



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200624068**

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Date: March 23, 2006

No Third Party Contact
501.04-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

C =

T =

Dear _____ :

This is in reply to your request for a ruling that proposed lease modifications between you and C will not affect your exempt status under section 501(c)(4) of the Internal Revenue Code.

You were created as part of a redevelopment project undertaken by the city of C for the purpose of attracting new revenue sources into its area. C made the determination that T racing would achieve its purposes. As part of the project, C built a racing track and has since added other recreational facilities. You were created to operate the facilities and to conduct T pari-mutual wagering and other forms of gaming under state laws limiting such activities to nonprofit organizations.

As part of your lease agreement with C, you are obligated to disperse _____ of your net cash to C's capital improvement budget and _____ to local section 501(c)(3) charities. You retain the remaining _____ for operating expenses and a reserve fund for capital improvements.

Due to recent changes in state gaming laws permitting an increased number of slot machines and table games, you anticipate a substantial increase in revenue. In anticipation of having more funds than needed for capital improvements, C has requested a modification of the lease to expand the enumerated uses of the rents and the cash distributions.

The modified lease provides:

C shall expend such funds for capital expenditures, including but not limited to street lighting, street improvements, the Civic Center, parks & recreation, the replacement of motor vehicles and operating equipment, economic and tourism development projects. In

the event net payments under this paragraph exceed the budgetary needs enumerated for the foregoing capital expenditures in C's general fund capital improvements budget, then C shall use remaining rents for funding of police, fire and other public safety departments. C shall use any rent payments remaining after exhausting the foregoing purposes, if any, for mass transit and library budgets...All rent payments shall be used by C exclusively for the promotion of social welfare under section 501(c)(4) of the Code.

Law

Section 501(c)(4) of the Internal Revenue Code, as amended by the Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452, describes in relevant part, civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, no part of whose net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations provides that a civic league or organization may be exempt as an organization described in section 501(c)(4) if it is not organized or operated for profit; and it is operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides, in relevant part, that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of "charitable" set forth in paragraph (d)(2) of section 1.501(c)(3)-1 and is not an action organization as set forth in paragraph (c)(3) of section 1.501(c)(3)-1.

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides, in relevant part, that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

Rev. Rul. 85-1, 1985-1 C.B. 177, sets out a two-part test for determining whether an organization's activities are lessening the burdens of government. First, it is necessary to determine whether the governmental unit considers the organization's activities to be its burden. The second part of the test is whether these activities actually lessen the burdens of the government. An activity is a burden of the government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden. The interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden. Whether the organization is actually lessening the burdens of government is determined by considering all relevant facts and circumstances.

Rationale

C has established through a statutory scheme that the provision of recreational activities and

the promotion of tourism and economic development are part of its governmental burden. C has manifested its intent to operate the T track and related facilities and has selected you as the means by which it will accomplish its objectives. C has a significant voice in your operations and a continuing oversight role. By anticipating and revising the lease agreement to allocate the expected additional revenue from your operations, C will continue to assure that you operate for its benefit. Although your activities have many of the characteristics of a trade or business, your exempt purposes will not change as a result of the modification of the lease.

Conclusion:

Based on the foregoing, we rule as follows:

The modification of the lease with C and expansion of the enumerated uses of the funds to include the police department, fire department, mass transit and library budgets will not adversely affect your exempt status under section 501(c)(4) of the Code.

This ruling 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.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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

Sincerely,

Debra Cowen

Steven B. Grodnitzky
Acting Manager,
Exempt Organizations
Technical Group 1

Enclosure
Notice 437