

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
P.O. Box 2508 - EP/EO  
Cincinnati, OH 45201

Date: OCT 15 2001

Employer Identification Number:  
[REDACTED]

Person to Contact I.D. Number:  
[REDACTED]

Contact Telephone Numbers:  
[REDACTED]

Phone  
[REDACTED]  
FAX  
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 since you are a corporation. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment 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.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

*Steven P. Miller*

Director, Exempt Organizations

Enclosures: 3

Enclosure I

You were incorporated on [REDACTED] as a Not For Profit Corporation in [REDACTED]. Your Articles Of Incorporation state that the purposes for which you were incorporated are to

(a) assist and cooperate with colleges and universities to alleviate shortages of suitable student housing, and in connection therewith, to build, provide and maintain affordable on-campus residential housing facilities for students and staff at colleges and universities; and

(b) do any other act or thing incidental to or connected with the forgoing purposes or in advancement thereof, but not for the pecuniary profit or financial gain of its members, directors, or officers except as permitted under [REDACTED].

On [REDACTED] Amended Articles of Incorporation were filed with the [REDACTED]. The purpose section of your Articles of Incorporation were amended to include the following:

"consult with and assist governmental entities and municipalities in the areas of providing facilities for the carrying out of governmental functions, and to provide consulting and related services to such entities for the establishment of appropriate facilities, and to assume responsibility for such functions currently handled by such entities for the benefit of such entities and the constituents therein"

You state on page 2 of Form 1023 that the purpose of the corporation is to assist and cooperate with colleges and universities to alleviate shortages of suitable student and staff housing, and in connection therewith, to build, provide and maintain affordable on-campus residential housing facilities for students and staff at colleges and universities. You also state that in addition the corporation will assist governmental entities and municipalities in the areas of providing facilities for the purpose of carrying out government functions, and to provide consulting and related services to such entities for the establishment of appropriate facilities.

You indicate that the organization will derive its financial support from public contributions that are expected to average about \$ [REDACTED] per year. The remainder of the funds will be obtained from tax exempt bond financing obtained for the development of real estate projects in furtherance of the organization's tax exempt purpose. You also state that no formal fundraising program has been adopted, nor is it expected that one will be necessary in order to accomplish the Foundation's purpose.

[REDACTED]  
[REDACTED]

In response to item 6, page 3 of Form 1023 you indicate that the organization will undertake tax exempt bond financing under IRC section 145. You indicate that the organization may obtain [REDACTED] financing, for construction purposes consistent with its tax exempt purposes.

You stated on page 4, item 12 that consulting services will be performed for a fee and that fees will be determined on a case by case basis, depending upon individual projects.

To date your organization has not conducted any of your proposed activities. Your organization plans to construct facilities for colleges and governmental entities. You plan to finance the construction and development with the proceeds obtained through the issuance of tax exempt bonds. You will then enter into capital leases with the college or governmental entity whereby they will own the facility at the end of the lease. The capital lease will be used as security for the tax exempt bonds and the rents charged will be used to repay the bond financing.

You plan to lessen the burden of government and promote education by supplementing their access to capital markets by facilitating the construction of facilities, and the financing of this construction through a lease/purchase financing vehicle.

You are not affiliated with, or controlled by any other non profit or governmental entity. The local governments and the colleges or universities which you hope to assist will have no control over electing or appointing your board of directors.

The financial data submitted on page 8 of Form 1023 indicates that for tax years [REDACTED], [REDACTED], and [REDACTED] your organization anticipates total revenues of \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] respectively. The financial data submitted indicates that out of the \$ [REDACTED] in total revenue \$ [REDACTED] will be from gifts, grants, and contributions. The remaining \$ [REDACTED] will be the proceeds from transfers to educational and governmental institutions of developed real estate pursuant to capital lease arrangements. You have listed expenses of \$ [REDACTED], \$ [REDACTED], and \$ [REDACTED] for tax years [REDACTED], [REDACTED], and [REDACTED] respectively. You have listed these expenses as other expenses and stated that they are the costs with regard to development of real estate projects on behalf of educational and governmental institutions. You have not provided a detailed breakdown of these expenses.

In correspondence dated [REDACTED], you stated that the organization's business is being conducted by its board members, all of whom are volunteers and each of whom have knowledge concerning

[REDACTED]  
[REDACTED]

community needs, construction and real estate. There are currently no officers as no activities have commenced.

Your correspondence indicated that your organization would be marketed to colleges and universities by word of mouth and through direct contact with regionally located colleges, universities and municipalities. You stated that the organization may also decide to advertise in higher education trade journals and/or attend trade shows of college administrators.

You stated that your fees for consulting services would be set at rates commensurate with the amount of required work as customary with industry practices, and sufficient to cover all costs of such services.

Your [REDACTED] correspondence also stated that your organization is neither a subsidiary of; affiliated with; or controlled by any exempt organization and that the organization has no relationships with any municipal governments other than through any future bond financing related transaction.

In correspondence dated [REDACTED], you stated that your organization's educationally related purpose comports with the requirements recited in section 501(c)(3). You stated that [REDACTED] purpose to assist government entities and municipalities in the areas of providing consulting and related services to such entities for the establishment of appropriate facilities also comports with the organizational and operational requirements. You indicate that [REDACTED] activities lessen the burdens of government

You presented several Revenue Rulings and as precedent for granting exemption under section 501(c)(3) of the Internal Revenue Code. You also included the court case Monterey Public Parking Corporation v. the United States and stated that the District Court held that the City of Monterey was the primary beneficiary of the parking facility and even though the plaintiff corporation's business activity itself was similar to that which others might engage in for private profit, it was carried on only because it was necessary for the attainment of an undeniably public end.

Your correspondence dated [REDACTED] indicated that your organization was formed in response to the generally recognized need for governmental facilities, student housing and other sites to operate for governmental tax exempt colleges that benefit the public and the communities in which they are located. Your correspondence reemphasized the fact that the organization currently has no relationships with colleges or governmental entities. Your response also stated that the organization does not anticipate that the

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██████████

colleges or governmental entities will have a role in the daily operations of the Foundation's organization. You indicated that they will be involved in specific projects undertaken, but that they will not be members of the Foundation's board of directors, officers, employees or otherwise involved except to the extent needed for their specific project.

In your correspondence you cited General Counsel Memorandum ██████████ as precedent (General Counsel Memoranda can not be cited as precedent). The memorandum dealt with three organizations and determined that the referenced organizations lessened the burdens of government and qualified for exemption.

In the same correspondence dated ██████████ you stated that "Tax exempt bond financing will be repaid from the rents received under any capital lease. The capital leases will be used as security for any tax exempt bond financing, and at the end of the term of the lease, the facility will be owned by the college or municipality, free and clear. It is anticipated that rent payments will assigned to the bond authority to provide these payments."

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious or 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 Regulations states:

In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states:

The term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states 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) 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.

[REDACTED]

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Revenue Ruling 72-369, 1972-2 C.B. 245, held that an organization formed to provide managerial and consulting services to unrelated nonprofit organizations exempt under section 501(c)(3) of the Code to improve the administration of their charitable programs on a cost basis was not operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. The Service's position was that an organization is not operated exclusively for an exempt purpose simply because it is not operated to make a profit. To satisfy the operational test, an organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and applicable regulations. Provision of managerial and consulting services for a fee were considered by the Service to be providing a commercial service normally carried on by a for profit entity.

Revenue Ruling 77-3, 1977-1 C.B. 140, held that an organization formed to lease housing to a city at cost, so that the city can provide the housing free of charge to tenants whose homes have been destroyed by fire, did not qualify for exemption under section 501(c)(3) of the Code. The Service contended that the organization was simply leasing housing property and providing certain maintenance services in a manner undistinguishable from other for profit entities, and in itself is not operated exclusively for charitable purposes.

Revenue Ruling 85-2, 1985-1, C.B. 178, held that to determine whether an activity is a burden of government, the question to be answered is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden.

Rev. Rul. 67-217, 1967-2 CB 181, held that a nonprofit organization may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 where it is formed to provide housing and food service exclusively for students and faculty of a university in accordance with the rules and regulations of the university and offers the university an option to acquire the property at any time upon payment of an amount equal to the outstanding indebtedness.

[REDACTED]

Rev. Rul. 76-336, 1976-2 CB 143, held that a nonprofit organization formed to provide housing for students of a college unable to provide adequate student housing and located in a community in which suitable housing is not otherwise available is operated exclusively for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 81-19, 1981-1 C.B. 353, held that an organization formed to assist a university qualified for exemption under section 501(c)(3) of the Code. The organization's operation of machines that provide soft drink and food vending services and laundromat facilities on campus is not unrelated trade or business under section 513.

In Rev. Rul. 66-358, 1966-2 CB 218, a corporation contributed funds and realty adjacent to its plant reception area to an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954. The exempt organization used the funds and realty to establish a park for the use of the general public. Acceptance of this gift by the exempt organization did not affect its exempt status even though the donor retained the right to continue using the picture of a certain scenic view in the park as its brand symbol.

Rev. Rul. 78-86, 1978 1 CB 151, held that the Service will not follow the Monterey Public Parking Corporation decision that an organization formed by merchants to establish and operate a public off-street parking facility that provides free or reduced-rate parking for the merchants' customers through a validation stamp system qualifies for exemption as either a charitable corporation under section 501(c)(3) of the Code or a social welfare organization under section 501(c)(4).

In B.S.W. Group, Incorporated v. Commissioner of Internal Revenue, 70 T.C. 352 (1978) the court held that a corporation which plans as its sole activity to offer consulting services for a fee set at or close to costs to nonprofit, limited resource organizations does not qualify for exemption under 501(c)(3) of the Code.

Your organization is not similar to the organizations described in Revenue Rulings 67-217 and 76-336. The organization described in Rev. Rul. 67-217 was formed to provide housing and food service exclusively for students of a particular university. The organization described in Rev. Rul. 76-336 was formed by community leaders to provide housing for students of a particular college in response to studies by staff members of the college showing that the college lacked suitable housing to meet the need. As both of the rulings indicate the organization was formed to provide services to a particular college or university. The school and community had significant involvement in the activities and creation of the exempt organizations. You have indicated that your organization currently has no relationships with colleges or governmental entities. You have also indicated that they will only be involved in specific projects undertaken, they will not



[REDACTED]  
[REDACTED]

be members of the Foundation's board of directors, officers, employees or otherwise involved except to the extent needed for their specific project. This relationship does not appear to differ from a commercially run business.

Revenue Ruling 81-19, which was cited as precedent dealt with an organization exempt under section 501(c)(3). The organization conducted activities for a particular university. The issue in this ruling was whether the organization's operation of machines that provide soft drink and food vending services and laundromat facilities on campus is an unrelated trade or business under section 513. The ruling concluded that it was not unrelated business income. The organization in this ruling worked in close cooperation with a particular university and they conducted activities for this particular university. You currently do not have a relationship with any organization. Your organizations present activities consist of locating customers for your services.

Your organization is not similar to the organization described in Rev. Rul. 66-358. The organization described in the ruling was exempt under section 501(c)(3). The issue was whether the receipt of funds and realty to establish a park would have an adverse affect on their exempt status even though the donor retained the right to continue using the picture of a certain scenic view. Your organization plans to construct facilities and lease the facilities to exempt organizations at cost.

You are similar to the organization described in Revenue Ruling 77-3, in that you appear to rent the facilities you construct to the organizations at cost. While you may have some charitable intentions, the building of facilities, and then leasing them at cost does not appear to differ significantly from a commercial activity normally carried on for profit. While you indicate that working with the colleges or universities is promoting education per Regs. 1.501(c)(3)-1(d)(2), your activities do not appear to differ significantly from any other commercial business attempting to make a sale, and working with the customer on how to obtain the proper financing.

You are similar to the organization described in Revenue Ruling 72-369, in that you appear to provide services to unrelated 501(c)(3) organizations at a fee not substantially below cost. While lease payments may be below the market rates the organizations could obtain elsewhere, this does not mean that they are offered at substantially below cost. Many commercial businesses find ways to provide goods and services at market rates less than their competitors. Reiterating the Service's position in Revenue Ruling 72-369, just because an organization does not make a profit, does not mean it is operated exclusively for charitable purposes.

[REDACTED]

You do not appear to lessen the burdens of government under Regs. 1.501(c)(3)-1(d)(2) in that you were not created by a government entity, and are not controlled or supervised by a government entity. While you may assist various local governments in carrying on activities which they have previously carried on, and can show them ways that your organization can assist them in doing this better, you do not lessen the burdens of government, and cannot be considered similar to the organization described in Revenue Ruling 85-2. At the present time you do not have any relationships with governmental entities or colleges. Your anticipated transactions with various unrelated governmental units and colleges share similarities with a commercially run business that has narrowed/selected it's appropriate target market.

Your organization shares similarities with the organizations described in Revenue Rulings 77-3, and 72-369, both of which provided commercial services at cost to unrelated entities. You do not lessen the burdens of government under Regs. 1.501(c)(3)-1(d)(2), and you are not similar to the organization described in Revenue Ruling 85-2, in that you were not created, affiliated, or controlled by any government entity. Therefore we must conclude that you are not operated exclusively for charitable, educational, scientific, or religious purposes within the meaning of section 501(c)(3) of the Code.

You will not be recognized as an organization described under section 501(c)(3) of the Internal Revenue Code.