



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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501.03-05

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A =

B =

Dear _____ :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

A was formed on June 17, _____. Its activities include:

1. Establishing a center for the short-term (one night to two weeks at most) care, feeding and housing of the immediate family or caregivers of chronically and terminally ill individuals in a rural setting.
2. Teaching caregivers holistic therapies to improve the care of their patient or family member. Therapies include massage, yoga, reiki, healing touch, meditation, hydrotherapy, art, cooking for healing (nutrition for healing), gardening, caring for and feeding small farm animals, and support groups and grief therapy.

3. Providing resource to the community (individuals and groups) for retreat, learning opportunities and voluntarism.

Services will be provided to unpaid and paid caregivers. Approximately 60 percent of the guests will be paid caregivers while 40 percent will be family members who care for ill relatives. The activities will be conducted on a small farm. Guests will participate in those activities they may want to participate in.

The property is owned by B, the applicant's President. The property will be leased to A. Part of the existing house will be utilized as accommodations, hydrotherapy, massage, a larger meeting space, and office for staff. The existing barn will be used to house farm animals. Several existing pens and small buildings can be customized to also house farm animals. The retreat will be staffed by paid and volunteer staff.

At the end of the lease, all property that is provided (installed or constructed) by A will revert to A or B will donate its depreciated value to A. Payments of the utilities for the tri-level primary residence that is separately metered are the responsibility of B. A is responsible for the payment of the utilities for the rest of the property.

A self-perpetuating Board of Directors governs A. The Board adopted a Conflicts of Interest Policy. A expects to receive substantial funding from grants and contributions.

LAW AND ANALYSIS

Section 501(a) of the Internal Revenue Code provides that organizations described in subsection (c) shall be exempt from taxation. Subsection (c)(3) includes corporations organized and operated exclusively for charitable, religious, and educational purposes. Furthermore, the aforementioned subsection requires that no part of the organization's net earnings inure to the benefit of any private shareholder or individual, that no substantial part of its activities is to influence legislation, and that it does not participate in 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 provides that to be exempt as an organization described in section 501(c)(3) of the Code an organization must be both organized and operated exclusively for purposes specified in said section of the Code. If an organization fails to meet either test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that in order for an organization to be considered operated for one or more exempt purposes, it must engage primarily in activities that accomplish one or more exempt purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated for an exempt purpose unless it serves a public rather than a

private interest. Even though an organization serves a public interest, it will not qualify for status under section 501(c)(3) of the Code if it also serves a private interest more than incidentally.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" as used in section 501(c)(3) of the Code includes its generally accepted legal sense. The promotion of health is a recognized charitable purpose. Rev. Rul. 56-185, 1956-1 C.B. 202, as modified by Rev. Rul. 69-545, 1969-2 C.B. 117; Rev. Rul. 80-114, 1980-1 C.B. 115; and Rev. Rul. 83-157, 1983-2 C.B. 94.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" as used in section 501(c)(3) of the Code includes relief of the distressed.

Rev. Rul. 81-28, 1981-1 C.B. 328, held that an organization that provides services to relatives and friends who travel to the organization's community to visit patients at local health care facilities qualified for exemption under section 501(c)(3) of the Code. The organization provided free, temporary, modest housing for relatives and friends who traveled to the community to visit and comfort patients at local health-care facilities. It provided visitors with shuttle transportation to the hospitals and nursing homes, counseled visitors on the medical and personal problems resulting from a patient's condition. The Service concluded that the organization's activities promoted health by helping to relieve the distress of hospitals patients who benefit from the visitation and comfort provided by their relatives and friends.

In The Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), an organization operating a religious retreat facility was not operated exclusively for religious purposes. Although the organization's mountain lodge offered guests religious, recreational, and social activities, however, none was scheduled or required. The court concluded that the organization had not met its burden of proof to show that the lodge was operated primarily for an exempt religious purpose and that the recreational and social activities at the lodge were only incidental to a religious purpose.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. This case is the basis of section 1.501(c)(3)-1(c)(1) of the regulations, which 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) of the Code. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities if the operation of the trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized and operated for the primary purpose of carrying an unrelated trade or business, as defined in section 513 of the Code. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the activities that are in furtherance of one or more exempt purposes.

Section 502 of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501(c)(3) on the ground that all its profit are payable to one or more organizations exempt from taxation under section 501.

Section 1-502-1(a) of the regulations provides that in determining the primary purpose of an organization, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 501.

Section 513(a) of the Code defines the term unrelated trade or business as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Section 513(c) of the Code provides that the term "trade or business" includes any activity that is carried on for the production of income from the sale of goods or the performance of services. For the purpose of the preceding sentence, an activity does not lose its identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

RATIONALE

A was formed for charitable purposes. It will provide rest and relaxation to caregivers of chronically and terminally ill individuals in a rural setting. It will also teach the caregivers how to manage the stress cause by their care giving activities. A's facilities will also be available to the community for retreats.

A substantial part of A's activities will be to provide a retreat for caregivers the majority of whom will be paid caregivers. Guests will participate in the activities they are interested or may chose just to rest. It will also provide the community facilities for

retreats and educational activities. Unlike the organization in Rev. Rul. 81-28, supra, A's activities are not exclusively directed to the provision of services to the families of patients. The activities will be similar to those of a commercial Bread and Breakfast or Inn, not one operated to provide relief or support to a charitable class. A is operated for a substantial nonexempt purpose as in the case in Better Business Bureau of Washington, D.C. v. United States, supra. Its principal activities constitute a trade or business. Therefore, as provided by section 502 of the Code it is precluded from classification under section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling 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 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 United States Court of Federal Claims, 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 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is

attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If it is convenient, you may fax your reply using the fax number shown in the heading of this letter.

Internal Revenue Service
TE/GE SE:EO:RA:T:1-3Q1

1111 Constitution Ave, N.W., PE
Washington, D.C. 20224

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437