



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200851037**
Release Date: 12/19/2008

Date: September 26, 2008

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

SE:T:EO:RA:T:3

Uniform Issue List:
501.03-10

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

Enclosure
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: March 6, 2008

Contact Person:

XXXXX
XXXXX
XXXXX

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:
XXXXX

Uniform Issue List:
501.03-10

Legend:

A = XXXXX
B = XXXXX
C = XXXXX
D = XXXXX
E = XXXXX
F = XXXXX
G = XXXXX
H = XXXXX
I = XXXXX
J = XXXXX
K = XXXXX

M = XXXXX

t = XXXXX
u = XXXXX
v = XXXXX
w = XXXXX
x = XXXXX
y = XXXXX
z = XXXXX

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.

You are a nonprofit organization incorporated in M. Your Articles of Incorporation provide that you are organized exclusively for one or more purposes as specified in Section 501(c)(3) of the Internal Revenue Code.

You have five uncompensated directors. The current directors of the Corporation are A, B, C, D, and E. A and E are related by blood. You have indicated that you have a conflict of interest policy and bylaws.

Your activities are exclusively dedicated to providing a viable alternative to institutional type care facilities for F, a mentally and physically handicapped individual. A is the sister of F. E and G are the parents of F.

You maintain a tri-level house that has been remodeled to specifically suit the needs of a handicapped individual. The house includes self-activated chair lifts on each level. The bathroom features a powered lift chair that elevates over the edge of the bathtub and then lowers to tub surface level. The house also contains a spa which allows for range-of-motion exercises in heated water. The spa is equipped with a powered seat sling and arm boom that is capable of moving a person into and out of the spa.

In addition to housing, you provide care for one special needs resident. You employ three caregivers, H, I, and J. H is on duty Monday thru Thursday from 8:00 a.m. until 5:00 p.m. H provides training tailored to the needs of the resident. I and J reside in the home, alternating weeks on duty. They are responsible for caring for the resident during the hours that H is not on duty. You also employ an on-call and visiting neo-natal pediatric nurse.

Medicaid billing, payroll, vendor invoice payments, preparation of financial statements, and record keeping are all performed by E for no compensation. These administrative duties are undertaken at a home office in the residence of E and using E's office equipment free of charge. G prepares the menus and purchases and delivers all the food and household supplies, also free of charge. You plan to cease relying on E and G for these services in approximately three years time, at which point you will purchase those services from another source.

You primarily fund your activities using Medicaid reimbursements for services rendered to your special needs resident. Most of the remaining expenses are paid out of F's social security income. However, in 2005, E and G contributed t for the purpose of making the down payment on the tri-level house and paying the closing costs associated with the purchase of the house. In that same year, E and G also donated dishes, cookware, kitchen appliances, and linens valued at u and loaned you v to cover salaries and operational costs until Medicaid issued reimbursement. E also made improvements to the house valued at w for which he was not reimbursed. Additionally, in 2006 you received a grant from K in the amount of x for the purchase of disposable diapers as well as donations from E and G of cash in the amount of y for the purchase of the spa and of kitchen ware valued at z.

You have represented that your cost for the care of F is less than the cost of that care if it were provided by an intermediate care facility for mental retardation. You have also stated that F is charged an amount that does not exceed F's social security income. Additionally, if F was unable to afford the cost of living in your facility, you have represented that the amount charged would be reduced to the point of affordability and that, if this was not possible, you would dissolve.

Section 501(c)(3) of the Internal Revenue Code provides an exemption from taxation for organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated for one or more of the purposes specified in that section. Thus, an organization that fails to meet either the organizational or operational test is not exempt.

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 which accomplish one or more of such exempt activities 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(a)-1(c) of the regulations defines private shareholder or individual as a person having a personal and private interest in the activities of the organization.

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 exempt purposes unless it serves a public rather than a private interest. Therefore, to meet the requirement of this subsection, 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.

Rev. Rul. 56-403, 1956-2 C.B. 307 provides that an organization which awarded scholarships solely to undergraduate members of a designated fraternity was organized and operated exclusively for exempt purposes because there was no specific designation of person eligible for the scholarships nor were the purposes of the organization so personal or private in nature as to lack the elements of public usefulness and benefit that are required of an organization qualifying for exemption under section 501(c)(3) of the Code.

Rev. Rul. 79-19, 1979-1 C.B. 195 provides that an organization formed under the sponsorship of community leaders, consisting of civic leaders and other individuals with particular interest in the problems of the handicapped, to meet the housing needs of the physically handicapped by building and operating an apartment rental complex designed especially for them, at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code.

Better Business Bureau of Washington D.C., Inc. v. U.S., 326 U.S. 279 (1945) holds that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of statutorily exempt purposes.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348, the Tax Court considered whether the petitioner qualified for exemption under section 501(c)(3) of the Code. Petitioner's purpose was to aid the victims of coma by providing these coma victims with funds and therapeutic equipment and devices used in conjunction with accepted coma recovery programs. Petitioner's officers and directors were the father, mother, and brother of Wendy L. Parker, a recovering coma patient. In its exemption application, petitioner represented that thirty percent of its income was expected to be expended for the benefit of Wendy L. Parker. The Court found that Wendy Parker's parents and brother as officers and directors of the foundation formed to benefit coma patients, including Wendy Parker, had a personal interest in petitioner's affairs to provide assistance to Wendy Parker and other coma patients. In addition, these persons were found to be "private individuals" within the meaning of section 1.501(a)-1(c) of the regulations. The distribution of funds for the benefit of Wendy Parker assisted the Parker family in providing for her care. Consequently, there was a prohibitive benefit from petitioner's funds that inures to the benefit of private individuals.

Similarly, in Charleston Chair Co. v. U.S., 203 F. Supp. 126 (E.D.S.C. 1962), the District Court reasoned whether a foundation, which was organized and operated to provide scholarships to four children of employees of a corporation, qualified for exemption under section 501(c)(3) of the Code. The court found that one of the four children, the son of the corporation president and foundation trustee, received 30% of the foundation's income. The court held that the narrow class of persons who might benefit, the more restricted group that did benefit, and the preference given to the son of the director, stockholder, and trustee were dispositive that the Foundation was not operated exclusively for charitable purposes.

Based on the information submitted, you have failed to establish that your operations will further a charitable purpose and that you will not be operated for a substantial nonexempt private purpose. The information also indicates that you are not serving a charitable class of individuals and, thus, lacking in the elements of public usefulness and benefit. You provide services solely to one, specified individual. The individual that you serve is also related to your directors in such a way that your assistance to that individual relieves obligations of the directors, thereby constituting inurement and private benefit.

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 are part of a charitable class. Where the beneficiaries have been identifiable, the Service has taken an adverse position.

Your situation is similar to that found in Wendy L. Parker, *supra*. F, while a member of a charitable class, does not constitute a charitable class. F is the only resident of the facility. The facility was purchased and improved with the intention that F, not another, reside there. F will be the sole resident of the facility for the duration of F's life unless F chooses to leave the facility or you are forced to dissolve. Without serving any charitable class, you cannot be organized and operated for charitable purposes within the meaning of 501(c)(3) of the Code.

Additionally, even an otherwise qualifying organization will be disqualified for exemption if it excessively benefits private interests, either through inurement of its net earnings to certain "insiders" or by primarily benefiting the interests of persons who, though not "insiders," do not comprise a charitable class. A and E are two of your directors and, as such, have a personal

interest your activities. Thus, A and E are both private individuals within the meaning of section 1.501(a)-1(c) of the regulations. Under 1.501(c)(3)-1(c)(2) of the regulations, no net earnings may inure to the benefit of these private individuals. However, A and E are closely related to F. In fact, E and G are the parents of F and have an obligation to pay for F's care. As a result, distribution of funds or services for the benefit of F assists E and G in providing for F's care. In this way, your net earnings inure to the benefit of private individuals.

Housing organizations may be charitable by providing specially designed housing for the handicapped at the lowest feasible cost and maintaining in residence those tenants who subsequently become unable to pay its monthly fees. See, e.g., Rev. Rul. 79-19, *supra*. However, in your case, you are providing the housing to a single handicapped tenant.

As stated in Better Business Bureau of Washington, D.C., *supra*, 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. You were formed for the purpose of providing a home for F. Such activity relieves F's parents of certain financial obligations and constitutes substantial inurement for the benefit of a private individual. Such benefit is specifically prohibited by section 1.501(c)(3)-1(c)(2) of the Regulations. Based on the foregoing, you are not operating exclusively for charitable purposes, but primarily for the purpose of benefiting F.

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.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

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, 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 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:

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements