of the Internal Revenue Code, or corresponding Section of any future federal tax code. In addition, they state as your activity that you will provide funding for the ongoing medical and life expenses for D and his family. Your corporate name and D's name are also very similar.

Your Form 1023 shows that you are raising, and administering funds for the long-term care of D to insure that he receives the supplemental financial help to assist with his extraordinary additional life expenses resulting from a debilitating accident.

You will conduct your own fundraising programs through emails, personal contacts, phone solicitations as well as multimedia campaigns, and running events. In the future, you may develop a website as well as use outside fundraisers to solicit donations.

You are governed by a three-person board of directors including D's wife who is your president and was one of your incorporators. Your board members also administer your activities on a volunteer basis.

Initially, donations from family, friends and the public have provided your funding. In addition, you estimate that % of your gross proceeds will be used for B and your expenses will consist of internet expenses and other miscellaneous fundraising expenses.

Finally, you specifically indicated:

- You exist solely to fundraise for D,
- Your fundraising program is limited to D,
- Funds may not be used for any other purpose than to provide for the well-being of D, and
- Your purpose is to raise funds for this one individual only.

LAW

Section 501(c)(3) of the Code 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 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.

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 the purposes of such organization to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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 Section 501(c)(3) of the Code. 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 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) 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 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 because it is serving private interests rather than public charitable and educational interests.

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 funds. It also noted that such distributions relieved the family of the economic burden of providing medical and rehabilitation care for their family member.

APPLICATION OF LAW

You are not described in Section 501(c)(3) of the Code because you fail the organizational and operational tests as per 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 as your activity that you will provide funding for the ongoing medical and life expenses for D and his family. Because your Articles of Incorporation state that you will provide funding for the ongoing medical and life expenses of a specific named individual, you are not organized exclusively for purposes described in the regulations.

You do not meet the provisions in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you were formed and are solely operated to raise funds to pay for the medical and living expenses of D and his family. This shows you were formed to further private purposes not public.

As described in Treas. Reg. Section 1.501(c)(3)-1(c)(2), you are not operated exclusively for exempt purposes because your net earnings inure to the benefit of private shareholders or individuals. This is evidenced by the fact that you were formed by D's wife, who is also your president to help pay the medical and life expenses of D.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. You are operating for private interests of C and his wife rather than public interests. This is evidenced by the following:

- You only exist to fundraising to pay the medical and living expenses of D and his family.
- D is the only beneficiary of your fundraising programs
- Your corporate name and D's name are very similar.

You are like the organization described in Revenue Ruling 67-367. You were formed to benefit a preselected, designated individual, D, who is the only beneficiary of your fundraising. You are also named after D which illustrates you are serving private interests.

You are similar to the organization described in the court case Wendy L. Parker Rehabilitation Foundation, because you were formed to pay the medical and living expenses for a preselected individual. Like this organization, you are serving the private benefit of an individual and his family by paying these expenses and relieving him and his family of their financial obligation.

CONCLUSION

You do not qualify for exemption under Section 501(c)(3) of the Internal Revenue Code, because you do not meet the organizational and operational tests. You are not organized and operated exclusively for an exempt purpose, you are operated for the purpose of benefiting D and his family. You serve a private rather than a public interest and your net earnings are inuring to D and his family.

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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892