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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **200733028**
Release Date: 8/17/07
Date: May 22, 2007

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL Code No.
501.03-25

Dear

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.

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosures:
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: April 11, 2007

Person to Contact:

Identification Number:

Contact Telephone Number:

FAX Number:

Employer Identification Number:

UIL Code No.
501.03-25

Legend:
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Dear

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

FACTS

You were incorporated under the laws of aa in bb. Your application and subsequent correspondence indicates that you are organized for the following purposes:

a. To make grants for educational and charitable endeavors

b. To make grants for scientific and medical research related to spinal cord injuries

c. To make grants to assist with costs of medical treatment, rehabilitative services, hospitalization, hospice, temporary housing, and educational expenses of individuals with spinal cord injuries and their families.

You were organized in response to A's spinal cord injury that left him paralyzed from the neck down requiring the support of a ventilator. At the time of the accident, A had no form of medical insurance, and his mother, R, was billed by S for outstanding medical costs. You were formed to educate the public regarding the costs of medical treatment for spinal cord injury victims and to assist those with similar injuries pay for the costs associated with spinal cord injuries.

You have a self-perpetuating board of directors. Members include the following individuals:

a. B, A's father;

b. C, A's stepmother;

c. D, A's aunt;

d. E, A's sister;

e. F, your accountant;

f. G, business consultant;

g. H, actor;

h. I, business owner; and

i. J.

Your officers include B, President; D, Secretary; and E, Treasurer.

You state that your operations consist of raising money and accepting donations, the proceeds of which are granted to spinal cord injury victims. You received a donation from the K, and the proceeds were specifically used to purchase a van for A. From inception to cc, your income consisted of donations and revenue generated by fundraisers totaling $dd. You also received a donation of medical equipment and supplies totaling $ee.

Your grant making procedures include an application with several open-ended questions. You advertise the availability of such grants through your website at L. The decisions regarding the selection of grant recipients rests within the sole discretion of your board of directors.

Over the course of your existence, you have used your income to make several grants. You have made grants to the following individuals and organizations in the following amounts for the following purposes:

a. A, in the amount of $ff to pay for the purchase of a handicapped van.

b. A, in the amount of $gg to pay for the purchase of van insurance

c. A, in the amount of $hh to pay for van taxes and fees.

d. A, in the amount of $ii to pay for gas to operate the van.

e. A, in the amount of $jj to pay his rent at an apartment.

f. A, in the amount of $kk to pay for his utilities, medical supplies, and his other living expenses.

g. M, in the amount of $ll.

h. N, a section 501(c)(3) rehab center, medical equipment that was donated to you worth $mm.

i. O, in the amount of $rr, for a handicapped ramp.

You have considered using your income to purchase a house for A, but because of the lack of funds for that project, you pay for an apartment for him to live in. You also pay for all of his living expenses, medical supplies, and utilities. You will continue to pay for his rent and living expenses until he becomes self-sufficient. According to your board minutes, you have applied for a credit card exclusively used to pay all of A's bills. He requires 24 hour care, and thus his caregivers must live at the apartment you rent for him. His caregivers have included his girlfriend, his mother, his sister, and his father.

Your website includes information about A's life prior to the injury, his accident, and his life after the injury. There is information about your fundraisers and general information about spinal cord injuries and the costs associated therewith. You have a newsletter as well as links to other organizations involved with spinal cord injuries. You also advertise where and how to make a donation to you.

You have included in your application a news article advertising your golf fundraiser and indicating that the foundation's number one priority was A.

LAW

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

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its general accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that, in order to be exempt as an organization described in 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 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)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

a. Limit 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 that 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 "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that 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 are not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1) of the regulations provides that an organization may be exempt as an organization described in section 501(c)(3) of the Code if it is operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(3) of the regulations provides, [t]he term "educational", as used in section 501(c)(3) of the Code relates to, the instruction or training of the individual for the purposes of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(3) of the regulations provides examples of educational organizations. Example 2 refers to [a]n organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar program.

Section 1.501(c)(3)-1(c)(2) of the regulations provides, "[a]n 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(a)-(1)(c) of the regulations provides that a private individual is a person having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1) of the regulations provides that and organization is not organized and operated exclusively for one or more exempt purposes unless it serves public rather than private interests. Thus, it is necessary for the 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.

In John Marshall Law School v. U.S., 81-2 U.S.T.C. 9514 (Ct. Cl. 1981), the court held that the Commissioner acted properly in revoking exemption under Code section 501(c)(3) on the ground of inurement to the controlling officers and their families. The inurement included, but was not limited to, payments to members of the officer's families.

In Wendy L. Parker v. Commissioner, T.C. Memo 1986-348, an organization was formed to aid victims of coma, resulting from motor vehicle accidents, stroke, drowning, and other related causes; to provide such coma victims who are in various stages of rehabilitation and recovery, with funds and therapeutic equipment and devices used in conjunction with accepted coma recovery programs; to run fundraising affairs and social functions in aid of coma victims; to exchange and disseminate information concerning the care and treatment of coma victims in all stages of recovery. The organization received voluntary contributions and distributed 20% to organizations helping coma victims and 80% to individual coma victims, 30% of which was expended for the benefit of Wendy Parker. The organization's board members and officer consisted of Wendy Parker's father, mother, and brother.

In upholding the Commissioner's decision denying exemption, the Court stated:

The distribution of funds for the benefit of Wendy Parker assists the Parker family in providing for her care. These funds will be used to pay for the medical and rehabilitative care of Wendy Parker. This relieves the Parker family of the economic burden of providing such care. Consequently, there is a prohibitive benefit from the organization's funds that inures to the benefit of private individuals. The Parker family's control over the organization is not in itself fatal to the organization's cause. However, the organization's selection of Wendy Parker as a substantial beneficiary of its disbursements is the determinative factor in this case. Inurement of a benefit to private individuals, whether monetary or not, as a result of contributions made to a purportedly exempt organization is proscribed.

ANALYSIS

You are virtually indistinguishable from the organization discussed in Wendy Parker v. Commissioner, supra. Similar to Wendy Parker v. Commissioner, supra, A is one of an unspecified number of recovering spinal cord injury victims. A is the son of board member and President B, the brother of board member and Treasurer, E, the stepson of board member and Secretary C, and the nephew of board member D. B, E, C and D, as officers and directors of your organization formed to benefit spinal cord injury victims, including A, have a personal and private interest in your affairs to provide assistance, including financial aid, to A and other spinal cord injury victims. See section 1.501(a)-1(c) of the regulations. Similar to Wendy Parker v. Commissioner, supra, all of the P family members serving as officers and directors are "private individuals" within the meaning of section 1.501(a)-1(c).

Your operations are indistinguishable from the organization in Wendy Parker v. Commissioner, supra. The organization in that case distributed 80% of their income to individual victims and 30% of that amount was given for the benefit of Wendy Parker. Here, your income totals $nn in funds and equipment and of that amount you have distributed $oo or ss% for the benefit of A. You have distributed $pp or tt% of your total income for the benefit of individuals and organizations other than A. See Wendy Parker v. Commissioner, supra. You did not use formal guidelines in selecting A as a grant recipient. Those decisions were within the sole discretion of related board members who have a personal and private interest in that decision. See section 1.501(a)-1(c) of the regulations. Similar to the payments made to family members in John Marshall Law School v. U.S, supra, are the grant payments made to A here. Consequently, there is a prohibitive benefit from your income that inures to the benefit of private individuals. See Wendy Parker v. Commissioner, supra.

Your board members have discussed allowing the corporation's name to be used to obtain a credit card for the sole purpose of paying A's expenses. Your directors have discussed using your income to purchase a small home for A. The $qq of your income donated to you by the K was used specifically for the purchase of a van for A. A newspaper article affirmatively states that A is your number one priority. By distributing funds primarily for the benefit of A, and incidentally, to organizations and members of the public, you are operated for private interests. See section 1.501(c)(3)-1(d)(1) of the regulations.

The decision to distribute funds for the benefit of A assists the P family and A in providing for his care. These funds are used to pay for A's rent, living, medical, and transportation expenses. You will continue to use your income to pay for his expenses. This alleviates the P family and A of the economic burden of providing for his care. See Wendy Parker v. Commissioner, supra. The selection of A as a substantial beneficiary of your disbursements by related family members is the determinative factor in this case. Inurement to the benefit of a private individual as a result of contributions made to a purportedly exempt organization is proscribed. See section 1.501(c)(3)-1(c)(2) of the regulations; See also Wendy Parker v. Commissioner, supra.

Although you may have an educational purpose by maintaining a website that informs the public of spinal cord injuries and the various costs associated therewith, you are not operated exclusively for an exempt purpose within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations because your earnings inure to the benefit of private individuals. See section 1.501(c)(3)-1(c)(2). Additionally, you have failed to demonstrate that your operations serve public interests rather than private interests. See section 1.501(c)(3)-1(d)(1). As a result, you fail the operational test of section 1.501(c)(3)-1(a)(1).

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 a right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code 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 administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy of it will be forwarded to the Ohio Tax Exempt and Governmental Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate state officials will be notified of this action in accordance with Code section 6104(c).

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intent to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, and do not intend to protest our denial of exempt status, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If you also disagree with our proposed deletions, you should send your comments on the deletions with your protest statement, and not to the address shown in Notice 437.

Internal Revenue Service

1111 Constitution Ave.
Washington, D.C. 20224

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take further action.

If you have any questions, please contact the person whose name and telephone number are shown in the header of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreement