

**Internal Revenue Service**  
Appeals Division  
55 N. Robinson, Suite 939  
MS 8000  
Oklahoma City, OK 73102-9231

**CERTIFIED**

**Department of the Treasury**

Date: **NOV 16 2007**

Redaction legend:

A=

B=

C=



Number: **200825051**  
Release Date: 6/20/2008

UIL: 501.03-30  
501.36-04

**Taxpayer Identification Number:**



**Person to Contact:**

Employee ID Number:

Tel:

Fax:

**Refer Reply to:**

AP:LA:EMW

**In Re:**

Exempt status

**Tax Years:** 2004 and subsequent  
years

Last Day to File a Petition with the  
United States Tax Court: **JAN 15 2008**

Dear :

This is a final adverse determination as to your application for exempt status under section 501(a) as an organization described under section 501(c)(3) of the Internal Revenue Code. Our adverse determination was made for the following reason(s):

Your organization is not organized or operated exclusively for charitable purposes. Your organization has failed to establish that it will primarily engage in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) as required by Treas. Reg. § 1.501(c)(3)-1(c)(1). Your organization appears to have a substantial commercial purpose that serves a private, rather than public interests.

Contributions to your organization are not deductible under Code § 170. You are required to file federal Form 1120 for the year(s) shown above.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> (ninety-first) day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

You also have the right to contact the Office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778, and ask for Taxpayer Advocate assistance.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals procedures, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, or extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

We will notify the appropriate State officials of this final adverse determination of your exempt status, as required by Code section 6104(c).

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

Sincerely,



Charles F. Fisher  
Appeals Team Manager

cc:



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: DEC 13 2006

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL Index:  
501.03-30  
501.36-04

Legend:

L= The Applicant

B = State Name

C = Date of Incorporation

D = Date of Amendment to Articles of Incorporation

E = Brokerage Company

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues:

*Does an organization formed to facilitate donations of real estate qualify for exemption from Federal income under section 501(c)(3) of the Internal Revenue Code of 1986?*

Facts:

L was incorporated as a domestic nonprofit corporation pursuant to the statutes of the State of B on C. L is organized as a public benefit corporation. The Second Article states "the purpose of this organization is to facilitate non-profit donations." Articles of Amendment were filed by your organization on D that restated the Second Article to say "the purpose of this organization is to facilitate non-profit donations. Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organization under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code."

Article III, Section 3 of your bylaws state that the "the corporation is organized as a public benefit corporation for the following purpose or purposes: to provide assistance to donor and

donee organizations who wish to effect a charitable giving while simultaneously reducing liability concerns for both."

L was established to work with individuals and organizations that want to donate real estate for the benefit of specifically named Universities, Colleges or other charitable organizations. The donors make their real estate donations to L who will accept title to this property, assume the property maintenance expenses and liabilities and then resell the property through the listing and sales services of third party real estate organizations. The net proceeds after expenses will then be given to the school or charitable organization designated by the original donor.

The application for exemption explains that "smaller schools especially are reluctant to accept donations other than cash or marketable securities because of the burdens and lack of expertise in converting such assets to cash. They face many unwanted property maintenance expenses and undesired liabilities as well associated with having the school appear in a chain of title for a property." Additional information subsequently submitted clarified that "L's primary charitable purpose is to connect donors with the university or school of their choice with donations that otherwise would not be currently accepted."

The Founder/President of L is currently the only officer/director. Other officers and director positions are still to be filled. Article V of the Bylaws states that the affairs of this corporation shall be managed by a Board of Directors consisting of not less than three (3) directors or more than nine (9) directors.

The Founder's qualifications and expertise includes providing real estate services to individuals as an independent contractor to the E organization. The Founder stated that once the applicant qualifies for exemption that all relationships with E will be severed and the Founder will join L on a full time basis.

The compensation of officers and directors of L was clarified as follows:

"The compensation schedule as originally presented assumed a salary for the President of \$85,000 and for the Vice President \$75,000. In the second year, a CFO was included in the plan at a salary of \$95,000 (this salary is not defined as it is yet to be shown what would be needed to attract an individual with the appropriate talents and experience). Bonus potential of 20% is included in the plan (on the assumption that L is moving positively forward and has the cash flow necessary to cover such an expense). A five percent annual raise is projected for all employees."

L's business plan or model was submitted in a hard copy form of a power point presentation. This presentation model also explains how the real estate donation process works in the following nine steps:

Step 1. The donor contacts the charity with their intentions to make a donation of real estate. The charity will then recommend that the donor consider L.

Step 2. The donor or charity contacts L who arranges for a professional market appraisal and inspection.

Step 3. The donor contributes property to L. L arranges for a formal closing and takes title to

the property. L gives the donor a statement of market value.

Steps 4 and 5. L arranges for property listing and repair if needed. L then lists the property for sale with a local Real Estate Agent.

Steps 6 and 7. L arranges for property maintenance and upkeep of its physical appearance in order to maximize its ultimate resale value. L then sells the property to a qualified buyer.

Steps 8 and 9. L deducts for property expenses and fees. L then will donate net proceeds to the chosen charity of the original donor.

L's presentation model explains that this program provides certain benefits to both the donor and to the charity. The donor would receive the following benefits:

- Donor receives immediate, full value contribution.
- Donor relinquishes all maintenance responsibilities.
- Donor has no "sales process" hassles.

Benefits to the Charity were listed as:

- Charity averts all risks of ownership.
- Charity never takes title.
- Charity has no property maintenance obligations.
- Charity guarantees receipt of cash donation.
- Charity requires no staff to manage the program.

These benefits highlighted in the presentation model also reinforce the purposes stated in the bylaws that providing assistance to the donor and donee simultaneously reduces liability concerns to both.

The presentation model included an illustration that shows the advantage for a charity that utilizes L's services. In that illustrated example the charity would receive 86% of the market value of a property by utilizing the services of L. This is compared to 91% of the market value if the property was sold by the owner and the funds donated to the charity. This illustration assumes in both cases that the property is held for six months. Although the charity receives 5% less the illustration points out that the charity still benefits because:

For a 5% difference, does the charity:

- Want to Refuse or Lose the Donation?
- Want the risks of Ownership?
- Want the maintenance obligations?
- Want the Insurance/tax obligations?
- Want to staff/manage the program?

Donors that donate property to L are not anticipated to pay any fees for service. The donors are introduced to L by the benefiting charitable institution. Once the donated property is under ownership control of L, steps are taken to dispose of the property at prevailing market prices.

As stated earlier in Steps 8 and 9 L deducts for property expenses and fees before donating the net proceeds to the chosen charity of the original donor. The fee to cover L's overhead is anticipated to be 3-4% of the proceeds.

The following is a list of expenses related to the costs of property disposition:

Real Estate Commissions  
 Project Manager Commissions  
 Property Appraisal  
 Property Inspection  
 Property Survey  
 Property Management Fees  
 Closing Fees  
 Closing Attorney Fees  
 Closing Mortgage Fees  
 Title Insurance  
 Hazards Insurance  
 Property Taxes

L anticipates they will not be solely relying on fees for services. As the organization grows, funds will also be solicited from the general public through fundraising and government grants so that the fees charged can be reduced.

It is anticipated that all donated properties will be physically located in geographic areas remote from L. Therefore, L will facilitate the use of local real estate agencies and professionals located in the vicinity of the donated property.

"L will have no employees or capabilities to handle the day-to-day needs of the properties that it controls. Once donated property is accepted, L will be obligated to maintain its appearance (mowing, plowing, etc.) and its physical operation (water, lights, sewer services, etc.) in order to maximize its ultimate resale value. Any services of this type will be contracted on a local basis to the property most likely on the advice and recommendation of the broker who has been selected to list the property for sale."

In situations where rental property is donated any rental operations would also be contracted with a local property manager. "Income from rentals would ultimately be distributed to the benefiting public charity, less associated expenses for management by third parties."

Law:

An organization described in section 501(c)(3) of the Code, must, among other requirements, be organized and operated exclusively for certain purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states:

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.

Section 1.501(c)(3)-1(c)(1) of the regulations states:

An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1) of the regulations states:

(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:

....

(b) Charitable,

....

(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.

Section 1.501(c)(3)-1(e)(1) of the regulations states:

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 extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

In Rev. Rul. 64-182, 1964-1 C.B. 186, an organization derived its income principally from the rental of space in a large commercial office building. The organization's charitable purposes are carried out by making contributions and grants to other charitable organizations. In this revenue ruling, the IRS concluded that this organization met the primary purpose test of section 1.501(c)(3)-1(e)(1) of the regulations because it carried on a charitable program that was commensurate in scope with its financial resources.

In Rev. Rul. 85-184, 1985-2 C.B. 84, a public utility entered into an agreement with a charitable organization under which the charity designated the utility as its authorized agent to collect

contributions to the program on the charity's behalf. When the utility's customers pay their bills, they are given the opportunity of paying an additional amount designated as contributions to the charity's financial assistance program for the elderly and handicapped. The utility collects these contributions, segregates them from its own funds, does not exercise any dominion or control over the contributions, and transfers them to the charity weekly.

The issue in this revenue ruling was whether the customers who contribute to this program are allowed a charitable contribution deduction under section 170(a) of the Code. The Service concluded that since the utility was acting as the charity's collection agent in receiving certain funds over which the utility exercised no dominion or control and which the utility earmarked for use by the charity, a customer who makes such contribution is entitled to a charitable contribution deduction under section 170(a) in the year the utility pays the funds to the charity.

In Rev. Rul. 2002-67, 2002-2 C.B. 873, O, a charitable organization, entered into a written agreement with X, a for-profit entity licensed to sell cars in the same state where they are both located. The agreement provides that X, acting as O's authorized agent, will administer a fund-raising program for O in exchange for a fee. X's activities under the agreement are subject to O's review and approval. The agreement provides that X will act on O's behalf to:

- (1) Solicit donation of used cars;
- (2) Accept, process and sell the cars;
- (3) Transfer the proceeds of the sales to the charity, less X's fee; and
- (4) Provide each donor with substantiation of that donor's contribution, including the acknowledgement that contains the required information.

B transferred a used car to X as O's authorized agent.

In this revenue ruling, the IRS concluded that because the charity and X have established a valid agency relationship under the laws of the state, X has the authority to act on the charity's behalf according to the terms of their agency agreement. Thus, for purposes of section 170 of the Code, B's transfer of the car to X as the charity's authorized agent is treated as a transfer to the charity. This revenue ruling states that the determination of whether an agency relationship exists is based upon the requirements of state law, and that not all contractual relationships will result in an agency relationship under state law.

In *State Police Association of Massachusetts v. Commissioner*, 125 F.3d 1 (1<sup>st</sup> Cir. 1997), a state police association that is tax-exempt under section 501(c)(5) of the Code, published a yearbook and derived income from advertisements placed in the yearbook. The association contracted with an outside for-profit company to publish the yearbook and recruit telemarketers to solicit advertisements. The telemarketers worked out of field offices selected by the outside firm with the association's approval and solicited local and national businesses within geographic areas demarcated by the association. They used a canned solicitation format approved by the association, which identified themselves as calling on behalf of the association. Troopers monitored all solicitations. The association retained the right to inspect the field offices



from which the solicitations took place. Payments for ads sold were made to the association and paid set percentages of the gross receipts to the telemarketers and to the outside firm.

The principal issue in this case was whether the advertising revenues were subject to the tax on unrelated business income. One of the subordinate issues was whether the outside firm was an agent of the association, in which event their advertising activities would be attributed to the association, or simply an independent contractor. In concluding that the outside firm was the association's agent, the court of appeals stated:

In the first place, an independent contractor can be an agent if, and to the extent that, the contractor acts for the benefit of another and under its control in a particular transaction. See Restatement (Second) of Agency §§ 2, 14N (1957). In the second place, the label which contracting parties place on their relationship is not decisive of their status vis-à-vis third parties. [Citations omitted.]

125 F.3d at 7.

In analyzing the relationship between the association and the outside firm, the court stated:

... [N]o single factor is dispositive. [Citations omitted.] Rather, the nature of the relationship between the Association and the outside firms depends on a myriad of factors, including control over the manner and means of performing the work, the skill required, and the method of payment, the duration of the relationship, and similar factors. [Citations omitted.] The relevant factors here, taken as a whole, solidly support the Tax Court's determination that the outside firms acted as the Association's agents.

*Ibid*

In Rev. Rul. 72-369, 1972-2 C.B. 245, an organization was formed to provide managerial and consulting services for section 501(c)(3) organizations to improve the administration of their charitable programs. The organization enters into agreements with unrelated section 501(c)(3) organizations to furnish managerial and consulting services on a cost basis.

This revenue ruling stated that:

An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the "operational test, the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative intent element necessary to establish this activity as charitable.

In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under section 501(c)(3) of the Code because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses. The Tax Court stated:

We must agree with the Commissioner that petitioner's activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit . . . .

70 T.C. at 358.

In *Easter House v. U.S.*, 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F.2d 78 (Fed. Cir. 1988), *cert. den.*, 488 U.S. 907 (1988), the organization, in exchange for a fee, provided adoption services to parents seeking to adopt a child, including services to pregnant women who intended to place their newborns for adoption. These fees were the organization's sole source of income. The Claims Court concluded that the organization's business purpose of operating an adoption service, not the advancement of educational and charitable activities, was its primary goal. It competed with other commercial organizations providing similar services. Thus, "[p]laintiff's competition provides its activities with a commercial hue." 12 Cl. Ct. at 486. Accordingly, the organization did not qualify for exemption under section 501(c)(3) of the Code.

In *Airlie Foundation v. I.R.S.*, 283 F. Supp. 2d 58 (D. D.C. 2003), the District Court found that that the organization was formed principally to organize, host, conduct and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax-exempt entities, but included patrons of a private and corporate nature. The organization paid significant advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its primary activity of operating a for-profit conference center. The court stated:

While plaintiff's organizational purpose is exempt and the foundation operates, in important respects, in an exempt fashion, there is a distinctive "commercial hue" to the way Airlie carries out its business.

283 F. Supp. 2d at 65.

#### Application of Law:

When an individual wishes to donate a real estate property to a specific charity, you and the individual agree that the individual will transfer to you possession and legal title of the property. You agree that you will assume full responsibility and will arrange for making the appropriate services, repairs or upgrades needed to make the property more readily marketable. You also agree that you will arrange for the property to be sold and that after the sale, you will donate the net proceeds to the designated charity on behalf of the donor.

As a result of this arrangement with a donor, you are performing services for and on behalf of the donor that facilitate the donor's contribution of property to the charity designated by the donor. Thus, you are serving as an agent of the donor. See Rev. Rul. 85- 184, *supra*; Rev. Rul. 2002-67, *supra*; and *State Police Association of Massachusetts v. Commissioner, supra*.

By you serving as an agent of each donor, you are performing commercial services for these individuals in a manner that is similar to the organization in Rev. Rul. 72-369, *supra*. Arranging for donors for the charitable contribution of their properties, by taking possession and title to the property; by arranging with third parties to maintain its appearance, its physical operation and all necessary services to be sold by brokers; and by paying the net sales proceeds to the charity designated by the donor, all constitute common commercial activities, rather than activities that further a charitable purpose. See *B.S.W. Inc. v. Commissioner, supra*; *Easter House v. U.S., supra*; and *Airlie Foundation v. I.R.S., supra*. The fact that your activities consist exclusively of performing services for individuals who wish to donate property to section 501(c)(3) organizations does not render your activities as charitable. Rev. Rul. 72-369, *supra*.

In addition, since all of your activities constitute the operation of a commercial activity, you are organized and operated for the primary purpose of carrying on an unrelated trade or business. As a result, under section 1.501(c)(3)-1(e)(1) of the regulations, you do not meet the requirements of section 501(c)(3) of the Code. Unlike the organization described in Rev. Rul. 64-182, *supra*, you do not carry on a charitable program that is commensurate in scope with your financial resources.

Therefore, you do not operate exclusively for charitable purposes, as required in section 501(c)(3) of the Code and the regulations.

Applicant's Position:

The applicant reiterates their position that L's primary "objective is to increase charitable donations to colleges and universities by facilitating the transfer of real property donations from donors. These donations are often turned down because of the type of property involved and the fact that the contribution policies at these organizations often do not include accepting real property due to the complexities involved. Many colleges and universities are not accepting donations of property due to their reluctance to hold the title to the property." L "assists colleges and universities to obtain these donations while increasing the overall level of giving to educational institutions."

"It is important to note that if a college or university accepted a donation of real property and converted the gift to cash, without the aid of L, the college or university would not be performing an unrelated activity. Accepting and maximizing contributions is a key component of an exempt organization's fundraising activities."

"With these facts, I think it is clear that the activity of L is for a legitimate charitable purpose and does not constitute a trade or business. Our goal is to assist the general public with making contributions of real property to colleges and universities, providing them with the necessary financial support to further their individual exempt purposes."

"The actual structure of L is not that of a real estate agency and they are not acting as a broker. The fees collected by L to cover operating expenses are deducted from the proceeds of the property and are not charged to the university or college, which supports L's mission to perform a charitable service for these organizations."

The applicant also compared themselves to another organization they believe has a similar or exact business model. This organization qualified for exemption under section 501(c)(3). Although the applicant believes they operate in the same manner as another organization, they understand that the comparison cannot be used as legal precedent.

**Conclusion:**

L's primary activity and purpose is to facilitate donations of real estate on behalf of donors and their chosen charity. Your business plan explains that after title of the property has been transferred to L the facilitation process is transacted through third party for profit entities. This process includes assuming the property maintenance operations, expenses and liabilities and then reselling the property. The net proceeds after expenses will then be given to the school or charitable organization designated by the donor. Your position is that the main goal is to increase funding to the colleges and universities by assisting their potential donors in converting titled real property into cash that the university or college will accept. The fact that this service simultaneously reduces liability concerns for both the donor and donee does not necessarily increase charitable donations to charities or further an exempt purpose. The facilitation of real estate transactions through for-profit third party entities for a fee constitutes a trade or business ordinarily carried on for profit.

Accordingly, it is held that L's activities are not charitable and therefore does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax

Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

**Mail to:**

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

**Deliver to:**

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements