



TAX-EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NO PROTEST RECEIVED  
Reliance on Manager, EO Determinations - Cincinnati

DATE: [REDACTED]  
SURNAME [REDACTED]

Date: AUG 21 2002

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 ("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 state that you are operated to be a conservation organization. You own [REDACTED] acres of forested wetlands and farmlands in [REDACTED]. You state that you were formed to "ensure proper succession of the property in our family and maintenance of the property," and that your members intend to keep the property in the family and upon dissolution, there will be no distribution of assets to an exempt purpose.

You state that your plan encompasses: (1) Forest Stewardship: the management of forested property for a specific goal. you state that currently a certified State forester is in the process of completing a certified forest management plan that the State of [REDACTED] Department of Natural Resources will approve; (2) Wetlands preservation: you state that you have applied through the Department of Natural Resources for a wetlands preservation and restoration grant; and (3) Wildlife and Fish Habitat Management: you state that you plan to enhance the land and water areas for maximum benefit to the natural animal and fish inhabitants.

To raise money, you have leased portions of the property to hunters and a portion of the land to a farmer so that the farmer can grow crops, and have harvested the forest about every 10 years.

Your membership is limited to family members, with dues being \$ [REDACTED] a month. Members of the family are entitled to use the land for recreational activities. You elaborate that you intend to use the land to fit in with the overall goals of maintaining the ecological integrity of the property. You state that all of your family members are community members who know of church groups, scouting groups, and school groups who could enjoy the land through camp outs or picnic outings, etc.

[REDACTED]

You are organized pursuant to a Certificate of Trust. The Certificate of Trust, under the Trustee Administrative and Investment Powers ("Powers"), section (D)24, sets forth the dissolution clause as follows:

24. Distribution for Economy. The Trustees may terminate this Trust if, in the absolute discretion of the Trustees or if a court of competent jurisdiction determines that:

- (a) It has become sufficiently small in value such that its cost of administration is disproportionate to the value of its assets; or
- (b) Its continuation is no longer in the best interests of its beneficiaries.

All principal and undistributed income shall be distributed to the then income beneficiaries in the proportion in which they are, at the time of termination, entitled to receive the income provided. However, if the rights to income are not then fixed by the terms of this Trust, the distribution under this paragraph shall be made to such persons as are then entitled or authorized, in the Trustee's discretion, to receive payments from this Trust. Upon such distribution, the Trust shall terminate and the Trustees shall not be liable or responsible to any person or persons for such action.

The Certificate of Trust does not identify the income beneficiaries, presumably family members, or what income is to be distributed to them.


The Certificate of Trust provides that all real estate owned by you shall be operated and managed exclusively by The [REDACTED] See paragraph D page 2 of the Certificate of Trust.

Additionally under Powers, Section B of the Certificate of Trust provides:

B. Powers to be exercised in the Best Interests of the Beneficiaries. The Trustees shall exercise the following administrative and investment powers without the order of any court, as the Trustees determine in their sole and absolute discretion to be in the best interest of the beneficiaries. Notwithstanding anything to the contrary in this agreement, the Trustees shall not exercise any power in a manner inconsistent with the beneficiaries right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Certificate of Trust also provides for the Trustees to have extensive discretionary powers. Such powers include, but are not limited to:

1. the power to open and operate and maintain margin and brokerage accounts (paragraph 8, page 5);

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2. the power to maintain or purchase oil, gas, coal, and other mineral interest when necessary with regard to the Trust property (paragraph 11, page 5);
  3. the power to develop and subdivide any real estate (paragraph 15, page 6); and
  4. the power to hold the property which is non-income producing or is otherwise nonproductive if the holding of such property is, in the sole and absolute discretion of the Trustees, in the best interests of the beneficiaries (paragraph 21, page 8).

All Trustees are related and the Certificate of Trust provides that trustees shall be able to nominate and appoint their own successor Trustee provided that said successor be a blood relative.

Section 501(c)(3) of the Code provides for both an organizational and operational tests. Assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose. If the assets could be distributed to members or private individuals, the organizational test is not met.

Section 1.501(c)(3)-1(b) of the Income Tax Regulations ("regulations") provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes, and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides in part that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. However, an organization does not meet the organization test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes only if it engages primarily in activities that 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides in part that an organization is not organized or operated exclusively for one or more of the purposes set forth in subdivision (i) of this subparagraph 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.

Rev. Rul. 76-204, 1976-1 C.B. 152, holds that an organization preserving ecologically significant land for the benefit of the public is operated exclusively for charitable purposes under section 501(c)(3) of the Code. That ruling stated that limited public access on ecologically

significant lands is necessary to realize the charitable purpose – preservation. To allow general public access would, in fact, be inconsistent with attainment of the charitable goals.

Rev. Rul. 78-384, 1978-2 C.B. 174, holds that a nonprofit organization that owns farmland and restricts its use to farming or other uses the organization deems ecologically suitable, but is not operated for the purpose of preserving ecologically significant land and does not otherwise establish that it serves a charitable purpose, does not qualify for exemption under section 501(c)(3) of the Code. Unlike the situation presented in Rev. Rul. 76-204, the land contains no ecologically significant attributes. However the farming is restricted so that it is compatible with the ecology of the area. The ruling found that although there was some ecological preservation involved, the organization was not preserving land of any distinctive ecological significance.

You fail the organizational test because your Certificate of Trust does not include specific provisions that meet the requirements of section 501(c)(3)-1(b) of the regulations. You also fail the operational test of section 1.501(c)(3)-1(c) because your activities primarily serve the private interests of the family members.

1. The organizational test is not met. You must limit your purpose to one or more purposes described in section 501(c)(3) of the Code and your organizational document must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that do not further one or more of those purposes. The Certificate of Trust does not describe any preservation purposes or educational purposes and expressly empowers the Trustees to conduct extensive non-charitable activities. Your proposed preservation activities include forest, wetlands, and wildlife preservation. Yet you do not state specifically what you plan to do to accomplish such goals. Hunting, farming and harvesting of forest are not activities that fall within the preservation guidelines. You also do not state how your property is ecologically significant within the meaning of Rev. Rul. 78-384. Your proposed educational activities are vague and undeveloped, and you do not state how such educational activities will be conducted so that the property will be ecologically preserved. Nor do you state what the family members' access to the property is, or how such access is restricted in order to ecologically preserve the land.

Additionally, you fail the dedication and distribution of assets requirements of section 501(c)(3) of the Code. Assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose. If the assets could be distributed to members or private individuals or for any other purpose, the organizational test is not met. You have stated that the property is to remain in the hands of family and the Certificate of Trust confirms this by stating upon dissolution the assets go to the income beneficiaries.

2. You serve the private interests of family members. Even if your Certificate of Trust were amended to meet the organizational requirements set forth above, your activities will substantially benefit the private interests of the family members. Your membership is limited to family members. You obtain money from the leasing of property for farming, hunting and harvesting the trees. These activities are not directed towards the preservation of the property, but for the raising of funds to pay for expenses for the upkeep of the property for family

[REDACTED]

members' use and enjoyment. The Certificate of Trust includes the power given to the Trustees to hold the property that is non-income producing or is otherwise nonproductive if the holding of such property is, in the sole and absolute discretion of the Trustees, in the best interests of the beneficiaries. This specific language confirms that you will serve the private interests of family members.

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.

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 judgement 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  
T:EO:RA:T:3

[REDACTED]  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

[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) Robert C. Harper, Jr.

Robert C. Harper, Jr.  
Manager, Exempt Organizations  
Technical Group 3

	Initiator	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]		
Surname	[REDACTED]	[REDACTED]		
Date	[REDACTED]	[REDACTED]		