

Internal Revenue Service  
Director, Exempt Organizations  
Rulings and Agreements

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

JUL 22 2003

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.

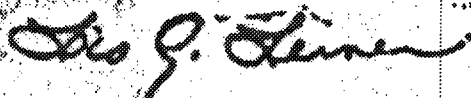
If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(3) of the Internal Revenue Code provides, in part, that:

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 5104(c) of the Code.

A copy of this letter has been sent to your representative as designated on Form 2848.

Sincerely,



Lois G. Lerner  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures: 3

ENCLOSURE I

Information submitted with the application indicates [redacted] indicates it was incorporated in the State of [redacted] on [redacted]. Page 1 of the Form 1023 application indicated [redacted] filed Form 990 in 2001. There is no indication the organization filed Form 1120 in prior years.

The Articles of Incorporation state the purposes for which the Corporation is organized are

A. To encourage the development, marketing, and diversification of industry and business in and adjacent to [redacted], and to encourage and assist industries and enterprises now located or which hereafter may locate in said area.

B. To accept, secure and handle funding to provide and accomplish aforesaid objectives and to encourage participation and interest in the development of value adding processes and diversification of industry and business in said area;

C. To join and enter into agreements for cooperative relationships with any person, firms, associations, or corporations, governmental, municipal or otherwise in and about the development of the aforesaid area and the establishment or expansion or [sic] such industries and enterprises therein.

D. To have all powers and do all things necessary to accomplish the foregoing purposes and otherwise do any thing allowed and authorized by [redacted] which does not otherwise conflict with or forbidden [sic] by an express provision herein or otherwise forbidden for an non-profit economic development corporation to do.

E. To loan money or real estate, chattels, or other security, to make unsecured loans or grants as may be necessary to assist with the development of the kinds of business or purposes above indicated within said area.

F. To acquire by purchase, subscription, or otherwise, and to hold and dispose of stocks, bonds or other obligations of any corporation or cooperative formed for or

engaged in any one or more of the kinds of business or purposes above indicated.

G. To incur debt and to secure the same by pledges or mortgages upon any of the property belonging to the corporation or issuing bonds or other evidences of debt necessary to assist with the development of the kinds of businesses or purposes above described within said area.

H. To act as agent or trustee on behalf of others to carry out any of the purposes herein set forth."

The Articles of Incorporation were amended on [REDACTED] to state [REDACTED] is organized exclusively for charitable, religious, educational, and scientific purposes, within the meaning of section 501(c)(3), including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Article II of the bylaws states,

"The object of [REDACTED] shall be to use its financial and other resources to encourage, assist and promote the development of business and industry in [REDACTED]. The [REDACTED] shall also use its financial resources to develop and promote residential development in [REDACTED]."

On page 2 of the Form 1023 application, [REDACTED] stated,

"The [REDACTED] was created to help provide financial assistance for temporary or permanent financing to assist new businesses with start-up costs; business retention or expansion loans; business relocation projects; to encourage the development, marketing and diversification of industry, business and quality of life, to cooperate with the state and local government in securing and financing personal property for development of residential lots; to help provide financial assistance to other local charity groups which seek to improve the quality of life for residents of [REDACTED] operated charitable gaming activities within the [REDACTED] as approved and monitored by the [REDACTED]. Net proceeds derived from the charitable

gaming operations as determined by the [REDACTED]  
[REDACTED] provides the necessary  
funding for [REDACTED] to  
assist in the above listed activities. Charitable Gaming  
is the primary activity for [REDACTED]  
and provides a significant base of full-time and part-time  
employment to local individuals who are trained to sell and  
distribute games of chance. The games of chance are  
conducted at authorized gaming sites within [REDACTED] city  
limits. The voluntary board of officers of the [REDACTED]  
assist to approve disbursement of net  
proceeds from charitable gaming for the good of economic  
development activities in [REDACTED] which improve the  
quality of life for [REDACTED] residents through promotion  
of business, recreation and residential development. [REDACTED]  
of the Board activities work with providing research,  
development and financial support to the local businesses  
who participate or seek financing provided by [REDACTED]  
[REDACTED]. [REDACTED] of the Board  
activities work with the local government and its  
contractors or consultants in securing and developing  
personal property for residential lot development. [REDACTED]  
of the Board activities work with supporting activities of  
other charitable groups within the community who seek to  
improve the quality of life to the residents of the  
[REDACTED] area."

In the Form 1023 the organization indicates its gross revenues were as  
follow:

[REDACTED] \$ [REDACTED]  
[REDACTED]: [REDACTED]  
[REDACTED]: [REDACTED]  
[REDACTED]: [REDACTED] (partial year)

All expenses were related to salaries/wages, occupancy and operations  
of gaming activities, with the exception of the following  
contributions, gifts and grants:

[REDACTED] \$ [REDACTED]  
[REDACTED]: [REDACTED]  
[REDACTED]: [REDACTED]  
[REDACTED]: [REDACTED] (partial year)

According to the attachments to Form 1023 these include grants, loans  
and "[REDACTED]."

[REDACTED]

As shown below, expenses related to the programs [REDACTED] states are charitable represent a percentage of gross revenues:

- [REDACTED] (%)
- [REDACTED] (%)
- [REDACTED] (%)
- [REDACTED] (%) - partial year

Business meetings of [REDACTED] are held in [REDACTED]. [REDACTED] leases office space for gaming activities and storage from [REDACTED].

Games of chance also are conducted in facilities owned by [REDACTED], [REDACTED] establishment [REDACTED] and [REDACTED] establishment [REDACTED].

[REDACTED] has a loan fund program that it contends is one of its charitable programs. In an undated and unsigned letter submitted in response to our letter dated [REDACTED], [REDACTED] stated,

"The purposes of the [REDACTED] is to encourage economic development in the [REDACTED] trade area by providing loans for Job Creation, Job Retention, Business and Industrial Development, Diversification of the Local Economy, Enhancing local property taxes and Tourism."

The explanation further states,

"The [REDACTED] has determined that the financing for the Loan Fund Program is to provide to any project which is either a start-up business, existing business, or an existing business relocation and will create or save primary sector jobs."

The explanation also states,

"The residents of [REDACTED] are very mobile. Because of the ease of access to the interstate system and job opportunities in the larger metropolitan areas, residents of [REDACTED] often get out of town. While [REDACTED] is fortunate to provide many of the necessary amenities for livelihood, it is faced with the reality that goods are provided at a lower cost in the larger cities. By providing the opportunity to work closely and creatively

with an applicant who will enhance the economic base of our retail sector by providing job opportunities and tax dollars, we are able to strengthen the existing city infrastructure of the school system, medical center, and other service providers."

In an undated and unsigned letter submitted in response to our letter dated [REDACTED], [REDACTED] submitted copies of a blank loan application and completed applications of businesses who received grants and loans. The cover sheet loan program application states,

"The purpose of the [REDACTED] is to encourage economic development in the [REDACTED] trade area by providing funds for job creation; job retention; business and industrial development; diversification of the local economy; enhancing local property tax base; tourism.

"Primary sector business are the focus of the [REDACTED] Loan Program with an emphasis on job creation and/or the creation of new wealth.

"Financial assistance available through the [REDACTED] Loan Program may be used for temporary or permanent financing of business costs related to the following:

- 1) New business start-up projects
- 2) Business retention or expansion loans
- 3) Business relation projects"

The loan application requests information about the name, address, type of business, business' strengths and weaknesses, and background of individuals involved in the business. Neither the blank loan application nor the copies of completed loan applications request or provide information about the impact of the businesses' activities on the local economy. There is no indication in the documents that the businesses will create new jobs or provide jobs to individuals of a charitable class. There is no indication in the documents that the businesses receiving grants/loans will provide job-training. There is no indication that applicant businesses would not otherwise be able to obtain financing from traditional sources.

[REDACTED] has a residential development activity that it also contends is a charitable activity. [REDACTED] has purchased a parcel of property in the city of [REDACTED], developed residential lots, and

then re-sold individual lots. [REDACTED] has indicated it recently acquired another parcel of property on which it will also develop and then re-sell the lots for residential uses. [REDACTED] has not stated or demonstrated that the sales are restricted to any charitable class such as minorities or low-income families.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax for "Corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary 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 Income Tax Regulations states, "In order to be exempt as an organization described in section 501(c)(3), 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 or operational test, it is not exempt."

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

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 a claim for exemption regardless of the number or importance of truly exempt purposes.

In B.S.W. Group, Inc. v. Commissioner of Internal Revenue, 70 T.C. 352 (1978) the court held the particular manner in which an organization's activities are conducted, the commercial hue of those activities, competition with commercial firms, and the existence and amount of annual or accumulated profits, are all relevant evidence in determining whether an organization has a substantial non-exempt purpose.

In Help the Children Inc. v. Commissioner of Internal Revenue, 28 T.C. 425 (1957) exemption under section 501(c)(3) was denied to an organization whose primary activity was the operation of bingo games. The organization did not operate any charitable institutions and its actual charitable function consisted of contributions to various



doctors and institutions. Only small amounts of funds were used for charitable purposes.

In Rev. Rul. 67-5, 1967-1 C.B. 123, exemption under section 501(c)(3) was denied to an organization whose charitable program was not commensurate with its financial resources. Specifically, it was found that the organization was used as a vehicle for financial activities advantageous to the creator and his family. The activities of the organization failed to produce income for a charitable program commensurate in scope with its financial resources.

In Rev. Rul. 64-182, 1964-1 C.B. 186, it was held that an organization carrying out charitable activities by making contributions and grants was exempt if the charitable program is commensurate with its financial resources.

Rev. Rul. 74-587, 1974-2 C.B. 162, described a loan program that qualified for exemption under 501(c)(3). The organization provided funds to businesses that were not able to obtain funds from conventional sources. In selecting recipients, the organization consulted with other non-profit and governmental groups to identify particular undertakings that would fill a community need and offer the greatest potential community benefit. Preference was given to businesses that would provide training and employment opportunities for the unemployed or underemployed residents of the area.

Rev. Rul. 77-111, 1977-1 C.B. 144, describes a situation (referenced in the revenue ruling as "Situation 2") in which an organization's purpose was to revive retail sales in an area suffering from continued economic decline. The organization proposed to limit further decline of retail sales within the area caused by competing, outlying shopping centers by constructing a center that would complement the area's existing retail facilities. No financial gain accrued to the organization. The local city government had significant involvement in the project. Additionally, it was required that minorities be utilized in the construction and in the businesses operating in the retail center. The organization described in situation 2 in the revenue ruling was found not to be exempt under section 501(c)(3). It was held that major benefits would accrue to the stores in the center and that the organization did not limit its aid to businesses that would only locate within the area because of the existence of the retail center.

\_\_\_\_\_ is like the organization described in Help the Children, Inc. Like the organization that was denied exemption, \_\_\_\_\_ does not operate any charitable institutions and its actual charitable function consists of contributions to other entities (In Help the Children,

[redacted] Inc. contributions were to individual doctors and charities, [redacted] (businesses and charities). As was true for Help the Children, Inc., only a very small portion of contributions are to charities, with the majority going to non-exempt entities. Although [redacted] referred to most of the grants as "Community Grants" on the attachment to page 8 of the Form 1023, the vast majority were to local businesses. This is supported by the copies of applications submitted by [redacted] in response to our letter dated [redacted].

[redacted] is like the organization described in Rev. Rul. 67-5. [redacted] charitable expenditures are not commensurate with financial resources. Only between 1% and 2% of gross revenues are used for the loan, grant and residential lot programs. Because the organization has operated at a net loss since [redacted], these activities would constitute an even smaller percentage of the organization's total expenses.

[redacted] is not like the organization described in Rev. Rul. 64-182 as its charitable expenses are not commensurate with resources.

Even if the expenses were commensurate with financial resources, [redacted] does not qualify for exemption under 501(c)(3) because its economic development activities are not charitable within the meaning of section 501(c)(3).

Because the programs are not charitable, the organization engages in substantial non-exempt activities. According to the Court in the Better Business Bureau, Inc. the presence of a non-exempt activity will destroy a claim for exemption.

[redacted] is not like the organization described in Rev. Rul. 74-587, and therefore does not qualify for exemption under section 501(c)(3). The organization in the revenue ruling provided loans to businesses that were not able to obtain financing from traditional sources. [redacted] has not demonstrated that its grant and loan recipients cannot obtain funding elsewhere. The application provided to potential recipients does not even ask if the recipients have applied and/or been rejected for funding from other sources.

The organization in Rev. Rul. 74-587 selected recipients only after consulting with other non-profit and governmental units to identify undertakings that would fill a community need and offer the greatest potential community benefit. [redacted]

\_\_\_\_\_ has not shown it consults with other entities when selecting recipients. Other than a desire to compete with two other nearby communities and to expand \_\_\_\_\_ tax base, \_\_\_\_\_ has not shown that any particular community or need is considered.

The organization in Rev. Rul. 74-587 gave preference to businesses that would provide training and employment opportunities for the unemployed or underemployed residents of the area. The applications provided by \_\_\_\_\_ do not ask if potential recipients will provide any training or that local residents would be given preference in hiring.

\_\_\_\_\_ is like the organization that was denied exemption in Rev. Rul. 77-111. Like the organization in the revenue ruling \_\_\_\_\_ purpose is to revive retail sales in an area suffering economic decline.

Like the organization that was denied exemption in Rev. Rul. 77-111 \_\_\_\_\_ proposes to limit declining business in the area caused by competing businesses in nearby communities. \_\_\_\_\_ response clearly states this.

Like the organization in Rev. Rul. 77-111 no financial gain accrues to \_\_\_\_\_. Like the organization in Rev. Rul. 77-111, \_\_\_\_\_ has some involvement by the local government.

Unlike the organization in Rev. Rul. 77-111 \_\_\_\_\_ does not require minorities or other residents be utilized by recipients of funding.

Although this fact is different from the organization denied exemption in Rev. Rul. 77-111, it also is unlike the organization that did receive exemption in Rev. Rul. 74-587.

Like the organization that was denied exemption in Rev. Rul. 77-111 major benefits accrue to \_\_\_\_\_ who receive assistance.

Also like the organization in Rev. Rul. 77-111 aid is not limited to businesses that would only locate in \_\_\_\_\_ because of the activities of \_\_\_\_\_.

\_\_\_\_\_ residential lot program also is not charitable within the meaning of section 501(c)(3). Information submitted by \_\_\_\_\_

indicates that the organization purchases parcels of land and prepares them to be subdivided. Individual lots are then sold. This activity is no different than those carried on by commercial, non-exempt developers. The fact that commercial developers have taken little or no interest in the larger parcels does not make the activity charitable.

There has been no showing by [REDACTED] that sales are restricted to any charitable class of individuals such as minorities or low-income individuals. Copies of purchase contracts show no restrictions. Rather, the program is part of an overall attempt to increase the tax-base which is not a charitable activity within the meaning of 501(c)(3).

According to the holding in B.S.W. Group, Inc., the commercial hue of activities are evidence of a substantial non-exempt purpose. According to Better Business Bureau, Inc., a substantial non-exempt purpose precludes exemption under section 501(c)(3).

In response to our letter dated [REDACTED], [REDACTED] supported its claim for exemption by citing exceptions regarding charitable gaming from instructions to Form 990 and Publication 3079. In both cases, the cited materials are related to issues and rules of unrelated business income taxation. Unrelated business income taxation rules only apply to organizations that already have been recognized as exempt. As [REDACTED] has not been recognized as exempt, unrelated business income taxation rules are not applicable. Additionally, there is no legal authority that allows an organization to support a claim for exemption solely based on unrelated business income taxation rules.

Based on the information submitted as part of [REDACTED] application for exemption, [REDACTED] expenditures are not exempt within the meaning of section 501(c)(3) and constitute a substantial non-exempt purpose. Even if the activities were charitable, they are not commensurate with financial resources.

Accordingly, we conclude that [REDACTED] does not qualify for exemption under section 501(c)(3) of the Internal Revenue Code.