

Internal Revenue Service

Department of the Treasury

District
Director

Baltimore District

31 Hopkins Plaza, Baltimore, Md. 21201

▷

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Person to Contact:

[REDACTED]

Contact Telephone Number:

[REDACTED]

Reply Refer To:

[REDACTED]

Date: FEB 10 1999

Certified Mail

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 that section. Our reasons for this conclusion and the facts on which it is based are explained below.

Evidence submitted revealed that the organization incorporated in [REDACTED] on [REDACTED]. The purpose of the Corporation is to:

- A. To obtain, by agreement with the [REDACTED] of [REDACTED] in [REDACTED] possession of such title and interest as said incorporated Association has or may have in and to what is known as the [REDACTED] in said [REDACTED] in [REDACTED] and the [REDACTED] and grounds adjacent thereto: and to obtain title possession and control of all of said [REDACTED] and adjacent grounds from whatever source such title may be lawfully obtained.
- B. To obtain by purchase, gift or grant and hold and use or sell for the benefit of said Cemetery and said Association lands, property and money, and all pursuant to the provisions and conditions of such gifts and grants and according to existing laws.
- C. To raise money by subscription of parties who may be interested in said [REDACTED] and to use such money for current upkeeps thereof or for permanent fund therefore as the conditions of such subscription may provide, to obtain lawfully the custody of all existing permanent funds theretofore raised for the benefit of said [REDACTED] and to use the interest and income of any all permanent funds so raised and obtained for the proper use in the maintenance of said Cemetery.
- D. To lay out and plat the grounds of and for said [REDACTED] into lots and grave plots suitable for the requirements of said Cemetery and Community and to sell the same for burial and ornamental purposes and to use the income from such sales for the proper benefit of said Cemetery and

[REDACTED]

E. To manage the affairs of said [REDACTED] to the best possible advantage, and to protect the property thereof: to see that the lots and graves therein are properly cared for; and to do all other things necessary and/or lawfully beneficial thereto.

Further clarification of the activities disclosed the organization to be a perpetual care association. The association maintains and repairs the cemetery and grounds. Additionally, the organization states it is lessening the burdens of government.

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, 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 provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

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 such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in *Better Business Bureau v. United States*, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. The term 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 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 or discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

[REDACTED]

IRC 501(c)(13) grants exemption to cemetery companies, crematoria and perpetual care funds of which are organized and operated exclusively for the benefit of their members. These types of organizations are not operated for profit nor do they inure to the benefit of any private shareholder or individual.

Perpetual care organizations are formed to receive and hold in trust funds for the care and maintenance of cemeteries.

Revenue Ruling 58-190, Cumulative Bulletin 1958-1 page 15, held that an organization including a trust, created by formal action, the funds of which are irrevocably dedicated to the perpetual care of a nonprofit cemetery as a whole none of the earnings of which inures to the benefit of any private shareholder or individual may qualify for exemption from Federal income tax under IRC 501(c)(13).

Based on the facts presented we have determined that [REDACTED] does not qualify for exemption under IRC 501(c)(3).

ISSUE 1 - Lessening the Burdens of Government

The organization does not lessen the burdens of government. The organization was not formed by State statute nor is the organization accountable to, or controlled by the State Regulations 501(c)(3)-1(d)(2).

ISSUE 2 - Charitable, Educational, Scientific or Religious

The organization is not charitable, educational, scientific or religious. In fact, the organization is similar to Revenue Ruling 58-190 as a perpetual care organization maintaining and upkeeping a cemetery.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of sections 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

[REDACTED]

[REDACTED]

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all documentation required Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Paul M. Harrington
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]