



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: 10/14/14

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201502017**
Release Date: 1/9/2015

UIL: 501.32-00; 501.32-01; 501.33-00

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,

Director, Exempt Organizations

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
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 8/21/14

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B =
C =
O =
Q =

UIL:

501.32-00
501.32-01
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

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

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

Facts

You were formed as a corporation in the State of O on Q. Per your Articles of Incorporation, you were formed for the purpose of receiving and administering funds for perpetuation of the memory of B and for educational and charitable purposes, along with any other provision allowable under the law.

Letter 4036(CG) (11-2011)
Catalog Number 47630W

You were established to perpetuate the memory of B, by providing monetary educational support to his son, C. You planned a golf outing and other fundraising activities to raise money for C's education and support, including tuition, books, and other related expenses. Your support will be limited to any descendants of B and their expenses for education.

Your fundraising program is a golf outing. Email solicitations for participation and sponsorships were sent. Numerous people have solicited personal fund raising for this outing as well as phone solicitations. A sample of a solicitation flyer submitted with your application requested individuals to join the golf outing to celebrate B's life and legacy with all proceeds supporting his son's education fund.

Your financial data showed estimated revenues from contributions, gross receipts from admissions, and revenue not otherwise listed ranging from \$ to \$ annually. Your listed expenses were for fundraising, professional fees, and contributions paid out totaling \$ to \$ annually. The attachments to your application states there were no current disbursements to or for the benefit of members but it is expected that the net amount raised will be used for C's education.

In response to a request for additional information, you stated, "... it appears that the purpose of the organization will not be served by becoming a public charity. The reasons for the formation of the foundation, that being to provide for the education of B's son, would not be met by providing those funds to others."

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 Income Tax Regulations 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 that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax 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(d)(1)(ii) of the Income Tax 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*, 326 U.S. 279 (1945), the Supreme 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 *Easter House v. United States*, 12 Cl.Ct. 476 (1987), *aff'd* 846 F.2d 78 (Fed.Cir.1988), the court stated "It is the taxpayer who must demonstrate that no part of the earnings inured to the benefit of any individual. Likewise, it is the responsibility of an organization to establish that it serves a public rather than (a) private interest."

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.

Application of Law

Section 501(c)(3) of the Code sets forth two tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Your Articles of Incorporation states the purpose for which you organized is for receiving and administering funds for perpetuation of the memory of B and for educational and charitable purposes, along with any other provision allowable under the law. The language in your Articles of Incorporation does not exclusively limit your purposes for those described in section 501(c)(3). As a result, you have not satisfied the organizational test required by section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated exclusively for exempt purposes if it is organized or operated for private interests such as designated individuals. You were named after B, the father of C. Your solicitation for funding states all proceeds are for the support of C's education fund. This shows that your formation and operations are primarily for the private benefit of C. This substantial private benefit to C is 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 do not qualify for exemption because you are paying substantial funds to a pre-selected, specifically named individual provided in your application. This shows you serve the private interests of the friends of B rather than public interests.

You are like the organization described in *Better Business Bureau of Washington, D.C., Inc v. United States* in that you are not "operated exclusively" for exempt purposes. Your purposes include substantially furthering the private interests of C by providing the funds for the education and support of C. 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.

Similarly 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 C. You were created by friends of B, the father of C, and your board consists of friends of B. In addition, C was pre-selected as the sole recipient of funds throughout your formation and operations, as evidenced by your name, description of your activities, and financial data provided. Even after discussion of exemption under section 501(c)(3), you wish to only provide support for education of C. These facts show that your operations result in a substantial private benefit for C, which precludes exemption under 501(c)(3).

Applicant's Position

You qualify for exemption under section 501(c)(3) of the Code.

Service Response to Applicant's Position

You do not qualify for exemption under section 501(c)(3) of the Code. You meet neither the organizational test nor the operational test as required under section 501(c)(3). You limit your support only to C, who is the son of B. Generally, a charitable program is one that benefits an indefinite number of people as opposed to specific persons.

Conclusion

Based on the facts presented above, you failed both the organizational test and the operational test required of 501(c)(3) organizations. Your organizational document shows you were created for the substantial private benefit of C. Your operations show that you have operated for C's private benefit since formation, rather than for public purposes. Your operations result in substantial private benefit to C. Therefore, 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, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Types of information that should be included in your appeal can be found on page 1 of Publication 892, under the heading "Filing a Protest". The statement of facts (bullet 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 protest 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,

Director, Exempt Organizations

Enclosure: Publication 892