



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **201831012**
Release Date: 8/3/2018

Date:
May 9, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00, 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:

February 21, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Fishing vessel

C = State

D = Date

UIL:

501.03-00

501.33-00

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis 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 were incorporated in the State C on D. Your Articles of Incorporation state that you were formed exclusively for charitable, scientific, literary and educational purposes within the meaning of Section 501(c)(3) of the Code, specifically for the purpose of collecting and distributing contributions for the families of the crew of the B.

You are dedicated to ensuring the stability of the families of the deceased crew of the B, which consisted of less than ten individuals. You have not carried out any specific activities at this time, nor do you have any planned activities. However, other organizations have carried out various fundraisers to benefit you on their own accord without direct involvement or formal agreements with you.

During the processing of your application, it was suggested that you amend your Articles of Incorporation to limit your purposes to those which are exclusively Section 501(c)(3) purposes. To this you responded that you were "established to collect fund[sic] from the public and distribute such funds to the families of the deceased crew of the B, rather than make distributions to other organizations qualifying as exempt organizations under the code." Therefore, you stated, the suggested language limiting your purpose is not applicable to you.

You collect funds from the public and distribute those funds to the families of the deceased crew of B. Your officers and directors will determine how to allocate the funds, including how much is distributed to each recipient, taking into consideration financial need and family relatedness. You will keep supporting documents to show the amounts paid, the purpose of the payments, and information to establish that distributions were made to meet charitable purposes and the victims' needs.

You raise funds by sending emails to individuals in the community. You have also set up a social media page which directs anyone interested in donating through your link. Certain contributors wish to donate funds for the benefit of the minor children of the deceased B crew. Accordingly, you will set up a separate account for donations specifically for the benefit of such children. The only advice that donors may provide is that they wish the funds to benefit the children, but may not provide advice or direction to dictate which children will receive any funds. The decision-making authority as to which children receive funds remains with your directors and officers and any members of an Advisory Board or other individual appointed by your directors and officers.

Your activities are expected to continue for not more than one year following incorporation.

Law

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for educational or charitable 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) states that in order to qualify under Section 501(c)(3) of the Code, 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 or operational test, it is not exempt.

Treas. Reg. Section 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."

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Rev. Rul. 67-367, 1967-2 CB 188, states a nonprofit organization whose sole activity is the operation of a scholarship plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from federal income tax under Section 501(c)(3) of the Code.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943), a trust established for the benefit of an aged clergyman and his wife was a private trust and not an exempt activity despite the fact that the two individuals served were needy.

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 Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348, 52 T.C.M. (CCH) 51 (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 Section 501(c)(3).

Application of law

As explained in Reg. Section 1.501(c)(3)-1(a)(1), there are two main tests to qualify for exempt status under Section 501(c)(3) of the Code. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You fail both the organizational and operational tests.

Your organizing document states that you were formed specifically to provide funds to the families of the deceased crew of B. As explained in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iii), you are not organized exclusively for one or more exempt purposes because your articles expressly empower you to engage in activities which are not in furtherance of one or more exempt purposes. Despite the fact that your formation document states that you are formed exclusively for charitable purposes as described in Section 501(c)(3), your organizing document further states that you will provide funds to pre-selected individuals, which is not an exempt purpose.

You will collect and provide funds to support the pre-selected family members of the deceased crew of the D and you do not plan on distributing to others in the future. Rather, you anticipate that your activities will only be carried on for about a year. You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because, like the organizations described in Rev. Rul. 67-367 and Carrie A. Maxwell Trust, you are operating for the benefit of the private interests of a few pre-selected families, rather than for public interests.

Like the organization described in Wendy Parker, your benefits do not flow primarily to the general public as required under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). You were formed specifically to benefit a few pre-selected individuals. Providing for the substantial private benefit of a few pre-selected individuals is a substantial non-exempt purposes, as explained in Better Business Bureau. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

Conclusion

Based on the information submitted, you are neither organized nor operated exclusively for exempt purposes. You are operating for the private interests of a few pre-selected individuals, which is a substantial non-exempt purpose. Accordingly, you do not qualify for exemption under Section 501(c)(3) of the Code.

If you don't agree

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

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

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

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

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts 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 he or she hasn'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 provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office 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 at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement 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 he or she received it.

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.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892