



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201242017**
Release Date: 10/19/2012

Date: July 25, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.00-00; 501.36-01; 503.00-00

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,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: May 30, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Director
C = Trustee
D = Trustee
E = Relative/Owner of property
O = Date
R = State
G = Name of LLC

UIL:

501.00-00
501-36-01
503.00-00

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.

Issues

1. Do your activities constitute a substantial non-exempt commercial purpose, causing you to fail the operational test, disqualifying you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
2. Do you fail the organizational test, disqualifying you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
3. Do the payments for the personal expenses of your Director constitute inurement, disqualifying you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.

Letter 4036(CG) (11-2011)
Catalog Number 47630W

Facts

You were previously granted exemption under Section 501(c)(3) of the Code. Your exemption was revoked due to non-filing of Form 990 for three consecutive years. Accordingly, you submitted a new Form 1023, application for exemption for consideration.

You were formed by Articles of Incorporation on date O in the state of R. Your Articles of Incorporation state you were formed for "...charitable, religious, scientific, literary, or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code"). In particular the Corporation shall operate as a homeowner's association."

Your Bylaws state your number of directors may not be decreased to fewer than three. The directors elect directors at the annual meeting. Your Bylaws also say a director may be removed from office, with or without cause, by the persons entitled to elect them and removal requires an affirmative vote equal to the vote necessary to elect the director.

Your application lists one Director B, with C and D acting as Trustees. B is the sister and daughter to C and D, respectively. Per Page 2 of your Form 1023 B, C and D will be compensated.. When asked about this compensation you said, "Members of the Governing Body are not compensated. Sub-contractors are compensated according to the job(s) performed." The sub-contractors will be hired for site development, plumbing, concrete, framing, electrical and drywall. You will obtain three bids for the work needed before hiring a sub-contractor.

Your name includes the surname of two of your board members. When asked how the name of the organization came about you said, "When the land was platted. The designer just called it..." the surname of B and D.

During the development of your application, it was discovered you were using the Employer Identification Number (EIN) for an LLC, G of which B is the sole member. G is still an active corporation in R. You said this was a mistake. You said the G was "...a name that I had before" your current name. "It was used initially when I started to develop and build the houses." You indicated you are the same/different than G in that you initially had the G name, but later obtained the current name for the non-profit.

The description of your activities included with your application for exemption states you were formed to "...help build low-income communities, create jobs, start inspirational/educational and or leadership programs for women, girls and minorities." You said in the past you have held weekly meetings at a local high school for young ladies. Your present activities include providing guidance services, counseling, consultation, coordination and serving as a resource for women and minorities. You have presented workshops regarding classroom behavior management, strategic plans, organizing a home-based small business, etc. You plan to continue to present workshops to the community and serve as a resource. You said you spent 80% of your time on these activities and you plan on allocating 90 – 100% of your time to these activities in the future.

You also, however, submitted a Schedule F with your Form 1023, which describes your housing program. You provide single family housing, with 2, 3 or 4 bedrooms for semi-independent adults, persons with mental retardation or physical disabilities. Assisted-living will be provided if needed. The public is made aware of your facility through advertising, referrals, word of mouth and contact with the local department of mental health. You will advertise the homes for sale through a realtor and newspapers.

You indicated you had enclosed floor plans, but these items were omitted. There are no current residents according to your Form 1023. Prior to moving in the families will be given the option to rent or purchase the property. You developed the property yourself. In terms of age, you said individuals 18 years of age and older qualify. In response to the question, "Who qualifies in terms of disability?" you responded, "Everyone." Regarding your maintenance charges, you indicated you will charge "Association Fees."

You also indicated you would be providing low-income housing. Again, the maintenance charges will be "Association Fees." You said your housing will be affordable.

You submitted what you called an application for admission. The form, however, was a loan application. It required detailed "Borrower Information," as well as the purpose of the loan (either purchase or refinance), the loan program type (full doc, stated income, no ratio or no doc). It also included the desired terms of the loan and income/employer information of the Borrower. At the bottom of the form it said "FOR OFFICE USE ONLY" with the following questions:

1. Do [sic] the individual need assistance with daily living chores?
2. Do [sic] the individual need long term care?
3. Describe the individual and his/her needs.

When asked if you make loans you said, "No we do not make loans; this information will be pass [sic] on to a Realtor; if a family desire [sic] to purchase a home."

Rental rates were determined by a market analyst for the city. A rent reasonableness study was conducted to determine if the requested rent was reasonable as compared to location, quality, size, age, amenities, housing services, maintenance and utilities to be provided.

Your rates are "at cost." The cost is determined by a licensed appraiser. Other items taken into consideration are property tax, maintenance costs, and utility costs. You also said that the rental rate for each property is based on the fair housing rate.

The homes "...will be located in a suburban residential community; surrounded by a residential community with homes ranges [sic] from \$130,000 and above." You provided a specific location of the homes. Equipment provided in the home will meet the individual needs of the residents. Each community will be gated.

You said the area is distressed and is showing a potential for growth. "There is a vast array of growth opportunities; to further the development and training opportunities for the residents."

You described your proposed facilities as supportive housing for the elderly and for persons with disabilities. Services provided to the residents include daily assistance, meals, housing, transportation and counseling. These facilities and services will meet the special needs of the residents by creating safe, sanitary and decent affordable housing to residents.

One of the homes is used for the contract with the state agency. Later you said you never had any state agency clients live in the houses. You also indicated that you will allow individuals who are neither elderly nor disabled to lease a facility from you. Then you also said you have not been successful in getting any residential clients. The problem that you have been faced with is that the state agency requires you to have a resident that is inspected prior to you receiving the contract and once you have received the contract you are expected to market your own business for clients. You also stated "I still have these houses that I am responsible for the mortgage. This led us undertaking other contracts and working with other groups."

With your current application for exemption you indicated you presently have land for 38 houses. The capacities of each are 1625 sq. ft. with three bedrooms and two and a half baths. When you filed your application for exemption two homes were presently being built. Rental rates will be based on a sliding scale for the elderly and mentally impaired. You later said you "...no longer own the land; that was some years ago." You then said G purchased the land, not you.

Residents will be given the opportunity to buy the property. This will further your exempt purposes because "It could reduce the cost of the home to be built and pass the saving [sic] on to the buyer." In an attempt to clarify we asked when this opportunity would be given to purchase and you said "Initially when, the resident agrees to purchase the house." When asked how the purchase price will be determined and by whom, you responded to both questions that it would be determined by an appraisal. You then stated you sold two homes to individuals. G purchased the land in 2005 and you stated "we no longer own the land". The two homes built on the property were sold in 2007. The prices were determined by an appraisal and a realtor was used to take care of the Ads, brochures etc. All improvements to the property were paid for by G. The property was purchased from relative E and the purchase price was based on a market appraisal. The two individuals to whom you sold the house were not the same as the two individuals with whom you had lease agreements to lease the homes.

When asked how you determine how much money is to be put down by the housing buyers for their homes, you said that "Buyers incentives will be given for down payment assistance." You provided no other details regarding this program.

In response to the question "Are there (or will there be) any financial/business transactions between you and your officers, board members or their relatives you said, "No."

Individual E holds deed to the property that you are developing. Individual E is a relative (sister and daughter) of the three board members. The property was obtained five years ago through an auction for the land, which was divided into six lots. You submitted photographs of the houses you have built. When asked why the property is held in the E's name and not yours, you said, "The property were [sic] purchased at the auction; prior to being considered for this purpose. Two homes have been built; there are four empty lots." When we asked if you will

obtain the land from E, and if so, the price, you said "At this time we have not had an appraisal done to determine the price."

When asked for the details regarding the units you have built, you said "...the homes are registered (has a contract) with" the local department of aging and disability. The project is in a racially mixed area and is close to shopping and will enable the elderly to maintain their independence. You will have a community building which will be the focal point of the development where the delivery of supportive services will be provided as well as activities for socialization and education training and services. The gated complex will give residents access to safe, decent and affordable housing. The units will be developed for the special needs of the elderly with wheelchair accessibility. One two bedroom will be used for an on-site resident manager. The site is located within walking distance of several amenities such as grocers, restaurants and churches.

You said one of the units you have rented out is used for the contract with the local department of aging and disability and the other house is used for room and board for homeless veterans. The rental rate for the units is \$500 per month, which is "based on the fair housing rate." If a tenant is no longer able to pay their rent you will "...assist individuals in gaining their benefits back."

When asked how you would comply with the safe harbor guidelines outlined in Rev. Proc. 96-32, you submitted recent board meeting minutes which stated the guidelines as outlined in the Revenue Procedure Individuals B and C attended the meeting and signed the minutes. You also submitted a Rental Policy and Procedures document. It outlined your procedures to verify income and the rent calculation. The rent will be based upon the federal formula. The total tenant payment can also be the Flat Rent. The Flat rent, a market priced rent, is offered to every family once a year, either at admission or at annual recertification. It is assumed that families will choose the lower of the Flat rent or the income-based rent.

You also submitted an "Applicant Request for a Reasonable Income Accommodation/Structural Modification for the Sale of Homes." This document describes your policies and procedures to participate in your programs. Examples you provided include permitting a qualified disabled resident to have an assistive animal in a housing unit with a no-pet policy and adding grab bars, widening doorways or adding an entrance ramp for a wheelchair. The document also stated if an individual wants a reasonable income accommodation/structural modification, they can request it at any time in the application process or at the time of their interview with the property manager.

With your application you included an inquiry which said, "List any alternate names under which you operate." You then responded to your own inquiry and said, "No Other Name." Later you submitted a copy of two contracts you have with the state department of aging and disability. The contracts indicate you are using a "Doing Business As" (DBA) name. The DBA name includes the possessive form of a female name and the phrase "Assisted Living". You selected this name because you "...thought it seemed homely for a house."

You, along with your DBA, are listed as the contractor on the state contract. E is listed as the contact person on the contract. You have one person with a home services contract. This

individual lives with her mother. You have had three other contracts with the state agency and each of these individuals live with their families.

You receive fee-for-services payments from the state agency based on a fee for services contract. You ensure the client is provided with services. When you take a nurse to see the client you receive a payment from the state agency which you forward a portion to the nurse. All clients live with their families and are paid through the state agency for services that they receive. You submitted a copy of a "Foster Care Contract" between you and an individual. The individual that signed as the "Foster Care Provider" is the mother of the individual for whom she is caring and has the same surname of the child in care. You said, "These services assist parents to keep their children in the home in the community instead of placing them in a state school."

You submitted copies of your bank statements. These statements included numerous payments, totaling thousands of dollars, made to B. We asked for a representative sample of documentation to substantiate these payments. Rather than provide said documentation, you said you are "...not a self-supporting non-profit; the money that is used for..." the organization is given by B. You said B "...must provide personal funds and deposit money into the account. "We are attempting to provide services to individuals which is supported thru various contracts and jobs". When the idea to provide low income housing came about the only Company name, that was there was" G. You said you later got the non-profit and decided to build homes.

The bank statements also included many payments made to a credit card. You said B and the organization are the names on the credit cards. We asked for documentation to substantiate that these expenses were for exempt purposes. Rather than provide the documentation you said the expenses were for "Various purchases and supplies." You further asserted you "...have written for grants (have not received any at this time). The credit card is not tax exempt nor interest free. They are expenses in attempting to operate a non-supporting business."

The bank statements included payments made for a truck. You said that the truck was used for hauling material and was purchased at a time prior to your formation under G's name and that the truck has since been stolen.

Your bank statements also included payments made to a financial institution. Again, we asked for documentation regarding these debt payments and you did not provide same. You said the debt is in the name of B and it was incurred to enable you to pay the property taxes.

Your bank statements also included numerous payments to a particular bank. We asked for you to describe the nature of these payments, including documentation. To this you responded simply with the name of the bank.

You have also made payments to a specific fitness club. Per the resume of C, she owns this fitness club. You assert you "...have a group of seniors..." and the fitness club allows them to go to the facility. You provided no documentation to substantiate these expenses.

Law

Section 501(c)(3) of the Code provides, in part, that an organization that is organized and operated exclusively for charitable purposes is exempt from federal income tax.

Section 1.501(c)(3)-1(a)(1) of the regulations states that 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 an organization does not qualify for exemption if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

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 as defined in Section 1.501(a)-1(c).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit private interests such as "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

Section 1.501-1(d)(2) of the regulations defines the word "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed.

Rev. Rul. 67-138, 1967-1 C.B. 129, holds that the provision of housing for low-income persons accomplishes charitable purposes by relieving the poor and distressed.

Rev. Rul. 70-585, 1970-2 C.B. 115, states that where an organization is formed for charitable purposes and accomplishes its charitable purposes through a program of providing housing for low and, in certain circumstances, moderate income families, it is entitled to exemption under section 501(c)(3) of the Code.

In Rev. Rul. 78-232, 1978-1 C.B. 69 (1978), held that an individual who claims to be a minister, organizes a church, deposits salary checks for salary earned from outside employment in the church's bank account, and uses the funds of the account for lodging, food, clothing, and other living expenses is not entitled to a charitable deduction for the amount of the salary checks. The taxpayer, claiming to be a duly ordained minister, formed a "church." The original members of the church consisted of the taxpayer, the taxpayer's spouse and two minor children, and a few family friends. The taxpayer was employed full-time by a state government, and continued in this employment after the church was formed. The taxpayer's salary checks were received by the taxpayer and deposited into the church's bank account. The funds from the church bank account, however, were primarily used to furnish the taxpayer with lodging, food, clothing, and other living expenses in a manner comparable to that which the taxpayer previously enjoyed.

Revenue Ruling 81-94 1981-1 C.B. 330, A "church" that was formed by a professional nurse (who is also the "church's" minister, director, and principal officer) and that is used primarily as a vehicle for handling the nurse's personal financial transactions is not exempt from tax under section 501 (c)(3) of the Code.

Rev. Proc. 96-32, 1996-1 C.B. 717, sets forth a safe harbor under which organizations that provide low-income housing are considered charitable as relieving the poor and distressed, and a facts and circumstances test that applies in determining whether organizations that fall outside the safe harbor relieve the poor and distressed. The safe harbor requires that certain percentages of the units be occupied by residents that meet certain low-income standards, and that the housing is affordable to the charitable beneficiaries. In the case of rental housing, this requirement will ordinarily be satisfied by the adoption of a rental policy that complies with government-imposed rental restrictions or otherwise provides for the limitation of the tenant's portion of the rent charged to ensure that the housing is affordable to low-income and very low-income residents. Relevant facts and circumstances under the facts and circumstances test may include, but are not limited to, the following:

- (1) A substantially greater percentage of residents than required by the safe harbor with incomes up to 120 percent of the area's very low-income limit.
- (2) Limited degree of deviation from the safe harbor percentages.
- (3) Limitation of a resident's portion of rent or mortgage payment to ensure that the housing is affordable to low-income and very low-income residents.
- (4) Participation in a government housing program designed to provide affordable housing.
- (5) Operation through a community-based board of directors, particularly if the selection process demonstrates that community groups have input into the organization's operations.
- (6) The provision of additional social services affordable to the poor residents.
- (7) Relationship with an existing 501(c)(3) organization active in low-income housing for at least five years if the existing organization demonstrates control.
- (8) Acceptance of residents who, when considered individually, have unusual burdens such as extremely high medical costs which cause them to be in a condition similar to persons within the qualifying income limits in spite of their higher incomes.
- (9) Participation in a homeownership program designed to provide homeownership opportunities for families that cannot otherwise afford to purchase safe and decent housing.
- (10) Existence of affordability covenants or restrictions running with the property.

Rev. Proc. 2012-9, superseding Rev. Proc. 90-27, 1990-1 C.B. 514, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.02 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. It further states:

- (1) The applicant is responsible for the accuracy of any factual representations contained in the application.
- (2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalty of perjury statement.
- (3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Section 4.03 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.

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.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial.

In Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), aff'd without op., 631 F.2d736 (7th Cir. 1980); cert. den. 450 U.S. 981 (1981), the Tax Court held that although separate requirements, the "private inurement" test and the "operated exclusively for exempt purposes" test often overlap substantially.

In Unitary Mission Church v. Commissioner, 74 T.C. 507 (1980), it was held that the prohibition against inurement or private benefit is absolute, the amount or extent not being determinative. Petitioner's financial decisions are controlled by X, one of petitioner's ministers, and his wife. X received widely fluctuating "parsonage allowances" over a 3-year period as compensation for leading services and for being available for pastoral counseling. There is no evidence in the administrative record of any differing duties that he performed over these years. There is also insufficient evidence in the record regarding some of the travel expenses paid to X and his wife and regarding two loans made to X's secular employer. Parsonage allowances of fluctuating

amounts were also paid in some years to petitioner's other two ministers; yet, there is no evidence in the record about any services they performed for petitioner. The Tax Court concluded that petitioner is not entitled to exemption because a part of its net earnings inures to the benefit of private shareholders or individuals.

In Easter House v. United States, 12 Cl. Ct. 476 (1987), aff'd, 846 F.2d 78 (Fed. Cir. 1988) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3).

In KJ's Fund Raisers v. Commissioner, T.C. Memo 1997-424 (1997), aff'd, 166 F.3d 1200 (2d Cir. 1998), the Tax Court held, and the Second Circuit affirmed, that an organization formed to raise funds for distribution to charitable causes did not qualify for exemption under section 501(c)(3) because its activities resulted in a substantial private benefit to its founders.

Application of Law

You are not described in section 501(c)(3) of the Code and Section 1.501(c)(3)-1(a)(1) because you fail both the organizational and operational test of section 501(c)(3). You fail the organizational test because your Articles of Incorporation indicate your purpose is to operate as a homeowners association which is not a 501(c)(3) exempt purpose. You fail the operational test because you operate a housing program in a commercial manner and because your earnings inure to the benefit of an insider.

You are not described in Section 1.501(c)(3)-1(c)(1) of the regulations because you were set up by B and you pay her personal expenses. Also, you charge market rents for your housing. You constructed houses on land owned by relative E which was purchased by G, the sole member of which is B and then sold these houses at market rates to the general public by utilizing the services of a realtor. More than an insubstantial part of your activities are in furtherance of a non-exempt purpose, in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Therefore, you are not operated for an exempt purpose.

You are not as described in Section 1.501(c)(3)-1(c)(2) of the regulations because your earnings inure to B and her family. Your bank statements include payments to related for-profit companies as well as unexplained expenses. You were unable to substantiate these payments and expenses as related to exempt purposes.

You are not as described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you are set up for and operated for the benefit of designated individuals, specifically B and her family.

Furthermore, your activities are not charitable as defined in Section 1.501-1(d)(2) of the regulations. Your activities of constructing, renting and selling homes at market appraised rates do not provide relief to the poor and distressed.

Your housing program will not accomplish a charitable purpose as described in Rev. Rul. 67-138, *supra*, as you will be selling the units at market value. Your housing is not for low income families and you are not furthering a charitable purpose as described in Rev. Rul. 70-585, *supra*.

Further you are similar to the organization described in Rev. Rul. 78-232 and Rev. Rul. 81-94. Like the organizations described in these rulings, B used the organization to pay her personal living expenses. B and her family have sole financial control of you.. Private interests of B and her family are being served.

You do not meet the safe harbor provided by Rev. Proc. 96-32, *supra*, because you have not demonstrated how your housing activity relieves the poor or distressed. Even though you discussed Rev. Proc 96-32 guidelines at a board meeting you have not substantiated meeting the safe harbor provisions. You are also leasing property to individuals at fair market value. You intend to build more homes and sell them at appraised value.

As required by Rev. Proc. 2012-9 you have not established that you are organized and operated exclusively for exempt purposes and not for the private benefit of your creators, designated individuals or organizations controlled by such private interests. You have one individual and her family controlling the organization. You have continued to provide very few details regarding how your housing and other programs will be operated. As required by Section 4.03 of this Rev. Proc., you must fully describe all of the activities in which you expect 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. You have failed to provide adequate details to allow us to determine you qualify for exemption.

You are also like the organization described in the above-cited case of KJ's Fund Raisers v. Commissioner since your operations include substantial non-exempt purposes. As in Western Catholic Church v. Commissioner, *supra*, the "private inurement" test and the "operated exclusively for exempt purposes" test often overlap substantially. Specifically, your non-exempt purposes include inurement to B and her family members.

Much like the above-cited case Unitary Mission Church v. Commissioner, B's amount of inurement is not a determinative factor. You made regular payments for personal expenses each month. Your debit card and bank account were used regularly by B for personal purposes. Your finances and all operational decisions are controlled by B and her family, causing your net earnings to inure to the benefit of a private individual.

Your housing program is operated for a nonexempt purpose, which precludes exemption as in

Better Business Bureau of Washington, D.C. v. U. S., supra. Even though you signed a resolution stating that you will abide by the provisions of Revenue Procedure 96-32, your rental rates are fixed at cost by a market analyst. You will sell units at appraised market value. You are similar to the organization described above in B.S.W. Group, Inc., which did not satisfy the operational test under IRC section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. The purchase of the land from the relative, the construction of the homes thereon were all conducted by G. The plan was to rent or sell these homes at appraised value. Subsequently when the idea to operate as a non-profit arose you incorporated as a non-profit.

As in Easter House v. United States, supra, you are operated for a business purpose, as you have not distinguished your housing program from a commercial business.

Applicant's Position

You are not a self-supporting non-profit. The money that is used for you is given by B. B must provide personal funds and deposit money into the account. You are attempting to provide services to individuals which is supported thru various contracts and jobs. When the idea to provide low income housing came about the only company name that was there was G and you later got your name.

Service Response to Applicant's Position

Your position affirms B's use of you as a vehicle for private benefit. The facts show not only B depositing money into your account but also numerous withdrawals for B's personal expenses and transfers to related for-profit companies. The mere provision of services to individuals supported by contracts and jobs is not alone sufficient to distinguish you from a commercial business nor does it lessen the severity of inurement to B.

Conclusion

Based on the above facts and law, we conclude that you are not organized or operated for purposes described in Section 501(c)(3) of the Code.

1. Providing housing in the manner you describe is a commercial, nonexempt purpose, causing you to fail the operational test.
2. Your Articles of Incorporation includes operate a homeowners association among your purposes which causes you to fail the organizational test.
3. The payments for the personal expenses of B and her family, constitutes inurement.

Accordingly you do not qualify for exemption.

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*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

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 Group 7830
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Group 7830
550 Main Street,
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,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892