



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201039035**
Release Date: 10/1/10
Date: 5/31/10
UIL Code: 501.03-00

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

March 29, 2007

UIL Number:
501.03-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =
Q =
R =
S =
T =

State =
Date =
X =
Y =

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, M are a State nonprofit corporation formed on Date. Your application Form 1023 provides that you were formed with the purpose to "market the quality educational services delivered in the S and T (regions) to a national audience, make financial grants to area educational institutions, to improve educational offerings, provide quality student housing" and to provide various other services to students in these regions.

You state that your specific activities are as follows:

1. Develop student housing;
2. Operate a student shuttle transportation service; and
3. Market quality education in the region.

Your bylaws provide that you are managed by a board of directors composed of one to three persons. Currently, you have a single director, the founder of the organization who is also the only officer. The bylaws state that all decisions must be made by a majority of the directors entitled to vote. Your day-to-day operations are conducted by an executive director and your officers. In your letter of February 28, 2007, you state that additional directors and officers will be selected based on experience and community involvement.

You state that you will conduct your operations under the name of Q. As Q, you will support education in S and I by providing support and assistance to public and private schools, colleges and universities. From your application, you indicate that you will limit all of services (housing, shuttle and marketing) to "students attending a supported educational institution in the defined geographic area."

You state that there is only one college-owned student housing facility and no other college-owned housing servicing your geographic region. You state that due to this lack of housing, you plan to develop a student housing facility, R which will be located adjacent to one university and accessible to three other educational institutions via a student-only shuttle operated by you. You state that R will be a student centered area owned by Q, which has contracted to purchase several parcels of land available for this particular development. You state that Phase 1 will provide housing for 1,064 students. The development will be financed through tax-exempt bonds and it will be owned and managed by you. In your letter of April 29, 2005 and clarified in your letter of February 28, 2007, you state that an enclosed feasibility study for R was commissioned by you as part of your bid proposal to a financial institution for underwriting purposes.

The development and construction of the facility will be provided by outside service providers selected by a competitive bidding process. In your letter of February 28, 2007, you state that your criteria in reviewing service providers will include those with no conflict of interests, experience, credit and financial strength, availability, reputation and employees to operate or provide services. You did not provide drafts or working copies of any contracts or agreements and did not disclose any of the terms since any prior agreements were not longer going forward and you currently do not have any contracts in place.

Your letter of April 29, 2005 states that the rental rate of the housing will be at market rate, but less than other area student housing. Housing will only be provided to those students attending an affiliated educational institution within the specified geographic region. You did not provide any other criteria for determining residency eligibility.

You state that you are developing a "strategic relationship" with each educational institution to establish an "affiliation." In your letter of April 29, 2005 you state that you are not accountable in anyway to any of the affiliated educational institutions. Instead, you state that your purpose is "improve the quality of educational services" by utilizing your services.

Your application and supplemental information indicate that you will use available operating reserve funds generated by your student housing facility to provide grants to each affiliated institution based on the ratio of students residing in the private housing. You state that you will make \$x in direct grants to the affiliated educational institutions. You did not provide any additional information on how you determine the amount of grants provided to each affiliated

institution. You also indicate that an additional amount of funds may be distributed to an institution based on the desire of the institution to expand or offer a particular service. You state "need" shall be determined subjectively by the managing Board each year." However, you did not provide any other criteria that you will use in evaluating grant applications.

As part of the "affiliation" agreements, you plan to implement a \$y educational awareness campaign targeted at families of high school juniors and seniors to increase applications and/or enrollment at the affiliated educational institutions. The awareness campaign includes a marketing campaign on behalf of the affiliated educational institution including direct mail, advertisements, informational CD production, and a website with links to the schools. The school allows you to place marketing materials in the school's mailings to students, place the school's logos and name on various promotional advertisements and marketing materials that you will produce. In turn, the school agrees to promote your shuttle service to students and recommend your facility as the preferred off-campus housing provider. None of the documents you provided was finalized and you indicate that all the documents that you have related to any affiliation agreement are only proposed agreements in the developmental stages to generate interest in your services.

You also plan to create a class of directors, made up of one faculty member and one student resident from each participating institution to provide input to the main board of directors. In your letter of February 28, 2007, you indicate that while such class of directors will be allowed, these directors will not be voting members nor will they be involved in the management or operation of the organization. They will only "be advisory in nature and not voting."

In your letter of February 28, 2007, you state that "major educational institutions have a support foundation or commission, which are organized for the benefit of a particular institution . . . [i]n our instance, the area educational institutions are not large . . . [o]ur entity is designed to promote housing and other service to all area institutions, achieving economies of scale and as such, lessen the burdens of government."

Law:

Section 501(c)(3) of the Internal Revenue Code provides, in part, that an organization is exempt from Federal income tax if it is organized and operated exclusively for charitable purposes, and if no part of the net earnings of the organization inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the advancement of education as well as relieving the poor, distressed or underprivileged, lessening the burdens of government, and promotion of social welfare by organizations designed to lessen neighborhood tensions, eliminate prejudice and discrimination, defend human and civil rights secured by law, or combat community deterioration and juvenile delinquency.

Section 509(a)(2) of the Code provides that an organization will be a public charity (and not a private foundation) if it normally receives more than one-third of its support in each taxable year from gross receipts from performance of services or furnishing of facilities, among other, in an activity which is not an unrelated trade or business and not more than one-third of its support

from gross investment income.

Rev. Rul. 63-220, 1963-2 C.B. 208, describes a corporation that was organized primarily for the purpose of extending loans to needy students of a college to enable them to complete their educational programs. Certain loans were granted on an unsecured basis, while others required a type of security. Both types of loans were made at the same nominal rate of interest which was substantially lower than commercial interest rates, thereby representing a substantial saving to the students. The ruling holds that such activity serves a charitable purpose by making loans available to students at substantially less than commercial rates. The fact that under certain circumstances security is required before a loan may be granted is not sufficient to destroy the charitable aspect of the organization's purposes and activities

Rev. Rul. 64-274, 1964-2 C.B. 141, describes an organization that provides free housing, scholarships, and books, to students who could not otherwise attend college because of a lack of funds. The Service ruled that under these circumstances, the organization was exempt because it was advancing education by relieving the poverty of the students.

Rev. Rul. 67-217, 1967- 2 C.B. 181, recognizes an organization formed to provide housing and food service exclusively for students and faculty of a specific university lacking such facilities as exempt under section 501(c)(3) of the Code. The housing facility was constructed by the organization on land near the university and made available to the students of the university at rates comparable to those offered by the university in its own facilities. While the facility was run by a commercial management company, any surplus from operations was donated to the university and the university had an option to purchase the facility at any time for an amount equal to the outstanding indebtedness. Providing the housing under these circumstances served to advance education.

Rev. Rul. 76-336, 1976-2 C.B. 143, describes an organization formed by community leaders to provide housing for students of a particular college in response to studies by staff members of the college showing that the college lacked suitable housing to meet the needs of students. The college was financially unable to provide housing. Additionally, many of the students in its primary service area live at such a distance that daily commuting is not reasonably possible. The organization operates a housing facility for students adjacent to the college campus. All students of the college are eligible to apply for the housing. Applications for housing are accepted on a first come-first served basis. Charges to students for the housing approximate costs, including debt retirement. The organization is not controlled by the student residents or by the college. However, the college and the organization consult and cooperate to ensure that the needs of the college and its students are served by the operation of the housing facility. The organization is governed by a board of directors composed of community leaders. The organization's income is from rentals of the housing facilities and from contributions. Its disbursements are for operating expenses and debt retirement. The ruling holds that the organization provides needed student housing that is not otherwise available. All students who attend the college are eligible to apply for residence. Under these circumstances, the organization is both helping the college, which is unable to provide adequate student housing, to fulfill its educational purposes, and aiding the students to attain an education. Therefore, the activities of the organization are advancing education.

Rev. Rul. 85-1, 1985-2 C.B. 177 provides that the determination of whether an organization is

lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burden, and whether such activities actually lessen such governmental burden. An activity is a burden of the government if there is objective manifestation by the government unit that it considers the activities of the organization to be its burden. Such consideration may be evidenced by the interrelationship between the governmental unit and the organization. In this context, the lessening of the burdens of government is determined by considering all relevant facts and circumstances; however, a favorable working relationship between the government and the organization is strong evidence that the organization is actually "lessening" the burdens of government.

Rev. Rul. 85-2, 1985-2 C.B. 178 states that an organization is lessening the burdens of government if: (1) its activities are activities that a governmental unit considers to be its burdens; and (2) the activities actually lessen such government burden.

Section 5.02 of Rev. Proc. 90-27, 1990-1 C.B. 514 provides that an application for exemption under section 501 of the Code must fully describe its proposed activities, including identifying a specific proposed project.

In Better Business Bureau of Washington, D.C. v. U. S., 326 U.S. 279 (1945), the court held that an organization was not organized and operated exclusively for charitable purposes. The court reasoned that the presence of a single nonexempt purpose, if substantial in nature, would destroy the exemption regardless of the number or importance of truly exempt purposes.

Analysis and Conclusion:

You have failed to establish that your operations will further a charitable purpose and that you will not be operated for a substantial nonexempt private purpose. Providing housing for students, absent special facts and circumstances, is a trade or business that is not a charitable activity.

Unlike Rev. Ruls. 67-217 and 76-336, *supra* where exemption was based primarily on the element of control by or on behalf of an exempt organization and providing assistance to specific colleges, you are an independent organization not created by the community or in conjunction with the educational institutions that you intend to become "affiliated" with. While you have indicated that you will establish an "advisory" board, there is no evidence that members of the local community or directors of the educational institutions will have any significant involvement in, contribute to, or otherwise participate in your operations. Your purpose is to provide financing and housing to a number of colleges and universities, and as such, you cannot be controlled by any one educational institution or by any one community.

You do not restrict your services to a charitable class of students such as low-income. Nor do you provide free housing or below cost services. Providing services at cost and solely for exempt organizations is not sufficient to characterize the activity as charitable. See Rev. Ruls. 63-220 and 64-274, *supra*. You have also failed to establish that your other activities providing marketing and advertising services to the affiliated educational institutions and the shuttle service are charitable activities.

You have failed to establish that your activities lessen the burdens of government. An activity is a burden of government only if there is an objective manifestation by a governmental unit that it considers the activities of the organization to be its burden. See Rev. Rul. 85-1, *supra*. You have failed to demonstrate that a governmental unit considers you to be acting on its behalf.

Finally, in your application and supplemental information, you failed to fully describe your proposed activities, including identifying a specific proposed project. See Rev. Proc. 90-27, *supra*. Your role is primarily that of developer. You are operated for the substantial nonexempt purpose of marketing and designing projects and to act as a vehicle for financing the projects through tax-exempt bonds. Your overall structure is designed to be self-supporting without regard to the educational institutions you are servicing. Such activity is not an exempt activity, but a trade or business.

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:)

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