



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date:

JUL 30 2001

[REDACTED]

Contact Person:

[REDACTED]  
Identification Number:

[REDACTED]  
Contact Number:

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code (the Code) as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated on [REDACTED] in the state of [REDACTED]. According to your amended Articles of Incorporation, you were organized exclusively for religious, charitable, scientific, literary, and educational purposes within the meaning of section 501(c)(3) of the Code.

You function as a nature preserve consisting of [REDACTED] acres of wild land in a rural area. Collectively, you maintain the wild land, study it, enjoy it, and make it available for your members, invited friends, and community and school groups for study and enjoyment. The area includes woods, high meadows, rock outcroppings, a natural bridge, caves, evidence of prehistoric cliff dwellings, a wetland's area with a meadow stream running through it, and an area of wilderness. You rely primarily on member donations. A member pays a one-time \$[REDACTED] fee, and afterwards is required to pay a user fee of \$[REDACTED] per month, which takes into account the actual cost of local property taxes on the undeveloped land, insurance, and driveway snow removal. Non-members who use the land with permission, such as a school group or a member's friend, are asked to make a donation if they chose.

To shelter you and your nature preserve plan from any unforeseeable but possible costs, you insisted that there be a separate organization to do the housing development and shoulder all the risks. Thus, [REDACTED] ( [REDACTED] ) was created. You maintained that, in this way, you would never have any housing-related costs or liabilities to interfere with or possibly ruin your nonprofit endeavor.

[REDACTED], a taxpaying housing-cooperative corporation, rents five of your [REDACTED] acres of land. These five acres are a wildlife area as well. You have a verbal lease with [REDACTED]

[REDACTED]

requiring it to pay its share of the local property taxes (on the land it rents and the buildings it owns); the costs of maintaining road access as well as relevant insurance, and the costs for the septic field and the water well. Both you and [REDACTED] share the access to the land. The [REDACTED] ensures that the access road is plowed, graded, and the shoulders mowed. You have no out-of-pocket costs because of [REDACTED].

According to a map submitted by you, [REDACTED] is located in the middle of the [REDACTED] acres and surrounded on all sides by nature. [REDACTED] has built some dwellings for its members on the land. The dwellings consist of three structures that are earth shelter quonset hut-style buildings built into a hillside. All three of the buildings are duplexes containing two apartment-style units. In one of the buildings, the unit is not occupied, but instead is a common area for use by everyone. Thus, the total number of dwellings is five. An appraised fair market value of each dwelling is \$[REDACTED] with a total value of \$[REDACTED]. [REDACTED] owns the houses it has built on the land rented from you.

Only your members may be members of the [REDACTED]. You pay property tax on all of your property, except for the five acres. There are five members on the [REDACTED] board, all of whom are also on your board. Two of the five members make their primary residence in the [REDACTED] while two maintain a part-time apartment there. You have twelve members on your board.

In considering whether you are an organization within the meaning of section 501(c)(3) of the Code, we looked at whether you benefit the private interests of the Coop. and its members more than incidentally.

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational purposes, among others, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations (the regulations) maintains that "private shareholder or individual" is defined as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations maintains that an organization will not be regarded as a 501(c)(3) exempt organization if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations maintains 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(c)(3)-1(d)(1)(ii) of the regulations maintains that an organization will not be treated as operating exclusively for an exempt purpose unless it serves a public rather than a private interest. Furthermore, 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.

[REDACTED]

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 the exemption regardless of the number or importance of truly exempt purposes.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court stated that individuals benefiting from a tax-exempt organization must be members of a charitable class, and within that charitable class, the individuals do not comprise a select group of members earmarked to receive benefits. A benefited class must possess charitable characteristics to qualify. Such charitable characteristics include relief of the poor, distressed, underprivileged, among others.

Rev. Rul. 75-286, 1975-2 C.B. 210 provides that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block will not qualify for exemption under section 501(c)(3) of the Code. Its activities consist of paying the city government to plant trees on public property within the block, organizing residents to pick up litter and refuse in the public streets and on public sidewalks within the block, and encouraging residents to take an active part in beautifying the block by placing shrubbery in public areas within the block.

By enhancing the value of the roadway sections abutted by property of its members, the organization is enhancing the value of its members' property rights. The restricted nature of its membership and the limited area in which its improvements are made, indicate that the organization is organized and operated to serve the private interests of its members within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. However, the Service found that the organization promotes social welfare and may qualify for exemption under section 501(c)(4) of the Code.

A review of the information submitted indicates that you operate for the private benefit of the [REDACTED] and its members. Under section 501(c)(3) of the Code, benefits to a private group are allowed only if the private group benefited as an incidental part of the general public benefited. If the private group receives benefits simply as members of the general public, the "incidental" requirement is met. However, the composition of the [REDACTED] membership and the tangible benefits to its property owners supports the conclusion that the [REDACTED] benefited more than incidentally. (See, Rev. Rul. 75-286, *supra*, holding that the restricted nature of the organization's membership and the limited area in which its improvements are made indicate that the organization is organized and operated to serve the private interests of its members.)

There is a restricted membership of individuals who maintain residences in the [REDACTED], a taxpaying housing-cooperative corporation. Only your members may be members of the [REDACTED]. To be a member of you, a \$ [REDACTED] fee is required, thereby further restricting membership in the [REDACTED] to individuals who can afford such a costly fee. Thus, the [REDACTED] is not open to the general public and any benefits it receives are limited to your members. Two of your members make their primary residence in the [REDACTED], while two of your members maintain a part-time apartment there. (See, Rev. Rul. 75-286, *supra*, in which membership is restricted to residents

[REDACTED]

of a city block and those owning property or operating businesses there.) Furthermore, the [REDACTED] entire board consists of members of your board.

There is no evidence that your members, who currently maintain residences in the Coop., are poor, sick, elderly, or part of another group constituting a charitable class. (See: American Campaign Academy v. Commissioner, *supra*, in which the court stated that individuals benefiting from a tax-exempt organization must be members of a charitable class, and within that charitable class, the individuals do not comprise a select group of members earmarked to receive benefits. A benefited class must possess charitable characteristics to qualify. Such charitable characteristics include relief of the poor, distressed, underprivileged, among others.)

In addition to a restricted membership, the [REDACTED] and its members (i.e. your members) receive a tangible benefit that is more than incidental as compared to the benefit received by the general public of enjoying and studying the nature preserve. The [REDACTED], which consists of [REDACTED] acres of wildlife and apartment-style dwellings, is conveniently located in the middle of the [REDACTED] acres. It is surrounded on all sides by nature, including woods, high meadows, rock outcroppings, a natural bridge, caves, evidence of prehistoric cliff dwellings, a wetland's area with a meadow stream running through it, and an area of wilderness. By maintaining the land as a nature preserve, you enhance the value of the [REDACTED] property rights. The land is prevented from development unless the development is compatible with the nature preserve, including the highest level of environmentally friendly practices. (See, Rev. Rul. 75-286, *supra*, in which the Service found that the organization is enhancing the value of its members' property rights by enhancing the value of the roadway sections abutted by property of its members.)

The restricted nature of your membership and the tangible benefit to the [REDACTED] and its members indicates that you operate to serve the members' private interests within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. This private benefit is substantial in nature and precludes you from meeting the requirements under section 501(c)(3) of the Code. This is the case regardless of the fact that you provide a service to your members and the community by operating a nature preserve (i.e. an exempt purpose). (See, Better Business Bureau of Washington D.C., Inc. v. United States, *supra*).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

[REDACTED]

If you do not protest this ruling 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 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 United States Court of Federal Claims, 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 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
[REDACTED], T:EO:RA:T:4  
1111 Constitution Ave., N.W.  
Washington, D.C. 20224

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

Sincerely,

(signed) Gerald V. Sack

Gerald V. Sack  
Manager, Exempt Organizations  
Technical Group 4

[REDACTED] [REDACTED]