



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Release Number: 201419016  
Release Date: 5/9/2014  
Date: 2/12/14  
UIL Code: 501.03-05

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.

Since 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.

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, you should 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.

Letter 4038 (CG) (11-2005)  
Catalog Number 47632S

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,

Director, Exempt Organizations

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: 12/19/13

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B =  
C =  
D =  
E =  
F =  
M =  
v =  
w dollars =  
x dollars =  
y =  
z =

**UIL:**

501.03-05  
501.03-10

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 meet the qualifications for exemption under section 501(c)(3) of the Internal Revenue Code? No, for the reasons described below.

Will you operate in a commercial, non-exempt manner inconsistent with section 501(c)(3) of the IRS Code? Yes, for the reasons given below.

Are private interests being served prohibiting you from qualification under Section 501 (c)(3) of

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

the Code? Yes, for the reasons given 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 M.

Your Charter states you are "organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under the section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code."

You further your purposes by:

- Acquiring distressed homes (properties) from government entities and individuals through purchase or donation and attending tax sales.
- Maintaining properties to city standards during transition period by mowing, clearing, cleaning, spraying and pruning.
- Packaging properties to provide housing for veterans, seniors, and individuals who require assisted living or constant care.
- Approving building plans of developer/builder to ensure mission objectives are followed.
- Transferring property to developer/builder at book value, which includes costs you incurred to purchase, maintain and dispose of the property. The developer/builder will be required to develop the property into private housing, assisted living or constant care housing.
- You will not provide housing. Instead, you will provide lots in cooperation with housing assistance organizations and military veteran organizations. You will sell the property to a developer/builder who will then develop the property and sell it to the end user. Once the developer/builder has been identified, you will construct a contract that specifies the terms under which the property is deeded to the specified end user.

To accomplish your purposes, you will acquire properties by one of two ways:

1. Acquisition of property from private property owners:

You will solicit donations from private owners who have properties that are worth less than their debt, or simply do not want their property. You stated that the property owners have the following options:

- a. Let the government seize the property.
- b. Burn their property and try to collect insurance proceeds.
- c. Rent them to undesirables who do not maintain them.
- d. Abandon their property

You plan to contact property owners of approximately v properties and encourage them

to donate their unwanted property to your organization. Properties from private owners will be purchased or accepted as donations.

Once you have identified individuals who wish to donate or sell their property and arrive at a verbal agreement to transfer the property, you will prepare an Offer To Purchase Real Estate. Next, an account with a closing attorney will be opened and the same procedure as in all real estate transactions will be followed.

You indicated that neither the City nor the County want to seize the properties because they will have to incur the cost to maintain them. Currently, these properties are selling between w dollars, about 50% below County Assessor's appraised value. Your organization will allow private owners an opportunity to donate the unwanted properties to your organization. The benefits to the property owners will be a tax deduction at the County Assessor's appraised value, which is approximately twice the fair market value of the property. In addition, the property owners will not have their credit impacted by a possible foreclosure or property seizure.

## 2. Acquisition of property through the E B program:

You will participate in the E B program to acquire the county's unsellable properties. In the D, E, C area, there are thousands of properties each year that are sold at delinquent tax sales. At many of the sales, there are no bidders and the County will seek to donate the real estate to charitable organizations. These properties have been on the market for at least six months and the County considers them unsellable.

To acquire properties under this program, an organization must:

- Be a private nonprofit entity or a nonprofit community development corporation or an adjoining property owner of the delinquent tax property:
- Pay the advertising notification and processing fee of x dollars
- Pay the closing costs, delinquent taxes owed on the property and the cost of recording the Quit Claim Deed.

Organizations that purchase properties through the E B program will receive the property free and clear of any and all encumbrances, except for any and all easements of record and easements for all existing utility, sanitary sewer and drainage facilities. After the E F has accepted your request for a nominal consideration conveyance to purchase a property, a E employee will complete the transfer of title.

After you have acquired properties as discussed above, you will work with developers/builders who will purchase the property from your organization to prepare it for use as low-income housing.

Once a developer/builder has been identified, your attorney will construct a contract that specifies the terms under which the property will be transferred. Developers/builders will be required to construct new properties or remodeling existing properties for the purpose of providing homes for low-income individuals or war veterans. In some instances, you will work with charitable organizations to identify individuals in need of low-income housing. You will sell

properties to developers/builders who will then construct or remodel properties that will then be sold to the individuals who are in need of low-income housing.

You plan to have the properties developed, either individually or bundled, by a developer/builder. You will receive the property at a cost that will allow it to pass to a developer/builder at a significantly reduced price. You will deed the properties to developers/builders or end users with no profit. However, the developers/builders will be required to pay any costs incurred by you to acquire, maintain, package the properties, and sell/donate the property.

Approximately 75% of your costs will be incurred to maintain the properties you will acquire.

The properties you will acquire are located in E,C. You provided statistical information of the area located within zip code z, one of y different zip codes located in E, C. You have not provided any information to indicate that the areas where you will conduct your activities have been declared economically depressed or blighted.

**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)-1(a)(1) of the Income Tax Regulations (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.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to

accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Revenue Ruling 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.

Revenue Ruling 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.

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 the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

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 addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. As the court stated: Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

**Application of law:**

You are not operated exclusively for charitable, educational, or religious purposes consistent with section 501(c)(3) of the Code nor section 1.501(c)(3)-1(a) of the regulations and therefore fail to meet the operational test. Specifically, the facts above indicate that you are not operated for exempt purposes but that you are operated in a commercial manner to acquire properties and sell the properties to developers/builders at cost.

As described in section 1.501(c)(3)-1(c)(2) of the regulations, you are not operated exclusively for exempt purposes because your activities provide a private benefit to donors of private properties and to developers/builders. Donors will be allowed to assess the value of their donation at the County Assessor's book value, which is twice the actual selling price of comparable properties. Developers/builders will be able to purchase properties from your organization at a significantly reduced cost. The developers/builders will prepare the properties for private housing, senior housing, assisted care housing or nursing homes/constant care facilities. Once the developers/builders have completed work on the properties, they will sell the properties to the end users.

You have not established that you are organized and operated for the benefit of public rather than private interests as required in regulation 1.501(c)(3)-1(d)(1)(ii). Your activities provide a material benefit to the private interests of donors and developers/builders.

You are not operated exclusively for one or more exempt purposes as required under section 1.501(c)(3)-1(c)(1) of the regulations. Selling properties at or below cost to developers/builders is not in furtherance of an exempt purpose.

You are not similar to the organization in Rev. Rul. 76-419, above, in that your activities are not conducted in an economically distressed area. Your activities are conducted throughout the E, C area. There is no evidence to support that E, C is an economically distressed area.

You are similar to the organizations described in Rev. Rul. 77-111, above, in that your activities do not limit your benefits to needy individuals or businesses. Your activities provide a direct benefit to donors of private properties by allowing them to deduct their donations at approximately twice the fair market value of their properties. Your activities provide a direct benefit to developers/builders by allowing them to purchase properties at significantly below fair market value.

As noted in B.S.W Group and Arlie Foundation, above, the sale of properties to developers/builders constitute a business ordinarily carried on as a commercial venture. You will acquire, maintain and sell properties at cost. You will construct a contract that specifies the terms under which the property is deeded to the specified end user. Once the developer/builder has completed the preparation of the property, it will be sold to the end user. The activities are similar to that of a for-profit real-estate development company.

Although the properties may eventually be utilized by the poor or distressed, the primary purpose of your activities will provide a material commercial benefit to developers/builders. You will receive the property at a cost that will allow you to pass it to a developer/builder at a



significantly reduced price. Due to the commercial benefit provided, your activities are distinguishable from an exclusively charitable and educational organization. As noted in Better Business Bureau of Washington D.C., above, the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

## Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes as required by section 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. You are organized and operated for a commercial purpose that is inconsistent with the requirements of section 1.501(c)(3)-1(c)(1) of the regulations.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

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, *How To Appeal An IRS Decision On Tax-Exempt Status*.

Types of information that should be included in your protest can be found on page 1 of Publication 892, under the heading "Filing A Protest." The statement of facts (bullet 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 protest will be considered incomplete without this statement.

If an organization's representative submits the protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying documents; and whether the representative knows personally that the statements of facts contained in the protest 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](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 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,

Kenneth Corbin  
Acting Director, Exempt Organizations

Enclosure: Publication 892

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