



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201044017**
Release Date: 11/5/2010

Date: August 13, 2010

UIL: 501.03-10; 501.32-01; 501.33.01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:
All

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,

Rob 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: June 10, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL Index:

501.03-10

501.32-01

501.33-01

Legend:

N= Name of Assisted Living for-profit business

P= Name of Government Insurance program

R= Name of Applicant's President and Daughter of S & T

S= Name of owner of N and the facility

T= Name of owner of N and the facility

U= Name of president of V and the Board member of the applicant

V= Name of consultant entity.

W= Name of Board member and employee of N

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.

Issue:

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.

Facts:

Formation:

You were created as a successor to for profit company N, wholly owned by S and T, husband and wife. R, daughter of S and T, Administrator and employee of N will serve as your president. You explained that S and T were moving into retirement and want to transfer N's nursing home activities to you. You further stated "S and T want to allow their daughter, R, to transition into a

structure where she can have access to a funding support network that is stable and one that has the ability to support the current participant base and is open to expansion.”

Three days prior to your formation, R made a contractual agreement with V, a “Business, Marketing and Fundraising Consultant Entity.” The contractual agreement identified U as the President of V. The services V provided included filing your corporation papers, preparing the Form 1023 application and assisting in applying for Federal, State or Local grants. In exchange for these services V was paid “a retainer of \$ to provide the materials for the grant and program development process...the fee of 15% of each grant submitted... and a 3% finder’s fee for said services plus expenses.” An addendum to the contractual agreement stated that “this agreement does not constitute a hiring of the parties, V is an independent contractor and not an employee of the Client.” Another addendum to the contract stipulated that U will be signed as a “temporary Power of Attorney...to allow her to communicate with the IRS as needed” Your application for exemption included both IRS Form 2848, Power of Attorney and Declaration of Representative, and the Tax Information Authorization Form 8821. These forms authorized U to receive copies of notices and other written communications from the IRS regarding your application for exemption.

You were formed with the filing of your state Charter as a nonprofit public benefit corporation.

Purposes:

Your Charter states you were organized exclusively for charitable and educational purposes as may qualify if as exempt from federal income tax under section 501(c)(3), but not limited to, in pertinent part:

Design and develop economic and human development programs that serve to improve the quality of life and prosperity for participants in programs, workshops, training, seminars, housing and services offered;

Develop, design and implement programs for historic restoration and cultural development, special needs, at risk, disenfranchised and low income populations, including infants, toddlers, children, youth, young adults, adults and seniors:

Design of training programs for human development, organization management support, saving persons from personal financial tragedies, housing support and placement, homeless programs, job development and reestablishment, new initiatives, special programs, operations technology systems design, medical support initiatives, educational initiatives and development of prosperity programs for new income sources and survival support networks, housing initiatives, business concepts development and historic preservation initiatives;

To publish tapes and printed materials that serve to develop self esteem and personal growth, cultural expansion, historical recordation and information that will support seminars and presentations in the public arena;

Conduct of studies and the development of an information base to serve to support network of the advancement of programs that will meet the critical

appropriate personal, business, environmental, medical, human developmental needs of constituents and at risk populations;

Develop programs for support of youth development ,counseling and teen development;

Development of programs relating to career development and development of housing subdivisions and transitional housing and at risk populations to promote care, upkeep, and longevity of new life styles for safer and better living and the housing facilities;

Development and management of food banks, clothing banks, job banks, housing acquisition and finance networks to support the basic needs of constituents.

Your charter further stated you:

seek to bring together resources that support the implementation of these and other related initiatives through the solicitation of grants from the private foundation community and the solicitation of government grants. The government supported initiatives will be initiated through the programs available through the federal, state and local government programs as well.

Your charter continued:

To host conferences, conventions and other such information gathering and distribution events geared toward advancing human and social causes; inclusive but not limited to educational and spiritual advancement of deprived, disenfranchised and at risk individuals.

To acquire all or any part of the good will, rights, property and business of any person, firm, association or corporation heretofore and hereafter engaged in any activity similar to or in furtherance of any purposes which the corporation has the power to conduct, and to hold utilize, enjoy, and in any manner dispose of the whole or any part of the rights property, and business so acquired, and to assume in connection herewith any liabilities of any such person, firm, association or corporation....

I work with government jurisdictions around the area to insure their[your] ability to support initiatives ratified by the jurisdictions to assist in private public partnerships to improve the available facilities in a timely matter which will increase the program availability for site for at risk populations and underserved populations within the metropolitan and county community and service area.

To carry out all or any of the foregoing objects as principal, factor, agent, contractor, or otherwise, either alone through, or in conjunction with any carrying on of its purposes for the purpose of attaining or furthering any of its objects and purposes, to make and perform any contracts and to do any acts and things, and to exercise any powers suitable, and convenient or proper for the

accomplishment of any of the objects and purposes herein enumerated or incidental to the powers herein specified, or which at any time may appear conducive to or expedient for the accomplishment of any such objects and purposes.

Governing Body:

Your Form 1023 indicated your governing board consists of three individuals. Your board included R, daughter of S and T and employee of N who will serve as your president and employee; W an employee of N who will serve as your secretary and employee; and T an individual who resides in another state. Subsequent to the filing of your application for exemption, you reported that during an emergency board meeting a decision was made to appoint U as one of your board members. At present your board is made up of four individuals including U who is also the President of consulting company V. U was not a board member at the time you entered into a contractual agreement with V for consulting and fundraising services. You also amended the Form 2848 to report U as an officer.

Activities:

Your narrative description of activities included a diversified list of proposed activities that were divided into the following eleven modules:

Module I: Community Networking Support programs that provide the community with guidance projects to aid adults, seniors and veterans and their family members of all age groups.

Module II: Street Programs that provide guidance and support for homeless individuals and families

Module III: Breakfast and Feeding Programs

Module IV: Food Pantry and Food Bank

Module V: Shelter Program to provide a search program for the homeless and indigent to locate apartments and housing.

Module VI: Jail and Prison Counseling Programs

Module VII: Senior Citizen's Day Care Program to provide support for seniors who are not in the skilled care category designated by Medicare and Medicaid.

Module VIII: Housing and Facilities Development Program to develop training programs for persons living in public housing or transitional housing.

Module IX: Career Training, Job Placement and Human Development Program and Youth Support Programs

Module X: Research and Development, Economic Development and Global Networking

Module XI: Economic Development and New Technologies to provide programs that support the establishment of economic venues for persons seeking to develop business entities.

In your response to our additional information request you estimated "the percentage of [y]our time that we devote to the following programs include, but are not limited to: Adult Day Care Program 78%; Respite Care 10%; Educational Program 11% Veterans' Program 11% initially." Subsequent information submitted clarified that your primary activities were to operate a residential home for the elderly and an adult day care.

Your activities will be conducted at the same location as N. As noted above, you were formed as a successor to N. Both you and N operate at the same location. You explained that the

transition to you was only partly completed. "The [elderly] daycare is now the responsibility of the applicant [you], the respite care part of the business is still operated by the LLC [N].

Income/Expenses:

The financial information included with your Form 1023 reported the average annual receipts to support these programs were to be no more than \$10,000 per year.

Revised financial information reported expenses of \$ in the first year of operation for building improvements to the facility. Correspondence from you clarified that you "are seeking a grant or grants to provide the funding for these improvements."

The additional information also explained "one of the conditions that created this transfer [of N's activities to you] was the failure of P, a government sponsored insurance program which went bankrupt." This government sponsored insurance program provided a source of support for the patients along with private payments from their families.

You requested expedite processing of your Application Form 1023 because you were in jeopardy of losing an emergency grant in the amount of \$ for a job counseling program. To support your expedite handling request you submitted a copy of a letter addressed to V that requested assistance in obtaining a grant in the amount of \$. The written request was dated one month prior to the adoption of your Charter. The request for grant writing assistance explained the need for funds that allow you to continue your program established two years prior for assisted living care to seniors and persons with dementia and Alzheimer's. You also submitted a copy of the response from V. This letter written prior to the date of your contract with V stated V "had approved the grant search request in the amount of \$, however, we will need a current IRS Letter of Determination in order to have the grantors to release the funds to your organization." As noted above, your contract with V included the service of securing grants for you along with preparing your application for exemption.

Facility:

The site where you and N operate is a twelve room elderly assisted living residence. It has two baths, a large living room, kitchen, laundry, dining room, seven bedrooms, and a large storage area for supplies and food. The building was built around 1950 with updates throughout the years. The facility is owned by S and T. "They are joint/equal owners of the fully paid facility." Additional information you provided stated that S and T do not reside at the property. However, there is a separate structure on the property described as a carriage house with living quarters for a caretaker. S and T have utilized these living quarters to help provide maintenance of the property and grooming of the grounds. The assisted living residence and carriage house share the same utility expenses on the same billing statements.

You have entered into a lease agreement for use of the facility. The lease was an agreement between R as your President and S & T as current owners & Lessor, to rent the facility and full grounds "for the continued use of health care, respite care and daycare for senior citizens with health challenges." The lease further stated the facility will be "available 24 hour care of the seniors and at risk persons that have been housed and cared for at this facility previously..." The terms of the lease provided "the insurance and mortgage payments will be requested to be

supported" by you. You "will work to provide funding to complete needed improvements and renovations to the property for continued use for senior respite care support and all operations." We requested additional information regarding the lease and you responded with a new lease agreement. Like the first lease, the same parties, R, S and T executed the lease. The new lease agreement provided that you will maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises and you will be responsible for all repairs required. You will also be solely liable for utility charges including sewer, water, gas, electricity and telephone service. The lease provided for an annual rent of \$

The rent amount was set based on an appraisal secured by S&T. The appraisal gave the purpose of the appraisal "to estimate the Income Value of the fee simple estate of the property ." The estimated market value of the fee was \$ or a projected gross rental income of \$ annually. The appraisal was based on the entire property and did not separately consider use by you and N.

You explained the \$ for property upgrading and improvements reported in your financial data was based on the requirements of the Health Department. You substantiated the Health Department requirements by providing a copy of a letter from the Health Department to R as administrator of N. The letter accepted N's plan for correction and included a list of required facility improvements. You also submitted a written proposal from a contractor to install a new metal roof, vinyl siding and trim for N at the estimated cost of \$. Your additional information explained you are "seeking grant funds to renovate and upgrade our present facility." The owners of the facility, S and T, "are going into retirement and their business advisor recommended that, in order to continue the business and expand in order to gain access to the new structures for assisted living, now available through HUD the nonprofit structure would be the most stable structure to pursue."

Law:

Section 501(c)(3) of the Code provides for exemption from federal income tax for organizations that are organized and operated exclusively for charitable, educational, religious, or scientific purposes, no part of the income of which inures to the benefit of private individuals.

Section 1.501(a)-1(c) of the Income Tax Regulations defines "private shareholder or individual" to mean persons having a personal and private interest in the activities of the organization.

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) of the Code.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(ii) of the regulations states that an organization is not operated exclusively for one or more exempt purpose unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who

created it.

Revenue Ruling 75-198 states that an organization that establishes a service center providing information, referral, counseling services relating to health, housing, finances, education and employment as well as a facility for specialized recreation for a particular community's senior citizens, who need not become members to obtain the services or participate in the activities, may qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 75-385 holds that a non-profit publicly supported organization that operates a rural rest home to provide, at a nominal charge, two week vacations for elderly poor people from nearby metropolitan areas qualifies for exemption as a charitable organization under section 501(c)(3) of the Code

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 a claim for exemption regardless of the number or importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973). The Fourth Circuit held that operating for the benefit of private parties constitutes a substantial nonexempt purpose.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), aff'd in unpublished opinion 647 F.2d 170 (9th Cir.1981) ("est. of Hawaii"), several for-profit est organizations exerted significant indirect control over est of Hawaii, a non-profit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the nonprofit as an "instrument" to further their for-profit purposes. Neither the fact that the for-profits lacked structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts were reasonable affected the court's conclusion. Consequently, est of Hawaii did not qualify as an organization described in § 501(c)(3).

In Texas Trade School v. Commissioner, 30 T.C. 642, (1958), aff'd 272 F. 2d 168 (5th Cir. 1959), the officers of the school leased property owned by them to the school and caused the school to erect improvements hereon which benefited them individually. The officers shared in the schools net earnings as the result of the payment to them of excessive and unreasonable rent for the physical plant leased by the school and as a result of the construction by the petitioner of buildings which became part of their real estate.

Application of Tax Law:

You are not described in section 501(c)(3) of the Code because you are not operated exclusively for section 501(c)(3) exempt purposes. Specifically, the facts above include the purpose of private benefit to S & T by funding capital improvements to property they own, by transitioning business and employment to their daughter R, and through lease not entered into arms length and whose terms were not without conflict,

You are not as described in section 1.501(c)(3)-1(c)(1) of the Regulations because more than an insubstantial part of your activities further the private interests of S & T.

You are not as described in section 1.501(c)(3)-1(c)(2) of the Regulations because your earnings inure to R, daughter or S & T, and to S & T by securing funds for their direct benefit.

You are not as described in section 1.501(c)(3)-1(d)(ii) of the Regulations because your activities further the private interests of S & T and their daughter R. Your activities also further the interests of U since as a Board member you will compensate her through fees and a percentage of the grants she procures for you

You are not like the organizations in Revenue Rulings 75-198 and 75-385. Although you provide services to the elderly, more than an insubstantial part of your purposes is to change from a for-profit to a non-profit with a view to qualify for and obtain government grants, to help transition the business to R daughter of the founders S & T, and to operate for the private benefit of S & T.

You are also like the organizations in Better Business Bureau of Washington DC because your operations include substantial non-exempt purposes specifically, private benefit. As noted above, you were formed after contracting with V to secure access to funding and funding was specifically to be used for improvements to property owned by S & T.

You are like Old Dominion Box Co because you are operating for the benefit of private parties. S & T the founders of N, R the daughter of S & T, and to U the Board member and President of V with whom you have entered into a contract.

You are similar to est of Hawaii, supra, because you too entered contractual arrangements which use your nonprofit as an instrument to secure funds for non-exempt purposes. Namely, funds you secure are intended to flow to S & T and pay for improvements to property they own. Your contractual agreements were not negotiated at arms length but were instead entered into by S, T and R, all related parties. Your contract with V was entered into prior to your formation and was executed by R and U, both of which stand to benefit from the terms of the contract.

You are similar to *Texas Trade School* because you too will make improvements to property owned by individuals. In your case, you will fund improvements to property owned by S & T, parents of your president R. You will also pay rent to S & T equal to the gross potential income and pay the utility costs, all operating costs and insurance and all increases of taxes including on property owned and used by S & T either directly or through their company N.

Applicants Position:

You stated that one of the conditions that created the transfer of activities from N to you was the failure of P. P is a government-operated medical assistance program designed for people who are eligible for Medicaid. The persons who would have been able to transfer to the P program were left without any sources of support or care as a backup. In addition, some of the caregivers and guardians are the victims of the massive layoffs that are being experienced throughout this community and the country. The approach taken is an alternative to having these persons without any care. In addition, S and T want to allow R to transition into a structure where she can have access to a funding support network that is stable and one that

has the ability to support the current participant base and is open to expansion.

Response to Applicant's Position:

The provision of services for the elderly may be considered charitable within the meaning of section 501(c)(3) See Rev. Rul. 75-198 and Rev. Rul. 75-385. However, the facts above show that more than an insubstantial part of your purposes is not the provision of such services. You were formed with the help of U, a consultant so that S & T could potentially find a more stable funding source such as government grants to continue N's activities and transition the business to R, daughter of N's sole owners. A percentage of the funds received will be used to compensate U who is now also a director on your board. The funds received after payment of fees to U under the contract will inure to the benefit of your founders through your organization in the form of property improvements and excessive rent. Therefore you are operating for the benefit of private parties and this constitutes a substantial nonexempt purpose.

Conclusion:

The facts show you were formed to assume the activities of a for-profit company, have R, daughter of S & T serve as your president and employee, secure funds which will be used for capital improvements and other expenses to property owned by S & T. In conclusion, you do not qualify for exemption under section 501(c)(3) because more than an insubstantial part of your purposes furthers private benefit.

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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in 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 appeal 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 the applicable address: Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may 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

Enclosure, Publication 892