



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **200936039**  
Release Date: 9/4/09  
Date: June 11, 2009  
UIL Code: 501.03-08

Contact Person:  
Identification Number:  
Contact Number:  
Employer Identification Number:  
Form Required To Be Filed:  
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: April 20, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

M =  
State =  
Date =  
B =

Dear

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

You, M, were formed on Date as a State nonprofit corporation. You applied for exemption under section 501(c)(3) and requested foundation status under section 509(a)(1) of the Code and 170(b)(1)(A)(vi) or 509(a)(2). Your original Articles did not include purpose, dissolution or prohibition against inurement clauses as required by section 1.501(c)(3)-1(b) of the Income Tax Regulations ("regulations"). You subsequently filed amendments to your articles on May 30, 20 including all the required provisions.

Your narrative statement provides that you were formed for the purpose of providing "skills training, affordable housing and self-help programs for low-income individuals throughout  
" You state that you will provide skills training to allow individuals to become gainfully employed and will eventually provide "economically feasible housing programs."

You state that your "economically feasibly housing programs" are geared towards low-income persons. You state that participation is open to the public, provided the prospective participants meet the criteria: low-income, limited employment experience, first-time homeowner and limited credit. You plan to purchase and accept donations, of a number of properties, use them to house participants with either low or zero rent. You state that the participants living in the properties must be willing to fix-up and maintain the property for a reduced or in lieu of, rent. You state that your program will provide education to the participants from the initial stages of

credit to home ownership. You state that after a period of time, you encourage participant to purchase the property.

You state that you plan to provide educational programs on the following topics:

1. Mortgages – you plan to provide information on the fundamentals of originating a residential or commercial loan;
2. Real estate – provide education on the principles of acquiring, holding, and renting;
3. Credit – provide information on the fundamentals of establishing and maintaining credit
4. Entity – teach persons about the different types of entities and how to establish them; and
5. Entertainment promotions – provide information on how to engage in entertainment promotions.

You state that the training workshop will be taught by instructors who are persons involved in each particular area, e.g. realtors and mortgage professionals for the real estate and mortgage courses, including several officers and entities with whom B has a relationship.

Participants will be selected on a first come, first served basis by the officers, provided the prospective participant meets the criteria noted above. You plan to charge program participants an annual fee of \$60 for membership which will allow participants access to instructors, computers, scholarship information, website, training materials, access to promotions, etc.

You have a second tier of membership for the “business concerns” who are involved in the employment and training aspects. You state that they will be given membership status in lieu of a cash payout, provided that the entity commits to a number of employment and training hours and post work shops for participants. In addition, such members will have access to all promotions and productions. You state that B has served as a business agent for a number of the entities and/or persons that will be participating in your programs.

You state that to facilitate these activities, you will hold at least four to six fundraisers per year and that your primary fundraiser will be “entertainment promotions.” You state that your entertainment promotions will consist of staging amateur boxing events including selling admissions, providing concessions, merchandising and parking services. You also plan to engage in other fundraising events such as concerts, talent competitions, cookouts, etc. You state that such events allow your business members an opportunity to entertain clients and build their clientele.

Your founder, B is a licensed agent for an entertainment promotion firm; B has stated that the for-profit entity may participate or join with M on future events as a “consultant.” Through the for-profit firm, B serves as a licensed matchmaker and promoter for professional boxing promotions. You state that the difference between the for-profit promotions and yours is that the professionals are financially compensated and that your performers will be compensated with trophies, medals and title belts.

Your board of directors currently consists of a single person, B. In addition, while they are not involved in the sale or development of real estate, three of the officers own residential rental properties. In addition, B has arranged for the financing of mortgages and credit in his capacity as business agent for a number of entities. You share office space with B's for-profit promotions

firm.

You indicate that compensation for officers is currently under consideration but that officers will receive a membership in lieu of cash which will allow them to employ a number of participants for internships and apprenticeships. In addition, in the sample proposed budget that you submitted, you noted that the promoter will receive a payout of "normally 10 percent of the purse budget" as a fee.

In your breakdown of projected time and expenses allocated to each activity, the majority of your time and expenses will be allocated to your entertainment promotions activity.

#### LAW:

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations ("regulations") provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the 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 operational test is not exempt.

Section 1.501(c)(3)-1(b) of the regulations provides 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; and does not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c) of the regulations provides that 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 exempt purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subsection, 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(d)(2) of the regulations defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Rev. Rul. 67-138, 1967-1 C.B. 129 holds that a nonprofit organization created to provide instruction and guidance to low-income families in need of adequate housing and interested in building their own homes is exempt under section 501(c)(3) of the Code. The organization's

training of low-income families on various aspects of house building and homeownership was educational. The activities related to assisting families find adequate housing was charitable as it provided relief to the underprivileged, lessened the burdens of government and was a means of combating community deterioration.

Rev. Rul. 68-17, 1968-1 C.B. 247 describes a nonprofit organization that was formed to aid low-income families living in deteriorating neighborhoods in improving their homes. The organization conducted a model demonstration housing program for low-income families funded in part by a grant from the Department of Housing and Urban Development. The program tested the feasibility, cost, and procedural and financial aspects of providing housing for low-income families through the acquisition, rehabilitation, and resale or lease of residential structures in deteriorating neighborhoods. The organization disseminated information about the results. The ruling finds that the organization's activities are educational within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 70-585, 1970-2 C.B. 115 provides four situations where nonprofit organizations created to provide housing for low or moderate income families may qualify for exemption under section 501(c)(3) of the Code. The fact that an organization receives public funds under a State or Federal program for housing is not determinative of whether the organization qualifies. Instead qualification is based on whether the organization is charitable within the meaning of section 501(c)(3). In order to be exempt, the organization needed to demonstrate that its activities promoted social welfare such as lessening neighborhood tensions, eliminating prejudice and discrimination, combating deterioration, and otherwise, relieving the poor and distressed.

Rev. Proc. 96-32, 1996-1 C.B. 717, set forth a safe harbor under which organizations that provide low-income housing will be considered charitable for relief of the poor and distressed, and described the facts and circumstances test that will apply to determine whether organizations that fall outside the safe harbor relieve the poor and distressed. It also clarified that housing organizations may rely on other charitable purposes to qualify for recognition of exemption. The safe harbor requires that the housing be affordable to the charitable beneficiaries. In the case of rental housing, this requirement will ordinarily be satisfied by the adoption of a rental policy that complies with government-imposed rental restrictions or otherwise provides for the limitation of the tenant's portion of the rent charged to ensure that the housing is affordable to low-income and very low-income residents. In the case of homeownership programs, this requirement will ordinarily be satisfied by the adoption of a mortgage policy that complies with government-imposed mortgage limitations or otherwise makes the initial and continuing costs of purchasing a home affordable to low and very low-income residents. Facts and circumstances that demonstrate relief of the poor may include, but are not limited to, the following:

1. A substantially greater percentage of residents than required by the safe harbor with incomes up to 120 percent of the area's very low-income limit.
2. Limited degree of deviation from the safe harbor percentages.
3. Limitation of a resident's portion of rent or mortgage payment to ensure that the housing is affordable to low-income and very low-income residents.
4. Participation in a government housing program designed to provide affordable housing.
5. Operation through a community-based board of directors, particularly if the selection

process demonstrates that community groups have input into the organization's operations.

6. The provision of additional social services affordable to the poor residents.
7. Relationship with an existing 501(c)(3) organization active in low-income housing for at least five years if the existing organization demonstrates control.
8. Acceptance of residents who, when considered individually, have unusual burdens such as extremely high medical costs which cause them to be in a condition similar to persons within the qualifying income limits in spite of their higher incomes.
9. Participation in a homeownership program designed to provide homeownership opportunities for families that cannot otherwise afford to purchase safe and decent housing.
10. Existence of affordability covenants or restrictions running with the property.

Under Section 4.03 of Rev. Proc. 2009-9, 2009-2 I.R.B. 256, exempt status will be recognized in advance of the commencement of operations if the proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. In order to satisfy this criteria, the organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), a nonprofit organization paid a for-profit corporation for the licenses to conduct "est" programs. The est programs involved training, seminars, and lectures in the areas of intrapersonal awareness and communication. The court held that denial of exemption was proper because the organization had a substantial commercial purpose that served private rather than public interests. Although the nonprofit claimed that it had no connection, direct or indirect with the for-profit, the court found that the for-profit exerted considerable control over the nonprofit's activities. The nonprofit's only function was to present to the public for a fee, ideas that were owned by the for-profit with materials and trainers supplied by the for-profit. Regardless of whether the payments made by the nonprofit to the for-profit were excessive, the for-profit benefited substantially from the operation of the nonprofit. The nonprofit was the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of the for-profit.

In KJ's Fund Raisers, Inc. v. Commissioner, 74 T.C.M. 669 (1997), the court held that a nonprofit organization, which sold lottery tickets on the premises of a for-profit business had a substantial non-exempt purpose to enhance the profits of the for-profit business. The owners of the for-profit business formed the nonprofit organization purportedly to raise funds for distribution to charitable causes. The nonprofit's lottery tickets were sold during the regular business hours by the owners and employees of the for-profit business. The owners of the for-profit initially controlled the board and later indicated that it would vest control in unrelated parties. The nonprofit opined that the organization "would fold without the original founders of the organization as officers." In finding that the nonprofit had a substantial nonexempt purpose, the court reasoned that the owners of the for-profit were in a position to control the nonprofit. Additionally, the court found that the publicity received by the for-profit was a significant benefit.

The "presence of a single . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number of truly . . . [exempt] purposes." Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945).

## RATIONALE:

You have failed to establish that your operations will further a charitable purpose, and that you will not be operated for a substantial nonexempt private purpose.

You have not presented the standards, criteria, procedures, or other means by which you intend to effectuate your current purposes or the nature of contemplated expenditures, as required in Rev. Proc. 2009-9, 2009-2 I.R.B. 256. In addition, vague generalizations and conclusory expectations are insufficient to demonstrate that you meet the operational test.

You have failed to establish that your operations will be charitable through relief of the poor and distressed. You have not established that you will meet the safe harbor of Rev. Proc. 96-32 for dealing with "low-income" persons. You also have not established that your housing sale and rental programs will be affordable to such persons. You have not established that you will comply with government-imposed rent restrictions or limitations of rent to an affordable level. With regard to sales activities, you have not indicated how you will assist or otherwise provide for downpayment costs, and you have failed to show how continuing costs will be made affordable. Moreover, you lack many favorable factors set forth in the facts-and-circumstances test, such as serving very-low-income persons, limitation of rent or mortgage payments, participation in a government affordable housing program, a community-based board, relationship with an existing 501(c)(3) organization, and affordability covenants running with the property.

Housing organizations may also be charitable through combating community deterioration. However, the mere redevelopment of blighted areas is not necessarily a charitable activity, as for-profit organizations often engage in such activity. You have not clearly established facts and circumstances demonstrating a charitable endeavor here, such as participation in a government grant program and community participation and control of your board. See, e.g., Rev. Rul. 68-17, 1968-1 C.B. 247, and Rev. Rul. 70-585, 1970-2 C.B. 115.

You also have failed to establish that your activities will not serve the private interests of B or his for-profit entity or the owners, directors, and officers of the participating business members. As stated in Better Business Bureau of Washington, D.C., supra, the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption, regardless of the number or importance of truly exempt purposes. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization does not operate exclusively for exempt purposes if it operates for the benefit of private interests.

You state that B operates an entertainment promotions firm for professional boxing and that you plan to contract with B to produce 4 to 6 amateur boxing promotions per year. Even though you stated that the amateur boxers will receive nothing more than trophies, medals and title belts, you will compensate B with a percentage of the revenue rather than a fee for his services. Further, you expect that your business members would realize a business advantage of using the promotions to entertain clients. While you exist as a separate legal entity, you are clearly controlled by B. You currently only have a single director, B; and your activities are substantially similar to B's. While you have other officers, control rests with B. Moreover, est of Hawaii and KJ's Fund Raisers, Inc. held that the nonprofit's activities served the commercial purposes of the for-profit organizations that formed them, even where individuals unrelated to the for-profit organizations formally controlled the nonprofit. Like those cases, your operations will provide

impermissible promotion of and business for the for-profit business of your founder.

**CONCLUSION:**

Based on the information provided in your Form 1023 and supporting documentation, we conclude that you are not operated exclusively for purposes described in section 501(c)(3) of the Internal Revenue Code. You have failed to establish that you further a charitable purpose that you will not be operated for a substantial nonexempt private purpose.

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.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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 protest 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 this address:

Internal Revenue Service  
TE/GE (SE:T:EO:RA:T:)

1111 Constitution Ave, N.W.  
Washington, DC 20224

You may also 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,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements