

Internal Revenue Service

Department of the Treasury

District
Director

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO
Date: FEB 28 1990

NO PROTEST RECEIVED.
CASE CLOSED TO ESU 3-24-90
EO REVIEWER

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 and we have concluded that you do not.

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 that 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.

[REDACTED]

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 yours,

[REDACTED]

[REDACTED]
District Director

Enclosures: 3

Facts

████████████████████ was formed on ██████████, for the purposes shown on the trust agreement as follows:

WITNESS:

Whereas, the relatives and friends of ██████████, a cancer victim, are trying to collect money for her benefit; and

Whereas, it is anticipated that various sums of money will be accumulated; and

Whereas, Grantor desires that all of said money be placed with Trustee in a fund designated the ██████████; and

Whereas, the purpose of the Trust Fund is charitable to provide money to help defray the medical and living expenses associated with promoting the general welfare of ██████████; and

Whereas, the Grantor intends to use said money exclusively for the benefit of ██████████;

Now Therefore, the Grantor hereby assigns, transfers and conveys to the Trustee such monies as she may receive; which money is to be held in trust by the Trustee for the use and benefit of ██████████, under the terms and conditions hereinafter set forth.

On ██████████, after being notified by the Internal Revenue Service that a private charity would not be tax exempt, the purposes of the trust were amended as follows:

1. The trust is set up with the general charitable purpose of benefiting individuals with cancer in the City of ██████████, ██████████, and not for the benefit of a specified individual. The name given the trust was selected merely for identification purposes.
2. Said trust is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code.

The amendment also contained additional provisions such as there would be no inurement to officers and upon dissolution assets would be contributed to other organizations for exempt purposes under section 501(c)(3) of the Code. The amendment also stated "Any provisions of

████████████████████
the original Trust Agreement that are in conflict with the provisions of the First Amendment are canceled and of no effect."

On the application, the organization's activities were described as follows:

The organization was formed ██████████ to have a bingo/combination raffle for the benefit of ██████████, a cancer victim. The money raised to be used to help defray the hospital, medical, and living expenses of ██████████. The bingo and raffle were held ██████████, and the receipts are in a bank account awaiting distribution. The money is to be distributed in a lump sum.

The application also states, "Income and assets will not produce (interest) income as (principle is) to be given to ██████████ within 30 days."

The bingo was sponsored by the ██████████, an organization exempt under section 501(c)(4) of the Code. A circular was used to advertise the bingo. The circular states, "-BINGO- for the benefit of ██████████ ...". A letter was also used to generate support for the bingo and to solicit contributions. The letter states that it is on the behalf of ██████████, and that a group of ██████████'s co-workers and friends were organizing the benefit bingo to assist ██████████ and her family.

In a letter dated ██████████, the organization provided additional information. This additional information is shown, in part, below:

Benefits paid to date include \$████████ given to ██████████. The additional funds raised are being held in a non-interest bearing account until further distribution is made.

The organization will terminate upon disbursement of the present remaining funds. The funds will be disbursed as soon as a determination is made as to the status of this organization. We would expect the fund to terminate within the next 60 days.

There is no budget planned as there are no income generating activities planned and the only anticipated expense would involve tax preparation and expense.

All funds received to date will be donated for the benefit of ██████████.

No more bingos or fund raising activities are being planned by this organization.

Only one bingo event has been sponsored and no others are planned. The event was held [REDACTED].

No future bingo and/or raffle events are planned at this time.

LAW

Section 501(c)(3) of the Code 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.

Section 1.501(c)(3)-1(a)(1) of the Regulations 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 exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(a) and (b) of the Regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage in activities which are not in furtherance of an exempt purpose.

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

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations 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.

Revenue Ruling 67-367, 1967-2 C.B. 188, provides that 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 Internal Revenue Code.

Carrie A. Maxwell Trust, Pasadena Methodist Foundation vs. Commissioner, 2 TCM 905 (1943). This case 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.

ANALYSIS

The original trust clearly states that it is set up to benefit the individual, [REDACTED]. Although the First amendment to the Trust corrects the defect in the organizing instrument, the amendment was made at a point in time when the organization had completed its activities and had already performed according to the purposes stated in the original document. The organization stated in its application, in its public announcements, and in its solicitation letters that the funds raised would be for the benefit of [REDACTED]. The organization had also indicated that its only disbursement to date was \$ [REDACTED] paid to [REDACTED], and that its intention was to pay its remaining funds to [REDACTED].

Our position is that the Trust as originally organized did not meet the organizational requirements set out in the Regulation 1.501(c)(3)-1(b)(1)(a) and (b). All of the organization's activities took place under the provisions of the original Trust Agreement. The organization has also failed to meet the operational test set out in Regulation 1.501(c)(3)-1(c)(1) because it operated for the benefit of a designated individual indicating it is not serving a public purpose but a private interest, contrary to Regulation 1.501(c)(3)-1(d)(ii).

We rely on Revenue Ruling 67-367, previously cited, which denied exemption to an organization paying scholarships to pre-selected, specifically named individuals. We also rely on the Carrie A. Maxwell Trust, Pasadena Methodist Foundation vs. Commissioner, which denied exemption to a trust set up to benefit an elderly, retired minister, who was considered to be in financial need. We think the [REDACTED] is similar because it too is set up for the benefit of a designated individual.

The organization argues that it should be granted exemption on the grounds that it was founded for strictly charitable purposes and that it changed its Trust document to meet the organizational test of section 501(c)(3), and that the [REDACTED], an exempt organization, sponsored the fund raising events.

We do not dispute the facts presented by the organization, but we disagree with the conclusion. Although [REDACTED] is a person in need of assistance, an organization set up for her exclusive benefit has a private rather than a public interest, which means it is not charitable within the meaning of section 501(c)(3) of the Code. Amending the Trust document to meet the organizational test would be meaningful if the organization were seeking a prospective exemption from the date the trust was amended on the premise it could demonstrate that in the future it would operate for public rather than private benefit. In this case, however, the organization's past operations were all for the benefit of a designated individual and it plans no future activities. In a situation where the original organizing document contains no provisions which were contradictory to the permitted purposes of section 501(c)(3) and the past operations were for

public rather than private benefit, retroactive exemption could be considered. But the facts in this case indicate otherwise. We can see no reason to grant prospective exemption as no future activities are planned, and exemption for the period prior to the time the Trust was amended could not be considered because in that period the Trust was both organized and operated for a private benefit. The fact that [REDACTED], the sponsor of the fund raiser, is exempt under section 501(c)(4) does not effect the exempt status of the Trust. An organization cannot assume the exempt status of a sponsor, but must prove its exemption in accordance with Regulation 1.501(a)-1(a)(2).

CONCLUSION

[REDACTED] was organized and operated for the benefit of a designated individual and not for a public purpose. Therefore, the Trust is not exempt from tax under section 501(c)(3) of the Code.