



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

Number: **201923026**
Release Date: 6/7/2019

Date:
March 14, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00, 501.03-31

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 22, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = date
C = date
D = family name

UIL:
501.03-00
501.03-31

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 stated below.

Facts

You submitted Form 1023-EZ, Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code on B.

Form 1023-EZ indicates you were formed as an unincorporated association on C. You attest to have the necessary organizing document limiting your purposes to one or more exempt purposes within the meaning of Section 501(c)(3) of the Code. You also attest your organizing document does not empower you to engage, other than insubstantially, in activities that are not in furtherance of one or more exempt purposes. You attest your organizing document contains the dissolution provision required under Section 501(c)(3) and the provisions required (if necessary) by Section 508(e). You attest to be organized and operated exclusively to further charitable purposes and you have not and will not conduct prohibited activities under Section 501(c)(3).

Further, within Form 1023-EZ you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure 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 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

Your Form 1023-EZ was identified for technical review. Within Part III, where you were asked to describe your mission and activities, you stated you were formed to host a fundraiser for the five children of the D family after the loss of both of their parents to tragic circumstances within a year of each other. The event will offset living expenses for these orphans.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to qualify under Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states 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(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

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 established a plan whereby it entered into agreements with subscribers. The subscribers deposited a certain amount of money with a designated bank. The subscriber also named a specific child to be the recipient of the scholarship money. The recipient received the scholarship around the time he or she were to begin college. The organization did not qualify for exemption under Section 501(c)(3) of the Code because it was serving the private interests of its subscribers rather than serve public charitable and educational interests.

Revenue Procedure 2018-5 provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the Section under which exemption from federal income tax is claimed. A determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), the Supreme Court of the United States interpreted the requirement in Section 501(c)(3) of the Code that an organization be “operated exclusively” by indicating that an organization must be devoted to

exempt purposes exclusively. The presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner of Internal Revenue, 855-85X.-In this case, thirty percent of the petitioner's income is expected to be expended for the benefit of Wendy L. Parker, the daughter of an officer and organizer of the corporation. An adverse determination was made because "a child of the founder and chief operating officer of the Foundation is a substantial beneficiary of the services contemplated by the organization. This constitutes inurement which is prohibited under Code Section 501(c)(3) and the Regulations there under." To qualify under 501(c)(3), an organization, inter alia, must operate exclusively for exempt purposes, and no part of its net earnings can inure to the benefit of any private individual.

Application of law

You are not operated exclusively for one or more exempt purposes under Section 501(c)(3) of the Code as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you are operated for the private benefit of one family rather than operating to provide a public benefit. Despite the fact that funds are raised and expended for orphaned children the beneficiaries are pre-selected and all from one family. This serves private rather than public purposes.

You have not established that you are operated exclusively for one or more exempt purposes as required in Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your funding will be used to pay for the living expenses of one family. This results in a substantial private benefit to this family.

You have not established that you are organized and operated for the benefit of public rather than private interests as required in Regulation 1.501(c)(3)-1(d)(1)(ii). Like the organization denied exemption in Revenue Ruling 67-367, you have established a plan to award funds to members of a preselected group of individuals. You were formed and operate to benefit one family and were formed to allow for the flow of funds directly to the D children.

Your activities are the same as those described in Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner. You have set up a process whereby pre-named beneficiaries are able to collect funding. Regardless of whether the D children are related to any board members, or meet the definition of needy, they have been predetermined to receive your funding without documented cause, making them a direct beneficiary and recipient of your income, resulting in inurement.

As in Better Business Bureau, a single, substantial non-exempt purpose is sufficient to prevent exemption. Although you plan to pay for the living expenses of orphans, you have the substantial purpose of providing funds only to a limited number of individuals from one family, which results in private benefit. Because you failed to provide that your activities are exclusively charitable, you have not established that you meet the requirements for exemption under Section 501(c)(3) of the Code as required by Revenue Procedure 2018-5.

Conclusion

Based on the information submitted, we conclude that you are not an organization described in Section 501(c)(3) of the Code because you are operated for the substantial private benefit of one family. Therefore, you do not qualify for exemption under Section 501(c)(3).

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