



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **201935013**
Release Date: 8/30/2019

Date:
June 5, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.00-00, 501.03-00, 501.03-30, 501.33-00

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date:

April 10, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

D = Date

E = Individual

F = Individual

UIL:

501.00-00

501.03-00

501.03-30

501.33-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

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

Facts

You are formed as a charitable remainder unitrust established on D. E is your Trustor and E and F are your Co-Trustees. The trust was funded by closely-held securities contributed by E.

Your trust document states that you are established as a hybrid charitable remainder unitrust that will qualify as such initially under Section 664(d)(2) and (3) of the Internal Revenue Code of 1986 and ultimately under Section 664(d)(2) of the Code for the remaining term of the trust pursuant to Treasury Regulation Section 1.664-3(a)(1)(i)(c).

The trust includes a non-charitable interest held by E and his spouse, F, as Recipients, for their joint lifetimes, and after both of their deaths, for the survivor during their lifetime. In each taxable year the Trustee shall pay the "Initial Period Amount" during the "Initial Period" and the "Unitrust Amount" during the "Remaining Period" to E and F in equal proportions during their joint lifetimes, and after the death of either of them, wholly to the survivor during his or her lifetime.

The "Initial Period Amount" refers to the smaller of (I) the Trust Income for a taxable year during the Initial Period, and (II) a fixed percentage amount equal to seven percent (7%) of the net fair market value of the trust assets valued as of the Valuation Date. In determining the Initial Period Amount, the Trustee shall prorate the same on a daily basis for a short taxable year in accordance with Treas. Reg. Section 1.664-3(a)(1)(v)(a), and, for the taxable year in which all noncharitable interests terminate, in accordance with Treas. Reg. Section 1.664-3(a)(1)(v)(b).

The “Remaining Period” refers to the period of time this trust will be treated as a charitable remainder unitrust solely pursuant to Section 664(d)(2) of the Code.

Upon the death of the last surviving Recipient, the Trustee shall distribute all of the principal and income of the trust, other than any amount then due to the last surviving Recipient (or such Recipient’s estate), to one or more charitable remaindermen, each of which must be a type of charity described in each of Section 170(b)(1)(A), Section 170(c), 2055(a), and 2522(a) of the Code. The Trustor has designated a charity to receive the charitable remainder to be used to support charitable training programs.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 664(d)(2) of the Code sets forth the requirements to be a charitable remainder unitrust. Section 664(d)(2)(A) provides that a fixed percentage (which is not less than 5 percent) of the net fair market value of the assets, valued annually, is to be paid, not less often than annually, to one or more persons (at least one of whom is not an organization described in Section 170(c) and, in the case of individuals, only to an individual who is living at the time of the creation of the trust) for a term of years (not in excess of 20 years) or for the life or lives of such individual or individuals. No amount other than the above-described payments may be paid to or for the use of any person other than an organization described in Section 170(c). Following the termination of the payments described above, the remainder interest in the trust is to be transferred to, or for the use of, an organization described in Section 170(c).

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that if the organization fails either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 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 limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) 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 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 is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(c)(2) states 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) 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.

In Revenue Ruling 69-256, 1969-1 C.B. 151, a testamentary trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot is not exempt under Section 501(c)(3) of the Code.

In Rev. Rul. 69-279, 1969-1 C.B. 152, an irrevocable inter vivos trust, which provides that a fixed percentage of the income must be paid annually to the settlor with the balance of the income to charity does not qualify for exemption under Section 501(c)(3) of the Code. Under the terms of the trust instrument a percentage of the trust's income must be paid to the settlor. Thus, the trust is organized and is operated for two purposes-to benefit the settlor and to benefit charity. The trust therefore is not organized and operated exclusively for charitable purposes. Rather, it is organized and operated, in part, for the benefit of the private interest of the settlor and a part of the trust's earnings is inuring to the benefit of a private individual.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375, (1945), the Supreme 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 purposes.

Application of law

As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3) of the Code to qualify for exemption. Your Trust document does not limit your purposes to those described in Section 501(c)(3). As a result, you have not satisfied the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i).

You do not meet the operational test under Section 501(c)(3) of the Code because you are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). The initial Recipients of your funds, E and F, are not charitable. During their lifetime, your purpose is to provide a percentage of your income to them annually.

After the deaths of E and F, the remainder of the Trust assets will be distributed to a charity. You are organized and operated for two purposes - to benefit E and F during their lifetimes and to benefit charity after their deaths. Therefore, you are not operated exclusively for charitable purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(2). Rather, you are organized and operated, in part, for the benefit of the private interest of E and F, which is prohibited according to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are like the organization described in Rev. Rul. 69-256, where making annual payments for non-exempt purposes were held to be non-exempt. You are nearly identical to the organization described in Rev. Rul. 69-279. You are organized and operated for charitable and non-charitable purposes. Your non-charitable recipients benefit substantially, which precludes you from exemption under Section 501(c)(3) of the Code.

Although you have future charitable purposes, you also have a current, substantial, non-exempt purpose of distributing funds to non-charitable recipients. The presence of this substantial non-exempt purpose precludes exemption regardless of the number or importance of truly exempt purposes, as explained in Better Business Bureau. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

Your position

You indicated that the Trust is a standard, regulation Charitable Remainder Unitrust, pursuant to Section 664(d)(2) of the Code, using a "combination of methods" approach, per Treas. Reg. Section 1.664-3(a)(1)(i)(c).

The donor's charitable deduction was calculated pursuant to Treg. Reg. Section 1.664-4. You asserted that the Trust Agreement was written in strict adherence to the Code and Regulations regarding charitable remainder trusts, using an approved template.

Our response to your position

A charitable remainder trust is generally exempt from tax under Section 664 of the Code, not under Section 501(a). Exemption under Section 501(c)(3) would not be appropriate because of the private interest present in the split interest trust. The Code and the Regulations specifically forbid the inurement of earnings to private shareholders or individuals, as explained in Treas. Reg. Section 1.501(c)(3)-1(c)(2). You are requesting a ruling as a charitable remainder unitrust, but you are using Form 1023 to seek exemption under Section 501(c)(3) of the Code. We cannot rule on classification under Section 664 using this process.

Conclusion

You do not qualify for exemption under Section 501(c)(3) of the Code because you fail both the organizational and operational tests. You are neither organized nor operated exclusively for an exempt purpose and your earnings inure to the benefit E and F. You have a substantial non-exempt purpose of providing funds to E and F, which precludes exemption under Section 501(c)(3).

No opinion is expressed as to the federal tax consequences of the formation or operation of the trust under Section 664 or of any other section of the Code.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

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 if 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 www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements