

NO PROTEST Received
Release

Date 3-25-94

Surname [REDACTED]

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[REDACTED]

DEC 6 1993

[REDACTED]

Dear Applicant:

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 shows that you were incorporated pursuant to the Domestic Nonprofit Corporation Laws of the State of [REDACTED] on [REDACTED].

You state that your primary purpose and activity is the development of University and College cooperative housing for your membership. Your services include lender and seller negotiations, market analyses, feasibility analyses, financial projections, and other services. You will work with [REDACTED] to provide assistance to students to start, or expand, student housing cooperatives. [REDACTED] provides cooperative conferences, a movement newsletter, cooperative linking services, and internship network. You will be reimbursing [REDACTED] for use of their employees, facilities equipment and services. You will also be working with the [REDACTED]. The [REDACTED] is a national membership and trade association serving the cooperative businesses with programs promoting cooperative business development and education in the United States and overseas.

You presently have [REDACTED] members that are mostly exempt under section 501(c)(3) or section 501(c)(7) of the Code. [REDACTED] of these organizations are [REDACTED] organizations and [REDACTED] of these organizations have not applied for exempt status. You are supported by requiring a new development to reimburse you for travel, legal, consulting and other miscellaneous expenses. You also require a success fee of \$[REDACTED] per bed or [REDACTED]% of the total project cost. Upon completing of a project you charge your membership a \$[REDACTED] per hour consulting fee. You also require that your assisted groups (membership) pay you a \$[REDACTED] per member per month membership fee.

Section 501(c)(3) of the Code provides for the exemption from federal tax of organizations that are organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any individual.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. An organization that fails to meet either the organizational or the operational test is not exempt.

Section 1.501(c)(3)-1(c) of the regulations provides that an organization will not be regarded as "operated exclusively" for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of a purpose described in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not operated exclusively for one or more purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such terms includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monument, or works; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(3) of the regulations states that the term "educational", as used in section 501(c)(3), relates to-

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary

purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and of the trade or business which are in furtherance of one or more exempt purposes.

The presence of a single purpose not described in section 501(c)(3) of the Code, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. See Better Business Bureau v. U.S., 326 U.S. 279 (1945), Ct. D. 1650, 1945 C.B. 375.

Although an incidental private benefit will not destroy the qualifications of an otherwise educational organization, where an organization is serving both public and private interests the private benefit must be clearly incidental to the overriding public interest. A contrary finding will indicate that the organization is serving private interests. Benedict Ginsberg v. Commissioner, 46 T.C. 47 (1966).

Rev. Rul. 72-369, 1972-2 C.B. 245, provides that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. Furnishing services at cost lacks the donative element necessary to establish this activity as charitable.

An organization is not exempt under section 501(c)(3) of the Code merely because its operations are conducted on a non-profit basis. The operation of a cooperative housing development service and a consulting service for a fee is a trade or business ordinarily carried on for a profit. Although your housing development fees and your consulting fees are below the market rate they are not substantially below cost. Therefore, the donative element necessary to establish this activity as charitable is lacking. The fact that most of your services will be for organizations that are recognized as exempt under section 501(c)(3) of the Code would not change this result. See Rev. Rul. 72-369. In addition, the providing of housing development services and consulting services to social clubs that are exempt under section 501(c)(7) of the Code and to cooperative housing organizations which are not exempt under any section of the Code serves the private interests of these cooperative member/owners in more than an insubstantial way.

Therefore, it is our conclusion that you are neither organized nor operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code. Thus, you are not entitled to be recognized as exempt from federal income tax under section 501(c)(3) of the Code. You are required to file federal

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income tax returns. Contributions to you are not deductible by donors 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 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 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 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, 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.

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 income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

Signed for: [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 2

cc: DD, Cincinnati
Attn: EO Group

cc: State Officials of [REDACTED]

[REDACTED]

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