

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - Room 6417
Cincinnati, OH 45201

Date: AUG 19 2002

[REDACTED]

Employer Identification Number:
[REDACTED]

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

Contact Telephone Numbers:

[REDACTED] Phone

[REDACTED] FAX

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 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. 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]

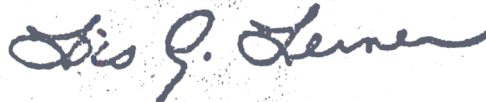
If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory 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.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

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,



Director, Exempt Organizations

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Publication 892
Form 6018

Enclosure I

FACTS

Your organization was formed as a trust on [REDACTED]. The trust is governed by the provisions of [REDACTED]'s Last Will and Testament. [REDACTED]'s will contains the following provisions:

- a. I give my stock in [REDACTED] to [REDACTED], [REDACTED] and [REDACTED] equally in amounts equal to the maximum amount that is allowed by law without incurring tax liabilities. The balance of my stock in [REDACTED], I leave to [REDACTED], and I direct the Trust to sell the stock only to [REDACTED], [REDACTED] and [REDACTED] or their descendents.
- b. My personal effects shall be divided between [REDACTED] and [REDACTED] by [REDACTED] and [REDACTED] as they, in their sole discretion decide.
- c. Any and all of the rest of my property, both real and personal, I give to [REDACTED] for the benefit of the citizens of [REDACTED].
- d. My personal residence in [REDACTED] is to be used by [REDACTED] as a meeting place for the trustees as well as housing for the trustees as they may desire. The home will also be available, at a reasonable and modest charge, for use by relatives and friends at the discretion of the trustees. It is my hope the home will serve as a hostel for people to enjoy and the fee charged for their stay to be modest, determined by the basic expenses necessary to keep up the dwelling and its grounds.
- e. The trust shall also support and maintain [REDACTED] living at the time of my death, until the time of their natural death.
- f. I direct the income from the Trust assets is to be used for taxes and maintenance of the Trust assets. The balance of the income is to be used as grants to benefit the citizens of [REDACTED]. The principal is to be invested or loaned to promote businesses in [REDACTED].

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Article II of your trust document states that the trust's purpose is to "...qualify as a charitable trust that can receive gifts free of taxes. If the trust assets do not so qualify and estate taxes are determined to be due on all or any portion of the trust assets, then that portion of the trust assets subject to taxation are to be transferred out of the trust and divided equally among [REDACTED] and [REDACTED]."

Article X of your trust document states the following:

The Income from the Trust assets is to be used for expenses and maintenance of the Trust assets. The balance of the income is to be used as grants or loans to promote businesses and benefit the citizens of [REDACTED]. The principal is to be invested or loaned to promote businesses in [REDACTED].

The Trustees may freely act in all matters concerning the Trust including investment and distribution, after forming judgments based upon all circumstances of any particular situation as to the wisest and best course to pursue in the interest of the Trust and its beneficiaries, without the necessity of obtaining the consent or approval of any person or of any court. A majority vote is all that is necessary unless otherwise provided in this document.

Your organization has no members. The trustees of your trust are [REDACTED] and [REDACTED].

You state on page 2 of Form 1023 that your trust was created to benefit the citizens of [REDACTED]. The focus of your trust would be to engage in charitable activities which can result in the education of new business ideas or modifications of existing businesses to increase business in general or even specific businesses for the benefit of [REDACTED] as a whole.

Your organization plans to work with other existing exempt organizations to carry out your purposes. In addition, you may work with local governments on public purpose projects. You will help to establish new or expand existing business and employment opportunities for the citizens of [REDACTED].

You state that [REDACTED] is an economically depressed area. [REDACTED] has steadily lost population and job base over the past thirty years and it has the highest unemployment rate of any

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[REDACTED] in [REDACTED]. The total population is currently 1,200 people. Your organization plans to use the trust assets to stimulate the economy by promoting business through cooperation with local government and by educating individuals on how to improve or modify existing businesses. Specifically, you would work with state and federal programs that encourage economic development in the area.

You explain that there are people interested in exploring the opportunities of using what have been the strong points of [REDACTED] to re-establish businesses. This might include tourist related industries such as traditional hunting and fishing guides, river rafting on the [REDACTED] River, bird watching, fossil hunting, or using the natural resources such as the fossils, the juniper trees, or traditional forestry to create a business and particularly value added businesses in [REDACTED] to provide local jobs and payroll. Your organization would make loans and grants to provide educational assistance for the business owners, prospective business owners and employees in an effort to jump start the economy in [REDACTED]. In addition, you will conduct training programs for the unemployed and underemployed of [REDACTED].

With regard to the loans your organization will make to business owners, prospective business owners and employees, you state that interest rates and payment terms will be set by your organization and that they will generally be set at commercial rates. The loans would be open to citizens of [REDACTED] and businesses in [REDACTED]. The trustees would determine whether or not the application benefits [REDACTED] and whether or not the loan is a prudent loan to make. Preference will be given to organizations that will provide employment and training to the underemployed and the unemployed of [REDACTED].

You state that your trustees have no consulting firms or other businesses that would benefit from the proposed economic development activities. [REDACTED] your trustee, does sell insurance and in theory, one of the new businesses may purchase insurance from his firm.

The trust assets currently consist of a home and real property located in [REDACTED]. The value of the property is \$ [REDACTED]. The trust will either rent or sell this property. You may receive an additional \$ [REDACTED] in cash if you qualify as a tax-exempt charitable organization. The cash would be invested in conservative investments that would not earn a

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rate of return above four percent.

The income to your trust is from distributions of property from the [REDACTED] and from return on investments. Your budgets currently reflect expenses of \$ [REDACTED] per year in grants.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

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

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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 or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(a)-1(c) of the Regulations states that the words "private shareholder or individual" mean an individual having a personal and private interest in the activities of the organization.

[REDACTED]

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[REDACTED] "Deviation from instrument as to trustee's duties and powers not authorized," states the following:

Nothing contained in this section and [REDACTED] to [REDACTED] authorizes any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the trustee's duties and powers. [Formerly [REDACTED]]

[REDACTED] "Copies of certain documents and notice to be provided to Attorney General" states as follows:

Every person who offers for probate any instrument which establishes a testamentary trust of property for charitable purposes or who records in any county an inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. Upon filing the final account and petition for decree of distribution of any estate through which a residuary testamentary trust for charitable purposes is established, the personal representative shall mail a copy thereof, and a copy of the notice fixing the time for filing objections thereto, to the Attorney General not less than 20 days before the time fixed in the notice.

[REDACTED] "Trustees may amend governing instrument of 'private foundation' or 'split-interest' trust with prior consent of Attorney General and benefited organizations" states as follows:

The trustee of a trust which is a private foundation to which [REDACTED] applies or a split-interest trust to which [REDACTED] applies may, with the prior consent of the Attorney General, amend the terms of the governing instrument to the extent necessary (1) to assure conformity of the governing instrument with the requirements for exemption from the taxes imposed by sections 4941 to 4945 of the Internal Revenue Code of 1954, including amendments which broaden, extend, reduce or limit the charitable purposes for which the trust is administered, or (2) to terminate the status of the trust as a private foundation in a manner described in section 507(b)(1) of the Internal Revenue Code of 1954. Prior to giving consent, the Attorney General shall determine that the proposed amendments are necessary or appropriate to achieve the charitable purposes of the trust.

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██████████ "Certain agreements relating to trusts authorized; persons required to sign agreement," provides that (1) The persons specified in subsection (2) of this section may by written instrument enter into an agreement with respect to:

- (a) Determining classes of creditors, beneficiaries, heirs, next of kin or other persons;
 - (b) Resolving disputes arising out of the administration or distribution of the trust, including disputes over the construction of the language of the trust or construction of the language of other writings that affect the trust;
 - (c) Granting to the trustee necessary or desirable powers not granted in the trust instrument or otherwise provided by law, to the extent that those powers are not inconsistent with the express provisions or purposes of the trust;
 - (d) Modifying the trust instrument, including extending or reducing the period of the trust's operation, if the modification is not inconsistent with any dominant purpose or objective of the trust; or
 - (e) Any other matter that can be the subject of a petition under ██████████ or the subject of an amendment under ██████████
- (2) An agreement under this section is not effective unless it has been signed by all of the following persons:
- (a) The trustor or grantor, if living;
 - (b) All persons who have a beneficial interest in the subject of the agreement;
 - (c) Any acting trustee for the trust; and
 - (d) The Attorney General, if the trust is a charitable trust subject to the enforcement or supervisory powers of the State or the Attorney General under the provisions of ██████████ ██████████

If a trust is created for the benefit of designated

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beneficiaries, it is not charitable even though its purpose is to relieve poverty. Restatement (Second) of Trusts, § 375, comment b, (1959).

Henry O. Havemeyer v. Commissioner, 36 B.T.A. 859, held that an organization which was making distributions exclusively to Mr. Havemeyer and members of his family as salaries and other forms of payment did not qualify for tax exemption under section 23(n)(2) of the Revenue Act of 1932. The organization was formed by Mr. Havemeyer, members of his family, and a close business associate. The contributions to the organization were made by Mr. Havemeyer and members of his family. All distributions made by the organization served the private interests of Mr. Havemeyer, his family and business associate. The organization did not contribute funds to charity as indicated in the purpose statement in their Articles of Association.

Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), held that the presence of a single nonexempt purpose, if substantial in nature, will preclude tax exemption under section 501(c)(3) of the Code.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court was called on to decide whether benefits to third parties, who were not members of the petitioner, would prevent the petitioner from being recognized as an exempt organization within the meaning of section 501(c)(3) of the Code. As its primary activity, the Academy operated a school to train individuals for careers as political campaign professionals. The Tax Court found that the Academy conducted its educational activities with the partisan objective of benefiting Republican candidates and entities. The Tax Court concluded that the Academy operated to confer a substantial private benefit on Republican entities and candidates. The Court stated that the requirement that the petitioner not be operated for the benefit of private interests is applicable notwithstanding the Service's concession that no portion of the petitioner's net earnings inured to the benefit of private shareholders or individuals. Also important to the ruling was that prohibited private interests include those of unrelated third parties. The Court held that the petitioner's activities benefited private interests more than incidentally and that this substantial nonexempt purpose was grounds for revocation of the Academy's exemption.

In Church by Mail, Inc. v. Commissioner (1985), the Court affirmed a Tax Court decision (T.C. 1984-349). Church by Mail sent out sermons

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in numerous mailings. This required a great deal of printing services. Twentieth Century Advertising Agency provided the printing and mailing. Twentieth Century was controlled by the same ministers. It also employed family members. The services were provided under two contracts. The contracts were signed by the two ministers for both Church by Mail and Twentieth Century. Church by Mail business comprised two-thirds of the business of Twentieth Century. In deciding for the government, the Court made the following statement:

There is ample evidence in the record to support the Tax Court's finding that the Church was operated for the substantial non-exempt purpose of providing a market for Twentieth's services. The employees of Twentieth spend two-thirds of their time working on the services provided to the Church. The majority of the Church's income is paid to Twentieth to cover repayments on loan principal, interest, and commissions. Finally, the potential for abuse created by the ministers' control of the Church requires open and candid disclosure of facts bearing upon the exemption application. Moreover, the ministers' dual control of both the Church and Twentieth enables them to profit from the affiliation of the two entities through increased compensation.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exerted significant indirect control over est of Hawaii, a nonprofit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the nonprofit as an "instrument" to further their for-profit purposes. Neither the fact that the for-profits lacked structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts were reasonable affected the court's conclusion that est of Hawaii did not qualify as an organization described in section 501(c)(3) of the Code.

Rev. Rul. 67-5, 1967-1 C.B. 123 held that a foundation controlled by the creator's family, operated to enable the creator and his family to engage in financial activities beneficial to them, results in the foundation's ownership of non-income-producing assets which prevents its carrying on a charitable program commensurate in scope with its financial resources did not qualify for tax exemption under section 501(c)(3) of the Code.

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Rev. Rul. 69-256, 1969-1 C.B. 151 held that a testamentary trust established to make annual payments to exempt charities and to use a fixed sum from annual income for the care of the testator's burial lot does not qualify for tax exemption under section 501(c)(3) of the Code.

Rev. Rul. 69-279, 1969-1 C.B. 152 held that an irrevocable inter vivos trust which provides that a fixed percentage of income must be paid annually to the settlor with the balance to charity is organized and operated for private interests and thus not entitled to exemption under section 501(c)(3) of the Code.

APPLICATION OF LAW

Section 501(c)(3) of the Code sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Your organization has not satisfied either test.

To satisfy the organizational test, you must be organized exclusively for purposes specified in section 501(c)(3) of the Code. You have submitted a trust as your organizing document, however, this document was drawn up after the decedent's death. There is no record of an amendment of the will to include the provisions of the trust filed with the probate court. Based on [REDACTED], your trust does not legally exist. As a result, the provisions of [REDACTED]'s will would serve as the organizing document for your organization. According to [REDACTED], nothing in the [REDACTED] authorizes a departure from, or variation of, the express terms or limitations set forth in any will except as provided in [REDACTED]. [REDACTED] provides for the amendment of the governing instrument of a "private foundation" or a "split-interest" trust with the prior consent of the Attorney General and benefited organizations. [REDACTED] provides that the person specified in subsection (2) of this section may by written instrument enter into an agreement with respect to modifying the trust instrument if the modification is not inconsistent with any dominant purpose or objective of the trust. The agreement would have to be signed by the trustor, all persons with a beneficial interest in the subject of the agreement, any acting trustee, and the State Attorney General, if the trust is a

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charitable trust subject to the enforcement or supervisory powers of the State or the Attorney General.

Your organization does not meet the organizational test under section 501(c)(3) of the Code because the trust document submitted as the organizing document for the organization would not be recognized as a legal entity under [redacted] State Law and the provisions outlined in [redacted]'s will, which would serve as the organizing document for your organization, do not limit the purposes of your organization to exclusively charitable purposes described in section 501(c)(3). Rather, the provisions of the will, which creates the testamentary trust, provide for the care of the late [redacted]'s [redacted] the use of his personal residence as a meeting place and housing for the trustees and [redacted]'s family and friends for a modest fee, and for the sale of stock in a closely held corporation to three named individuals, one of whom is a trustee of your organization.

To satisfy the operational test, you must be operated exclusively for one or more exempt purposes. You will not be "operated exclusively for one or more exempt purposes" as set forth in section 1.501(c)(3)-1(e)(1) of the Regulations unless your organization's activities are conducted in furtherance of tax exempt purposes rather than to carry out the private interests of your trustees and the family members of the late [redacted].

Our understanding is that you will be conducting economic development activities in [redacted] which is an economically depressed area. You will promote economic development by enticing businesses to operate in [redacted]. The types of businesses that you will help set-up or relocate to the area are tourist related industries like hunting and fishing guides, river rafting businesses, or traditional forestry businesses. You plan to provide loans to businesses to help them with start-up costs. Loans and grants will be provided by your organization to provide educational assistance for the business owners, prospective business owners, and employees. The only income to your organization will be from rent of the residence and commercial property and from the sale of stock in a closely held corporation to three named individuals. The residence will be rented to the trustees, family and friends of [redacted] at a "reasonable and modest charge" which you have not established is set at fair market value.

To determine whether the operational test is satisfied, section 1.501(c)(3)-1(c)(1) of the Regulations directs the Service to

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determine if your organization engages primarily in activities which accomplish one or more exempt purposes. Section 1.501(c)(3)-1(c)(2) 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. Section 1.501(a)-1(c) states that the words "private shareholder or individual" mean an individual having a personal and private interest in the activities of the organization. While your organization will conduct economic development activities that are charitable in nature, your net earnings inure in part to the trustees, friends and family of [REDACTED] who are using [REDACTED]'s former residence for their personal purposes, at a modest charge, which is set to cover the basic expenses necessary to keep up the dwelling and its grounds. In addition, earnings are inuring to [REDACTED], and [REDACTED] (trustee of your organization), or their decedents. The estate is distributing a residual balance of stock in the closely held corporation, [REDACTED] to your organization. The testamentary trust restricts the subsequent sale of this stock by your organization to the aforementioned individuals. There are no other provisions in the trust that govern the sale of the stock to ensure that it is done at fair market value and that it results in an arms length transaction. Based on the information stated above, it is clear that the net earnings of your organization are inuring in part to the benefit of private shareholders and individuals. As a result, the operational test is not met.

In accordance with the Restatement (Second) of Trusts, @ 375, comment b, (1959), your organization is created for the benefit of designated beneficiaries and is thus not charitable.

Your organization is similar to the organization described in Henry O. Havemeyer v. Commissioner, 36 B.T.A. 859, because your assets are dedicated primarily to serving the private interests of the trustees, family and friends of [REDACTED]. You are restricting the sale of stock that will be distributed to the trust to three named individuals, one of whom is a trustee of your organization and you have no provisions in the trust that govern the sale to ensure that it is done at fair market value. In addition, you are renting [REDACTED]'s former residence to the trustees, family and friends of [REDACTED] at a modest charge, which is set to cover the basic expenses necessary to keep up the dwelling and its grounds. Like the organization described in the Court Case, you do not qualify for tax exemption under section 501(c)(3) of the Code because you are operating for

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the substantial nonexempt purpose of serving the private interests of the trustees, family and friends of [REDACTED]

Better Business Bureau of Washington D.C. v. United States, 326 U.S. 279 (1945) held that a single nonexempt purpose, if substantial, would preclude tax exemption under section 501(c)(3) of the Code. Your organization is using the assets of the organization to further the private interests of [REDACTED]'s trustees, family and friends. This constitutes a substantial nonexempt purpose which in accordance with the court's ruling in the aforementioned case will preclude tax exemption under section 501(c)(3).

You are similar to the organization described in American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), because you are providing benefits to [REDACTED]'s family, friends, and trustees of his estate. Like the American Campaign Academy, your activities benefit private interests more than incidentally and this substantial nonexempt purpose precludes tax exemption under section 501(c)(3) of the Code.

Your organization is similar to the organization described in Church by Mail, Inc. v. Commissioner (1985), because you are primarily operated to serve the private interests of the trustees, family and friends of [REDACTED]. Like Church by Mail, Inc., your organization is dedicating the use of your assets to serve a substantial private purpose rather than furthering a public 501(c)(3) purpose. As a result, tax exemption under section 501(c)(3) of the Code is precluded.

Your organization is similar to the organization described in est of Hawaii v. Commissioner, 71 T.C. 1067 (1979) because you are operated to further the private interests of the trustees, family and friends of [REDACTED]. The trustees, family and friends of [REDACTED] exert significant indirect control over your organization and they use your organization to further their private purposes. Like est of Hawaii, your organization does not qualify for tax exemption under section 501(c)(3) of the Code because you are furthering private rather than public purposes.

You are similar to the organization described in Rev. Rul. 67-5, 1967-1 C.B. 123 because you are using the assets of the organization to promote the private interests of the trustees, family and friends of [REDACTED]. You are restricting the sale of stock that will be distributed to the trust to three named individuals, one of whom is a trustee of your organization and

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you have no provisions in the trust that govern the sale to ensure that it is done at fair market value. In addition, you are renting [REDACTED]'s former residence to the trustees, family and friends of [REDACTED] at a modest charge, which is set to cover the basic expenses necessary to keep up the dwelling and its grounds. Like the organization described in the Rev. Rul., you are engaging in financial activities beneficial to the friends, family and trustees of [REDACTED] and these financial activities result in non-income-producing assets which prevent your organization from carrying on a charitable program commensurate in scope with your financial resources. As a result, you do not qualify for tax exemption under section 501(c)(3) of the Code.

Your organization is similar to the testamentary trust described in Rev. Rul. 69-256, 1969-1 C.B. 151 because you also organized and operated for private rather than public purposes and therefore precluded from qualifying for tax exemption under section 501(c)(3) of the Code. Private interests are served by your organization because you are legally obligated by the provisions of your trust to care for [REDACTED] of [REDACTED] provide housing at cost to the friends, family and trustees of [REDACTED] and to sell stock contributed to the organization by the estate of [REDACTED] only to one of your trustees and two unrelated parties.

You are similar to the organization described in Rev. Rul. 69-279, 1969-1 C.B. 152, because you are using your assets to serve the private interests of the family, friends and trustees of your settlor, [REDACTED], with the balance of your assets to be used for charitable purposes. Like the organization described in this Rev. Rul., you are primarily organized and operated for private interests and thus not entitled to exemption under section 501(c)(3) of the Code.

TAXPAYER'S POSITION

Your letter dated [REDACTED], outlines the position of your organization with regard to qualification for tax exemption under section 501(c)(3) of the Code. You indicate that you are organized and operated exclusively for charitable purposes. As a result, you conclude that you qualify for tax exemption under section 501(c)(3).

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You indicate that the organization meets the organizational test under section 501(c)(3) of the Code. You make the argument that each of the following trust provisions meets the requirements of section 501(c)(3) for the following reasons:

(a) **Trust provision:**

"The trust shall also support and maintain [REDACTED] of mine, living at the time of my death, until the time of their natural death."

Taxpayer Argument:

You indicate that no funds from your organization will be used to pay for the care of [REDACTED]'s [REDACTED]. As a result, you argue that this provision is a mute issue.

(b) **Trust provision:**

"My personal residence in [REDACTED] is to be used by the Trust as a meeting place for the trustees as well as housing for the trustees as they may desire. The home will also be available, at a reasonable and modest charge, for the use by relatives and friends at the discretion of the trustees. It is my hope the home will serve as a hostel for people to enjoy and the fee charged for their stay to be modest, determined by the basic expenses necessary to keep up the dwelling and its grounds.

Taxpayer argument:

You argue that the use of [REDACTED]'s personal residence by his trustees, family, and friends at a modest fee is a method by which the organization will earn income to carry out charitable purposes. Further, you indicate that this provision was included in the will to ensure that the trustees, family and friends of [REDACTED] would not use his personal residence without paying a fee to the organization. You have indicated that the property may be sold by your organization at a later date to generate funds to be used for charitable purposes.

You ultimately conclude that your organization is operated exclusively for charitable purposes because you are using the assets of the trust to generate rental income and then

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distributing the proceeds to promote economic development in [REDACTED]

(c) Trust provision:

"I give my stock in [REDACTED] to [REDACTED], [REDACTED], and [REDACTED] equally in amounts equal to the maximum amount that is allowed by law without incurring tax liabilities. The balance of my stock in [REDACTED] I leave to the [REDACTED], and I direct the Trust to sell the stock only to [REDACTED], [REDACTED], and [REDACTED] or their descendents."

Taxpayer Argument:

You argue that [REDACTED] had no children. He was involved in a closely held family corporation in which a [REDACTED] and the [REDACTED]'s wife and children owned interests. This business was a large family [REDACTED] which had been in the family for some time. Prior to [REDACTED]'s death, the [REDACTED] had been sold. Because of the sale of the [REDACTED] the corporation had money available to it to basically buy back the stock in the estate. Because of the restrictions on the transfer of stock, this buyback transaction benefited the corporation, the other stockholders, [REDACTED]'s estate, and your trust, by making things much simpler. Two of the trustees of your organization are no blood relation to [REDACTED]. [REDACTED], is a [REDACTED] to [REDACTED]. You argue that this is hardly a situation where your trust is set up or controlled by [REDACTED] and his descendents, nor will it operate for their benefit.

You argue that you meet the operational test under section 501(c)(3) of the Code because the trust provisions outlined above do not serve the private interests of your trustees and the friends and family of [REDACTED]. Further, all assets contributed to your trust are used exclusively for charitable purposes, specifically to promote economic development in [REDACTED], a blighted and depressed area.

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IRS POSITION

Your letter dated [REDACTED] asserts that your organization meets the requirements of section 501(c)(3) of the Code because you are organized and operated exclusively for 501(c)(3) purposes. Based on the information submitted, it is our position that your organization is neither organized nor operated exclusively for 501(c)(3) purposes and as a result, tax exemption under section 501(c)(3) is precluded.

You are not organized exclusively for 501(c)(3) purposes because the provisions of [REDACTED]'s will serve private interests. The will provides for the care of [REDACTED]'s [REDACTED] the use of his home by family and friends at a modest fee, and the restricted sale of stock in [REDACTED] to [REDACTED] of [REDACTED], who also serves as a trustee of your organization, and two other named individuals. Your organization has chosen not to file an amendment with the Probate court to have these provisions deleted from the will, which would allow your organization to meet the organizational test under section 501(c)(3) of the Code. Until such time as these amendments are filed and the will is so changed, the organization will be precluded from meeting the requirements of section 501(c)(3) because all of these provisions serve the interests of private parties and preclude your organization from meeting the organizational test outlined in section 501(c)(3).

You are not operated exclusively for 501(c)(3) purposes for the following reasons:

- (a) Your trust is required to provide for the care of [REDACTED]'s [REDACTED]. Your organization argues that you will not pay any expenses in this regard. However, it is a provision of the trust and your organization is under a legal obligation to provide for the care of [REDACTED]'s [REDACTED]. Payments for the care of [REDACTED]'s [REDACTED] throughout their natural life does not serve a charitable purpose.
- (b) You are allowing [REDACTED]'s personal residence, to be used for the personal purposes of [REDACTED]'s family, friends, and trustees, for a modest fee determined by the basic expenses necessary to keep up the dwelling and its grounds. You state that this rental activity is an attempt by the organization to raise funds for charitable purposes,

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however, you have not established that the organization is renting the facility at fair market value. In addition, you are not opening the rental of the home up to anyone outside of the family, friends, and trustees of [REDACTED]. Finally, the trust provisions state that [REDACTED] hoped his home would serve as a hostel for people to enjoy and the fee charged to stay there would be set at cost. It is clear that opening up the home of [REDACTED] to his trustees, friends and family for a modest fee is not an attempt by the organization to raise funds to support charitable purposes. Rather, this provision merely serves the private interests of [REDACTED]'s friends, family and trustees by providing a place for these individuals to stay for a fee that is set at cost.

- (c) The distribution of [REDACTED] stock to your trust and the subsequent restricted sale of the stock to your trustee, [REDACTED] and [REDACTED] or their decedents may have benefited [REDACTED] other stockholders, and [REDACTED]'s estate by making things much simpler. Your organization, however, clearly does not benefit from this transaction. Effectively, your organization is required to sell stock that it has received as a donation from the estate only to three individuals or their decedents. One of the named individuals is a trustee of your organization. There is no governing provision in your trust document that ensures that the sale of the stock is done at fair market value. It appears that this provision is designed to ensure that the private interests of your trustee, [REDACTED], and the other named parties or their decedents are served rather than serving the public and charitable interests of your trust.

The fact the your organization plans to conduct economic development activities in [REDACTED], a blighted and depressed area, is outweighed by the substantial nonexempt purpose of promoting the private interests of the trustees, family and friends of [REDACTED]. As a result, your organization is not operated exclusively for 501(c)(3) purposes and recognition of tax exempt status under section 501(c)(3) of the Code is precluded.

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CONCLUSION

Based on the facts presented above, we hold that your organization does not meet the requirements for tax exemption under section 501(c)(3) of the Code.

Based on the facts that you have provided in your application for recognition of exemption, we are not able to conclude that you are organized and operated exclusively for public rather than private purposes. The fact that some of your activities further charitable purposes does not detract from the existence of the substantial nonexempt purpose of promoting the private interests of the trustees, family and friends of [REDACTED]. Despite any charitable purposes your activities may achieve, you cannot qualify for exemption because more than an insubstantial part of your activities is not in furtherance of exempt purposes.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code because you do not meet the proscriptions in sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(d)(1)(ii) of the Regulations.