

INTERNAL REVENUE SERVICE
District Director
31 Hopkins Plaza
Baltimore, MD 21201

DEPARTMENT OF THE TREASURY
Baltimore District

PERSON TO CONTACT:
[REDACTED]

CONTACT TELEPHONE NUMBER:
[REDACTED]

IN REPLY REFER TO:
[REDACTED]

DATE: OCT 17 1995

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

Evidence submitted indicates you were incorporated in the state of [REDACTED] on [REDACTED] for the purpose of raising funds to support [REDACTED] and his family.

The activities of the Organization is fund raising to help alleviate the living expenses, as well as set up college funds for [REDACTED] and his family, while he undergoes treatment for a terminal illness.

Income will be derived from dinners, raffles, golf outings, and other fund-raising activities.

Expenditures will be allocated for operations and disbursements to the [REDACTED] family.

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

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private interest. Thus to meet the requirements of this subparagraph, 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. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serve private interests.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943), it was held that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust, because it was created and operated for the benefit of specified persons.

In general, an organization which applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular Code section under which it has applied. See Kenner v. Commissioner, 318 F. 2d 632 (7th Cir. 1963), and Cleveland Chiropractic College v. Commissioner, 312 F. 2d 203, 206, (8th Cir. 1963)

Likewise, in Revenue Ruling 57-449, published in Cumulative Bulletin 1957-2 on page 622, a trust set up to pay a certain sum to all individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust, because the beneficiaries were a group of identifiable individuals.

Our review of your application indicates that your articles of incorporation do not meet the organizational test required to be recognized as tax exempt under section 501(c)(3) since this document does not limit your purposes exclusively to one or more purposes described in this section. The Second Article in your Articles of Incorporation states that the purpose of the organization is to raise funds for the support of [REDACTED] and his family.

The element of public benefit is a necessary condition of legal charity. If the purposes or operations of an organization are such that a private individual who is not a member of a charitable class receives other than an insubstantial or indirect economic benefit therefrom, such activities are deemed repugnant to the idea of an exclusively charitable purpose.

A charitable organization or trust must be set up for the benefit of an indefinite class of individuals, not for specific persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable, regardless of an established financial need.

Thus you are not operated for a public benefit as required by Income Tax Regulations 1.501(c)(3)-1(d)(1)(ii). You therefore do not meet the organizational or the operational tests defined in section 1.501(c)(3)-1(b)(c) or (d) of the Income Tax Regulations.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120. Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

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

Sincerely,


District Director

Enclosure: Publication 892

cc: State Attorney General 