



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201210044**  
Release Date: 3/9/2012

Date: December 16, 2011

Uniform Issue List Number:  
501.00-00  
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.

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

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: November 8, 2011

Contact Person:

Uniform Issue List Number:

501.00-00

501.03-00

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Taxpayer =  
State =  
Date =  
County =  
Company =

Dear :

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

Facts:

You, Taxpayer, are a not for profit corporation organized under the laws of State on Date. You submitted a Form 1023 requesting recognition of exemption under § 501(c)(3). Your Articles of Incorporation contain both a purpose and dissolution clause, but lack a prohibition on inurement.

According to your Articles of Incorporation, you were formed for "charitable, educational, or scientific purposes." Specifically, you will provide "residential solar energy systems to low to middle class income households in County." You state that your primary missions are to "alleviate poverty, provide for community development, and to conserve the environment." According to your mission statement, you "provide[] an opportunity for all County households to utilize 'green' technology, regardless of the financial condition of the family."

In order to qualify for these solar systems, you initially represented that household income must be less than \$30,000, though you also provided that this figure "isn't an exact benchmark" and "may be adjusted as determined by the board." You provided that you would verify income amounts, most likely using tax return information.

You later represented that you will follow the Area Median Income ("AMI") published by the US Dept. of Housing and Urban Development in determining eligibility, though you will "not limit

[your] services solely to low income households" (i.e. those earning less than \$30,000 a year). Rather, you provided that you would instead provide solar systems to low and moderate income households not to exceed 120% of the AMI. You did not provide a percentage estimate of how many households would be classified as low income versus the number that would be moderate income. You stated that priority will be given to the "lesser incomed (*sic*) of two otherwise equally-eligible participants in every case." You will not provide services to households defined as middle income or above.

Homeowners must submit an application to be considered for your services. You also require that applicant households must meet other criteria as well. These include minimum standards of efficiency, southern exposure to the sun, and adequate roof space and strength. The application includes a statement of income, household size, the average electrical bill amount, and pictures denoting orientation. Because you anticipate having more applicants than available solar systems, you will assign a number upon eligibility verification to applicants. Random drawings will be conducted to select which eligible homeowners will receive a system.

The solar systems, at all times, will remain your property. If a homeowner moves, the solar system stays with the home (provided that the new homeowner qualifies for the system and wishes to retain the system). You have also provided that if the financial circumstances of the homeowners changes due to events such as winning the lottery that the system will be moved to a new qualified home.

Any overproduction to the grid from the solar systems will be sold to Company, the local power company. A monthly dividend check will then be provided to you as per Company's dual metering plan. The overproduction monies will then be used to purchase additional solar systems.

While you initially planned on selling carbon offsets, it is not something that you currently plan to do. You indicated that you would submit a written ruling request on whether the activity is taxable as unrelated business income should you decide to conduct that activity in the future.

#### **LAW:**

Section 501(c)(3) of the Code provides that corporations will be exempted from tax if they are "organized and operated exclusively for . . . charitable" purposes and "no part of the net earnings of which inures to the benefit of any private shareholder or individual . . . ."

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides in "order to be exempt as an organization described in § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

Section 1.501(c)(3)-1(c)(1) of the regulations provides "[a]n 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 § 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)(2) of the regulations defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Rev. Rul. 67-138, 1967-1 C.B. 129 held that helping low-income persons obtain adequate and affordable housing is a "charitable" activity because it relieves the poor and distressed or underprivileged.

In Rev. Rul. 68-14, 1968-1 C.B. 243 an organization that planted trees in public areas and assisting municipal authorities in their programs to plant trees and keep the city clean was lessening the burdens of government. The organization's informational program directed to the public, architects, and builders was deemed educational. And, the overall effect of the organization's activities was to combat community deterioration. Accordingly, the organization was exempt from tax under § 501(c)(3).

Rev. Rul. 70-585, 1970-2 C.B. 115, discussed four situations of organizations providing housing and whether each qualified as charitable within the meaning of § 501(c)(3). Situation 1 described an organization formed to construct new homes and renovate existing homes for sale to low-income families who could not obtain financing through conventional channels. The revenue ruling held that by providing homes for low-income families who otherwise could not afford them, the organization relieved the poor and distressed.

Situation 2 described an organization formed to ameliorate the housing needs of minority groups by building housing units for sale to persons of low and moderate income on an open-occupancy basis. The housing was made available to members of minority groups who were unable to obtain adequate housing because of local discrimination. The housing units were located to help reduce racial and ethnic imbalances in the community. As the activities were designed to eliminate prejudice and discrimination and to lessen neighborhood tensions, the revenue ruling held that the organization was engaged in charitable activities within the meaning of § 501(c)(3).

Situation 3 described an organization formed to formulate plans for the renewal and rehabilitation of a particular area in a city as a residential community. The median income level in the area was lower than in other sections of the city and the housing in the area generally was old and badly deteriorated. The organization developed an overall plan for the rehabilitation of the area, sponsored a renewal project, and involved residents in the area renewal plan. The organization also purchased an apartment building that it rehabilitated and rented at cost to low and moderate income families with a preference given to residents of the area. The revenue ruling held that the organization was described in § 501(c)(3) because its purposes and activities combated community deterioration.

Situation 4 described an organization formed to alleviate a shortage of housing for moderate-income families in a particular community. The organization planned to build housing to be rented at cost to moderate-income families. The revenue ruling held that the organization failed to qualify for exemption under § 501(c)(3) because the organization's program was not designed to provide relief to the poor or further any other charitable purpose within the meaning of § 501(c)(3) and the regulations.

In Rev. Rul. 72-560, 1972-2 C.B. 248, an organization that provided information to the public concerning environmental problems caused by solid waste materials and the advantages of recycling such materials, was found to be instructing the public on subjects useful to the individual and beneficial to the community. The recycling of the waste materials is an essential element in the organization's efforts to combat environmental deterioration, since it prevents the pollution of the environment caused by the usual disposition of these materials.

In Rev. Rul. 76-204, 1976-1 C.B. 152, an organization was formed for the purpose of preserving the natural environment. The organization accomplished this purpose by acquiring and maintaining ecologically significant and undeveloped land such as swamps, marshes, forests, wilderness tracts, and other natural areas. The organization worked closely with Federal, state, and local government agencies, and private organizations that were also concerned with environmental conservation. The ruling reasoned that by preserving "ecologically significant undeveloped land, the organization is enhancing the accomplishment of express national policy of conserving the nation's unique natural resources." Thus, the ruling concluded that the "organization is advancing education and science and is benefiting the public in a manner that the law regards as charitable."

Rev. Proc. 2011-9, 2011-2 I.R.B. 283, section 4.03 provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

#### **ANALYSIS:**

Organizations described in § 501(c)(3) must be both organized and operated exclusively for one or more of the purposes specified in such section. § 1.501(c)(3)-1(a)(1). Pursuant to § 1.501(c)(3)-1(c)(1), an organization will only be regarded as "operated exclusively" for charitable purposes if it engages primarily in activities that accomplish one or more of such exempt purposes specified in § 501(c)(3). "Charitable" purposes is defined as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. § 1.501(c)(3)-1(d)(2). Charitable purposes may also include environmental preservation and promotion. Rev. Rul. 76-204, supra.

You are not operated exclusively for exempt purposes as defined by § 501(c)(3) and § 1.501(c)(3)-1(d)(2). Your primary activity is the provision of residential solar energy systems to low and moderate income households in County. You state that this activity alleviates poverty, provides for community development, and preserves the environment.

Your activity does not alleviate poverty. In an analogous situation, the provision of housing was determined to be exempt as relieving the poor and distressed in certain circumstances such as providing new and renovated homes to low income families who could not obtain conventional financing, providing homes to low and moderate income groups to reduce racial and ethnic imbalances in a community, and providing apartments to low and moderate income families in a

particular deteriorated area of a city in an effort to combat community deterioration. Rev. Rul. 70-585, supra.

However, that ruling also provided that an organization who built and rented homes for moderate income families did not qualify for exemption because it was not relieving the poor and distressed and was not furthering any other charitable purpose. Similarly, you provide services to moderate income homes. While you also provide services to low income households, you do not do so in a way that would reduce racial and ethnic imbalances or combat community deterioration. Additionally, you do not provide a breakdown of the number of homes you expect will be moderate income versus the number that are low income. While you state that low income applicants would be given a preference over equally eligible moderate income applicants, this does not provide any guarantee that your services will primarily serve a charitable class.

You state that this activity provides for community development. However, you do not explain how providing solar panels throughout County accomplishes your goal of community development. In a grant application you submitted, you do provide that you have a "transformative impact" on your community because you would "free up significant amounts of disposable income" for the families who receive your systems. You also state that the systems would "add considerable equity to each home which receives a system." While these may be benefits of your program, there is no indication that these activities provide for community development as meant by § 501(c)(3). Any benefits resulting from your program would primarily be in the form of potential financial savings to a select group of homeowners who use your solar systems, rather than general community development. Section 4.03 of Rev. Proc. 2011-9, supra, provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. The information provided by you is not sufficient to permit a conclusion that you are engaged in activities that provide for community development in an exempt manner.

You state that your activity preserves the environment. Organizations that promote or protect the environment have been recognized as exempt. See Rev. Rul. 68-14, supra (planting trees to combat community deterioration); Rev. Rul. 72-560, supra (providing education information on solid waste recycling); Rev. Rul. 76-204, supra (acquiring and preserving ecologically significant land). However, the activities of those organizations are different than your activities. The organizations described in each of these revenue rulings provided a direct environmental benefit to the public as a result of its activities. While the environmental benefits of your activities would be indirect and tangential. Moreover, you have provided no credible studies or research to show that use of your particular solar systems would have a measurable, significant impact in preserving and protecting the environment. As discussed above, exempt status cannot be recognized in advance of operations if your activities are not described in sufficient detail to permit a conclusion that you will meet the requirements for § 501(c)(3). See Rev. Proc. 2011-9, supra. The information provided by you is not sufficient to permit a conclusion that you are engaged in activities that preserve the environment.

**CONCLUSION:**

Based on the facts and information provided, you are not operated exclusively for exempt purposes as required by sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. Therefore, you are not described in section 501(c)(3).

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](http://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  
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 G. Lerner  
Director, Exempt Organizations