

Internal Revenue Service
TEGE Appeals Programs
300 N. Los Angeles Street
Los Angeles, CA 90012

Department of the Treasury
CERTIFIED

Release Number: **201505039**

Release Date: 1/30/2015

Date: 10/22/2014

Redaction legend:

A=

B=

C=

A

B

Taxpayer Identification Number:

C

Person to Contact:

Employee ID Number: ****

Tel: (**** Fax: ****

Refer Reply to:

In Re: Exempt status

Tax Years: 12/31/**and subsequent
years**

UIL Index:

501.03-00

Dear _____ :

This is a final adverse determination to your application for exempt status under section 501(a) of the Internal Revenue Code as an organization described under section 501(c)(3). Our adverse determination was made for the following reason(s):

Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not operated exclusively for exempt purposes unless it serves a public rather than a private interest. You operated for the benefit of private interests of a particular and specified individual.

As such, you failed to meet the requirements of I.R.C. section 501(c)(3) and Treasury Regulation section 1.501(c)(3)-1(d)(1)(ii) in that you have not demonstrated

that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3).

Contributions to your organization are not deductible under Code § 170. You are required to file federal Form 1120 for the year(s) shown above.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed before the 91st (ninety-first) day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

You also have the right to contact the Office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778, and ask for Taxpayer Advocate assistance.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals procedures, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, or extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

We will notify the appropriate State officials of this final adverse determination of your exempt status, as required by Code section 6104(c).

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

Sincerely,

Shari Kolnicki
acting Appeals Team Manager

cc:



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 10/9/14

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

P= Name
Q= Date
S= Name
Z= Name

UIL:

501.00-00
501.32-00

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.

Issue(s)

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You were previously granted exemption under Section 501(c)(3) of the Code. Your exemption was revoked due to the non-filing of Form 990 for three consecutive years. Accordingly, you submitted this new Form 1023, application for exemption for retroactive reinstatement.

You were incorporated as a nonprofit corporation on date Q in the State of P.

Your Articles of Incorporation state your specific purpose is to assist families with children born with physical handicaps and/or medical conditions with their extraordinary education, medical, and health care expenses.

Since your formation, you have only raised money for Z to pay her medical expenses such as specialized treatments, medical equipment and therapy. For example, you have paid for three heart surgeries, numerous cranial sacral treatments, and numerous prescriptions. You indicated you were founded by caring members in your community unrelated to Z, who were aware of her abnormal case history and the circumstances surrounding her medical care and health including her tremendous will to survive. You are even named for Z.

You have held numerous fundraising events such as golf outings and a casino night on behalf of Z. Her photo appears prominently on each of the fundraising flyers as well as her history. Over one half your gross receipts from these events were provided for Z's medical expenses. Moreover, there had been no application process for requesting funding.

For the last several years, you had only one active board member and sole officer, S, who reviewed the medical documentation for Z's expenses and signed all the checks. S is a family friend. You also wrote there was no bias in paying her expenses and funds were reimbursements to Z's family for treatments already paid for. Furthermore, board members and their relatives are not eligible to receive funds. You have since expanded your board by adding four unrelated individuals.

Law

Section 501(c)(3) of the Internal Revenue Code ("Code") provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational and other purposes, including the prevention of cruelty to children or animals provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

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), 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(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). 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 Income Tax Regulations provides that an organization is not organized or operated exclusively for an exempt purpose unless it serves a public rather than a private interest. The organization must demonstrate 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 CB 188 describes a nonprofit organization whose sole activity was the operation of a 'scholarship' plan for making payments to pre-selected, specifically named individuals. The organization did not qualify for exemption from federal income tax under section 501(c)(3) of the Code because it was serving private rather than public or charitable interests.

Revenue Ruling 76-206, 1976-1 C.B. 154 describes a nonprofit organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station by conducting activities that increased the station's revenues; the organization had a broad community board; however, the organization was found to be serving a private rather than a public interest and did not qualify for exemption from federal income tax under Section 501(c)3).

In Wendy L. Parker Rehabilitation Foundation, Inc. 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 distribution of funds from the foundation were for the medical and rehabilitative care of Wendy Parker, and this was to relieve the Parker family of the economic burden of providing such care.

Application of Law

You are not described in section 501(c)(3) of the Code because you fail the operational test as per Section 1.501(c)(3)-1(a)(1) of the regulations.

You are not described in Section 1.501(c)(3)-1(c)(1) of the regulations because you are operating for the non-exempt private purpose of raising funds to pay for a preselected person's medical expenses.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations because you are operating for private interests rather than public interests. Your activities have only benefited Z. For example:

- You have only provided financial assistance to Z.
- Over one half of the gross proceeds have been used for Z's medical expenses.

- You have no formal application process or selection process for requesting assistance.

You are like the organization described in Revenue Ruling 67-367 because you were formed and are operated to benefit a preselected individual. Your fundraising materials illustrate this by showing a prominent picture of Z and her history. These materials also show the proceeds were to be used for her medical expenses. The fact that you are named after Z also substantiates you were formed to benefit a preselected, designated individual which shows you are serving private interests precluding exemption under Section 501(c)(3).

You are similar to the organization described in Revenue Ruling 76-206 because you are not serving public or charitable interests. You are fundraising on Z's behalf to pay her medical expenses and over one half of your gross proceeds have been used to pay for Z's medical expenses. Although your board is unrelated to Z and her family, this does not change the fact that you are serving substantial private interests.

You are similar to the organization described in the court case Wendy L. Parker Rehabilitation Foundation , because you were formed to pay the medical expenses for a preselected individual. Like this organization, you are serving the private benefit of an individual and her family by paying her medical expenses and relieving her family of their financial obligation by providing such care.

Applicant's Position

You state that you were formed to help Z and other children with special medical needs from the community. Your fundraising efforts have been affected by the downturn in the economy, and you are hoping to eventually reach out to other children with special needs. However, to date, Z has been the sole beneficiary of your fundraising efforts.

Service's Response to Applicant's Position

You failed to provide any additional information from which it can be concluded that you are operating exclusively for 501(c)(3) purposes. You are operating for the benefit of a designated individual as described in the preceding facts and analysis and are serving private interests rather than public interests. This precludes exemption under Section 501(c)(3).

Conclusion

You do not qualify for tax-exemption under IRC section 501(c)(3) because you were formed and have operated to raise funds for the benefit of a designated individual. You therefore are serving a private rather than a public or charitable interest.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a protest statement explaining your views and reasoning. You must submit the protest 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 protest 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.

Types of information that should be included in your protest statement can be found in Publication 892. The protest statement must 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 relevant facts and such facts are true, correct, and complete."

Your protest will be considered incomplete without this statement.

If an organization's representative submits the protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying documents; and whether the representative knows personally that the statements of facts contained in the protest 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, 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
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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,

Director, Exempt Organizations

Enclosure: Publication 892