

W. V. St. Henry

CP:E:EO:T:5

NOV 12 1996

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 were incorporated [REDACTED] for the general purposes recited in section 501(c)(3) of the Internal Revenue Code, and for the specific purpose of providing residential multi-family housing and facilities for persons of limited financial means, the handicapped and the elderly. With these provisions, and other provisions in your articles of incorporation you have met the organizational test of section 501(c)(3).

You describe your planned activities as the acquisition, construction and/or renovation of multifamily housing units which will be rented to persons with very low, low or moderate income as defined by the Department of Housing and Urban Development. In order to accomplish this purpose you have identified a tract of land upon which to construct an apartment complex consisting of [REDACTED] units.

In order to finance the apartment complex, you intend to enter into a partnership which will sell limited partnership interests in units of \$[REDACTED], but neither the number of such units to be sold, nor the identity of purchasers is known. Your proposed partnership agreement provides that you will be a general partner with a [REDACTED]% interest, and that a for-profit construction company will also be a general partner with a [REDACTED]% interest. The remaining [REDACTED]% partnership interest will be held by limited partners.

Your proposed partnership agreement also contains the following provisions:

1. After construction of the apartment complex, the general

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partners shall appoint a management agent, who for █% of the gross receipts of the partnership, will operate the complex. The management agent shall be an affiliate of one of the general partners;

2. The for-profit general partner is also designated as the "Tax Matters Partner."

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

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

In the case of Plumstead Theatre Society, Inc. v. Commissioner, 74 T.C. 1324 (1980), the court held that an organization's participation as a general partner in a limited partnership would not adversely affect its tax exempt-status under sections 501(a) and 501(c)(3) of the Code where pursuant to an arm's length transaction, the charitable general partners sold part of its interest in a play to three limited partners. Important to the holding is that the limited partners have no control over the way the organization manages its affairs, and that none of the limited partners are directors or officers of the general partner.

In the case of Housing Pioneers, Inc. v Commissioner, T.C.M. 1993-120, aff'd 58 F.3d 401(9th Cir. 1995) the court held that an organization which participates in a limited partnership as a general partner is precluded from exemption where investors privately benefit from the arrangement. The opinion notes that the Plumstead Theatre Society case, cited above, does not apply

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because it differs factually, in that private benefit arises when two of the limited partners were also board members of the general partner applying for exempt status.

Rev. Proc. 90-27, 1990-1 C.B. 514 sets forth procedures with regard to applications for recognition of exemption from federal income tax under sections 501 and 521 of the Code.

Section 5.02 of Rev. Proc. 90-27 provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

In order for an organization to establish that it qualifies for recognition of exemption under section 501(c)(3) of the Code it has the burden to establish that it is operating exclusively for charitable or educational purposes.

In order for you to establish your qualification for exempt status it will be necessary to provide a copy of your final partnership agreement which identifies all limited partners and establishes the rights and obligations of all parties. The proposed partnership agreement you have provided gives control to the general partners, and █% of that interest is controlled by your for-profit general partner. This represents the sort of intrusion into partnership affairs found in the Housing Pioneers case cited above. Furthermore, since the for-profit general partner could become a substantial, or even the only limited partner, the opportunity for further intrusion into the partnership business is present.

RE: [REDACTED]

Based on the above, you have not established that you will be operated exclusively for purposes described in section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principle officers, must be submitted within 30 days from the date of this letter. You also have the 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 principle officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the 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 United States Tax Court, the U.S. 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.

To insure your reply is properly directed and promptly considered, please use the following address:

[REDACTED]
Internal Revenue Service
Attn: CP:E:EO:T:5 Room 6539
1111 Constitution Ave. N.W.
Washington, DC 20224

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your Key District Director. Thereafter, any questions about your federal tax status should be addressed to that office. Also, the appropriate

RE: [REDACTED]

State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,
(signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 5

CC: [REDACTED]