



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Number: **202110034**
Release Date: 3/12/2021

Date: December 15, 2020

Employer ID number:

Form you must file:

Tax years: **ALL**

Person to contact:

Name:

ID number:

Telephone:

UIL: 501.32-00, 501.33-00

Dear _____ :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). 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 IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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.

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

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Notice 437
Redacted Letter 4034
Redacted Letter 4038



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: October 27, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Name
E = Name

UIL:

501.32-00
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 meet the operational test under IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You were incorporated in the state of B on C for educational purposes. According to your Form 1023, your board of directors is solely comprised of D and E, a married couple. Further, you requested foundation classification as a school under IRC Sections 509(a)(1) and 170(b)(1)(A)(ii). Your only activity consists of operating a home school for the child of D and E. There are no other children who attend your school. Your only source of support is from D and E. Your expenses consist of school supplies, and books.

Law

IRC Section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it does not qualify for exemption.

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 that accomplish one or more of such exempt purposes specified in IRC 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.

Treas. Reg. Section 1.501(c)(3)-1(c)(2) indicates that an organization is not operated exclusively for exempt purposes if its net earnings inure to the benefit of private individuals.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) 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. To meet the requirement of this subsection, the burden of proof is on the organization to show 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 69-175, 1969-1 C.B. 149, described an organization that was formed by parents of students attending a private school. The sole purpose of the organization was to provide bus transportation to and from school for the members' children. Parents paid an initial family fee and an additional annual charge for each child. The organization's income equaled the operation's expenses. The revenue ruling stated: "When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, under the circumstances described, the organization enables the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves private rather than a public interest". Accordingly, it is not exempt from federal income tax under IRC 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 IRC Section 501(c)(3) because you fail the operational test as per Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You are not described in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are operating for a substantial non-exempt private purpose. This is evidenced by the fact that you are operating a home school for the child of your directors, who are husband and wife.

As described in Treas. Reg. Section 1.501(c)(3)-1(c)(2) and Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), you are not operated exclusively for exempt purposes. You are operating a home school for the child of your directors, D and E, who are husband and wife. This shows that your net earnings inure to the benefit of D and E as well as that you are operating for private interests rather than public interests. Your activities only benefit D and E.

You are like the organization described in Revenue Ruling 69-175. Through operating a home school for your directors' child, you are enabling your directors to fulfill their individual responsibility of providing an

education for their child. Accordingly, you do not meet the requirements for recognition of tax exemption under IRC Section 501(c)(3).

You are similar to the organization described in the court case Wendy L. Parker Rehabilitation Foundation. You were formed to operate a home school for the child of your directors. Like this organization, you are serving the private benefit of your directors by relieving them of their financial obligation of educating their child.

Conclusion

You do not qualify for exemption under IRS Section 501(c)(3) because you do not meet the operational test of Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are operated for substantial non-exempt private purposes and your net earnings inure to the benefit of private shareholders. Further, you serve a private rather than a public interest. Accordingly, you do not qualify for exemption under IRC Section 501(c)(3).

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