



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

FILE

DATE: [REDACTED]
SURNAME: [REDACTED]

Date: NOV 30 2001

[REDACTED]

Contact Person: [REDACTED]
Identification Number: [REDACTED]
Contact Number: [REDACTED]

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 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 are a non-profit corporation organized under the [REDACTED] Non-Profit Corporation Act. You intend to purchase foreclosed homes that are in need of repair. You will renovate the homes and sell them solely to individuals and families with incomes at or below 80% of the area's median income. You will price houses generally at full value as determined by a market analysis of homes that have sold and homes that are for sale in the specific area that you have a home for sale.

You will use the [REDACTED] operated by the [REDACTED] to provide down payment assistance to buyers. Under the [REDACTED] [REDACTED] will provide grants of up to \$ [REDACTED] to buyers who purchase "eligible properties." For a property to become "eligible" for the [REDACTED] the seller of the property must agree to pay [REDACTED] a fee equal to the amount of [REDACTED] grant to the buyer plus one percent of the sales price.

You will list your homes with [REDACTED], a for-profit real estate agency. For its services, [REDACTED] and its agents will earn typical real estate commissions. Your directors have a financial interest in [REDACTED].

Your directors are [REDACTED] and [REDACTED]. Your bylaws provide that only these directors and their descendants may qualify as directors. Your bylaws also provide that your officers are to be chosen from among your directors. [REDACTED] and [REDACTED] serve as your two officers and may not be removed from office during their lifetimes.

[REDACTED]

[REDACTED] is the president of Realtron. [REDACTED] and [REDACTED] are employed as agents of [REDACTED]. All three individuals are engaged in the real estate business of selling homes.

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

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations (the "regulations") provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. Such term includes the relief of the poor and distressed or of the underprivileged, and promotion of social welfare designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, and to combat community deterioration and juvenile delinquency.

Rev. Proc. 96-32, 1996-1 C.B. 717, sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in section 501(c)(3) of the Code because they relieve the poor and distressed. An organization will be considered charitable under section 501(c)(3) if: (1) the organization establishes for each project that (a) at least 75 percent of the units are occupied by residents that qualify as low-income, and (b) either at least 20 percent of the units are occupied by residents that also meet the very low income limit for the area or 40 percent of the units are occupied by residents who also do not exceed 120 percent of the area's very low income limit; (2) the project is actually occupied by poor and distressed residents; and (3) the housing is affordable to the charitable beneficiaries. This requirement does not apply to organizations that provide individual homes or individual apartment units at scattered sites exclusively to families with incomes at or below 80 percent of the area's median income. If the safe harbor is not satisfied, an organization may demonstrate that it relieves the poor and distressed by reference to all the surrounding facts and circumstances.

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(c)(2) of the regulations 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(d) of the regulations provides that the words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides 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

[REDACTED]

interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly by such private interests.

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 private benefit, if substantial in nature, will destroy the exemption regardless of an organization's other charitable purposes or activities.

In American Campaign Academy v. Comm'r, 92 T.C. 1053 (1989), the Tax Court defined private benefit as "nonincidental benefits conferred on disinterested persons that serve private interests."

In International Postgraduate Medical Foundation v. Comm'r, 56 T.C.M. (CCH) 1140 (1989), the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of the Foundation, non-profit corporation that conducted continuing medical education tours. One of the Foundation's three trustees, Mr. Hellin, was a shareholder and the president of H & C Tours, a for-profit travel agency. The Foundation shared offices with H & C Tours. The Foundation used H & C Tours exclusively for all travel arrangements. The Foundation's contract with H & C Tours permitted it to acquire competitive bids, but provided that H & C Tours would always get the bid if it were within 2.5%. There is no evidence that the Foundation ever sought a competitive bid. The Court found that a substantial purpose of the Foundation was benefiting the for-profit travel agency. It concluded that "when a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes."

In Church by Mail, Inc. v. Comm'r, 765 F.2d 1387 (9th Cir. 1985), *aff'g*. TCM 1984-349 (1984), the organization, Church by Mail, sent out sermons in numerous mailings. This required a great deal of printing services. Twentieth Century Advertising Agency provided the printing and the mailing. Twentieth Century was controlled by the same ministers that controlled Church by Mail. In deciding that the Church was operated for the substantial non-exempt purpose of providing a market for Twentieth Century's services, the Court stated that "the critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but, instead, whether the entire enterprise is carried on in such a manner that the for-profit benefits substantially from the operation."

You have stated that Realtron is the "driving force" behind your organization and operation, and there appears to be little independence between your activities and those of [REDACTED]. You have no independent program for informing and educating potential charitable beneficiaries about your services. Rather, such beneficiaries are identified by [REDACTED] agents in the general course of selling homes.

Thus, it is apparent that you are organized and operated for the substantial non-exempt purpose of benefiting a related for-profit organization, [REDACTED]. You are like the organizations described in International Postgraduate Medical Foundation and Church by Mail, Inc., *supra*. You are controlled by the same persons that control [REDACTED], and your activities provide [REDACTED] with buyers that it would not otherwise have. Because [REDACTED] benefits substantially

[REDACTED]

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

Sincerely,

(signed) Terrell M. Berkovsky
Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

[REDACTED]

[REDACTED]