



**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
TE/GE: EO Examinations  
1100 Commerce Street, MC 4920 DAL  
Dallas, TX 75242

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

October 13, 2016

Release Number: 201702039  
Release Date: 1/13/2017  
UIL Code: 501.03-00

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

**CERTIFIED MAIL**

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated April 24, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective July 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

You are not engaged primarily in activities which accomplish charitable, educational, or any other exempt purposes as required by Treas. Reg. section 1.501(c)(3)-1(c)(1). Your activities more than insubstantially furthered non-exempt purposes and your income inured to the benefit of private shareholders and individuals. In addition, you operated for the benefit of private, rather than public interests, as required for continued recognition of exemption pursuant to Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii).

Contributions to your organization are no longer deductible under IRC §170 after July 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ended June 30, 20XX and for all tax years thereafter in accordance with the instructions of the return.

Pursuant to section 509(b) of the Code, your private foundation status continues unless your status as such is terminated under section 507 of the Code. Therefore, in addition to filing Form 1120, you are required to continue filing Form 990-PF and you are still subject to excise taxes under Chapter 42 of the Code until such time as you terminate your private foundation status under section 507 of the Code.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

United States Tax Court  
400 Second Street, NW  
Washington, D.C. 20217

United States Court of Federal Claims  
717 Madison Place, NW  
Washington, D.C. 20005

United States District Court for the District of Columbia  
333 Constitution Avenue, NW  
Washington, D.C. 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [taxpayeradvocate.irs.gov](http://taxpayeradvocate.irs.gov) or call 1-877-777-4778.

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

Sincerely,

Margaret Von Lienen  
Director, EO Examinations

Enclosure:  
Publication 892



**Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities  
Exempt Organizations Examinations**

Date:  
March 16, 2016  
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:  
June 30, 20XX  
Person to Contact/ID Number:

Contact Numbers:  
Telephone:  
Fax:  
Manager's Name/ID Number:

Manager's Contact Number:

Response due date:  
April 16, 20XX

**Certified Mail – Return Receipt Requested**

Dear :

**Why you are receiving this letter**

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

**What you need to do if you agree**

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

**If we don't hear from you**

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

**Effect of revocation status**

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

**What you need to do if you disagree with the proposed revocation**

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service  
Office of the Taxpayer Advocate

**For additional information**

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Paul A Marmolejo  
Acting Director, EO Examinations

Enclosures:  
Report of Examination  
Form 6018  
Publication 892  
Publication 3498

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended 20XX06

**ISSUE**

Does \_\_\_\_\_ continue to qualify for exemption under Internal Revenue Code §501(c)(3)?

**FACTS**

\_\_\_\_\_ filed Articles of Incorporation in the State of \_\_\_\_\_ as a nonprofit corporation on July 9, 20XX. The organization was recognized as exempt under IRC §501(c)(3) and issued a determination letter on April 24, 20XX. The organization was classified as a private foundation as of September 29, 20XX.

The Board of the organization consists of family members except for one person. The Board of Directors and the relationship to the CEO of the organization is shown below:

The purpose of the organization as stated in the Articles of Incorporation filed on July 9, 20XX was as follows:

“

”

\_\_\_\_\_ operates a single family home for one individual who is severely mentally disabled. This individual, \_\_\_\_\_, is the son of the CEO of the organization.

Form 1023, received by the service on March 6, 20XX states the activities of the organization are as follows:

“

”

The Internal Revenue Service requested additional information in a letter dated October 15, 20XX before making a determination on the organization's exempt status. The IRS asked specifically if the organization was set up to provide a home for one individual only.

A letter dated November 5, 20XX was received by the Internal Revenue Service that states the home is solely operated, managed, and set-up for the use of one individual.

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The organization provided a letter dated March 13, 20XX to \_\_\_\_\_, Internal Revenue Service that states:

“ \_\_\_\_\_ is currently in the process of a start-up program to provide support services for \_\_\_\_\_ disability is similar to that which we provide structure and support for \_\_\_\_\_ is working with the \_\_\_\_\_ ”

The organization stated they provided services for \_\_\_\_\_ for a couple of years, but did not provide the dates those services were provided. \_\_\_\_\_ is the grandson of the CEO of the organization.

The organization has not pursued providing services for any individuals other than \_\_\_\_\_ and \_\_\_\_\_

**LAW**

IRC §501(c)(3) exempts from Federal Income Tax corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation (“Regulation”) §1.501(c)(3)-1. 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. The term “exempt purpose or purposes”, as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

Regulation §1.501(c)(3)-1(b) provides the requirements for the organizational test.

Regulation §1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its “articles”) as defined in subparagraph (2) of this paragraph (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 which in themselves are not in furtherance of one or more exempt purposes.

Regulation §1.501(c)(3)-1(b)(1)(ii) provides, in meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3). Therefore, an organization which, by the terms of its articles, is formed ‘for literary and scientific purposes

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within the meaning of section 501(c)(3) of the Code shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely "to receive contributions and pay them over to organizations which are described in section 501(c)(3) and exempt from taxation under section 501(a)" are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "charitable purposes", such articles ordinarily shall be sufficient for purposes of the organizational test (see subparagraph (5) of this paragraph for rules relating to construction of terms).

Regulation §1.501(c)(3)-1(b)(1)(iii) provides an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business", or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of section 501(c)(3) of the Code."

Regulation §1.501(c)(3)-1(b)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

Regulation §1.501(c)(3)-1(c) provides the requirements for the operational test.

Regulation §1.501(c)(3)-1(c)(1) states 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.

Regulation §1.501(c)(3)-1(c)(2) states 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.

Regulation §1.501(a)-1(3)(c) states the words private shareholder or individual in section 501 refer to persons having a personal and private interest in the activities of the organization.

Regulation §1.501(c)(3)-1(d)(1)(ii) states an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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.



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Wendy L. Parker Rehabilitation Foundation Inc. v. C.I.R., T.C. Memo 1986-348 states the organization was issued an adverse ruling for their exempt status under § 501(c)(3) because "a child of the founder and chief operating officer of the Foundation is a substantial beneficiary of the services contemplated by the organization. This constitutes inurement which is prohibited under Code § 501(c)(3) and the Regulations thereunder." The organization anticipated disbursing 30 percent of its funds for the benefit of Wendy Parker, a recovering coma patient.

**TAXPAYER'S POSITION**

position is they are not opposed to revocation of their exempt status as long as they could continue to operate as they are presently.

**GOVERNMENT'S POSITION**

The organization's primary activity is providing a single person residence for . The organization also provides comprehensive and for who is severely developmentally disabled. The care is provided by employees and contractors.

To be exempt from federal income tax under IRC §501(c)(3) an organization must be organized and operated for exempt purposes per the law above.

The articles limit the purposes of the organization to one or more exempt purposes as required under Regulation §1.501(c)(3)-1(b)(1). The articles also state no part of the net earnings shall inure to the benefit of or be distributed to its members, trustees, directors, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of §501(c)(3) purposes.

The vast majority of the income for is from the State of Department of Welfare. The money from the state is for the care of exclusively. The organization must provide documentation to the state detailing the expenditures to ensure it was for . Thus the funds provided from the state inure to the benefit of , a private person.

In addition, to meet Regulation §1.501(c)(3)-1(d)(1)(ii) above, it is necessary for an organization to establish that it is not operated for the benefit of private interests such as designated individuals such as the creator or his family. This organization was formed strictly for the purpose of caring for the creator's son, . Although the organization did care for for approximately two years, once again, was the creator's grandson. This case is similar to Wendy Parker Rehabilitation Foundation v. Commissioner, TC Memo 1986-348, in which a recovering coma patient was the sole recipient of the organization's funds.

For the above reasons, the organization is operated for private interests, and does not meet the requirements for exemption under Internal Revenue Code §501(c)(3).

**CONCLUSION**

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The exempt status of \_\_\_\_\_ is to be revoked effective July 1, 20XX, because the organization is not operating for exempt purposes under IRC §501(c)(3).

The organization is liable to file Forms 1120 for the tax period ended June 30, 20XX and for all subsequent periods. You are considered to be a taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

In accordance with § 6104 of the Internal Revenue Code, state charity officials will be notified of the revocation.