



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224**

Number: **200621025**  
Release Date: 5/26/06  
Date: March 2, 2006

XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

Contact Person:  
XXXXXXXXXXXX  
Identification Number:  
XXXXXXX  
Contact Number:  
XXXXXXXXXXXX  
Employer Identification Number:  
XXXXXXXXXX  
Form Required To Be Filed:  
1120  
Tax Years:  
All years

Uniform Issue List: 501.03-00

Dear Applicant:

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, 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 Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

XX

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



XX

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: November 7, 2005

Employer Identification Number:

XXXXXXXXXX

Person to Contact and ID Number:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Contact Telephone Number:

XXXXXXXXXXXX

FAX Number:

XXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Uniform Issue List: 501.03-00

Legend:

M = XXX

State = XXXXXXXXX

Date = XXXXXXXXXXXXXXX

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

FACTS

You are a State non-profit corporation, formed on Date. Your purpose, as stated in your Articles of Incorporation, is to facilitate lifetime planning for persons with disabilities. Article Sixth of your Articles provides that upon dissolution, your remaining assets "shall be distributed, transferred, conveyed, delivered, and paid over to such other organization whose tax exempt purposes are as nearly the same or similar to" yours.

Your application, Form 1023, indicates that you were formed to manage the use of assets in third-party trusts, referred to as Special Needs Trusts ("SNTs"), for individuals with disabilities

XX

("DPs"). Some types of SNTs are required to be administered by organizations described in 501(c). The SNTs you provide services to do not fall into that group.

Once the family of a DP decides to use an SNT to protect a disabled family member, the family meets with you. You provide consulting services to the family with regard to a plan for care management services. Pursuant to a contract with the family of a DP you will evaluate, monitor, oversee and coordinate services and supports to enhance the life of that individual.

You do not receive or manage public benefits on behalf of a DP. In fact, the funds you manage cannot be used to provide the basic necessities covered by public benefits such as food, clothing and housing. Expenditures from the SNTs are limited to those outside the responsibility of the government. The SNT funds are used for supplemental items or services such as private-duty nursing care, furniture, swimming lessons, or vacations.

State law prohibits you from managing the assets of the SNTs. Accordingly, you have entered into an agreement with the trust department of a local bank to provide asset management.

Each of the SNTs you provide services to is considered to be a separate account whose assets are dedicated to the welfare of a specific DP. The SNTs provide a method for family or friends to set aside money for the benefit of a specific DP without jeopardizing that individual's eligibility for public benefits such as Medicaid, Section 8 housing assistance and Supplemental Security Income ("SSI") payments. To participate in your program, an SNT must have a minimum balance of \$50,000. The assets of the SNTs are not pooled. You state that you will offer your services for a fee that is consistent with the fair-market value of the services you provide plus a small margin to help defray your operating expenses.

Pursuant to the contract, you will act as an advocate for the DP, coordinate and monitor paid caregivers, advise the Trustee on the appropriateness of the funds requested, assist in the assessment of the needs of the DP over time, and, when appropriate, obtain other types of public and private assistance for the DP. You will devote 75% of your time to these activities.

You indicate in your application that the remainder of your time will be devoted to providing education and information to low and moderate income families of DP's about SNTs and other resources available through community outreach programs and providing a liaison between the families of DP's and community leaders and other public and private sources of support and services for DP's of low to moderate means through community outreach programs such as printed materials, discussion panels, new releases and articles.

You provided a copy of your marketing plan, *Marketing Plan For M* ("Marketing Plan").

Under the heading **The Customers**, in your Marketing Plan, you state, "There is a large potential customer base with a specialized need." Your Marketing Plan indicates that you plan to target estate planners and attorneys who create wills and trust instruments to increase your client base.

XX

One of the objectives listed in your Marketing Plan is to become one of the nation’s premier providers and managers of third party trusts.

The **General Strategy Overview** portion of your Marketing Plan provides, “As a start up, the first strategy is to define the product better, making refinements to the trust offering to widen the market of the potential consumers, which will enable the trust to better position itself in the market and target multiple yet similar markets. There could also be add on services like additional financial planning assistance or free checking offers for trust members ...” “As the product is being redefined, we will also work at developing new markets. We have identified several markets that offer both potential customers and vehicles to help market the trust. These are business leaders/business owners within the community, financial planners, lawyers, and health care professionals.

The **General Strategy Overview** notes that you could increase your client base by advertising in particular newspapers “where a higher economic demographic would be interested in the concepts of the trust, and having a separate phone line with voice mail for people to call if interested in receiving information on the trust.”

Your positioning statement provides that you need to have a bigger presence in the community for increased marketing, business and fundraising opportunities.

With respect to promotion of your program and increasing your clients, your Marketing Plan provides, among other things, “Target the local community press editors, business section ...” The major overriding issues that can impede this growth is the lack of understanding of the nature and purpose of a trust..”

The **CONCLUSION** portion of your Marketing Plan provides, “Special Needs Trusts are an essential component of estate planning for families with a disabled member. There is a huge untapped pool of potential clients who need the services of an organization, to manage a third-party SNT successfully for the long-term.”

LAW AND RATIONALE

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

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations describes the organizational test. Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt

XX

purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further 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 exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests. Thus, an organization must establish that it is not organized or operated for the benefit of a private interest such as designated individuals, or the creator or his or her family.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of section 501(c)(3) of the Code if the trade or business furthers an exempt purpose, and provided the organization’s primary purpose does not consist of carrying on an unrelated trade or business.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945), the Supreme Court held that the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Russell v. Allen, 107 U.S. 163, 167 (1882), the Supreme Court stated that charitable trusts “may, and indeed must, be for the benefit of an indefinite number of persons; for if all the beneficiaries are personally designated, the trust lacks the essential element of indefiniteness, which is one characteristic of a legal charity.”

A scholarship fund established to give scholarships to relatives of the organizer or donor is not exempt, even if the students are poor. Charleston Chair Co. v. United States, 203 F. Supp. 126 (1962). See also Hardage v. Hardage, 84 S.E.2d 54, 211 Ga. 30 (1954). Similarly, an organization primarily operated to benefit specific, designated poor, sick persons is not entitled to IRC 501(c)(3) status. Wendy L. Parker Rehabilitation Foundation, 52 T.C.M. 51 (1986; and, Rueckenwald Foundation, Inc. v. Commissioner, T.C. Memo 1974-298.

In the same way, private purposes are served by an organization doing genealogical research concerning ancestors and descendants of one person and disseminating the results primarily to the descendants. Consequently, the organization is not described in section 501(c)(3). Benjamin Price Genealogical Association v. Internal Revenue Service, 79-1 U.S.T.C. P9361 (D.D.C. 1979).

You were formed to provide services to SNTs set up to benefit specified disabled individuals. The issue is not whether serving the disabled is a charitable purpose, but whether your activities result in a more than insubstantial benefit to private individuals and whether you are organized or operated for a nonexempt purpose. Your primary purpose is a nonexempt purpose, to directly benefit the families of and the recipients of the SNTs. The presence of a

XX

single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.” See Better Business Bureau v. United States, supra.

The above cases demonstrate that a charitable organization or trust must be set up for the benefit of an indefinite class of individuals, not for specific persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable, regardless of whether the individuals served constitute a charitable class. Where the beneficiaries have been identifiable, the Service has taken an adverse position.

You are organized and operated to serve a group of specific individuals rather than unspecified disabled persons. The beneficiaries of the SNTs benefit directly by your activities since you provide management services for each participating SNT. Your activities also directly benefit the families of the beneficiaries by providing consulting services and managerial services to ensure that their family member is properly cared for. Like the organizations described in the court cases cited above, you do not serve an indefinite number of persons. You will serve specific SNT beneficiaries and their families. Thus, your purpose is not a charitable one.

An activity may provide an indirect benefit to private interests, and thus be “incidental” from a qualitative standpoint, but if it provides a substantial benefit to private interests it will negate charity and exemption under section 501(c)(3). The substantiality of the private benefit is measured in the context of the overall public benefit conferred by the activity.

You were formed to benefit specific individuals and their families rather than the general public. All of your activities concern the provision of consulting and managerial services. Thus, the benefit to the recipients of your services is not quantitatively insubstantial. Furthermore, unlike cases where an organization cannot accomplish its charitable goals without creating private benefit, your primary purpose is to directly benefit the families of and the recipients of the SNTs. The private benefit is, therefore, not qualitatively incidental to your exempt purposes. You serve private interests more than incidentally. Thus, you are organized and will be operated primarily to benefit the beneficiaries of the SNTs and their families.

Lessening the burdens of government is a separate, independent basis for exemption under IRC 501(c)(3) set forth in section 1.501(c)(3)-1(d)(2) of the regulations which defines “charitable” for purposes of section 501(c)(3).

The criteria the Service uses to determine if an organization’s activities further the charitable purpose of lessening the burdens of government are contained in Rev. Rul. 85-1, 1985-1 C.B. 177 and 85-2, 1985-1 C.B. 178. The criteria are, first, that a governmental unit considers the organization’s activities to be its burden; and second, that the activities actually lessen that burden.

Relevant factors in determining whether a governmental unit considers an organization’s activities to be its burden include:

- 1) An invitation by the governmental unit to the organization to take part in any activity actually being performed by the governmental unit.

XX

- 2) Whether the governmental unit has control over the activities of the organization. If a governmental unit appoints all of the directors of an organization, that is strong evidence that the government considers the activity to be its burden. If, on the other hand, a governmental unit appoints less than half of the directors, the fact that a governmental unit appoints some members to the board is less significant.
- 3) A close interrelationship and attitude of cooperation between the governmental unit and the organization.
- 4) Whether the governmental unit has actually undertaken this activity itself.
- 5) Whether there have been formal actions by a legislative body or other official actions by the governmental unit establishing that it expressly accepts the activity as a governmental burden and recognizes the organization as acting on its behalf.
- 6) Whether the organization regularly receives funding from the government in the form of general grants, as opposed to fees for services provided.
- 7) Whether the activity is one that the governmental unit may, under state or local law, conduct itself.

You are prohibited from providing the necessities that the government is obligated to provide. The supplemental services you provide are not considered to be a governmental burden. The government is not obligated to provide those types of benefits nor has it done so in the past. Your creation is not the subject of specific legislation. No governmental officials serve on your governing board nor do they appoint any of the members of your governing board. You have not provided any information which indicates that there is a relationship and attitude of cooperation between you and a governmental unit. You do not receive funding in the form of grants from a governmental unit. Accordingly, you do not lessen the burdens of government.

Rev. Rul. 72-369, 1972-2 C.B. 234, provides that a nonprofit organization formed to provide managerial and consulting services at cost on a regular basis to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code since the provision of such services is a trade or business ordinarily carried on for profit. The fact that the services described in that ruling were provided at cost and solely for exempt organizations was not sufficient to characterize the activity as charitable.

Rev. Rul. 76-442, 1976-2 C.B. 148, holds that an organization whose primary activity is the offering of free legal services for personal tax and estate planning to individuals who wish to make current and deferred gifts to charity as part of their overall tax and estate planning does not qualify for exemption under section 501(c)(3) of the Code.

In B.S.W. Group, Inc. v. Commissioner of Internal Revenue, 70 T.C. 31 (1978), the Tax Court held that the Service did not err in denying section 501(c)(3) exempt status to a corporation that was formed for the purpose of providing consulting services primarily in the area of rural-related policy and program development. The corporation's activity consists of



XX

obtaining appropriate consultants to perform research projects for tax-exempt organizations and other not-for-profit organizations. The corporation indicated that its fees for services will be set at or close to cost, but will in no event be less than its full cost of providing its services. The Court concluded that the Corporation’s activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit since the administrative record did not show otherwise and the burden was on the corporation. The Corporation did not show that it would not be in competition with commercial businesses.

The Court also indicated that there were additional factors that weighed against the corporation’s claim to exempt status. The Court noted that the corporation’s financing did not resemble that of the typical section 501(c)(3) organization. The corporation’s source of income was fees for services, not voluntary contributions from the public. The Court also noted that it appears that the corporation does not plan to charge a fee less than “cost”. Finally, the Court stated that the corporation’s failure to limit itself to organizations which are themselves section 501(c)(3) exempt organizations was another negative factor.

Like the organization described in Rev. Rul. 72-369, you will provide consulting and managerial services. The revenue ruling held that the provision of these services is a trade or business ordinarily carried on for profit.

Rev. Rul. 76-442 held that aiding individuals in their tax and estate planning is not a charitable activity since these are commercially available services. The services you provide are similar to estate planning in that you establish and carry out a plan to provide for the care of specific DPs.

You are similar to the organization described in B.S.W. Group, Inc. v. Commissioner of Internal Revenue. Your services are commercially available. You state that your fees are set at the going rate for like services plus a small amount to cover operating expenses. Your primary source of income will be fees for services rather than voluntary contributions from the public.

Only an insubstantial portion of the activities of an exempt organization may further a nonexempt purpose. See Better Business Bureau of Washington D.C., Inc. v. United States. You state that consulting and managerial services will constitute 75% of your activities. You state that your remaining activities are educational. Your Marketing Plan indicates that the purpose of these activities is to increase your client base. It makes it clear that you will conduct your operations in a manner that is consistent with a commercial firm seeking to maximize clients, rather than in a manner that would be consistent with a charitable or educational organization seeking to serve a charitable class or the public at large. Although you state in your application that you plan to assist individuals with low or moderate income, your Marketing Plan indicates that you plan to target potential clients in affluent areas since the minimum balance in the SNT must be \$50,000.

You will operate your business of providing consulting and managerial services in a manner that is indistinguishable from an ordinary trade or business. The provision of these services will be funded primarily by fees paid by the families of the beneficiaries. Your statement that you offer your services for a fee that is consistent with the fair-market value of the services you provide indicates that you are providing commercially available services. Your

XX

provision of these services will be your primary activity. Operating a trade or business of providing consulting and managerial services is not an inherently charitable activity. Thus, a substantial part of your activities further a nonexempt purpose.

Based on the information you provided in your application and supporting documentation, you are not operated for exempt purposes under section 501(c)(3) of the Code. Your primary purpose does not exclusively serve a purpose described in section 501(c)(3) and your activities result in more than an insubstantial benefit to private individuals.

The dedication-of-assets requirement of 501(c)(3) contemplates that, notwithstanding the dissolution of a charitable entity, the assets will continue to be devoted to a charitable purpose. Article Sixth of your Articles provides that upon dissolution, your remaining assets "shall be distributed, transferred, conveyed, delivered, and paid over to such other organization whose tax exempt purposes are as nearly the same or similar to" yours. As discussed above, your purposes are not tax exempt purposes. Accordingly, you do not meet the organizational test since you fail to satisfy the requirements of section 1.501(c)(3)-1(b)(4) of the regulations.

CONCLUSION

Based on the facts and information submitted, you are not organized or operated exclusively for exempt purposes. Therefore, you are not described in section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 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

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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](http://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 protest 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

XX

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 this address:

Internal Revenue Service  
TE/GE, SE:T:EO:RA:T:  
XXXXXXXXXXXXXXXX  
1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also 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,

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements