

Department of Treasury
Internal Revenue Service
Private Letter Ruling

PLR 202101007 - Section 501 - Exemption from Tax on Corporations, Certain Trusts, etc

Department of the Treasury
Internal Revenue Service
Appeals Office

Number: 202101007
Release Date: 1/8/2021

Date:

Person to contact:

Name:

Employee ID number:

Telephone:

Fax:

Hours:

Employer ID number:

Uniform issue list (UIL):
501.04-02

Certified Mail

Dear

This is a final adverse determination that you do not qualify for exemption from federal income tax under **Internal Revenue Code** (the "Code") Section **501(a)** as an organization described in Section **501(c)(3)** of the Code.

We made the adverse determination for the following reasons:

You have not demonstrated that you will be operated exclusively for charitable, educational or other exempt purposes as required by section **501(c)(3)** of the **Internal Revenue Code** . You are organized and operated for a substantial non-exempt purpose of producing, selling, and distribution of medications.

Contributions to your organization are not deductible under Section **170** of the Code.

You're required to file federal income tax returns on **Forms 1041**, U.S. Income Tax Return for Estates and Trusts. Mail your *form* to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Section **6110** of the Code after deleting certain identifying information. We provided to you, in a separate mailing, Notice 437, Notice of Intention to Disclose. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section **7428** of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court	US Court of Federal Claims	US District Court for the District of Columbia
400 Second Street, NW	717 Madison Place, NW	333 Constitution Avenue, NW
Washington, DC 20217	Washington, DC 20005	Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under Section **7428** of the Code.

Please refer to the enclosed **Publication 892**, How to Appeal an IRS Determination on Tax-Exempt Status, for more information about the Appeals process.

IRS, Private Letter Ruling, Section 501 - Exemption from Tax on Corporations, Certain Trusts, etc,
PLR 202101007

You also have the right to contact the Taxpayer Advocate Service (TAS). 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 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.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosures:

Publication 892

cc:

Department of the Treasury

Internal Revenue Service

P.O. Box 2508

Cincinnati, OH 45201

Date:

October 17, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

UIL:

B = Date

501.00-00

Legend:

UIL:

C = State	501.03-00
D = LLC	501.03-03
E = Date	501.03-30
F = Individual	501.36-01

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.

Issue

Do you qualify for exemption under Section **501(c)(3)** of the Code? No, for the reasons described below.

Facts

You formed as a trust on B in the State of C. F is your sole and initial Trustee. Your Trust Agreement states that you are organized and operated so that you may qualify for exemption from federal income tax under Section **501(c)(3)** of the Code. Your Trust states that the purpose for which you are organized is charitable. Specifically, you will offer [redacted data]

According to your Trust Agreement you are authorized and empowered to *form and* organize one or more nonprofit subsidiary entities that are treated as "disregarded entities" under applicable federal tax law. Accordingly, you formed D on E in the State of C and you are the sole member of D. F is the manager of D. The Operating Agreement of D states that D's principal purpose is to function as your wholly owned entity and to pursue your purpose.

You, through D, seek to develop and manufacture [redacted data]

From time to time, you may make grants to other charitable organizations that support [redacted data]

Initially, expect to be primarily funded with loans from F. The interest rate on any future loan(s) from F may not

exceed the current published applicable federal rate. According to your proposed budgets for the next [redacted data] years, you expect to be primarily funded from the sale of [redacted data] By your [redacted data] year of operations, you project that the sale of: [redacted data]

Law

Section **501(c)(3)** of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in Section **501(c)(3)**, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in Section **501(c)(3)** of the Code. An organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) defines charitable as it is used in its generally accepted legal sense. It continues to describe the generally accepted legal sense as the relief of the poor and distressed, advancement of religion, advancement of education or science, erection or maintenance of public buildings, lessening the burdens of government, or promoting social welfare if its an organization designed to accomplish one of the above causes or to lessen neighborhood tensions, defend human and civil rights, or combat community deterioration and juvenile delinquency.

Treas. Reg. Section 1.501(c)(3)-1(d)(5)(i) states that a scientific organization may meet the requirements of Section **501(c)(3)** only if it serves a public rather than a private interest.

Treas. Reg. Section 1.501(c)(3)-1(d)(5)(ii) states that scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

Treas. Reg. Section 1.501(c)(3)-1(d)(5)(iii) provides that scientific research will be regarded as carried on in the public interest if the results of such research (including any patents, copyrights, processes, or formulae resulting therefrom) are made available to the public on a nondiscriminatory basis.

Treas. Reg. Section 1.501(c)(3)-1(d)(5)(iv) provides that an organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under Section **501(c)(3)** as a scientific organization if such organization retains (directly or indirectly) the

ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulae resulting from its research and does not make such patents, copyrights, processes, or formulae available to the public on a nondiscriminatory basis.

Treas. Reg. Section 1.501(c)(3)-1(e)(1) provides that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under Section **501(c)(3)** of the Code.

42 United States Code ("U.S.C.") 14401(a)(2) states that assisted suicide, euthanasia, and mercy killing have been criminal offenses throughout the United States and, under current law, it would be unlawful to provide services in support of such illegal activities.

42 U.S.C. 14401(b) states that federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual.

Revenue Ruling **71-447**, 1971-2 C.B. 230, states that under common law, the term "charity" encompasses all three major categories of religious, educational, and charitable purposes. All charitable trusts, educational or otherwise, including religious trusts, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy. Citing Restatement (Second) Trusts, (1959) Sec. 377, Comment c: "A Trust for a purpose the accomplishment of which is contrary to public policy, although not forbidden by law, is invalid."

Rev. Rul. **75-384**, 1975-2 C.B. 204, holds that a nonprofit organization, whose purpose was to promote world peace, disarmament, and nonviolent direct action, did not qualify for exemption under **Sections 501(c)(3)** or **501(c)(4)** of the Code. The organization's primary activity was to sponsor antiwar protest demonstrations in which demonstrators were urged to violate local ordinances and commit acts of civil disobedience. Citing the law of trusts, the ruling stated that all charitable organizations are subject to the requirement that their purposes cannot be illegal or contrary to public policy. The law of trusts states that an intended trust or trust provision is invalid if its purpose is unlawful, its performance calls for the commission of a criminal or tortious act, or it is contrary to public policy.

In *Better Business Bureau v. United States*, **326 U.S. 279** (1945), the court held that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under Section **501(c)(3)**, if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

In *Green v. Connally*, **330 F. Supp. 1150** (1971), the court discussed multiple cases that limited tax benefits such as the dependency deduction, the business expense deduction, and the charitable deduction due to

violation of federal or state laws. "Before considering the more particular subject of charities, we refer to the general and well-established principle that the Congressional intent in providing tax deductions and exemptions is not construed to be applicable to activities that are ... illegal." It went on to say that all charitable trusts, educational or otherwise, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy. This elementary principle, was restated as follows in the Restatement (Second) of Trusts Section 377, Comment c (1959): "A trust for a purpose the accomplishment of which is contrary to public policy, although not forbidden by law, is invalid." This public policy doctrine operates as a necessary exception to or qualifier of the precept that in general trusts for education are considered to be for the benefit of the community. Otherwise, for example, Fagin's school for pickpockets would qualify for a charitable trust.

In the *Federation Pharmacy Services Inc, v. Commissioner*, [625 F.2d 804](#) (8th Cir. 1980), the Tax Court stated we fail to see how the fact that [an organization] happens to deal in drugs can convert it to a Section [501\(c\)\(3\)](#) organization. If it could be so converted, then so could a store which sells orthopedic shoes, crutches, health foods, or any other product beneficial to health. We do not believe that the law requires that any organization whose purpose is to benefit health, however remotely, is automatically entitled, without more, to the desired exemption. We have been cited no evidence that Congress intended to exercise its grace in such an expansive manner.

In *Bob Jones University v. United States*, [461 U.S. 574](#) (1983), the Supreme Court held that racially discriminatory education is contrary to public policy, and therefore, the University could not be viewed as providing public benefit within the charitable concept.

In *Regan v. Taxation with Representation*, [461 U.S. 540](#) (1983), the Supreme Court held that both tax exemptions and tax deductibility are a *form of* subsidy that is administered through the tax system.

In *IHC Health Plans, Inc, v. Commissioner*, [325 F.3d 1188](#) (10th Cir. 2003), the selling of health services or goods, at a discount, is not, of itself, a charitable purpose. Many profitmaking organizations sell at a discount. Nor does the fact that the petitioner seeks to sell its drugs at cost alter the result; so does an old-fashioned cooperative, yet it is not entitled to classification as charitable.

Application of law

Treas. Reg. Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt an organization described in Section [501\(c\)\(3\)](#) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. As explained in **Treas. Reg. Section 1.501(c)(3)-1(c)(1)**, an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in Section [501\(c\)\(3\)](#) of the Code. You fail the operational test because your activities are not exclusively charitable, as defined in **Treas. Reg. Section 1.501(c)(3)-1(d)(2)** because the development, manufacture, and distribution of medical aid in dying medication, is illegal at the federal level.

Your activities are a type ordinarily carried on as a commercial operation through your wholly owned entity, which seeks to develop, manufacture, import, and distribute [redacted data] Accordingly, you are not engaged

in scientific research within the meaning of [Treas. Reg. Section 1.501\(c\)\(3\)-1\(d\)\(5\)\(ii\)](#) .

You have failed to establish that you have any plans or intent to publish research or otherwise make your research or findings available to the public on a non-discriminatory basis. Therefore, your research cannot be regarded as carried on in the public interest as required by [Treas. Reg. Section 1.501\(c\)\(3\)-1\(d\)\(5\)\(iii\)](#) . Because your research does not serve a public interest as described in [Treas. Reg. Section 1.501\(c\)\(3\)-1\(5\)](#) , you are not exempt under Section [501\(c\)\(3\)](#) of the Code.

[redacted data] This is not considered carried on a manner that is for the public interest and does not qualify as scientific research as described in [Treas. Reg. Section 1.501\(c\)\(3\)-1\(d\)\(5\)\(iv\)](#) under Section [501\(c\)\(3\)](#) of the Code.

Federal law does not recognize any health benefits of what is described as "assisted suicide" in [42 U.S.C. Section 14401\(a\)\(2\)](#) . Federal law, under [42 U.S.C. Section 14401\(b\)](#) , prohibits federal funds to be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual. As stated in [Regan](#) , both tax exemption and tax deductibility are a *form of* federal subsidy. Also, stated in [Green](#) , tax deductions and exemptions are not designed to be applicable to activities that are illegal. Because you engage in activities that contravene federal law, you are not exempt.

In the tax code, charity is interpreted in its generally accepted legal sense as described in Section [1.501\(c\)\(3\)-1\(d\)\(2\)](#) . This includes the requirement for all charitable trusts that their purposes may not be illegal or contrary to public policy as explained in Rev. Rul. [71-447](#) . This ruling is further clarified by Rev. Rul. [75-384](#) , which provides that an organization that induces or encourages the commission of criminal acts cannot be exempt under Section [501\(c\)\(3\)](#) of the Code since it violates the common understanding of a charitable trust. These principles were later upheld in the Supreme Court case [Bob Jones University](#) , where in reaching its decision, the Court indicated that entitlement to tax exemption depends on meeting certain common law standards of charity; namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy. Since you are operated to support those engaging in the federally illegal act of providing medical aid in dying medicine, you cannot be exempt under Section [501\(c\)\(3\)](#) .

You are not operated exclusively for exempt purposes because you are formed to advance the development of a [redacted data] [Treas. Reg. Section 1.501\(c\)\(3\)-1\(e\)\(1\)](#) . As held in [Better Business Bureau](#) , the presence of a single non-exempt purpose if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Your provision of medical aid in dying medicine is a substantial non-exempt purpose, which precludes you from exemption.

Your development, manufacture, import, and sale of [redacted data] charitable purpose. Like [Federation Pharmacy Services Inc.](#) , the distribution of medication does not automatically cause you to qualify as a Section [501\(c\)\(3\)](#) organization. As explained in [IHC Health Plans](#) , selling health services or goods at a

discount, is not, of itself, a charitable purpose.

You anticipate that by your [redacted data] year of operations all of your revenue will come from the sale of [redacted data]. Even if you were to make the medication more easily obtainable or cheaper, this does not automatically convert your activity to one that is charitable. If it could so be converted, then so could a store which sells orthopedic shoes, health foods, or any other product beneficial to health as explained in [Federation Pharmacy Services Inc.](#) Without more, the law does not require that any organization whose purpose is to benefit health is automatically entitled to exemption. Therefore, even if we were to assume that [redacted data] were providing a health benefit to the community, without more, selling medication to qualified individuals is not an exclusively charitable activity and you do not qualify for exemption under Section [501\(c\)\(3\)](#) of the Code.

Your position

Your charitable purpose is to offer [redacted data]

You assert that medical aid in dying is legal under federal law by citing *Gonzales v. Oregon*, [546 U.S. 243](#) (2006), which held that doctors are permitted to prescribe regulated drugs for medical aid in dying under state law that permits the procedures. This holding is based on principles of federalism, delegation of the states of the regulation of the medical profession under the states' police powers, and consideration of "public interest."

[redacted data] You assert that [Gonzales v. Oregon](#) is relevant because the Supreme Court rejected the tactic to interpret federal law and that the court found that states are free to resolve the question for themselves.

The United States Constitution contains no explicit delegation of authority for the federal government to regulate medical aid in dying. There are currently no federal laws or regulations that make the practice of medical aid in dying illegal.

You cited Aid to Artisans, and stated that the presence of profitmaking activities is not, per se, a bar to qualification of an organization as exempt if the activities further or accomplish an exempt purpose. You said that [Treas. Reg. Section 1.501\(c\)\(3\)-1\(e\)\(1\)](#) provides that an organization may meet the requirements of Section [501\(c\)\(3\)](#) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in further of the organization's purpose. You said that you satisfy both the statutory and case law standards because you function as an "ecosystem" whereby the proceeds from the sale [redacted data]

Additionally, you cited Rev. Rul. [79-17](#), which provides that alleviating the physical and mental distress of the terminally ill is a qualifying charitable purpose under Section [501\(c\)\(3\)](#) of the Code.

Our response to your position

You cited [Gonzales v. Oregon](#) and said that medical aid in dying is legal under federal law if state law permits it. In this case, the court determined that the U.S. Attorney General can't enforce the federal Controlled

IRS, Private Letter Ruling, Section 501 - Exemption from Tax on Corporations, Certain Trusts, etc,
PLR 202101007

Substances Act against the physicians who prescribed the drugs in compliance with Oregon state law. This case was regarding the legality of the physicians prescribing medicine, not whether or not their activities were tax exempt. As indicated previously, **42 U.S.C. Section 14401(a)(2)** states that assisted suicide, euthanasia, and mercy killing have been criminal offenses throughout the U.S. and, under current law, it would be unlawful to provide services in support of such illegal activities. Conducting a federally illegal activity does not further any exempt purpose.

Although you said that you do not operate a trade or business, **Treas. Reg. Section 1.501(c)(3)-1(e)(1)** provides that an organization may meet the requirements of Section **501(c)(3)**, if the operation of such trade or business is in further of an exempt purpose. The first hurdle is that you must be exclusively furthering an exempt purpose. Manufacturing, distributing and selling [redacted data] is not an exempt purpose, so with that alone you do not qualify for exemption. Even if it were an exempt purpose, it is illegal at the federal level, which is another bar to exemption.

Conclusion

Your activity of enabling [redacted data] through the development, facilitation, and distribution of certain medication, is illegal under federal law. Because you support and engage in activities that contravene federal law, you are not exempt under Section **501(c)(3)** of the Code. In addition, your development and distribution of medication, without more, furthers a substantial non-exempt purpose. For these reasons, you do not qualify for exemption under Section **501(c)(3)**.

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:

Street address for delivery service:

Internal Revenue Service

Internal Revenue Service

EO Determinations Quality Assurance

EO Determinations Quality Assurance

Room 7-008

550 Main Street, Room 7-008

P.O. Box 2508

Cincinnati, OH 45202

Cincinnati, OH 45201

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.

IRS, Private Letter Ruling, Section 501 - Exemption from Tax on Corporations, Certain Trusts, etc,
PLR 202101007

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](#)