

Internal Revenue Service

Department of the Treasury

District  
Director

[REDACTED]

[REDACTED]

Employer Identification Number:

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to:

Internal Revenue Service

[REDACTED]

CERTIFIED

[REDACTED]

Date: APR 13 1993

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that you were incorporated on [REDACTED] under the nonprofit corporation laws of the State of [REDACTED].

The following purpose appears in your Articles of Incorporation:

The corporation is organized exclusively for charitable, educational, religious, or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

The corporation is organized to provide financial assistance for people with [REDACTED], who do not have adequate insurance to cover the cost or other means to obtain medical services for relief from the birthmark.

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to, its members, except that the corporation shall be authorized to pay reimbursement for out of pocket expenses.

According to your application and supportive documentation, your primary activity is to raise funds to pay the medical bills for individuals with [REDACTED]. You state that you are planning to help two children who are related to board members: [REDACTED], stepdaughter of the President and [REDACTED], grandson of the Secretary/Treasurer. After paying for the treatment of the above named individuals, you intend to dissolve the Foundation. As of [REDACTED], the Foundation received \$ [REDACTED] in financial support. In correspondence dated [REDACTED], you stated that \$ [REDACTED] has been disbursed to [REDACTED] for two treatments to remove her birthmarks.

[REDACTED]  
3-9-93

[REDACTED]  
4-9-93

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

Section 1.501(c)(3)-1 of the Income Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), 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. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(c) Operational test. (1) Primary activities. 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. (2) Distribution of earnings. 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..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) 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 preselected, specifically named individuals does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo. 1986-348, the Tax Court concluded that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Thirty percent of the Foundation's income was expected to be distributed to aid a member of the family controlling the Foundation. The Court found that such distributions relieved the family of the economic burden of providing medical and rehabilitation care for their family member and, therefore, constituted inurement to the benefit of private individuals.

[REDACTED]

By stating your organization plans to provide financial assistance to specifically named individuals, [REDACTED] and [REDACTED], the organization is serving private, rather than public interests. Your organization is similar to the organization mentioned in the above named revenue ruling as the recipients of your payments are preselected and specifically named. You are also similar to the above named court case in that more than ninety percent of your income has been disbursed to a member of the family of one of your board members and you plan to make disbursements to the family member of another board member.

The selections of family members of the board of directors to receive all the disbursements of the organization inures to the benefit of the families involved. Inurement precludes exemption under Section 501(c)(3) of the Code.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purposes within the meaning of Section 501(c)(3).

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under

[REDACTED]

this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

Sincerely yours,

[REDACTED]  
District Director

Enclosures:  
Publication 892  
Form 6018