



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

PO Box 2508
Cincinnati, OH 45201

Number: **202110044**
Release Date: 3/12/2021

UIL Number: 501.00-00, 501.03-05, 501.33-00

Date:
December 15, 2020
Employer ID number:

Form you must file:

Tax years:

Person to contact:
Name:
ID number:
Telephone:

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 13, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Individual
C = Date
D = State

UIL:

501.00-00
501.03-05
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 IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You were formed as a nonprofit corporation on C in the State of D. Your Articles of Incorporation state you are organized exclusively for charitable, religious, educational, and scientific purposes as described in IRC Section 501(c)(3). Your Articles further state that your business activity is "Donations for the children of a deceased father. For general care and expenses to raise these 2 children into adulthood."

B was a single father and is a now deceased. You were formed specifically to raise money to benefit the two children of B. The funds will be used to raise B's two children into adulthood. You will have various fundraisers, including a silent auction, as well as annual events, such as a dinner, a color run, and a golf tournament with corporate sponsorships. These events will generate donations for B's children.

You were organized exclusively to raise funds for the children of B. The funds will be used for their general care and education expenses.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax of 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.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, for an organization to be exempt under IRC Section 501(c)(3), it 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 or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization will be regarded as “organized exclusively” for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and 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.

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(d)(1)(ii) provides that an organization is not organized and operated exclusively for charitable purposes unless it serves a public rather than a private interest.

Revenue Ruling 67-367, 1967-2 C.B. 188, describes an organization that was created for a sole activity that consist in the operation of a "scholarship fund" plan for making payments to pre-selected, specifically named individuals. The organization did not qualify for exemption under IRC Section 501(c)(3).

In Better Business Bureau of Washington, D.C., Inc., v. U.S., 326 U.S. 279 (1945), the court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption, regardless of the number or importance of statutorily exempt purposes.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348 (1986), the organization was created by the Parker family to aid an open-ended class of “victims of coma.” However, the organization stated that it anticipated spending 30 percent of its income for the benefit of Wendy Parker, significant contributions were made to the organization by the Parker family, and the Parker family controlled the organization. Wendy Parker's selection as a substantial recipient of funds substantially benefited the Parker family by assisting with the economic burden of caring for her. The benefit did not flow primarily to the general public as required under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). Therefore, the Foundation was not exempt from federal income tax under IRC Section 501(c)(3).

Application of law

You are not described in IRC Section 501(c)(3) because you fail both the organizational and operational tests as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1).

Your Articles of Incorporation state that you were formed to raise funds for two preselected individuals. Providing funds exclusively for preselected individuals is not an exempt purpose as described in IRC Section 501(c)(3). Because your formation document expressly empowers you to engage in a substantial non-exempt purpose, you fail the organizational test, as described in Treas. Reg Section 1.501(c)(3)-1(b)(1)(i).

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will not be regarded as exempt under IRC Section 501(c)(3) or operated exclusively for one or more exempt purposes if more than an insubstantial part of

its activities is not in furtherance of an exempt purpose. Your only activity is providing for the private interests of B's children. Accordingly, you fail the operational test.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because, like the organization described in Rev. Rul. 67-367 you are operating for the benefit of the private interests of the two children of B, rather than for public interests.

Like the organization described in Wendy L. Parker Rehabilitation Foundation, Inc. you were formed to benefit pre-selected individuals. Providing for the substantial private benefit of a few pre-selected individuals is a substantial non-exempt purpose. As explained in Better Business Bureau of Washington, D.C., Inc., the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under IRC Section 501(c)(3) regardless of the number or importance of any other exempt purposes. Accordingly, you do not qualify for exemption under Section 501(c)(3).

Conclusion

Based on the above facts and analysis, you do not qualify for exemption under IRC Section 501(c)(3) because you fail both the organizational and operational tests. Your formation document indicates that your purposes are outside of the scope of IRC Section 501(c)(3), which causes you to fail the organizational test. You fail the operational test because you have a substantial non-exempt purpose of fundraising for the benefit of two pre-selected individuals, which furthers private interests. Accordingly, you do not qualify for exemption under 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.

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Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements