

Internal Revenue Service

Department of the Treasury

District
Director

1100 Commerce St., Dallas, Texas 75242

Date: DEC 11 1995

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

EC:TS:4920DAL:RH

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that the organization was incorporated on [REDACTED], in the State of [REDACTED]. The organization's Articles of Incorporation state that the organization was organized for exclusively charitable, religious, educational and scientific purposes within the meaning of Internal Revenue Code (IRC) section 501(c)(3). The articles further state that the organization will promote and enhance the availability and quality of decent affordable housing for very low, low and moderate-income individuals; oversee compliance with various housing programs of federal, municipal or private entities; and engage in such other activities as may be necessary in furtherance of affordable housing.

The organization has three directors, [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] and [REDACTED] are residents of the [REDACTED] (the Apartments).

The organization intends to accomplish these purposes by managing the Apartments. [REDACTED] ([REDACTED]) owns the apartments. [REDACTED], executive director for the organization, owns a majority interest in [REDACTED]. The renovation will be conducted by [REDACTED]. Upon completion of the renovation, the apartments will be leased to low income and very-low income individuals in a ratio which will meet the safe harbor requirements of IRS Announcement 95-37, 1995-20 I.R.B. 18.

The apartments will be managed by the organization which will receive a fee equal to 5% of the effective gross income of the property. Management of the apartments will consist of qualification of prospects, advertising, and ordering maintenance repairs and service. According to the organization, this fee is standard in the apartment management industry.

In your letter dated [REDACTED] you state, "The purpose of our seeking non-profit status is to secure financing for rehabilitation which is otherwise unavailable." This financing will be used to rehabilitate property owned by [REDACTED].

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable...or 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 Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization -

- "(A) Limit the purposes of such organization to one or more exempt purposes; and
- (B) 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(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(d)(1)(i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified 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, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

Revenue Ruling 71-529, 1971-2 C.B. 234 states that a nonprofit organization that provides assistance in the management of participating colleges' and

universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under Internal Revenue Code (IRC) section 501(c)(3).

Revenue Ruling 72-369, 1972-2 C.B. 245 indicates that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under IRC section 501(c)(3).

B.S.W. Group, Incorporated, v. Commissioner, 70 TC 352 provides that an organization which planned as its sole activity to offer consulting services for a fee to exempt and non-exempt organizations did not qualify for exemption under IRC section 501(c)(3).

In the case of Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the United States Supreme Court concluded that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption from federal income tax regardless of the number or importance of the exempt purposes of an organization.

Your organization is not like the organization described in Revenue Ruling 71-529, supra. You are not providing services for exempt organizations for a fee that is below cost.

Your organization is similar to the organizations described in Revenue Ruling 72-369, supra, and in B.S.W. Group v. Commissioner in that you provide services to another organization for a fee. As in both of these examples, you provide management services on a regular basis for a fee to another organization. While the organization in the ruling provided services only to exempt organizations, the organization in the court case provided services to both exempt and non-exempt organizations. You are providing the management service to a non-exempt organization, [REDACTED]. The provision of this service is a trade or business ordinarily carried on for profit. In addition, it was determined in the examples given that fees for services even at cost lack the donative element necessary to establish this activity as charitable. Your furnishing of the management service at the going rate in the industry to a non-exempt organization prevents the activity from being charitable. This is further supported by Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), in which the United States Supreme Court concluded that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption from federal income tax regardless of the number or importance of the exempt purposes of an organization.

Your purpose for seeking exemption is to secure low interest financing, grants and other funds for rehabilitation of property owned by [REDACTED]. This is a private benefit to [REDACTED] and precludes exemption under Code section 501(c)(3).

Accordingly, it is held that you are not entitled to exemption from Federal Income Tax as an organization described in IRC section 501(c)(3), and you are required to file Federal Income Tax Returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the

issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.



If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue 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 Court of 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 this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

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

Sincerely,



District Director

Enclosures:
Publication 892
Form 6018