



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

ID Number::

Telephone Number:

UIL: 501.03-00

Legend:

A
B
C
D
E
F
G

Dear _____ :

This letter is in response to letters from your authorized representative on your behalf requesting a ruling that the acquisition and operation of a mobile home park by an LLC of which you are the sole managing member is in furtherance of your charitable purposes and will have no adverse affect on your tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (Code).

Facts

You were incorporated under the Nonprofit Corporation Law of the State of F. You received a determination letter from the Service indicating that you are an organization exempt from federal income tax under section 501(c)(3) of the Code and classified as a section 509(a)(1) organization.

You are organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. Your articles of incorporation state that your specific purpose is to "provide low and moderate income persons, elderly persons and disabled persons with affordable housing by acquiring and/or developing low and moderate income housing and

providing ancillary development activities.” You currently own and operate affordable housing projects throughout States F and G.

You created and organized B to further your charitable purposes. The specific charitable purpose for which B was organized is to provide housing for low income families by acquiring C, a mobile home park, from D. You are the sole managing member of B and thus B will be disregarded as an entity separate from you for federal tax purposes. B will engage in no activities other than those related to the acquisition and operation of C.

C was purchased by D, and D transferred ownership of C to City E. Under contract with City E, you have provided oversight management of C.

City E currently owns C for the purpose of providing safe and affordable housing to residents within its jurisdiction consistent with its housing burden imposed under F requirements. As an interim step to divest itself of ownership of C, City E intends to sell C to D. Immediately following its acquisition of C, D will sell C to B pursuant to the Sale and Operating Agreement. The Sale and Operating Agreement provides that the sale of C to B is conditioned upon you obtaining a ruling from the Service that the acquisition and operation of C by B will not adversely affect your exempt status.

B will operate C to serve the housing needs of City E and D pursuant to the terms and conditions of the Sales and Operating Agreement and the Regulatory Agreement (the Agreements).

The Agreements impose various use and operating covenants on B, including affordable housing covenants. Among other things, B will be required to operate C in perpetuity in order to provide an economical source of housing for residents of City E. Both the Agreements require B to ensure that C is managed in a manner that preserves and enhances the quality of the services and amenities to be provided to residents of C.

The regulatory agreement requires B to restrict occupancy of not fewer than 20% of the mobile home spaces to very low income households and not fewer than an additional 40% of the mobile home spaces to lower income households. B will be required to annually submit to D a summary of the income, households, size and rent payable by each of the residents of the very low and the low income spaces and to obtain certifications from each household leasing an affordable space.

The maximum monthly rental amount for affordable spaces for residents renting either or both the mobile home unit or mobile home space will be based on a percentage of the area's median income for a family of a size appropriate to the mobile home unit. B shall establish initial rents for mobile home spaces (other than Affordable Spaces) rented to new residents at not greater than the fair market rent of the mobile home space as reasonably determined by B, and not lower than the highest rents charged to other mobile home spaces within the park. In addition, rent of any mobile home space can not be raised more than the increase in the

Consumer Price Index (CPI) during the past year.

The Agreements further require B to set aside a portion of the residual cash flow generated by C into a fund dedicated for the purpose of funding capital improvements in C, and other items which directly benefit C's residents. This funding is in addition to the operating reserve and the repair and replacement reserve requirements of the Regulatory Agreement.

You have indicated that there have been difficulties in obtaining income certification and verification from C's residents. City E and D have received income certifications from approximately 60% of C's households. City E and D have advised you that additional resident income certifications will be difficult to obtain. B intends to undertake efforts to increase the number of households providing income certification through various incentives, and to the extent possible, imposing this requirement in rental agreements.

You intend to benefit C's residents by providing, free of charge, a variety of programs, activities and services for family, youths and seniors. Among the programs and services to be provided are after school programs, recreation programs, adult training and job development, financial and retirement planning workshops, and health and wellness workshops.

LAW

Section 501(c)(3) of the Code provides, in part, that an organization that is organized and operated exclusively for charitable purposes is exempt from federal income tax.

Section 1.501-1(d)(2) of the Income Tax Regulations defines the word "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed.

Rev. Ruls. 67-138, 1967-1 C.B. 129, 70-585, 1970-2 C.B. 115 and 76-408, 1976-2 C.B. 145 hold that the provision of housing for low-income persons accomplishes charitable purposes by relieving the poor and distressed.

Rev. Rul. 70-585, 1970-2 C.B. 115, states that where an organization is formed for charitable purposes and accomplishes its charitable purposes through a program of providing housing for low and, in certain circumstances, moderate income families, it is entitled to exemption under section 501(c)(3) of the Code.

Rev. Proc. 96-32, 1996-1 C.B. 717, sets forth a safe harbor under which organizations that provide low-income housing are considered charitable as relieving the poor and distressed, and a facts and circumstances test that applies in determining whether organizations that fall outside the safe harbor relieve the poor and distressed. The safe harbor requires that certain percentages of the units be occupied by residents that meet certain low-income standards, and that the housing is affordable to the charitable beneficiaries. In the case of rental housing, this requirement will ordinarily be satisfied by the adoption of a rental policy that complies with government-imposed rental restrictions or otherwise provides for the limitation of the tenant's

portion of the rent charged to ensure that the housing is affordable to low-income and very low-income residents. Relevant facts and circumstances under the facts and circumstances test may include, but are not limited to, the following:

- (1) A substantially greater percentage of residents than required by the safe harbor with incomes up to 120 percent of the area's very low-income limit.
- (2) Limited degree of deviation from the safe harbor percentages.
- (3) Limitation of a resident's portion of rent or mortgage payment to ensure that the housing is affordable to low-income and very low-income residents.
- (4) Participation in a government housing program designed to provide affordable housing.
- (5) Operation through a community-based board of directors, particularly if the selection process demonstrates that community groups have input into the organization's operations.
- (6) The provision of additional social services affordable to the poor residents.
- (7) Relationship with an existing 501(c)(3) organization active in low-income housing for at least five years if the existing organization demonstrates control.
- (8) Acceptance of residents who, when considered individually, have unusual burdens such as extremely high medical costs which cause them to be in a condition similar to persons within the qualifying income limits in spite of their higher incomes.
- (9) Participation in a homeownership program designed to provide homeownership opportunities for families that cannot otherwise afford to purchase safe and decent housing.
- (10) Existence of affordability covenants or restrictions running with the property.

B does not meet the safe harbor provided by Rev. Proc. 96-32, *supra*, which allows exempt organizations to provide a certain amount of housing for income groups other than low income. In order to meet the safe harbor provided in Section 3 of Rev. Proc. 96-32, an exempt organization must establish that at least 75% of the units are occupied by low income residents and either that at least 20% of the units are occupied by very-low income residents or 40% of the units are occupied by residents that do not exceed 120% of the area's very-low income limits.

Historically, City E and D have received income certifications from approximately 60% of C's households. City E and D have advised you that additional resident income certifications will be difficult to obtain. Since City E and D have been unable to obtain sufficient information to certify that it meets the safe harbor tests we need to determine whether you meet the facts and

circumstances test described in section 4 of Rev. Proc. 96-32, *supra*.

The information submitted shows that you meet the following factors which are set forth in Rev. Proc. 96-32, *supra*.

(2) Limited degree of Deviation from the Safe Harbor Percentages

Based on the latest income certifications obtained by City E, presently at least 20.65% of the mobile home spaces are occupied by households that qualify as very-low-income and at least an additional 21.66 % of the spaces are occupied by households that meet the low-income limit for your county. You believe that actual economic demographics of the residents of C (which you assume to be typical for a mobile home park) would reflect higher percentages of low - and very low-income households than that which can be presently verified.

(3) Limitations of a Resident's Portion of the Rent

The third factor under the facts and circumstances test is the limitation of a resident's portion of rent or mortgage payment to ensure that the housing is affordable to low-income and very low-income. The rent limits which would be imposed on B by the Regulatory Agreement would satisfy this factor.

(6) The Provision of Additional Social Services Affordable to the Poor Residents

If the transaction is consummated, B, in affiliation with A, will provide numerous social services to C's residents including family, youth and senior programs free of charge, regardless of income.

(7) Relationship with an existing 501(c)(3) organization active in low-income housing for at least 5 years if the existing organization demonstrates control

You have been active in low income housing for at least five years, currently owning and operating affordable housing projects throughout F and G. You created and will have control over B.

(10) Existence of Affordability Covenants or Restrictions

The Regulatory Agreement imposes extensive affordability covenants and rental restrictions on B. Absent the transaction, such affordability covenants would be imposed on City E or D.

The Agreements impose various use and operating covenants on B, including affordable rent limitations, the operation of C in perpetuity, the operation of C in a manner that preserves and enhances the quality of services and amenities provided to C's residents, and a restrictive

low/very-low income residency policy.

B's ownership and operation of C will meet the general facts and circumstances test set forth in Rev. Proc. 96-32, *supra*, which determines whether organizations that fall outside the safe harbor relieve the poor and distressed such that they will be considered charitable organizations within the meaning of section 501(c)(3) of the Code. In addition, B will be responsible for meeting the various use and operating covenants including the affordable housing covenants as well as operate C in perpetuity in order to provide an economical source of housing for City E residents.

Ruling

Based on the above, we have determined that B's acquisition and operation of C in order to provide safe and decent housing to the residents of City E are activities that further your exempt purposes under section 501(c)(3) of the Code and as such, will have no adverse impact on your tax-exempt status under section 501(c)(3).

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any such change should be reported to the Ohio Tax Exempt and Government Entities (TE/GE) Customer Service office. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

Except as we have specifically ruled herein, we express no opinion as to the consequences of these transactions under the cited provisions or under any other provisions of the Code.

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 as precedent.

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

Sincerely,

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 2