



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Dear *****:

This responds to your letter, on behalf of ***** , requesting confirmation that a tax exempt nursing facility may operate an assisted living facility for elderly persons, and may amend the purposes statement of its Articles of Incorporation to include operation of such a facility, without having to obtain a private letter ruling from the Internal Revenue Service ("Service") affirming that these transactions will not jeopardize the organization's tax exempt status under Section 501(c)(3) of the Internal Revenue Code ("Code").

In general, a tax exempt organization may operate an assisted living facility to satisfy the needs of the elderly for housing, health care, and financial security without violating its tax exempt purposes. Accordingly, an organization may amend its Articles of Incorporation to allow for operation of such a facility to satisfy the needs of the elderly for housing, health care, and financial security, without jeopardizing tax exempt status, and without obtaining a private letter ruling from the Service regarding such operations and amendment.

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c)(3) which are organized and operated exclusively for charitable, educational, etc., purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Regulations states that the term "charitable" as used in section 501(c)(3) of the Code includes the relief of the distressed or of the underprivileged. Congress and the Service have recognized the elderly to be, in some

circumstances, a charitable class, as they are highly susceptible to financial distress and other forms of distress related to the special needs that result from their advanced years. 42 U.S.C. 3001; Rev. Rul. 72-124.

Operating a home for the elderly can be a tax exempt, charitable purpose if it meets the needs of the elderly for (1) housing, (2) health care, and (3) financial security, and if the cost for the housing is within the financial reach of a significant segment of the elderly persons in the community. Rev. Ruls. 72-124, 79-18.

The need for housing criterion will generally be satisfied if a home for the elderly provides residential facilities that are specifically designed to meet "some combination of the physical, emotional, recreational, social, religious, and similar needs of aged persons." Rev. Rul. 72-124 For instance, the Service has found that an organization met this criterion when it equipped apartment units for elderly residents with grab bars by bathtubs and toilets, wide entrance-exit doorways, ramps and elevators for wheelchair use, windows at eye level for wheelchair-bound residents, and an emergency 24-hour alarm system. Rev. Rul. 79-18.

The need for health care criterion generally will be met if a home for the elderly either provides some form of health care or maintains some continuing arrangement with other health care facilities or personnel designed to maintain the physical and, if necessary, mental well-being of its residents. Rev. Rul. 72-124. For instance, the Service has found that an organization that operated an apartment rental complex for elderly residents met this criterion when it had an employee on duty 24 hours a day who gave temporary aid in emergencies, contacted professional help (doctor, ambulance service, etc.), and ensured that the steps necessary to render aid were carried out. Rev. Rul. 79-18.

The need for financial security criterion generally will be met if an organization operating a home for the elderly (1) is committed to an established policy of maintaining in residence any persons who become unable to pay; and (2) is operated to provide services at the lowest feasible cost. Rev. Rul. 72-124.

First, the organization must be committed to an established policy, either in writing or in actual practice, of maintaining in residence any person who becomes unable to pay the regular rents or other charges. The organization should provide for these residents using whatever means are available to it, including using the organization's own reserves, governmental welfare assistance, or member or public contributions. Rev. Rul. 72-124.

Second, the organization must operate so as to provide its services to the aged at the lowest feasible cost. An organization will be considered to operate at the lowest feasible cost even though it includes within its cost the accumulation and maintenance of reserves necessary to ensure the life care of each resident, and reserves for physical

expansion commensurate with the needs of the community and the existing resources of the organization. Rev. Rul. 72-124.

Finally, to serve tax exempt charitable purposes, a home for the elderly must price its housing units to be within the financial reach of a significant segment of the elderly in the community. Rev. Rul. 79-18.

We believe this general information will be of assistance to you. This letter, however, is not a ruling and may not be relied on as such. If you have any questions, please feel free to contact the person whose name and telephone number are listed in the heading of this letter.

Sincerely,
Lawrence Brauer
Acting Manager
Exempt Organizations, Technical Group 1