

200447050

Internal Revenue Service  
Director, Exempt Organizations

Department of The Treasury  
P.O. Box 2508, Room 7008  
Cincinnati, OH 45201

Date: MAY 18 2004

Employer Identification Number:

Person to Contact – I.D. Number:

URL: 501.00-00

Contact Telephone Numbers:

We have considered your application for recognition of exemption from Federal income tax under the provision of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues."

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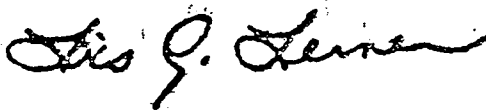
The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed 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 this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, 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.

If we do not hear from you within the time specified this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,



Director, Exempt Organizations

Enclosures:  
Attachments  
Form 6018  
Publication 892

**FACTS:**

The organization was incorporated as a Not-For-Profit Corporation in the State of \_\_\_\_\_ on June 11, \_\_\_\_\_. The purpose of the organization as stated in its Articles of Incorporation is exclusively within the meaning of Section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 or the corresponding provision of any subsequent United States Internal Revenue Law. The purpose of the corporation is to solicit contributions for \_\_\_\_\_ a minor child injured in a pool accident. The activities as set forth in its application; are \_\_\_\_\_

According to the Form 1023 Application, the organization's main sources of support are fundraising activities involving the local community and soliciting donations from interested corporations. The organization's fund raising programs will consist of flyers. People raising the funds will be volunteers.

The organization submitted a copy of a flyer explaining the injury and treatment for the injury. The flyer solicits items that can be sold in a garage sale. The flyer explains that all proceeds will go to pay for the therapy.

The organization has requested private operating foundation status as a newly created organization and states that all funds donated will go directly to pay for medical expense of \_\_\_\_\_

**ISSUE:**

Does the organization qualify for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code?

**LAW AND PUBLISHED PRECEDENT:**

Section 501(c)(3) of the Internal Revenue Code (Code) describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"...(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of the activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children and animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements, any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (Regulations) provides that "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."

Section 1.501(c)(3)-1(b) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) Limits the purposes of such organization to one or more exempt purposes; and (b) 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.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operating 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 the Regulations provides 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (1) of this subparagraph unless it serves public rather than a private interest. Thus to meet the requirement of this subdivision, 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 this

family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 55-610, 1955-2 CB 262 held that an organization formed to operate the activities which its principal founder conducted as his personal undertaking or hobby in prior years and planned to reimburse its founder for the expense incurred by him in prior years in the conduct of the activities was not exempt since a portion of the net earnings of the organization would inure to the benefit of the founder.

Revenue Ruling 56-403, 1956-2 CB 307 provides that the awarding of scholarships by a foundation solely to undergraduate members of a designated fraternity will not preclude it from exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Revenue Ruling 66-146, 1966-1 CB 136 provides that an organization organized and operated to further encourage and recognize outstanding achievements and contributions of citizens of a particular state toward the progress and betterment of human endeavors is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Revenue Ruling 69-175, 1969-1 CB 149 provides that an organization WAS formed by the parents of pupils attending a private school, that provides school bus transportation for its members' children serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 72-147, 1972-1 CB 147 provides that when an organization operates for the private benefit of those controlling it, exemption is lost even when the beneficiaries are members of a charitable class.

Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 TC-, No. 6, 46, TC 47 held that in order to qualify for exemption under Code section 501(c)(3) an organization must serve a public rather than a private interest. Although an incidental private benefit will not destroy the qualification or an otherwise religious and educational organization, where an organization is serving both public and private interests, the private benefit must be clearly incidental to the overriding public interest.

Human Engineering Institute v. Commissioner, Docket No. 528-68, 37 TCM 619 and William H. Kenner and Eleanor V. Kenner (CA-7), U.S. Court of appeals, 7th Circuit, No13806, affirmed that an organization is not organized and 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.

Puritan Church of America, petitioner v. Commissioner of Internal Revenue US-CT-APP-DC, [53-2 USTC Sec 9601] the court found that an organization is disqualified from exemption if it serves a private rather than a public interest. It must therefore establish that it is not organized and operated for the benefit of private interests such as designated individuals, the creator of the organization or his family, shareholders, or persons controlled (directly or indirectly) by such private interests and the accomplishment of the exempt purposes must not be accompanied by personal, private or selfish considerations.

**ANALYSIS AND CONCLUSION:**

Like the organizations in the above revenue rulings and court cases, your organization is organized and operated for the benefit of a specific individual which serves private rather than public interest as stated within the meaning of section 1.501 (c)(3)-(d)(1)(ii) of the Regulations.

Our analysis of your application indicates that your organization was established to raise funds to pay the medical expense of \_\_\_\_\_ who is the daughter of the organization's founder.

Because you have a substantial non exempt purpose of raising funds to pay for the medical expenses of the daughter of your founder you are operated for more than an insubstantial purpose of serving the private interests of the \_\_\_\_\_

By failing to meet the operational test for exemption, you are not exempt under section 501(c)(3) of the Code.

To be considered for tax exempt status under 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 that Code section. Also, its activities must be restricted to those permitted a section 501(c)(3) organization.

Based on the information submitted, it is the position of the Internal Revenue Service that you are not entitled to exemption from Federal income tax as an organization described in Code section 501(c)(3), inasmuch as you are not organized and operated exclusively for any of the specified purposes within that Code section but are operated exclusively for the private benefit of your founder's family.