



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201334043**  
Release Date: 8/23/2013

Date: May 31, 2013

UIL: 501.03-30; 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:  
All Years

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.

Since 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.

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, you should 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.

Letter 4038 (CG) (11-2005)  
Catalog Number 47632S

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,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and 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: April 12, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = Name  
C = Name  
G = Name  
O = State  
Q = Date  
R = Date

**UIL:**

501.03-30  
501.33-00

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.

**Issues**

Do you pass the organizational test under IRC section 501(c)(3)? No, for the reasons described below.

Do you pass the operational test under IRC section 501(c)(3)? No, for the reasons described below.

**Facts**

You were formed by a trust signed on Q, in the state of O. Based on submitted bank

Letter 4036(CG) (11-2011)  
Catalog Number 47630W

statements, the trust was initially funded on R.

Per your initial trust document, you were formed for the following purposes:

- *To pay to or for the benefit of the widow, B of [her address], and her unmarried children for their health, education and support, to the extent neither B nor her unmarried children earn sufficient income from their gainful employment and other business endeavors.*
- *To operate in such a manner so as to qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provisions of any subsequent Federal tax laws but not as a private foundation described in Section 509 of the Code.*

Your trust also states disbursements will not be made for any luxury items, but only for basic necessities, such as rent, food, clothing, medicine, hospital and doctor expenses, education, health insurance, term life insurance, and transportation for B and her unmarried children.

Your initial application shows that you were established to help support the family of a widow, B, and her two unmarried children. B's husband, C (also referred to as G), died suddenly in the same year you were created. B was left alone to care for her children. Her estimated annual expenses to sustain her family include food, rent, utilities, education, and health insurance, which far exceed her annual income.

C and B's siblings and acquaintances established you, a trust, to help B meet her basic needs. You were named after G. Your trustees consist of three individuals, two individuals who are friends of the family, and the third, who is B's brother-in-law. The trustees will make a monthly determination of B's short term needs and a semi-annual determination of B's long term needs. They will review bank statements, tax returns, W-2s, 1099s, bills and receipts to make determinations.

Your budgets show estimated revenues from contributions and interest income ranging from \$            to \$            annually. You expect contributions to come from the public, coming primarily from those who know the family or who have been made aware of the tragedy and wish to help.

Your only listed expense is contributions paid out, approximating \$            annually. You provided a listing of contributions paid out. These expenses include weekly payments of around \$            to B, along with several payments to a cable company, an electric company, a mortgage company, a phone company, and a water company. In the year following formation, you paid out over \$            in checks written directly to B, in addition to payments directly to service providers.

Solicitations will be made, beginning with the local community of B. A sample of a solicitation sent at the time of your formation, refers to you as The G Foundation. It states that G had no life insurance policy and his family no longer has a breadwinner to support them financially and emotionally. It describes you as a fund that was established for B and her children to create a solid financial foundation on which to rebuild their shattered lives.

During the exemption application process, you modified your activities to provide assistance to B's family and to provide assistance to other families in similar situations. You indicated potential recipients will be families who have had a parent die in an accident and are supported by a surviving parent whose resources cannot meet their basic needs. You will advertise this program by newspaper and word of mouth, and you will contact families facing tragedies to determine whether or not they are eligible. Distributions will be made at least twice per year and will be based on income of potential recipients and the recipient's expenses.

You have considered other people, but you have not found anyone except B who meets your requirements. You state that no more than % of all aggregate contributions paid out will be paid to B's family in future years. However, all distributions to date have been made to, or for the benefit of, B.

You also modified your trust document during the application process. You submitted a second copy of a signed trust document with a different purpose than the initial document, but also dated Q. Your first purpose paragraph in this trust was changed to state:

- *To pay to or for the benefit of the widow, B of [her address], and her unmarried children and any other family in which a parent has died in a fatal accident, for their health, education and support, to the extent neither the surviving parent and his or her unmarried children earn sufficient income from their gainful employment and other business endeavors.*

You subsequently submitted an amendment to the trust in another response removing the reference to B in your purpose clause. This purpose stated you were formed for the benefit of any Jewish family where a parent has died in a fatal accident. However, the amendment was not signed, nor was there any evidence that the amendment was adopted.

Lastly, you agreed to accept a prospective exemption after changes to your trust and activities were enacted.

## Law

Section 501(c)(3) of the Code provides, in relevant part, exemption from federal income tax for corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings inure to the benefit of any private shareholder or individual.

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 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 explains 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 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(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. 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.

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 pre-selected, specifically named individuals does not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 325 U.S. 844 the Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purpose.

In Wendy L. Parker Rehabilitation Foundation, Inc., Petitioner v. Commissioner, T.C. Memo. 1986-348, the tax court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was

expected to be distributed to aid the family coma victim. The court found that the family coma victim was a substantial beneficiary of the foundation's activities.

### **Application of Law**

Section 501(c)(3) of the Code sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). You are not described in section 501(c)(3) of the Code because you are neither organized, nor operated exclusively for charitable purposes. Instead, you were formed to privately benefit B and her family in more than an insubstantial degree.

### Organizational Test

The original signed trust document you provided states you were formed for the benefit of B and her children. The second trust document still refers to B, but expands your purposes to include other families. Even with this change in language, this purpose clause empowers you to operate for a non-exempt purpose that results in more than insubstantial private benefit to B and her family. You submitted an amendment removing the reference to B, but the amendment to the trust was not signed and shows no evidence that it was adopted. As a result, you have not satisfied the organizational test required by section 1.501(c)(3)-1(b)(1)(i) of the regulations.

### Operational Test

You do not meet the requirements of section 1.501(c)(3)-1(c)(1) of the regulations, which requires you to engage primarily in activities which accomplish one or more exempt purposes. Since your operations more than insubstantially benefit B and her family, you are not operating exclusively for charitable purposes.

In contradiction to section 1.501(c)(3)-1(d)(1)(ii) of the regulations, you are operated for the private benefit of designated individuals instead of benefitting the public as a whole. The facts show you were formed with the intent of providing funds to B, and her family. You were named after G, the spouse of B. Your solicitations for funding states you are a fund for B, and her family created you to help the family establish a financial foundation. Your financial records show that to date, substantially all of your revenue has been distributed to or for the benefit of B. During the exemption application process, you amended your activities to include as possible recipients, other widowed families who struggle to meet their basic needs due to a tragedy. However, you stated that you have been unable to find any other recipients aside from B. Even if you do actually distribute funds to other recipients in the future, you still plan to give up to 25% of your total contributions to or for the benefit of B. This shows that your formation and

operations provide for more than an insubstantial private benefit to B and her family. These facts show you are operated for private, not public benefit.

You are similar to the organization in described Revenue Ruling 67-367 because you were formed to make distributions to a pre-selected, specifically named individual. Like the organization in the ruling, you do not qualify for exemption because this form of distribution to a pre-selected individual provides more than insubstantial private benefit to the recipient. Even if other recipients are found in the future, up to 25% of your distributions will still be paid to B.

You are like Better Business Bureau of Washington, D.C., Inc v. United States, 326 U. S. 279, in that you are not "operated exclusively" for exempt purposes. Your purposes and activities include furthering the private interests of B and her family in more than an insubstantial degree. Like the organization in this court case, this single non-exempt purpose is substantial in nature, and precludes exemption.

Like the organization in Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, you were formed to benefit a specifically named individual. The facts show to date, 100% of your distributions have been paid to or for the benefit of B and her family. In addition, as much as 25% will benefit B and her family in the future. Therefore, even if you do find other individuals qualified to be recipients, B will still be a substantial beneficiary.

### **Applicant's Position**

You maintain that you are operated exclusively for charitable purposes by providing financial assistance to widowed families who cannot meet their basic needs. You provided an amended (but not signed) trust document amending your purposes. You also amended your activities to include an expanded pool of recipients beyond B's family to include other widowed families. Lastly, you suggested a prospective effective date based on the date changes to your operations were enacted. You maintain that as a result of these changes, you qualify for exemption under section 501(c)(3) of the Code.

### **Service Response to Applicant's Position**

You do not qualify for exemption under 501(c)(3) because your activities result in more than insubstantial private benefit to B and her family. We have received no substantiation that the amendment to your trust was adopted, thus the purpose for which you are organized remains to be benefiting B's family. Even if the trust was signed and you met the organizational test, you would still fail the operational test. The facts show you were initially formed and operated solely to benefit a pre-selected, specifically named individual. You claim to have expanded your pool of recipients, but



have not substantiated that claim. Your financial records still show all distributions have been made to or for the benefit of B. Even if you do provide funds to individuals other than B in the future, you still maintain that you will give up to % of your distributions to B. Providing % of your distributions to B and the rest to other eligible recipients is almost identical to the activities conducted by the organization described in Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, and provides more than insubstantial private benefit to B.

### **Conclusion**

Based on the facts presented above, you have failed both the operational test and the organizational test required of 501(c)(3) organizations. Your organizational document shows you were created for the private benefit of B and her family in more than an insubstantial degree. Your operations show that you have operated for B's private benefit since formation, rather than for public purposes. Even with your proposed changes, your operations will still result in private benefit to B and her family. Accordingly, we conclude that you do not qualify for exemption under section 501(c)(3) 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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying

documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in 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 appeal 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 the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance

You may 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,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure: Publication 892