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Date 10/9/91

Surname [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
SEP 9 1991

EIN: [REDACTED]  
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under this section. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted shows that you were incorporated under the non-profit corporation laws in the State of [REDACTED] on [REDACTED]. You were established for the specific purpose to purchase or construct supervised facilities and develop training programs for individuals with mental retardation and related developmental disabilities in [REDACTED] and [REDACTED]. Currently, you have submitted an application to the State of [REDACTED] in response to its Publication of Need for [REDACTED] beds for the mentally retarded.

Planned facilities will be licensed under the Medicaid Intermediate Care Facility for the Mentally Retarded (ICF/MR) program and as such will qualify for Medicaid funding. The facilities will be group homes that will house between six and eight individuals supervised by a registered nurse.

You expect to be financially supported by tax-exempt bonds and limited in-person solicitations by directors and officer of your organization. You intend to issue tax-exempt bonds to raise capital to fund the purchase, development or construction of your planned facilities and future projects. The bond buyers will have a first mortgage on all facilities purchased or developed. All bond payments will be satisfied from the cash flow derived from the your facilities namely Title XIX Medicaid Funds.

[REDACTED]

You proposed tax-exempt bond deal lacks sufficient information. To date, no property has been identified or purchased. As a result, you have not submitted any appraisals. A feasibility study has not been submitted. A bond date has not been established. No offering statements nor model agreements have been developed. Bond counsel opinion has not been submitted. No bond trustee has been selected.

Organizations described in section 501(c)(3) are exempt from federal income tax under section 501(a). In order to be described in section 501(c)(3), an organization must be organized and operated exclusively for charitable or educational purposes.

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

Section 1.501(c)(3)-1(c) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). 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)(ii) of the regulations states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator, shareholders, or persons controlled, directly or indirectly, by such private interests.

Rev. Proc. 91-4, 1991-4 I.R.B. 20, (Jan. 28, 1991) at section 8, provides that the Service may decline to issue a ruling or determination letter whenever warranted by the facts or circumstances of a particular case.

Rev. Proc. 90-27, 1990-1 C.B. 514, provides, in part, that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that the

proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of the contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operation may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest right will be afforded.

In News Release IR-90-60, dated April 3, 1990, the Service explained that it is carefully examining situations involving tax-exempt bonds used to finance health care facilities to determine whether the organization on whose behalf the bonds are issued is furthering private interests to an impermissible degree. The news release described several situations where such financing is a part of a series of transactions in which exempt organizations are used by developers or others to acquire health care facilities at a cost in excess of the fair market value. These situations may involve unreasonable development or management fees paid to acquire or operate health facilities. In addition to raising private benefit issues, such transactions may also endanger the financial integrity of the health care facility. Also the news release suggests that there are situations where an exempt organization leases or sells a health care facility that is purchased with tax-exempt bonds to partnerships or other entities who also maintain some control over the exempt organization. This raises concerns about arm's length standards and the true owner of the health facility.

Pursuant to Rev. Proc. 91-4, supra, and Rev. Proc. ~~90-27~~, supra, you have failed to provide sufficient detail to show that you are exclusively operated for section 501(c)(3) purposes. You have not provided any bond documents i.e. no feasibility study, no appraisals and no property description.

Accordingly, you have failed to establish that you qualify for exemption under section 501(c)(3). You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the

