



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200536021**

Release Date: 9/9/05

UIL: 501.00-00

Date: 11/15/04

Contact Person:

Identification Number:

Telephone Number:

Fax Number:

Employer Identification Number:

Legend:

M =

N =

b =

Dear _____ :

We have considered M's application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code (the Code). Based on the written information exchanged between us, we have determined that M failed to establish its qualification for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The information submitted shows that M was incorporated on _____, under state nonprofit laws. M's Articles of Incorporation state that "(M) is a not for profit facility offering a continuum of care for b individuals and those supportive of such diversity. (M) offers multiple levels of care to residents. The community is open to individuals forty (40) years and above to support the life long physical, cognitive, cultural, spiritual, and emotional needs of residents. Utilizing a holistic approach to care, (M) fosters a sense of family among residents, while ensuring the integrity, respect, and dignity of each resident as an individual." On May 13, 2004, at the suggestion of the Service, M amended its Articles to include the following: "The corporation is organized exclusively for charitable, religious, educational and scientific purposes within the meaning of

Sections 501(c)(3), 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law)....”

In its application, M states that it (1) will provide housing for the aged, (2) promote social welfare, (3) provide and promote education, (4) provide health care services, and (5) recruit volunteers.

At the suggestion of the Service, a developmental conference was held by telephone on June 30, 2004. The purpose of the conference was to discuss the information that would be necessary in order to establish M’s recognition of exemption under section 501(c)(3) of the Code. After the conference, M submitted additional information. M stated that it “would like to readdress the main components of our application for the 501(c)(3) status. It is NOT our desire to own the facility. It is our desire to be involved in protecting the interest of our members and residents. Our only desire is to be the management of the facility and provide the services and programming. It is true that we are working with N to provide such a facility; but ownership on our behalf is not a desire. Once the facility is built, the residents will be given its ownership if it is a co-op, condo or if a rental facility the ownership will be by an outside third party.” M goes on to state that it considers itself to be part of the facility, “but only in **the part of providing services and programming and doing the management.**”

In response to a letter from the Service after the conference requesting clarification about reorganizing only to provide services such as program and management services for the elderly, and a detailed description of the proposed activities, M states:

“as a non profit, it is our desire to provide programming and educational services to the aging (b) population that supports diversity. M will provide the physical, psychological, educational, spiritual and social needs as needed. N and Associates Inc., is the owner of the independent and assisted living facility. M and N and Associates are separate entities. M, not for profit entity, will direct N and Associates, Inc., for profit entity, the construction and design of the independent and assisted living facility to consider the needs of such services and programming within its purposes. The management entity will be non profit and is not applying for tax exempt status inclusion within this application.”

M also provided a list of employees and job descriptions, including an Executive Director, an Administrative Assistant, and a Program Manager. The Program Manager will be responsible for a filing system for the equipment and the paperwork associated with M’s organization.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax 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 Income Tax 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(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 or the persons who created it.

Section 5.02 of Rev. Proc. 90-27, 1990-1 C.B. 514, provides that 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.

Rev. Rul. 71-529, 1971-2 C.B. 234, holds that a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 72-369, 1972-2 C.B. 245, holds that an organization formed to provide managerial and consulting services at cost to unrelated exempt organization does not qualify for exemption under section 501(c)(3) of the Code. Furnishing the services at

cost lacks the donative element necessary to establish the activities as charitable.

Rev. Rul. 75-282, 1975-2 C.B. 201, holds that an organization formed and controlled by an exempt conference of churches that makes mortgage loans to affiliated churches to finance the construction of church buildings is carrying out an integral part of the activities of the parent church organization, qualifies for exemption under section 501(c)(3) of the Code.

For an organization claiming the benefits of section 501(c)(3) of the Code, “exemption is a privilege, a matter of grace rather than right.” Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973). The applicant for tax exempt status under section 501(c)(3) has the burden of showing it “comes squarely within the terms of the law conferring the benefit sought.” Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958).

The Tax Court has stated that an application for tax-exempt status “calls for open and candid disclosure of all facts bearing upon [an Applicant’s] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3).” Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980). See also, Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 498, 412 F.2d 1197, 1201 (1969), cert. denied, 397 U.S. 1009 (1970). Furthermore, the courts have repeatedly upheld the Service’s determination that an organization has failed to establish exemption where the organization fails to provide requested information. “[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities....Such generalizations do not satisfy us that [applicant] qualifies for the exemption.” Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004). The information submitted, thus far, is insufficient for us to conclude that you are organized and operated exclusively for charitable, religious or educational purposes as specified in section 501(c)(3) of the Code. Specifically, we are unable to determine whether or not you are operated for purposes that come within the exempt purposes described in section 501(c)(3) of the Code because:

The provision of managerial services to a particular facility, or to a company facility, even when the company has been recognized as exempt under section 501(c)(3) of the Code, is not an inherently charitable activity. An organization providing management services substantially below cost may be exempt as discussed in Rev. Rul. 71-529, supra. Furnishing services to an exempt organization at cost, as described in Rev. Rul. 72-369, supra, is not an exempt activity. Furnishing administrative services to a affiliated churches is an exempt activity only when the organization is formed and controlled by churches as discussed in Rev. Rul. 75-282, supra.

The information submitted shows that M only provided general information as to its proposed charitable operations. M did not supply detailed information that described its assisted living facility and when it will be constructed. M did not supply detailed information showing the management contract for the assisted living facility. M did not describe its marketing account. M did not submit a copy of its amendment to its Articles of Incorporation (only that this amendment was filed). M did not explain in sufficient detail its financial and other arrangements with the builder and the operator of the management contract to allow the Service to conclude that private interests will not be excessively promoted. Thus, we conclude that there is not sufficient information for us to make a determination on M's exempt status.

M has not provided sufficient information for the Service to evaluate its proposed activities of "providing services and programming." These activities appear to be substantial in nature. M considers itself to be a part of the facility that will be designed, constructed, and owned by N, a for-profit organization. M has not fully described its services and programming activities. M did not submit detailed information showing when, where, and how the assisted living facility will be built and its relationships with the builder, a for-profit company.

Therefore, for the above reasons, M has not established that it is operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Furthermore, M has failed to establish that its activities further a public charitable purpose rather than the promotion of private interests.

Contributions to M are not deductible by donors under section 170(c)(2) of the Code. M must file federal income tax returns.

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

If M does 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 M does not protest this proposed denial of exemption 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 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 M 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 its 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 section 6104(c) of the Code.

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 M disagrees with our proposed deletions, M should follow the instructions in Notice 437.

If M decides to protest this ruling, M's protest statement should be sent to the address shown below. If it is convenient, M may fax your reply using the fax number shown in the heading of this letter. If M faxes its reply, please contact the person identified in the heading of this letter by telephone to confirm that M's fax was received.

Internal Revenue Service SE:T:EO:RA:T:
1111 Constitution Ave, N.W. PE-
Washington, D.C. 20224

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

If M has 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 and Agreements