

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508, EODQA Rm. 7008
Cincinnati, OH 45201

Date: JUN 16 2004



Employer Identification Number:



Person to Contact - I.D. Number:



Contact Telephone Numbers:



Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

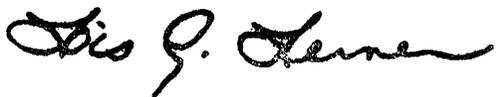
You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment 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.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Explanation of basis for denial
Publication 892
Form 6018

ENCLOSURE I
Reasons for Adverse Action

NAME: [REDACTED]
EIN : [REDACTED]

FACTS:

Your application indicates that you are legally organized as a trust. You submitted several different documents purporting to be your organizing documents. These included different documents identified as "Declaration of Trust", either undated or dated [REDACTED]; some of these documents were unsigned, and others were signed only by [REDACTED], although several other persons were also named as trustees. While your application for tax-exempt status was in process, you also submitted a "Declaration of Trust" and "articles of Organization" dated [REDACTED], again signed only by [REDACTED].

In the "Declaration of Trust" dated [REDACTED], you indicated that the trust was funded by "[REDACTED]," identified as a sole proprietorship. In various other documents, [REDACTED] is identified as the "donor/creator" and/or the "proprietary Officer" of the trust. [REDACTED] is also identified as the "sole contributor" of [REDACTED]. In one of the trust documents, the "Initial primary" purpose of the trust is stated as "to build an initially 'Small Medical Facility ([REDACTED], the Quality Care & Care Treatment of people, of All Nations & Races and to also provide Support/Care Services as specified by the Articles". In another document, it is stated that [REDACTED]' children are to become "beneficiaries and Trustees" of her estate upon her death, to share equally in the proceeds of the trust. In an unsigned document identified as an amendment to the trust, [REDACTED] relatives of [REDACTED] are designated to become trustees of the trust upon [REDACTED]' death. In another document, it is stated that trust proceeds are to be used for charitable purposes, and that, in the event of dissolution of the trust; assets would be distributed for purposes specified in Code section 501(c)(3). However, the same document provides that there must be at least two trustees, but again is signed only by [REDACTED]. Several trust documents identify [REDACTED] and trustees, and attorneys for the trust. These individuals were also named by [REDACTED] as representing her in this application process. However, these individuals have advised the Internal Revenue Service that they have no knowledge of the trust and are not resenting the trust or [REDACTED] in this matter. Another purported trust document appears to specify that [REDACTED] adult children are to be "primary beneficiaries" of the trust, and that trust funds are also to be used for the care an upbringing of [REDACTED] minor granddaughter. None of the purported trust agreements include documentation of transfer of assets to fund the trust(s).

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experience, finances, etc., rather than to the planned activities of a chartable trust.

The financial information submitted with your application included proposed budgets that were identified as being for "[REDACTED]"; however, it appears these were intended to represent the financial operations of the trust. You also submitted prior year income statements for [REDACTED], and copies of Forms W-2 and other tax documents relating to that entity.

On [REDACTED], we wrote to you requesting additional information, including documentation that persons other than [REDACTED] had agreed to be trustees, and further detail as to when you expected to begin the activities described in your application, more detail on how these activities would be carried out, and to whom services would be provided. Additionally, we requested further information concerning your relationship with [REDACTED] sole proprietorship, and a description of the business activities of that entity. We also advised that your purported trust document did not meet the organizational test under section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations, and that amendments would be needed. We also requested clarification concerning a number of items in the application that had not been answered completely, or to which inconsistent or unclear responses had been provided. We also requested that you resubmit financial information in a format relating to the categories of income/expenses requested in Form 1023.

In a response dated [REDACTED], you requested additional time to respond to our request. An extension until [REDACTED] was granted. The application process was administratively closed without a determination on [REDACTED], since we had not received a response.

The application process was later reopened after we received your response, dated [REDACTED] but not mailed until [REDACTED]. This response consisted of 20 handwritten pages plus documents that did not identifiably relate to your application, such as a funeral program and copies of [REDACTED]' personal insurance documents. The reply appeared to include both notes/drafts of responses and "final" responses to numerous items.

The response stated that the trust was established as a memorial to [REDACTED]' late mother, in order to provide assistance to needy persons. It was also stated that funds in the trust could be "transferred back to [REDACTED] entity for reinvestment & operational expense." The response also stated "Goal of income for proprietor at present is based on professional advancement & educational goals which should provide surfeit enough income which would then provide and enable additional reinvestment capital income

NAME : [REDACTED]
EIN : [REDACTED]

later from education provider at present. ... Reinvestment income to provide for supplies, payroll, travel expense - employees to reimbursement & bonuses."

The response also stated that [REDACTED] "is the [REDACTED] [REDACTED] enmity, at present being the only one who invests time & money to keep business activities operational and accomplish specified goals ... The establishment of the trust will be the initial step in the prior-mentioned objective of building a "trust fund which as specified previously will enable the organization to invest time, money, and professional services to a [illegible] of people requesting services being affordably provided."

The responses did not provide any information showing that any persons other than [REDACTED] were involved in setting up the trust, or had agreed to be trustees or otherwise involved in its planned activities. [REDACTED] was described as a business initially established as an "insurance producer" and "now diversified to include other fields of professionalism to incorporate and accomplish goals as indicated previously."

On [REDACTED] another additional information letter was sent out with a due date of [REDACTED].

Your response dated [REDACTED], which was received on [REDACTED], [REDACTED], was similar to prior submissions. You provided the same activity sheet that was originally provided with the application Form 1023. You also reiterated that a percentage of the receipts/earnings and or proceeds might be transferred back to the [REDACTED] entity for reinvestment and operational expenses. You also indicated that the establishment of the trust would be the initial step towards the objective of building a trust fund that will enable your organization to invest time, money and professional services to a facet of people requiring and/or requesting your organizations services. You also indicated in Item 14 of your response letter that the net earnings of the organization would be distributed to employees, in addition to Trustees, officers and other private (designated/selected) persons.

During the application process, numerous documents relating to [REDACTED] [REDACTED] personal financial, medical, and legal affairs were submitted, as well as a large volume of records pertaining to the financial operations and tax liability of [REDACTED]. These records showed that [REDACTED] has paid wages to [REDACTED] [REDACTED] and several members of her family, including her minor granddaughter. [REDACTED] appears to have used [REDACTED] as a mechanism for managing and distributing income received by herself and other family members from government assistance programs and other sources, and using it to pay their personal expenses.

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EIN : [REDACTED]

LAW:

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax, Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h) and which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Income Tax regulations states that in order to qualify under section 501(c)(3) of the Internal Revenue Code an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations 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). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Sec 1.501(c)(3)-(d)(1)(ii) of the Income Tax regulations states 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. Thus to meet the requirements of this subdivision, 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.

In Better Business Bureau of Washington, D.C, Inc V United States, 326 US 179, the supreme court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the claim for exemption regardless of the number or importance of truly exempt purposes.

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Operating for the benefit for private parties constitutes a substantial non-exempt purpose. Old Dominion Box Co. v United States 477 F 2d 340 (4th Cir.1973), cert.denied 413 U.S. 910 (1973).

In Church of Eternal Life and Liberty Inc V. Commissioner of Internal Revenue 86 T.C. 916; 1986 U.S. Tax Ct. 86 T.C. No.54 the court held that a substantial element of assets were used for the private benefit of its minister, and therefore the organization is not described in Section 501(c)(3) and is not exempt from federal tax.

In Basic Bible Church v. Commissioner of Internal Revenue 74 T.C. 846; 1980 U.S. Tax Ct. 74 T.C. No. 62 it was held that petitioner was not entitled to exemption from federal taxation under sections 501(a) and 501(c)(3) as amended because it fails the operational test of section 501(c)(3) in that petitioner serves the private interests of its founder and his family, and in so doing serves a substantial non-exempt purpose.

In Revenue Ruling 55-610, 1955-2 C.B. 262, an organization, formed to operate the activities previously conducted by its principal founder, which plans to reimburse the founder for expenditures made by him in prior years in the conduct of these activities, is not entitled to exemption, since a portion of the net earnings of the organization will inure to the benefit of the founder. § 1.501(c)(3)-1. (Sec. 501, '86 Code.)

In Revenue Ruling 81-94, 1981-1 C.B. 330, A "church" that was formed by a professional nurse (who is also the "church's" minister, director, and principal officer) and that is used primarily as a vehicle for handling the nurse's personal financial transactions is not exempt from tax under section 501(c)(3) of the Code.

Revenue Ruling 78-232, 1978-1 C.B.69, describes an organization formed by an individual who claimed to be a minister and formed an organization purporting to be a church. The individual deposited his personal salary checks from outside employment in the "church" bank account and used the funds for his personal living expenses. The ruling holds that the amount of the salary checks deposited by the taxpayer in the church bank account is not deductible as a charitable contribution under section 170 of the Code on two alternative grounds. First, the contribution is not a 'charitable contribution' within the meaning of section 170 because the transfer was made with the expectation of procuring a benefit in return. Second, the church is not an organization described in section 170(c) because it was operated for the private purposes of the taxpayer and not exclusively for religious or other charitable purposes.

Section 5.02 of Revenue Procedure 90-27, Cumulative Bulletin 1990-1, page 514, provides as follows:

NAME : [REDACTED]
EIN : [REDACTED]

"Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities; the anticipated sources of receipts; and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued."

ANALYSIS:

The activities indicated on your application for exemption do not show that you will operate exclusively for one or more exempt purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1954. Proposed operations have not been specifically identified and described in sufficient detail to permit a conclusion that the organization will clearly be exempt.

Based on the information submitted, your activities do not appear to be exempt activities under 501(c)(3) of the Internal Revenue Code. Therefore, the principle of the Better Business Bureau case is applicable to you. In addition, income is inuring to the benefit of the founder/sole proprietor of the sole proprietorship entity, Barnes Four Phutures. As noted in the above-cited cases and rulings, exemption under Code section 501(c)(3) is precluded where such private benefit exists.

You have indicated plans to build a "small Medical Facility". It appears that the medical facility is non-existent at this time, and it is unclear where and when this facility is to be built, and whether this facility, if built, will be a qualified charitable entity. You indicate general intent to aid the needy, however, as stated in R.P. 90-27, a mere statement of intent to operate for charitable purposes is insufficient grounds for recognition of exemption.

Your organizing document indicates that the Trust is formed for the benefit of specified family members, and additionally indicates that they are to share, equally, the trust proceeds for as long as they live. You also indicated that a percentage of the proceeds would be transferred back to the sole proprietorship entity [REDACTED] [REDACTED] for reinvestment and operational expenses.

NAME : [REDACTED]
EIN : [REDACTED]

Therefore, your organizing document does not limit your purposes exclusively to one or more exempt purposes. Your organizing document also does not appear to comply with the [REDACTED] Compiled Statutes, Trusts and Fiduciaries Charitable Trust Act [REDACTED] with regard to the registration requirements under this Act. Additionally, Your organizing document names co-trustees and co-executors who have indicated that they are not now, or have ever been nor intend to be co-trustees of the Trust.

Overall, your application indicates that there is no clear separation between your founder's personal finances and activities and those of the purported trust.

In conclusion, you do not meet either the operational test or the organizational test under Section 501(c)(3) of the Code, since your activities are not demonstrably exclusively exempt activities and they are also intended to bestow a private benefit to the founder. In addition, private benefit accrues to the founder's family since they are the named beneficiaries of the Trust and are to share in its proceeds. Further, it does not appear that a legally valid trust has been established. Accordingly, you do not qualify for exemption under Code section 501(c)(3), or any other section of the Internal Revenue Code.