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Date 3/29/84

Surname [REDACTED]

District Director of Internal Revenue
Baltimore
Division Group 7204

MAY 22 1984

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DISTRICT DIRECTOR OF INTERNAL REVENUE
FEB 29 1984

MAY 21 1984

CHIEF, EP/ED DIVISION
BALTIMORE

FFN

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code and concluded that you do not qualify for exemption.

The information submitted indicates that you were formed on [REDACTED] under the laws of the state of [REDACTED]. You filed your application for recognition of exemption on [REDACTED]. Your purposes, as stated in your constitution, are as follows:

The resident council shall be the program planning body for [REDACTED] resident... It shall design, plan and carry out the resident program.

The council also shall be a liaison body, interpreting administration policies to residents and conveying to the administration suggestions regarding any phase of life and services of the home....

Your by-laws also set forth the following purpose:

To provide a forum through which constructive suggestions may be offered and projects initiated for the mutual benefit of the institution and the residents of [REDACTED].

To provide information to the residents on action taken at resident council meetings.

Your constitution and by-laws do not include a provision describing the distribution of your residential assets upon dissolution.

You were formed at the same time as the opening of the Center. Your application states that you do not have a governing board as yet, but the director of the Center's resident services department and the director of the Center's activities department are advisors of the Council. The director of the resident services department also signed your application for exemption. The Social Worker and the program director of the Center are to serve as nonvoting members of your executive committee.

[REDACTED]

You have stated that your main objective is to operate in the best interests of the residents. The Meetings are held once a month by the residents. The meeting consists of discussions pertaining to problems of the center, complaints from the residents, and informing the residents of future social activities.

You will also conduct fundraisers activities from which the proceeds will be paid to the resident council.

In describing your residents, you stated that many have congestive heart failure or have had strokes. Most residents are between the ages of 74 and 78 years old. The average length of stay is two to three months.

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(b)(1) of the Income Tax 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.

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)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for charitable purposes unless it serves a public rather than a private interest. Thus, to meet this requirement, 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.

Rev. Rul. 68-73, 1968-1 C.B. 251, holds exempt from income tax under section 501(c)(3) of the Code a non-profit organization which ministers to the non-medical needs of patients in a proprietary hospital by reading to them, writing letters for them, and providing other similar personal services. It is not related to or controlled by the proprietary hospital, and the services are of a type which are not ordinarily provided by a hospital.

[REDACTED]

Based on the information submitted, we have concluded that you fail to meet the organizational requirements because you do not have a proper dissolution clause, and your purposes are not exclusively charitable. We have noted your willingness to consider amendment to your organizational documents. However, your current organizational documents fail to satisfy the organizational requirements described in section 1.501(c)(3)-1(b) of the regulations.

We also have concluded that you are operated to serve the private interests of the Center in more than an incidental manner.

The information submitted indicates that your activities are of the type that are ordinarily provided by the Center. It is the responsibility of the Center to answer complaints of the residents, and organize and conduct social programs for the residents in order to maintain the resident's general welfare at the Center. The services you provide serve to reduce the burden of the Center to provide services and expand funds for the residents' needs.

In addition, although you have stated that you are not controlled by the Center, you are substantially related to the Center. The directors of the resident services department and the activities department are advisors to the Council. They also act as the governing body because there are no long-term officers or directors appointed to the Council. Since the average stay of a resident is two to three months, it appears to be unlikely that a stable governing body will be controlled by the residents. Instead, the only relatively permanent members of your governing body are the two Center employees. Even though the social worker and program director of the Center cannot obtain voting power, they are a part of the executive committee of the Council. You thus are distinguishable from the organization described in Rev. Rul. 68-73 due both to the nature of the services provide and your relationship to the Center.

In conclusion, as stated above, we rule that based on the information submitted, you do not qualify for exemption under section 501 (c)(3) of the Code. Contributions to you or for your use 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, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted in duplicate within 21 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

[REDACTED]

your principal 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 proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7628(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 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."

Further correspondence with respect to this application should be sent to the following address:

[REDACTED]
[REDACTED]
Internal Revenue Service
111 Constitution Avenue, N.W.
Washington, D.C. 20224

Sincerely yours,

[REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch

cc: [REDACTED]
Attn: EO Group

cc: [REDACTED] State Officials

cc: [REDACTED]
[REDACTED]
[REDACTED]