

200810029



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: December 13, 2007

Release Date: 3/7/08

UIL# 501.03-10

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely yours,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter

200810029



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: August 3, 2006

UIL#: 501.03-10

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

- A =
- B =
- C =
- D =
- r =
- s =
- t =
- u =
- v =
- w =
- x =
- y =
- z =

Dear :

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

The information submitted indicates that you were incorporated on February 14, under the Laws of the State of A. Your Articles of Incorporation state that your specific purpose is for the restoration, preservation, and creation of affordable housing for low to moderate income, disabled, homeless, or special needs households. Your bylaws dated September 1, state that your primary objectives and purposes shall be:

- (a) provide affordable housing to very low to moderate income or special need persons(s)
- (b) create affordable housing by developing new housing units
- (c) preserve affordable housing by rehabilitation of existing housing units
- (d) promote home ownership or proper maintenance of affordable housing
- (e) provide goods at low cost for better livability, health, or safety in affordable housing

Your bylaws also provide that you shall have not less than three (3) or more than five (5) directors, with the exact number to be fixed within these limits by approval of the Board of Directors or the members.

The information you submitted indicates that your activities began with the purchase of a vacant lot for \$r at a Tax Sale on May 8, . You state that you intended to develop the lot for a manufactured home with all connections, and then sell (or rent if necessary) the property to a low or moderate income person. In order to obtain Title Insurance, you had to hold the property untouched for at least one year. Starting on August 1, , you operated a carpet thrift store by receiving slightly used carpet from a convention contractor. You paid \$s for 14,000 square yards in , and \$t for 7,000 square yards in . Expenses associated with the carpet (such as labor and transportation) were \$u. You state that you sold the carpet to landlords of low income housing, low income tenants, and low income home owners at \$.50 to \$3.00 per yard. You state that this is an extremely low price since similar carpet normally sells at \$12.00 to \$30.00 per yard. You state that you also donated carpet to churches, schools, and the community at large. You state that you discontinued this activity as of July 31, , because you could no longer obtain slightly used carpet. You state that you will no longer provide products for sale.

Subsequent to October, , you state that you completed building the home on the vacant lot. You state that the home was sold on March 29, , to an "income qualified buyer" (i.e., a buyer with "moderate income" as defined by the U. S. Department of Housing and Urban Development). The house was appraised at \$y, offered at \$w, and sold at \$x. You paid the closing costs of \$y. You also state that as soon as the house was listed, realtors in the area knew that the house was under market, and investors wanted to buy it. All were told not even to write an offer as it would be rejected. You state that since the time you sold the house, three new houses across the street have been built and sold for \$z.

You state that after you sold the house, you "ceased all mission activities," awaiting a determination from the Service on your application for exemption. You state that you also "narrowed and streamlined" your focus. You state that from this time forward, 50% of your resources will be devoted to the acquisition, improvement, and management of mobile home parks. You will search out under-performing parks that need improvement or are in jeopardy of redevelopment to new uses, and the new uses would evict and reduce the numbers of affordable housing units. The remaining 50% of your resources will be used as fundraising to obtain mobile home parks. You state that you will provide a safe harbor for each mobile home project, establishing the low-income mix set out in Rev. Proc. 96-32, 1996-1 C.B. 717. You further state that you will not provide housing to the elderly or the disabled, excepting those that would comply with the low-income mix, nor will you rehabilitate distressed, abandoned, or blighted properties.

You state that your current and past Board members are B, President, C, Secretary-Treasurer, and D (son of C). You state that if you receive a "conditional commitment" from the Service, four additional members from a list of seven, two of whom are married, will be added to the Board. Although receiving no compensation to date, B purchased the lot for you, selected the manufactured home to be placed there, contracted with all the contractors for construction,

supervised construction, and verified the deal to the ultimate buyers. In your letter dated April 26, 2006, you state that services provided to you by B will be for your management only, and that none of your paid employees, volunteers, or Board members can receive any profit, by salary or investment, from any project you are involved with.

Section 501(c)(3) of the Code provides an exemption from taxation for organizations organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 513(a)(3) of the Code provides that the term "unrelated trade or business" does not include any trade or business which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or operational test is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations 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 activities 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)(2) of the regulations defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed of the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Rev. Rul. 71-581, 1972-2 C.B. 236, describes an organization that operated a thrift shop where substantially all of the goods had been donated and more than half of the work was performed without compensation. The organization is recognized as exempt under section 501(c)(3) of the Code because its primary purpose was to serve a group of section 501(c)(3) organizations. The organization solicited contributions on behalf of the exempt organizations and converted the contributed goods to cash for charitable uses with a minimum of expense by the use of volunteer labor.

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. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

Rev. Proc. 96-32, 1996-1 C.B. 717, sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in section 501(c)(3) of the Code because they relieve the poor and distressed as described in section 1.501(c)(3)-1(d)(2) of the regulations. Section 3 of the Revenue Procedure provides that an organization will be considered charitable as described in section 501(c)(3) if it satisfies the following requirements:

- (1) The organization establishes for each project that (a) at least 75 percent of the units are occupied by residents that qualify as low-income; and (b) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit. Up to 25 percent of the units may be provided at market rates to persons who have incomes in excess of the low-income limit.
- (2) The project is actually occupied by poor and distressed residents. For projects requiring construction or rehabilitation, a reasonable transition period is allowed for an organization to place the project in service. Whether an organization's transition period is reasonable is determined by reference to all relevant facts and circumstances. For projects that do not require substantial construction or substantial rehabilitation, a one-year transition period to satisfy the actual occupancy requirement will generally be considered to be reasonable.
- (3) 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.
- (4) If the project consists of multiple buildings and each building does not separately meet the requirements of (1), (2), and (3), above, then the buildings must share the same grounds.

Rev. Proc. 96-32 also provides a facts and circumstances test for relieving the poor and distressed if the safe harbor, above, is not satisfied. Facts and circumstances that demonstrate relief of the poor 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 section 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.

The information you have submitted establishes that you are not currently performing any activities, and that the activities you have performed in the past are not going to be performed in the future, such as the development of manufactured homes to be sold to low or moderate-income persons, or the operation of a thrift store. You have not demonstrated that you meet the requirements of Rev. Proc. 96-32, supra, with regard to your sale of one manufactured home to a moderate-income buyer. The fact that you built and sold one home for a price well below the going price for homes in the area does not, in and of itself, show that a charitable purpose has been served.

You have not demonstrated that your operation of a carpet thrift store meets the requirements set forth in Rev. Rul. 71-581, supra. The used carpet you sold was not donated, but rather sold to you. Your sale of carpet to landlords of low income housing, low income tenants, and low income homeowners is not necessarily a charitable purpose as there is no indication that the carpet was sold substantially below cost or that more than half of the work in the operation was performed without compensation. Merely selling used carpet that was purchased by an exempt organization would be unrelated trade or business for that organization. See section 513(a)(3) of the Code. There is no documentation of your donation of carpet to charities, or the reasons for your donation of carpet to the community at large.

With the narrowing and streamlining of your focus, you state that you intend to devote your resources to the acquisition, improvement, and management of mobile home parks that need improvement or are in jeopardy of redevelopment that would evict persons and reduce the numbers of affordable housing units. There is no indication in the information you have presented that you have any mobile home parks in operation at the present time, or that you have identified a mobile home park for your immediate purchase, or that you have established a fundraising effort to obtain mobile home parks.

Rev. Proc. 96-32, supra, sets forth the requirements of a safe harbor for an organization providing low-income housing, in order to show that the organization actually has a purpose to relieve the poor and distressed. An organization developing a new project may qualify for

exemption before it has the ability to benefit a charitable class during a reasonable period of time that it takes to develop and construct the project if it can be clearly shown that occupancy of the project will be by qualifying residents. Similarly, for example, if the organization purchases an existing facility, the revenue procedure does not require the organization to benefit a charitable class immediately because an organization may acquire a development subject to the right of the existing residents. So long as the organization operates in a manner to remove the non-qualifying residents as rapidly as feasible and fill the vacant units with qualifying residents, the operation of the facility during a one-year transition period is considered as reasonable to carry out the exempt purposes. A project's short-lived operation prior to complying with the safe harbor is considered reasonably related to achieving an exempt function. Any delays beyond the shortest period of time required to make the transition would indicate that the facility is operated for a nonexempt purpose. You have not shown that you meet any of these requirements. There is no indication in the information you have presented to show that if you purchase an existing mobile home park there will be benefits to low-income persons within a reasonable amount of time or that the rights of existing residents will be addressed.

Further, you have not presented the standards, criteria, procedures, or other means by which you intend to effectuate your current purposes as required in Rev. Proc. 90-27, *supra*. The only basis in the file to indicate your purpose of low-income housing is your building of a single house which you sold to a moderate-income family. This does not indicate whether you will meet the housing requirements in Rev. Proc. 96-32, *supra*, or the standards that have long been applied to determine whether a low-income housing organization qualifies for exemption under section 501(c)(3) of the Code.

Therefore, due to the above reasons, 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.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS*



*and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE

1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely yours,

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements