



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **200824027**
Release Date: 6/13/08
Date: March 17, 2008

UIL Code: 501.36.01
501.03-08

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.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. 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.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: February 12, 2008

UIL 501.36-01,
501.03-08

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

X =

S Agency =

Dear

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

FACTS

You were formed as a Non Profit Corporation and have requested classification as a publicly supported organization under sections 501(c)(3) and 509(a) of the Code. Your Articles of Incorporation state that your purpose is to "provide educational opportunities to the citizens of the region."

Your sole activities consist of leasing space in X and providing related services, such as janitorial support. You lease space to a variety of organizations, including a school, non-governmental development agencies, and a fast food restaurant. These activities account for approximately 90% of your revenues. You also rent out an exhibit hall in X for events such as corporate meetings and training, banquets, high school reunions, and wedding receptions. This activity accounts for approximately 10% of your revenues. You determined the rental rates for all of your activities by setting prices comparable to those for renting space in a nearby shopping center. All of your tenants are charged substantially the same amount per square foot of space rented.

You have not presented evidence of any other activities. You do not conduct any formal instruction, you do not have a curriculum, and you do not employ any instructors. You do not communicate with the public other than by advertising that the exhibit hall in X can be rented to the general public.

You do not plan to conduct any fundraising. Your sole source of income is the market rate rent you charge your tenants. The rental income you receive is spent on upkeep of the building, employing staff, and making payments on debt incurred to finance the construction and decoration of X.

You presented evidence that X is located in an area designated as economically distressed by S Agency, a government agency led by the governors of several bordering states. However, you stated that you do not target your activities towards particular groups or businesses that have been disadvantaged because of local conditions.

Your organization was not established and is not controlled by any government bodies and it does not receive any government funding. You are not required to rent space to any specific tenants or government agencies.

LAW

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order 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 one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it 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 that 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 are not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. This term includes relief of the poor and distressed or of the underprivileged; the erection of public buildings, monuments, or works; and lessening the burdens of government. It also includes the promotion of social welfare by relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

Section 1.501(c)(3)-1(d)(1)(i)(f) of the regulations provides that the term educational is used in section 501(c)(3) of the Code to refer to the "instruction or training of the individual for the purpose of improving or developing his capabilities" or the "instruction of the public on subjects useful to the individual and beneficial to the community."

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's

exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

Rev. Rul. 76-419, 1976-2 C.B. 146, holds that an organization that purchases blighted land, develops it into an industrial park, and rents space in the park at favorable terms to industrial enterprises that would not ordinarily locate in the area, is organized and operated for the charitable purpose of promoting social welfare, relieving the poor and distressed, and combating community deterioration. The organization required tenants to hire a significant number of presently unemployed persons and it required tenants to train workers in needed skills. Tenants that required low skill workers were favored over those who had high initial job skill requirements.

Rev. Rul. 77-111, 1977-1 C.B. 144, involved two situations. In the first, an organization was formed to increase business patronage in a deteriorated area mainly inhabited by minority groups. It provided information to the public on the area's shopping opportunities, local transportation and accommodations. The ruling concluded that the primary purpose of the organization was to promote business rather than to accomplish exclusively section 501(c)(3) objectives. Thus, the organization was not operated exclusively for charitable purposes and did not qualify for exemption under section 501(c)(3) of the Code.

In the second situation, the organization's purpose was to revive retail sales in an area suffering from continued economic decline by constructing a retail shopping center. The organization purchased land, which it sold to the city at no profit. The city acquired additional land for the project through eminent domain. The city leased the land to the organization and to a private developer. The city required that minorities be utilized in both the construction and the operation of the project. Stores located within the project were also required to employ a certain percentage of minority group employees. Nevertheless, the ruling concluded that the organization's activities resulted in major benefits accruing to the stores that will locate in the shopping center. The organization did not limit its aid to businesses that were owned by members of a minority group or to businesses that would locate in the area only because of the existence of the shopping center. Thus, the end result was that the organization's activities were directed to benefit the businesses in the shopping center, rather than exclusively to accomplish 501(c)(3) purposes. Therefore, the organization did not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 85-1, 1985-1 C.B. 177, applied the criteria set out in Rev. Rul. 85-2, *infra*, for determining whether an organization's activities are lessening the burdens of government. In this ruling, the organization was created to assist a county's law enforcement agencies in policing illegal narcotics traffic more effectively. The organization provided funds that allowed the county's agents to engage in certain activities for which funds were not otherwise available. This ruling concluded that by funding activities that the county treats as an integral part of its Program to prevent the trafficking of illegal narcotics, the county demonstrated that it considered these activities to be its burden. Thus, the organization was lessening the burdens of the county by enabling it to augment its law enforcement activities.

Rev. Rul. 85-2, 1985-1 C.B. 178, states that to determine whether an activity is a burden of government, the question is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of

government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden. To determine whether the organization is actually lessening the burdens of government, all the relevant facts and circumstances must be considered. A favorable working relationship between the government and the organization is strong evidence that the organization is actually lessening the burdens of the government.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational Program from that carried out by a university.

In B.S.W. Group, Inc. v. Commissioner of Internal Revenue, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under section 501(c)(3) of the Code because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses. The Tax Court stated, "We must agree with the Commissioner that petitioner's activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit..." 70 T.C. at 358.

In Easter House v. U.S., 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F. 2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), the organization, in exchange for a fee, provided adoption services to parents seeking to adopt a child, including services to pregnant women who intended to place their newborns for adoption. These fees were the organization's sole source of income. The Claims Court concluded that the organization's business purpose of operating an adoption service, not the advancement of educational and charitable activities, was its primary goal. It competed with other commercial organizations providing similar services. Thus, "[p]laintiff's competition provides its activities with a commercial hue." 12 Cl. Ct. at 486. Accordingly, the organization did not qualify for exemption under section 501(c)(3) of the Code.

In Columbia Park and Recreation Assoc. v. Commissioner of Internal Revenue, 88 T.C. 1 (1987), aff'd without published opinion, 838 F.2d 465 (4th Cir. 1998) ["Columbia Park"], the court of appeals upheld the decision of the Tax Court that the organization did not lessen any burden of government and thus, was not exempt under section 501(c)(3) of the Code. The organization provided a wide range of services and facilities to the residents of Columbia, Maryland. The organization contended that if it did not provide these services and facilities the local or state government would have to provide them. The Tax Court stated that this assertion does not mean that the organization's activities are, in fact, a burden of government. Instead, the organization must demonstrate that the State of Maryland and/or the county accept the organization's activities as their responsibility and recognize the organization as acting on their behalf. In addition, the organization must further establish that its activities actually lessen the burden of the state or local government.

In Public Industries, Inc. v. Commissioner of Internal Revenue, T.C. Memo.1991-3 (1991), an organization planned to market goods manufactured by prisoners to the general public and engage in activities designed to raise awareness of prison goods. The organization

asserted that such activity lessened the burdens of government and that it would promote economic growth and reduce the trade deficit. The court found that the mere fact that the organization's activities would improve the economy of the state was not sufficient to establish an exempt purpose. In addition, the organization failed to show a concrete connection to any state support for the marketing of such prison goods.

In Airlie Foundation v. I.R.S., 283 F.Supp. 2d 58 (D.D.C. 2003), the District Court found that the organization was formed principally to organize, host, conduct, and sponsor educational and other charitable functions in its facilities. The organization's patrons were not limited to tax-exempt entities, but included patrons of a private and corporate nature. The organization paid advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its primary activity of operating a conference center. The court stated, "While plaintiff's organizational purpose is exempt and the foundation operates, in important respects, in an exempt fashion, there is a distinctive "commercial hue" to the way Airlie carries out its business. 283 F.Supp.2d at 65.

ANALYSIS

Based on our analysis of the information you submitted during the application process and in light of the applicable law, we have determined that you do not operate exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code.

An organization is not exempt from taxation merely because its operations are not conducted to produce a profit. The organization must operate exclusively for one or more of the purposes described in section 501(c)(3) of the Code and the applicable regulations.

Education

Section 501(c)(3) of the Code provides that organizations organized and operated exclusively for exempt purposes include those organized and operated for educational purposes. Section 1.501(c)(3)-1(d)(3)(i) of the regulations defines educational as both the instruction or training of individuals for the purpose of developing their capabilities and the instruction of the public on subjects useful to the individual and beneficial to the community.

You did not provide any evidence that you instruct individuals or the public. The only activities you provided information on are the rental of space in X to various organizations. Your only communication with the public is advertising the availability of space in X.

Therefore, from the evidence presented you do not operate for educational purposes within the meaning of section 501(c)(3) of the Code.

Economic Development

An organization may also establish exemption under section 501(c)(3) of the Code by furthering economic development in a charitable manner. The organization must show that its

economic development activities serve to promote social welfare by relieving the poor and distressed, or the underprivileged, or by combating community deterioration under section 1.501(c)(3)-1(d)(2) of the regulations. In order to meet this standard, an organization must do more than show it is operating in a blighted or economically depressed area. It must establish that it is actually achieving social welfare purposes. An organization may, for example, show that it is assisting specifically targeted groups, such as minorities, the unemployed, or the underemployed, or it may establish that it is assisting businesses which have experienced economic difficulty, either due to their minority composition or to the deteriorated nature of the area where they are located. See Rev. Rul. 76-419, supra; Rev. Rul. 77-111, supra.

You have submitted information indicating that X is located in a blighted or economically depressed area. However, your sole activity is renting space at commercial rates. Renting space at market rates does not assist specifically identified disadvantaged groups, nor does it assist businesses which have experienced difficulty due to the deteriorated nature of the area. See Rev. Rul. 77-111. You do not require tenants to hire and train workers like the organization described in Rev. Rul. 76-419.

You have not shown that your activities are targeted towards specific groups or businesses that have experienced economic difficulty. Therefore, you have not established that your organization is engaged in economic development and the promotion of social welfare within the meaning of section 501(c)(3) of the Code.

Lessening the Burdens of Government

We have also considered whether you are furthering charitable purposes by lessening the burdens of government under section 1.501(c)(3)-1(d)(2) of the regulations. An organization lessens the burdens of government if a governmental unit considers the organization's activities to be its burden and the organization's activities actually lessen such burden. Rev. Rul. 85-2, supra. 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. Id. Whether the organization is actually lessening the burdens of government is determined by considering all of the relevant facts and circumstances. Id.

Legislation that directly creates or supports an organization may help to establish that the organization is an integral part of the government's activities. A close interrelationship between a governmental unit and the organization may also provide evidence that the government unit considers the activity to be its burden, such as the board of directors being appointed by a government unit. Rev. Rul. 85-2, supra. There is no interrelationship between you and any governmental unit. None of your Board members are appointed by government agencies or are government officials acting in an official capacity. Furthermore, no governmental body exercises control over you.

The funding of an organization's activities may also indicate a governmental burden. If an organization regularly receives funding from the government in the form of grants, this may indicate a governmental burden. See, e.g. Rev. Rul. 85-2. Your organization is funded solely through rents collected from tenants in X. Your organization does not directly receive any government funding.

From the evidence presented, you have not established an objective manifestation by any government body that renting space at commercial rates in X is a government burden. As a result, your organization is not operating to lessen the burdens of government within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

Furthering a Commercial Purpose

Organizations that conduct activities substantially similar to those conducted by for-profit businesses or that operate with a distinctive “commercial hue” are not operated exclusively for exempt purposes under section 501(c)(3) of the Code. See, e.g. Airlie Foundation v. I.R.S., supra; Easter House v. U.S., supra; B.S.W. Group, Inc. v. Commissioner of Internal Revenue, supra.

Your sole activity is renting space at market rates to a variety of organizations. You use all of your rental income to pay for the upkeep of X, employ staff, and make payments on debt incurred to build X. This is an activity normally carried on by for-profit businesses and you conduct the activity in a manner similar to those for profit businesses. Therefore, we conclude that you are operated for the primary purpose of carrying on a commercial business. The presence of this substantial, commercial, non-exempt purpose precludes exemption under section 501(c)(3) of the Code. Better Business Bureau of Washington, D.C. v. U.S., supra.

Conclusion

Your organization is not engaged in educational, charitable, or other activities described in section 501(c)(3) of the Code. In addition, your activities are substantially similar to those of a for-profit property rental company. Therefore, your organization is not operated exclusively for exempt purposes.

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.

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, 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 (SE:T:EO:RA:T:1)

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements