



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201135032**
Release Date: 9/2/2011
Date: June 6, 2011
UIL Code: 501.00-00
501.03-30
501.33-00

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.

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,

Lois G. Lerner
Director, Exempt Organizations

cc:

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: March 14, 2011

Person to Contact and ID Number:

Contact Telephone Number:

FAX Number:

Employer Identification Number:

UIL:

501.00-00 Exemption From Tax on Corporations, Certain Trusts, etc. (Exempt v. Not Exempt)

501.03-30 Organizational and Operational Tests

501.33-00 Private v. Public Interest Served

Legend:

Application to Main Street Program =
 Association =
 Business District =
 Charette Report =
 City =
 Contract =
 County =
 Date =
 Land Use Plan =
 Main Street Program =
 Renewal Community =
 State =

Dear

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code of 1986, as amended (the "**Code**"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Facts:

You submitted your application for recognition of exemption from federal income tax under section 501(c)(3) of the Code and requested classification as a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) on Date.

You are a State nonprofit membership corporation and governed by a board of directors elected by the membership with a minority of ex-officio directors whom are local government officials.

Membership is open to those individuals, firms, or corporations “who love and take pride in [the City], or who may otherwise be interested in the preservation, betterment or development of [the City].” While a significant number of your members are individuals the majority are local businesses and professionals. Moreover, nearly all of your revenue from membership fees is paid by businesses under a progressive fee schedule.

Your Articles of Incorporation state you are “organized exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code” and forbids any activities not permitted organizations exempt from income tax under section 501(c)(3) of the Code. Your Bylaws state that your purpose for organization “shall relate directly to the general business district of the [City].” The Bylaws then list nine purposes including the following five relating to business, trade, or commerce: To foster and promote, vigorously and effectively, trade and commerce, primarily by the planning or cooperative trade promotions among members; To foster and promote and advertise vigorously and effectively the advantages of shopping in the [City]; to promote better relations between all business, commercial and professional enterprises among themselves and with the general public; to combat actively all influences, publicity, and actions, which are intended to adversely affect the fuller utilization of [City] as a growing business, commercial, and professional center; and, to work closely with the officials of the [City] and [County] in attaining these objectives.

You report that all of your activities, projects, and events are part of your Main Street Program and you have no expectation that any future activities, projects, and events will fall outside of the program. The National Trust for Historic Preservation created the Main Street Program and established the Nation Main Street Center in 1980 to provide support and to encourage revitalization of main streets across America based on historic preservation and sound business practices. The Main Street Program brochure states that “what began as an historic preservation program has evolved into one of the largest economic redevelopment programs in the United States.” You accomplish your goals by implementing the four parts of the Main Street Program: Organization, Design, Economic Restructuring, and Promotion.

Your Annual Report and website describes your implementation of the Main Street Program as follows:

You state on your website that your mission is to “

You expect to:

“Advance commerce through cooperative trade promotions among members and effective advantages of shopping in our community;”

“Gather, publish, and disseminate interesting and factual information respecting the advantages of trading in [City]; “

“Actively combat all influences which are intended to adversely affect [the City] as a growing business, commercial, and professional center;”

“Improve relations between all business, commercial, and professional enterprises among themselves, as well as the general public by setting an example of cooperation;” and,

“Promote appropriate city, county, and state legislation in support of these objectives, as well as other efforts geared toward historic preservation, restoration, and beautification in our community.”

You list and prioritize your community's five major problems and weaknesses as (i) proximity to retail/entertainment/dining alternatives, (ii) lack of upscale dining, (iii) lack of family oriented entertainment, (iv) appearance of entrance corridors (i.e. the roads into town), and (v) lack of coordinated effort to preserve community assets. We asked what conditions you seek to improve and explain how their improvement would combat community deterioration, and you answered that the deterioration was caused by the migration of businesses from the Business District to locations associated with major highways. We asked who will benefit from your activities and you responded with "consumers and investors" and "existing businesses" which will benefit the general public.

You, the City, and the Association have entered into and renewed the Contract obligating your continued participation in the Main Street Program. Under the Contract Participation means you must "implement a comprehensive approach to downtown revitalization" using the Main Street methodology and your activities must be concentrated in the Main Street District (i.e. the Business District). The Business District is a 10-block area nearly all of which is zoned commercial. Seventy-six percent (76%) of the Business District uses by category are retail, industry, offices, finance, and warehouses.

The four principles above are each implemented by a separate standing committee. You report that forty of our effort is administrative (primarily the time of the one paid staffer). The remainder is comprised of the efforts of these four committees. Your two most active committees are Economic Restructuring and Promotion. Together their efforts reports more than 30% of your total effort (more than 40% of your total effort is administrative overhead) or at least 50% of your program efforts.

You developed and proposed a historic preservation ordinance which the City adopted. Your Economic Restructuring Committee has devoted substantial efforts to developing a tax abatement plan which will reduce taxes on qualifying businesses. You intend to present the plan to the City council at which point it will be brought for a vote.

You sponsored, co-sponsored, or committed effort to numerous events such as "Let's Go Walking Down Main Street", "Sippin Cider", "Main Street Live", "Chicken Cook-off", "[State] Market", "[State] Tax Freedom Holiday", "Octoberfest", and "Farmers Market" which together consumed 25% of your effort. These events are held in the Business District, are open to the public, generally paid for by donations in kind from local businesses or from membership dues, and advertised by you to people outside of the City.

City is part of a multiple county area designated a Renewal Community under the Community Renewal Act Pub. L. 106-554, § 1(a)(7) [Title I, §101(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-589. To qualify your community must have a poverty rate of 20% or more and cannot have an unemployment rate that is less than the national average. This designation expired in 2010. There are a few qualified census tracts within several miles of the Business District. The data you submitted does not show the Business District or adjacent neighborhoods fall within those census tracts. We note that the Department of Housing and Urban Development had designated County a non-metropolitan difficult development area (Gulf Opportunity Zone) for 2008, 2009, and 2010; but not 2011. See <http://www.huduser.org/portal/Datasets/qct/DDA2011NM.pdf>.

You state that your “role is to assist in the identification of structures having historical importance. Further it is our intent to educate the public at large as to the importance of historic preservation.” You may assist property owners with design guidelines keeping with the historic character of the Business District. You report you devote 10% of your effort to historic preservation which corresponds to the amount of effort reported toward creation of the City’s Historic Preservation Commission. We understand that the building inventory, _____, and Certified Local Government have substantial historic preservation components and represent an additional 4.5% of your effort. There are two public owned and one private residence in the Business District which are National Register buildings. You are conducting a building inventory of the buildings in the Business District to identify those with historical importance.

You are obligated by the Contract to report monthly and annually to the Association your activities and the effort expended. You report the following to the Association each month and annually: Business openings, Business closing, Business expansions, New Jobs created, Jobs lost, Public money invested, Private money invested, Façade rehabs completed, Upper floor housing units, Federal rehabilitation tax credit projects, and Volunteer hours. (“**Progress Metrics**”).

Law:

Section 501(c)(3) of the Code provides for recognition of exemption from federal income tax of organizations which are organized and operated exclusively for, among other things, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1a(1) of the Income Tax Regulations (the “**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 purposes specified in that 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 which accomplish one or more of the 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 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 operated exclusively for any of the purposes specified in section 501(c)(3) unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests.

The Supreme Court held in Better Business Bureau v. United States, 326 U.S. 279 (1945), that a single nonexempt purpose, if substantial in nature, would preclude an organization from qualifying under section 501(c)(3) of the Code.

Rev. Rul. 74-146, 1974-1 C.B. 129, held that a nonprofit organization of accredited educational institutions, whose membership includes a small number of proprietary schools, and whose activities include the preparation of accreditation standards, identification of schools and colleges meeting these standards, and the dissemination of accredited institution lists qualifies as an exempt organization under section 501(c)(3) of the Code, because any private benefit that may accrue to the few proprietary members because of accreditation is incidental to the purpose of improving the quality of education.

Rev. Rul. 74-587, 1974-2 C.B. 162, holds that an organization that devotes its resources to programs to stimulate economic development in areas inhabited mainly by low-income minority or other disadvantaged groups qualifies for exemption under section 501(c)(3) of the Code. The organization made loans to and purchased equity interests in businesses unable to obtain funds from conventional sources. The investments were not undertaken for profit or gain, but to advance charitable goals. Funds for this program were obtained from foundation grants and public contributions. The organization was not penalized for benefiting non-needy taxpayers, as long as those taxpayers were instruments by which charitable purposes were accomplished.

Rev. Rul. 76-419, 1976-2 C.B. 146, held exempt an organization that purchased a blighted area, developed an industrial park in that area, and encouraged businesses to locate new facilities in an economically distressed area, because those activities provided more employment opportunities for low-income residents in the area, furthered the charitable purpose of promoting social welfare by organizations designed to relieve the poor and distressed, to lessen neighborhood tensions, or to combat community deterioration.

Rev. Rul. 77-111, 1977-1 C.B. 144, involved two organizations. The first was formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations. The second organization's purpose was to revive retail sales in an area of economic decline by constructing a shopping center that would complement the area's existing retail facilities. Neither organization was held to be exempt. The organizations both operated in a depressed area, but neither limited their benefits to needy individuals or businesses.

Analysis:

Your primary activity is economic development which benefits local business and such benefits are not incidental to furthering one or more of your exempt purposes. Accordingly, you are not operated exclusively for exempt purposes under section 501(c)(3) of the Code and therefore do not qualify for exemption under section 501(c)(3) as discussed below.

Section 501(c)(3) of the Code provides for recognition of exemption from federal income tax of organizations which are organized and operated exclusively for exempt purposes, which includes charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual. An organization must be both organized and operated exclusively for one or more exempt purposes to be a section 501(c)(3) tax-exempt organization. See section 1.501(c)(3)-1(a)(1) of the regulations. If an organization fails to meet either the organizational test or the operational test, it is not tax-exempt.

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 exempt purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. See section 1.501(c)(3)-1(c)(1) of the regulations. Moreover, 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 public rather than private interests. An organization can be 'operated exclusively' where the private benefit is incidental to serving the public benefit. See Rev. Rul. 74-146. To be incidental, the private benefit must be a necessary concomitant of the activity which benefits the public at large and accomplishes exempt purposes. In other words, the benefit to the public cannot be achieved without necessarily benefiting certain private individuals. Further, private interests must be benefited only to the extent necessary to accomplish exempt purposes.

Your sole activity is the Main Street Program. The Main Street Program advertises itself as an economic revitalization program based upon four principals: Economic Restructuring, Promotion, Design, and Organization. Your efforts are focused on the Business District of which more than 70% is used by businesses for commercial purposes. Two of your four implementing committees are Economic Restructuring and Promotion which together represent more than 25% of your total effort and nearly 50% of your program effort (40% of your effort is administrative).

You are developing a tax abatement plan to propose to the City council. The plan will reduce taxes on businesses in the Business District. Even a substantial part of your Progress Metrics measure the impact of your efforts on businesses.

In connection with your economic restructuring activities you have also sponsored many promotional events to draw consumers to the Business District. These events are paid for by in-kind donations from local businesses and from membership dues. Nearly all of your annual membership receipts are from local businesses. Accordingly, these events are essentially paid for by local businesses. This is consistent with your stated purpose for the Promotion committees:

Your numerous events such as "Sippin Cider", "Farmers Market" and "Let's Go Walking Down Main Street", among others, are directed to attracting people to the Business District to promote commerce.

Your Design committee has devoted its efforts to developing a revitalization plan for the Business District fully described in the Charrette Report. You describe the committee's purpose as:

Your governing documents, the Main Street program, corporate records, newsletters and other documents show your current efforts focused almost exclusively on the Business District. Although this plan has multiple phases the second and third phases focus on the commercial areas adjacent the interstate highway and the corridors leading to the Business District. Your historic rehabilitation efforts have been a real but small part of the effort. The documents show the primary purpose of your design efforts is the economic redevelopment of the Business District.

Most of your activities promote trade and commerce in the Business District. Most is "more than insubstantial" within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations. Therefore, your economic development activities must further one more exempt purposes for you to be described in section 501(c)(3) of the Code. They must provide a public benefit and cannot provide more than insubstantial private benefit unless such benefit is necessary to achieve the public benefit; even then, the private benefit must be no more than necessary to accomplish exempt purposes.

Several revenue rulings analyze the circumstances under which economic development serves one or more exempt purposes. In Rev. Rul. 74-587 the Service recognized as exempt an organization that provide loans to or bought equity interests in businesses unable to obtain funds from conventional sources. Like you, the organization's benefitted businesses in a very specific neighborhood. However, unlike your Business District, the neighborhood was economically distressed and the organization required the businesses to provide training and employment preferences for low-income and other disadvantaged groups. The businesses were just the instruments to relieve poverty. Rev. Rul. 76-419 approved an organization which encouraged businesses to relocate to an economically distressed area and provide training and employment to low-income and other disadvantaged groups. You have not demonstrated that the Business District is economically distressed and that your activities result in training or employment for low-income people or other disadvantaged groups. Rev. Rul. 77-111 denied recognition of exemption to two organizations operating in an economically distressed area who,

like you, promoted business patronage and sales which did not result in benefits to needy individuals.

Economic development is not a charitable activity unless it specifically targets the poor, distressed, unemployed, elderly, children, or other charitable class, in a distressed area. You have not reported any efforts to identify needy individuals, to assess their needs, nor to ensure that the benefitted businesses alleviate any of those needs. The businesses in the Business District are not merely instruments to achieve one or more exempt purposes. Nor is the Business District a distressed area. Because your economic development activity is more than an insubstantial part of your activities, provides a private benefit to local businesses that is not incidental to any public benefit provided, and therefore is not in furtherance of an exempt purpose, you are not "operated exclusively" for one or more exempt purposes within the meaning of section 1.501(c)(3)-1(c)(1) of the regulations. You have a nonexempt purpose of promoting business. One nonexempt purpose is sufficient to preclude you from qualifying for tax exemption under the rationale of Better Business Bureau v. United States. Because you fail to meet the operational test described in the regulations, you are not exempt from income tax under section 501(c)(3) of the Code.

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. 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
SE:T:EO:RA:T:3

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,

Lois Lerner
Director, Exempt Organizations

cc: