

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 – Room 7008
Cincinnati, OH 45201

Date: [REDACTED]

Employer Identification Number:

[REDACTED]
Person to Contact:

[REDACTED]
Contact Telephone Numbers:

[REDACTED] Phone

[REDACTED] FAX

[REDACTED]
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.

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,

[REDACTED]

Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Issues

- 1) Is the organization organized for exempt purposes under Section 501(c)(3) of the Code?
- 2) Is the activity of the organization, to "develop, maintain, and preserve the Garden Court neighborhood and surrounding area" serving public and not private interests?

Facts

According to the records you have submitted, you were incorporated on [REDACTED]. Your articles of incorporation provide that your purpose is to maintain the diversity in race, age and economics, and to preserve the historic site, "within the [REDACTED] and the surrounding community.

Although present in your bylaws, your organizing document, articles of incorporation, contain none of the language necessary to comply with the organizational requirements of IRC section 501(c)(3) of the Code.

Your bylaws provide that your purpose is to maintain the diversity in race, age and economics of the residents in the [REDACTED] neighborhood and to preserve the [REDACTED] buildings as historic sites.

The information provided in your application (Form 1023) reflects that you were formed to develop, maintain, and preserve the [REDACTED] neighborhood and surrounding area, which has been designated a historic site by the [REDACTED] and has been listed on the National Register of Historic Sites by the Alliance since 1984.

In your faxed response received [REDACTED] you indicated that [REDACTED]% of your time would be spent to "select, manage and fund rehabilitation and restoration projects to those buildings designated as historical sites within the [REDACTED] community."

That response also indicated that you will create partnerships with local civic and charitable groups so that they may utilize the resources (pool and tennis courts) within the [REDACTED] neighborhood. You state that you will devote [REDACTED]% of your time and resources to such activities.

Furthermore, you state that you will provide emergency funds for "residents" in the community who are experiencing an acute financial crisis. You state that you will devote [REDACTED]% of your time and resources to such activities.

Anticipated sources of income include private foundations, government grants, and individual contributions.

There had been no significant financial activity as of the time Form 1023 was submitted (postmarked [REDACTED]). Projected annual revenues are \$[REDACTED] and \$[REDACTED] for [REDACTED] and [REDACTED] respectively. Your primary expense will be for rehab and restoration projects. Projected annual expenses for such projects are \$[REDACTED] and \$[REDACTED] for [REDACTED] and [REDACTED] respectively. Thus, said projected expenses represent approximately [REDACTED]% of your projected revenues.

Your rehab and restoration projects will be for buildings designated as historic sites, resources such as a pool and tennis courts, and "common areas" such as streetlights and sidewalks.

There is no indication that the pools and tennis courts have been designated as historically or architecturally significant. You specify that each building has its own facilities, the use of which is primarily restricted to its residents.

There is also no indication of the extent to which civic / charitable groups will be allowed to utilize these otherwise private facilities.

It is unclear whether the "common areas" pertain to public property that is the responsibility of a municipality, or private property that is the responsibility of [REDACTED]. Given all of the other information presented herein, we presume the latter applies.

Other than one tennis court that is considered a municipal / public resource, all buildings and resources that you will rehab / restore are privately owned.

Law

Section 501(c)(3) of the Internal Revenue Code provides exemption from Federal income tax for organizations that are organized and operated exclusively for charitable, religious, and 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(b)(1)(i) of the Regulations states 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 states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of this subparagraph, 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. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes if more than an insubstantial part of its activities serves private interests.

Section 1.501(c)(3)-1(d)(3)(i) of the Regulations defines education as the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 59-6, 1959-1 C.B. 121, holds that an organization which conducts activities that go beyond education does not qualify for exemption under IRC section 501(c)(3). This holding rests

on findings that the organization's primary purpose is to improve working conditions of a group of laborers, and that the educational aspects related thereto are merely incidental to said primary purpose. Accordingly, the organization is not organized and operated exclusively for educational purposes as intended by IRC section 501(c)(3).

Revenue Ruling 59-310, 1959-2 C.B. 146, holds that a nonprofit organization formed for the purpose of establishing, maintaining, and operating a public swimming pool, playground, and other recreational facilities, for the children and other residents of the community qualifies for tax exemption under IRC section 501(c)(3).

Revenue Ruling 68-14, 1968-1 C.B. 243, holds that an organization that preserved and developed the beauty of a city by planting trees in public areas, assisting municipal authorities in keeping the city clean, and informing the public of the advantages of these programs was combating community deterioration and thus operated for charitable purposes within the meaning of IRC section 501(c)(3).

Revenue Ruling 70-186, 1970-1 C.B. 128, holds that an organization formed to preserve a lake used as a public recreation facility by treating the water in the lake and otherwise improving its condition for recreational purposes is a charitable organization within the meaning of IRC section 501(c)(3).

Revenue Ruling 74-17, 1974-1 C.B. 130, holds that a condominium housing association does not qualify for tax exemption. The organization in question was an association formed by unit owners of a condominium housing project and was operated to provide for the management, maintenance, and care of the common areas of the project. Its income was derived from membership assessments, and its disbursements were for normal operating expenses. The organization did not qualify for tax exemption because the nature and structure of a condominium system of ownership confers rights, duties, privileges, and immunities to members that are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his/her property in the condominium. Consequently, an organization dedicated to the maintenance and care of a condominium project constitutes the provision of private benefit to the unit owners.

Revenue Ruling 75-470, 1975-2 C.B. 207, holds that a nonprofit organization formed to promote an appreciation of history through the acquisition, restoration, and preservation of homes, churches, and public buildings having special historical or architectural significance, and to open the structures for viewing by the general public is educational and charitable within the meaning of IRC section 501(c)(3). This ruling, to a great extent, describes many of the well known American historical museum complexes, some of which have acquired, restored, and preserved or recreated whole colonial or 19th century towns.

Revenue Ruling 86-49, 1986-1 C.B. 243, holds that an organization formed for the purpose of preserving the historic or architectural character of a community through the acquisition and occasional restoration of historically or architecturally significant properties, and subsequent disposition of these properties subject to restrictive covenants, is educational within the meaning of IRC section 501(c)(3).

In Benedict Ginsberg, 46 T.C. 47 (1966), the Court ruled that a nonprofit organization formed to dredge a navigable waterway fronting the properties of its members does not qualify for tax exemption under IRC section 501(c)(3). The waterway was little used by the general public, but its navigability greatly affected the value of members' properties. Accordingly, the Court held that the organization was not charitable, but was serving private purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 283 (1945), the Court stated that the "presence of a single ... [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly ... [exempt] purposes."

Service Position

Firstly, your organization does not meet the organizational test. Your articles of organization do not limit the purposes of your organization to one or more exempt purposes and your assets are not dedicated to an exempt purpose.

Secondly, your organization does not meet the operational test. The above information reflects that your time and resources will be devoted primarily to rehab / restoration projects whose primary targets are privately owned properties that are not ordinarily available to the general public. Thus your organization serves private and not public interests.

Although the buildings you will rehab / restore have been designated as "historic", this does not alter or diminish the fact that such property is privately owned. Consequently, although your activities may serve the educational purpose of preserving historically significant sites, such activities also directly and substantially serve the private interests of the property owners as described in Revenue Ruling 74-17 and Benedict Ginsberg, and as prohibited per Regulations section 1.501(c)(3)-1(d)(1)(ii).

Unlike the organizations described in Revenue Rulings 75-470 and 86-49, you will not own or otherwise control such property, nor are the facilities ordinarily available to the general public.

In addition, there is no indication that the private pool and tennis courts you will rehab / restore are historically or architecturally significant. Accordingly, there is no apparent benefit to the general public other than the occasional use by local civic / charitable groups. There is also no indication of the extent to which such groups will have access to these resources. However, given that the resources are privately owned and access thereto is otherwise restricted to building residents, any public benefit would be considered incidental (as described in Revenue Ruling 59-6) to the direct and substantial private benefit your rehab / restoration projects would convey to the owners of said resources and those select individuals who enjoy full access. This is also a violation of the private benefit prohibition of Regulations section 1.501(c)(3)-1(d)(1)(ii), as described in Revenue Ruling 74-17 and Benedict Ginsberg.

Further, we presume that all, or portions, of the "common areas" you will maintain and improve pertain to property owned and/or managed by [REDACTED]. By providing such services, you are conducting activities described in Revenue Ruling 74-17 that were held to serve the private benefit of condominium unit owners. This also serves the private benefit of [REDACTED] by relieving it of a burden that it would ordinarily have to bear. This is a further violation of the private benefit prohibition of Regulations section 1.501(c)(3)-1(d)(1)(ii), as described in Revenue Ruling 74-17 and Benedict Ginsberg.

Unlike the organizations described in Revenue Rulings 59-310, 68-14, and 70-186, you will not own, maintain, operate, or improve public facilities, the use of which is available to all members of the community on a fully unrestricted basis.

Your program of providing emergency funds to those in financial need appears acceptable, however, it is unclear whether such assistance is limited to "residents" of [REDACTED] or whether it is available to all eligible "residents" of the surrounding community. Regardless, this program will consume only [REDACTED] % of your time and resources, and thus is not considered a substantial activity.

Even though a substantial purpose of your organization may be educational or charitable in nature as defined in section 1.501(c)(3)-1(d)(3)(i) of the regulations, similar to Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179, the presence of a single non-exempt purpose that is substantial in nature destroys a claim for exemption regardless of the number or importance of truly exempt purposes.

Applicant's Position

Your initial responses, received via your fax dated [REDACTED] are included in the above "Facts" section.

We presented our position regarding the current facts presented in the determination process to you in a letter dated [REDACTED], wherein you were offered an opportunity to present your position regarding the facts and to offer any pertinent law to support your position. To date, we have received no response to our [REDACTED] letter.

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.

Your organization is not organized for exempt purposes and your assets are not dedicated for an exempt purpose.

Your organization is not operated for exempt purposes because it is operated for the primary purpose of improving residential and recreational facilities that are privately owned and that are not ordinarily available to the general public. Any public benefit derived from your improvements is merely incidental to your primary purpose, as described in Revenue Ruling 59-6. Consequently, you directly and substantially serve private interests. Substantial private benefit will confer to the [REDACTED] and its constituent condominium unit owners and other private parties. This is a clear and unequivocal violation of the private benefit prohibition of Regulations section 1.501(c)(3)-1(d)(1)(ii), as described in Revenue Ruling 74-17 and Benedict Ginsberg. These are nonexempt purposes conducted to a substantial degree as described in Better Business Bureau of Washington, D.C., Inc.

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.