



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201014068**
Release Date: 4/9/2010

Date: 1/12/2010

UIL: 501.03-11

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s):

Your representation of mobile homeowner-members, liaison with management of your manufactured housing community, and providing social events to the residents of your small, private community, do not constitute organization or operation for charitable or social welfare purposes. The fact that you have abandoned activities aimed at purchasing the mobile home park does not change this conclusion.

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.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

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, you should 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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: May 5, 2003

Contact Person:

Identification Number:

Contact Number:

Legend:

x = X
y = Y
date a =
date b =

Employer Identification Number:

Dear :

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

You were organized on date a as a California nonprofit public benefit corporation. It appears that your original articles of incorporation (Article V) provided for dedication of your assets to exempt purposes upon dissolution, but that you deleted this provision when you amended your articles (by certificate of amendment dated date b).

Your articles of incorporation state the following specific purposes:

to purchase and convert X AKA X to a
resident owned mobilehome community and to represent the resident members of X
in matters of mutual concern.

The by-laws state similar purposes:

to purchase the X should it become available for sale; and to represent
the home owner members in issues of mutual concern between the homeowners and
the owners and managers of X

X ("X") is a -space manufactured/mobile home community where the residents own their homes and lease the land from the owner, Y. The area is a walled community with limited access.

You were organized to be in a legally acceptable form to purchase the park. Under the Mobilehome Residency Law the owner must provide a right of first refusal notice to an incorporated resident association, and lenders require a borrower to be incorporated to obtain purchase funding. You characterize your primary activity (51% of time) as preparing for and seeking park purchase. Upon purchase, you plan to operate the rental park, setting rents at operating costs and investing any excess income in common areas.

Your secondary activity (49% of time) is representing the homeowners in dealings with the park owner over issues of concern to the homeowners, such as leases. You will also conduct regular meetings of residents; educate residents on their rights and arrange for outside speakers on educational matters; and publish a monthly newsletter. You also claim to provide pot luck dinners, new resident welcome functions, seniors chat club, regular game nights for residents and guests, holiday events for children, and July 4th parade.

Your membership is open to all manufactured/mobile home owners who reside in X with the exception of those residents and their families who represent the owners and managers of the park. Your primary source of support is membership fees.

Section 501(c)(3) of the Code exempts from federal income tax organizations that are organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

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 purposes specified in section 501(c)(3). 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 provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 65-201, 1965-2 C.B. 170, held in relevant part that a cooperative organization that operates and maintains a housing development and provides housing facilities and maintenance services on a cooperative basis for the personal benefit of its tenant-owner members does not qualify for exemption under section 501(a) of the Code.

Rev. Rul. 73-306, 1973-2 C.B. 179, held not exempt under section 501(c)(4) of the Code a nonprofit organization formed to promote the common interest of tenants who resided in an apartment complex. Any person regularly living in the complex was eligible for membership. The organization represented its member-tenants in negotiations with the management of the complex in order to secure better maintenance and services, and to secure reasonable rentals. The organization also provided legal representation for members as a group in litigation and before local and Federal regulatory agencies involving matters of mutual concern to the members as tenants. The Service reasoned that the organization operated essentially for the private benefit of its members rather than for the common good and general welfare of the people of the community.

Rev. Rul. 74-99, 1974-1 C.B. 132, provides that a homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental; (2) it must not conduct activities directed to the exterior maintenance of private residences; and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public. A community within the meaning of section 501(c)(4) of the Code and the regulations is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof.

Rev. Rul. 80-206, 1980-2 C.B. 185, held exempt under section 501(c)(4) of the Code an organization formed to promote the legal rights of all tenants in a particular community and occasionally to initiate litigation to contest the validity of legislation that adversely affected tenants. The Service distinguished the organization in Rev. Rul. 73-306 as directed primarily

toward benefitting its member-tenants rather than all tenants in the community.

Rev. Proc. 96-32, 1996-1 C.B. 717 (enclosed), 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 be 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.

You are not "organized" exclusively for exempt purposes under section 501(c)(3) of the Code. Your stated purposes to operate a resident owned mobilehome community and to

represent the resident members of X in matters of mutual concern are not inherently charitable purposes, as discussed below. Moreover, your articles of incorporation do not dedicate your assets to exempt purposes upon dissolution as required by section 1.501(c)(3)-1(b)(4) of the regulations.

You also are not "operated" exclusively for exempt purposes under section 501(c)(3) of the Code, on several grounds. The acquisition and operation of a mobilehome park may be a charitable activity, depending on the structure of the organization and its manner of operation. You have not furnished sufficiently detailed information for us to determine whether such future activities would qualify as charitable under Rev. Proc. 96-32. However, such activity is at best a potentially charitable future activity.

You have current activities that are substantial in nature and are not charitable. In particular, your representation of homeowner members in issues of mutual concern between the homeowners and the owners of X does not further charitable purposes or promote social welfare. See Rev. Rul. 73-306. Such activities do not benefit residents of the entire community, but only residents of X. X, as a mobilehome park of units, is not a "community" for purposes of section 501(c)(3) or (4) of the Code. An organization is not operated exclusively for exempt purposes if a substantial part of its activities is not in furtherance of an exempt purpose.

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.

Contributions to you are not deductible under section 170 of the Code.

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

If you do 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 we do not hear from you 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 your 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 Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, D.C. 20224

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

Sincerely,

Manager, Exempt Organizations
Technical Group 2

Enclosure: Rev. Proc. 96-32