

ISSUE

Does an organization that is formed for the purpose of preserving the historic or architectural character of a community through the acquisition, occasional restoration of historically or architecturally significant properties, and subsequent disposition of those properties under the circumstances described below, qualify as an organization organized and operated exclusively for charitable or educational purposes under section 501(c)(3) of the Internal Revenue Code?

FACTS

The organization was formed exclusively for the purposes of preserving the historic and architectural character of its community through the acquisition, occasional restoration of historically or architecturally significant properties, and subsequent disposition of those properties subject to restrictive covenants. These covenants are designed exclusively to preserve the historical character or architectural significance of the properties and, through such activities, of education the public on the importance of historic preservation. The organization is composed of interested members of the public and is governed by a representative group that includes community and preservation leaders, and prominent architects and historians.

The organization has set up a 'revolving fund' to acquire and resell historically or architecturally significant properties. The fund may also be used to restore the historically or architecturally significant properties in some cases. The acquisitions and sales are made at fair market value on arm's length terms and any profits from sales are used to purchase other historically or architecturally significant properties or for other activities in keeping with the organization's tax exempt purposes. The organization sells the properties subject to restrictive covenants designed exclusively to preserve the historical character or architectural significance of the properties. These covenants generally restrict the use and enjoyment of the property by controlling its physical and/or visual aspects. The covenants are granted in perpetuity, bar any interior or exterior alterations without the consent of the organization, give the organization the right of first refusal in the event a purchaser should later desire to sell, and, in some cases, require restoration of the structure to its original appearance. Unlike covenants imposed by local associations of homeowners, these covenants preserve the designated properties in their historical state or character for the benefit of the public, rather than merely ensuring their conformity to locally imposed standards. Since such covenants may decrease the value of the property, the organization may lose some money in its resale operations. Such losses, if any, would be considered by it as a cost of its program.

The buyers include private individuals. However, the organization will not resell property to the person who initially sold or contributed the property to the organization or any related person.

The acquired structures are generally visible from the public right of way. Where they are not so visible, the organization provides in the restrictive covenants that visual access to the property will be made available to the public on a regular basis and the terms of the restrictive covenants contain prescribed conditions for such access, under the requirements set forth in section 1.170A-14(d) (5) (iv) of the Income Tax Regulations.

In order to ensure that only historically or architecturally significant structures are acquired, the organization confines its acquisitions to structures that possess integrity of location, design, setting, materials, and workmanship and:

(1) are closely associated with significant events or developments in American history; or

(2) are closely associated with the lives of significant American historical figures; or,

(3) embody distinctive characteristics of a type, period, or method of construction, or that represent the works of a master, or that possess high artistic value; and are either:

(a) listed in the National Register of Historic Places; or,

(b) located in a registered historic district and are certified by the Secretary of the Interior as being of historic significance to the district.

A registered historic district is either any district listed in the National Register of Historic Places or any district that is designated under a statute of an appropriate State or local government that is certified by the Secretary of the Interior as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district and that is certified by the Secretary of the Interior as meeting substantially all of the requirements for the listing of districts in the National Register.

LAW

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

Section 1.501(c) (3)-(d) (2) of the regulations states that the term 'charitable' is used in its generally accepted legal sense,

and includes the advancement of education, the erection or maintenance of public buildings, monuments, or works, and the promotion of social welfare by organizations designed to combat community deterioration.

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

The Historic Preservation Act of 1966 (16 U.S.C. Sections 461, 470) provides that it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States. The Act further states that the historical and cultural foundations of the nation should be preserved as a living part of our community life and development to give a sense of orientation to the American people.

Rev. Rul. 67-391, 1967-2 C.B. 190. holds that a nonprofit organization formed to develop and disseminate an urban land-use plan that is designed to improve the area, eliminate existing blight, and guard against future deterioration qualifies for exemption under section 501(c)(3) of the Code as being operated exclusively for educational and charitable purposes. The organization does not ordinarily engage in real estate transactions but does purchase and sell property of strategic value that is in danger of being exploited in a manner that might endanger the plan.

Rev. Rul. 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 buildings for viewing by the general public qualifies for exemption under section 501(c)(3) of the Code as being organized and operated exclusively for educational and charitable purposes.

ANALYSIS

The purpose of the organization in this case is to educate and otherwise benefit the public by restoring and preserving historically or architecturally significant properties through the acquisition, occasional restoration, and disposition of such properties at fair market value on arm's length terms. The continued preservation of such properties after their sale by the organization is guaranteed by means of restrictive covenants that are reasonably suited to preserving the historic or architectural character of the structures and community involved.

The identification, restoration, and preservation of historically or architecturally significant properties serves to educate the public and operates to prevent community deterioration

within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. Under such circumstances, historic and architectural preservation is a charitable purpose and activity within the meaning of section 501(c)(3) of the Code.

The organization's utilization of a revolving fund to facilitate the purchase and sale of properties is reasonably calculated to accomplish its charitable purposes. This method of historic and architectural preservation does not serve private interests within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations because any private purchaser pays not less than fair market value for the property purchased, and purchases subject to appropriate restrictive covenants.

HOLDING

An organization that is 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 those properties under the circumstances described above, qualifies as an organization organized and operated exclusively for charitable or educational purposes under section 501(c)(3) of the Code. Such an organization must also meet the other requirements of section 501(c)(3) in order to be exempt from federal income tax.

APPLICATION INSTRUCTIONS

Even though an organization considers itself within the scope of this revenue ruling, it must file an application on Form 1023, Application for Recognition of Exemption, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. See sections 1.501(a)-1 and 1.508-1(a) of the regulations. In accordance with the instructions to Form 1023, the application should be filed with the District Director of Internal Revenue for the key district indicated therein.