



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200945071**
Release Date: 11/6/2009

Date: August 11, 2009

UIL: 501.32-00, 501.33-00

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.

Since 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.

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, you should 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.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: August 11, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND

A = Name of Entity
B = Name of State
C = Date
D = Name of Entity
E = Name of Entity
F = Name of Individual
G = Name of Individual
H = Name of Individual

I = Name of Individual
J = Name of Individual
K = Name of Individual
L = Date
M = Name of Program
N = Name of Program
O = Name of Program
P = Name of Program
Q = Name of Entity
R = Name of Entity

UIL INDEX

501.32-00

501.33-00

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:

- 1) Do you, (A), qualify for recognition of tax exemption under section 501(c)(3) of the Code?
- 2) If you, (A), were to be granted recognition of tax exemption under section 501(c)(3) of the Code, should you be classified as a private foundation?

Facts:

You are a B nonprofit corporation incorporated on C. Your Articles of Incorporation provides that "Organization is organized for exclusively religious, charitable, educational and scientific

purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue Law, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under said Section 501(c)(3) of the Internal Revenue Code of 1986. Specifically, the organization will be a ministry that teaches the gospel of Jesus Christ as taught by the Holy Bible through workshops, conferences and retreats..."

Your Articles of Incorporation state that your incorporators were E, H, and I. E, H, and I are related. E is the daughter of H and I. Your board of directors consists of three married couples, including H and I.

You stated in your Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, that none of the individuals receiving goods, services, or funds through your programs are related to any of your officers, directors, or trustees. You also stated that you would not make grants, loans, or other distributions to organizations and that you did not have a close connection with any organization.

The activity narrative submitted with your application stated the following:

"[You] will educate and encourage the community about the Gospel of Jesus Christ through workshops, conferences and retreats. Conferences will be scheduled throughout the year. [Your] conferences and workshops will be held at public venues such as community centers, school auditoriums, hotels and conference facilities as can be coordinated to suit the target population being served. Subjects vary, but are all within the boundaries of the doctrines and teachings contained in the Holy Bible and are intended to encourage personal development and strengthening of Christian faith. The speakers will include local pastors and motivational speakers. Speakers will be selected by the Board of Directors. Volunteers will oversee the organization of these events. No fees are charged to attend these events. Facilities will be rented for these events. No specific events have been scheduled at this time."

Your website states that you began operations in _____ and have touched thousands of lives. Your website also states that your activities _____, H and I. This private property also serves as the personal residence of the H and I and their children.

Your website described your programs in more detail. Your website described three specific programs conducted by you, identified as M, N, and O.

Your website states that your programs are managed by volunteer staff, composed of E and G, both of which have been or are currently active participants in your programs.

You state that the M program is focused on training established and emerging leaders to impact persons within their centers of influence by practicing the leadership principles of Jesus of Nazareth. You state that approximately 75% of participants are under the age of 18. Your website states that this program focuses "

_____!" Your website contains pictures of individuals playing tug-of-war at a lake on the property.

Your N program gathers groups of adult men annually to "_____." Groups meet once or twice a year for a 24-hour period. Each man in the program creates a time line of significant events, accomplishments, and challenges from the previous year. The men have their families complete surveys and review them. The men then set goals and objectives for the coming year. Your website states that the events _____.

Your website states that "_____." Your website shows a picture of a group dressed in paintball gear and pictures of participants eating.

Your O programs are designed to encourage men to relate to their children. The program consists of a 24-hour campout on the property used by the foundation. Your website contains a _____.

The following is a schedule of events:

2:00 PM
 2:00 PM – 6:30 PM
 7:00 PM – 7:40 PM
 8:00 PM – 9:30 PM
 9:30 PM – 10:30 PM
 10:30 PM

7:00 AM
 8:00 AM – 9:00 AM
 9:00 AM – NOON
 11:30 AM
 NOON

The following recreational activities/equipment are available to your participants at your events:

- Fishing (which includes 2 stocked ponds)
- Swimming Pool
- Sand Volleyball
- Frisbee Golf
- Playground
- Trampoline
- Basketball
- 4-wheelers/ATVs
- Hiking Trails
- Paintball (has been discontinued)

Improvements to the property include two additional bays to the garage to store maintenance equipment and 4-wheelers, a double-hung gate at the property entrance with two commercial grade operators for security, double lateral lines in septic system, and the improvement of the property's gravel drive to a two-lane asphalt road. You have stated that the capital improvements made to the property were paid for personally by H. Almost all property and equipment used by you are owned by Q, a trust of H and L. In addition, you indicated that aside from the paintball activities, H and L, their family and guests may personally use all equipment and facilities

available to you. Furthermore, you state that the room over the garage of the personal residence of H and I are used specifically for your activities.

You do not charge admission for any of your programs. No rent is charged to you for the use of the property and equipment.

Your financial data indicated the following:

	2,0	2,0	20
Income			
Donations			
Interest Earned			
<i>Total Income</i>			
Expenses			
Admin (CAI) Fees			
Charitable			
Equipment Repair			
Program Support			
Property Maintenance			
<i>Total Expenses</i>			

You requested an advanced ruling on your public charity status, representing that you intend to solicit funds from the public in the form of gifts, grants, and contributions.

You have disclosed that you operated in connection with D until L when you transferred your remaining cash balances to an account managed by E. Your balance at the time of transfer was \$. You terminated your account with E approximately six months later. D, an entity recognized under section 501(c)(3) of the Code, operates a donor-advised fund. E is a for-profit organization that provides management services. The services provided by E include, but are not limited to the following:

1. Accounting and Bookkeeping
2. Receiving and receipting incoming donations
3. Writing and mailing checks for outgoing disbursements
4. Maintaining files and records
5. Administrative oversight

Although you stated on your Form 1023 application that no grants have or will be made by you, the financial data submitted subsequent to your application for exemption shows that you are active in grant-making. You state that the foundation makes grants in two ways. The first way consists of the board of directors becoming aware of organizations with purposes similar to its own. The board then reviews the purposes of said organization and determines an amount to be distributed. The board inquires of the potential recipient's tax-exempt status and verifies that the organization is either qualified to receive tax-deductible contributions in its own right or by virtue of its acceptance as a program under P, a field of interest fund recognized as tax exempt under section 501(c)(3) of the Code. The second way the organization makes grants is by way of notification by H. **H notifies the board of directors of a tax-exempt organization to which he and his family would personally like to donate. Upon board approval, H contributes the amount of his donation to you, and you, in turn, make a contribution of the same amount to the organization identified by H.**

According to the financial records provided, from your date of incorporation through the date that you submitted your application for tax exemption, you received actual revenues of \$ _____ from disqualified persons. From your date of incorporation through July of the following year, you received \$ _____ in contributions from disqualified persons. Disqualified persons include:

- Substantial Contributor
- Foundation Manager - An officer, director, trustee or an individual having powers or responsibilities similar to those of an officer, director, or trustee of the organization.
- Owner of more than 20% interest of an organization that is a substantial contributor to the foundation
- Family members of the above (spouse, ancestors, descendants, and spouse of lineal descendants)
- An organization in which persons described above hold more than a 35% interest

You received a total of \$ _____ in contributions for the period. Calculating your public support test from your date of incorporation through July of the following year shows that you have only received _____ % public support under 509(a)(1) & 170(b)(1)(A)(vi) and only _____ % public support under 509(a)(2). The percentages were calculated as follows:

Name	Year 1	Year 2	Total	2% Limitation	Excess Contributions over 2% Limitation
F	\$	\$	\$	\$	\$
H & I	\$	\$	\$	\$	\$
G	\$	\$	\$	\$	\$
H's Family member	\$	\$	\$	\$	\$
H's Family Member	\$	\$	\$	\$	\$
H's Related For-Profit	\$	\$	\$	\$	\$

TOTAL			\$		\$
-------	--	--	----	--	----

Public Support Test under 509(a)(1) & 170(b)(1)(A)(vi)

\$ - \$ = 18.65%
\$

Public Support Test under 509(a)(2)

\$ - \$ = 13.41%
\$

Your actual expenses encompassed the following: **property and equipment maintenance**, program expenses, charitable contributions, administrative fees, and other/miscellaneous.

Property and equipment maintenance includes lawn mowing, pest control, ATV repair, pool supplies, heating and air conditioning unit maintenance, painting, property maintenance supplies, lawn fertilizer, aerating and seeding of the property as well as the upkeep of the volleyball court, frisbee golf course, trampoline set, and swing set. Also included are clean-up expenses attributable to an ice storm that damaged trees on the property. **From your date of incorporation through July of the following year, you have expended \$ for property/equipment maintenance.** This accounts for % and % of your total annual expenses in your first and second years as a corporation, respectively.

Program expenses include food and supplies for your M, N, and O programs. From your date of incorporation through July of the following year, you expended \$ on your programs. This accounts for % and % of your total annual expenses in your first and second years as a corporation, respectively.

As indicated by your listing of charitable contributions, there are regular, recurring donations made to organizations. As indicated by the disbursement request forms from the period when you operated under D and E, one of the regular recipients, R is organized under P and is associated with E (the disbursement forms state, "Attention: E"). From your date of incorporation through July of the following year, you made \$ in contributions, \$ of which was donated to R, the foundation associated with E. Charitable contributions accounted for % and % of your total annual expenses in your first and second years as a corporation, respectively.

Administrative expenses include fees paid to E for their services, food and supplies for board meetings, printing/advertising, supplies, thank you gifts, and asset purchases (includes tripod, coffee urns, and chafing dishes). From your date of incorporation through July of the following year, you expended \$ on administrative expenses, \$ of which was paid to E. This accounts for % and % of your total annual expenses in your first and second years as a corporation, respectively.

Because your activities are conducted on the personal property and residence of H and I, you state that property and equipment maintenance expenses are split between you and H and I, with H and I paying approximately 50-60% of property related expenses (such as mowing, edging, trimming, storm debris removal, etc) and 30-40% of equipment related expenses (such as for the

pool, shop/garage doors, ATVs, playground equipment, etc.). You also state that a portion of the maintenance expenses are performed by volunteers.

You maintain that the property (including the facilities/equipment available on the property) is used 80% to 100% of the time by you and that the facilities are used personally by H, I, their family and guests up to 20% of the time.

Since incorporation through the end of your second year, you have conducted/scheduled 21 M events, 5 N events, and 6 O events. You state that the events last 24 hours. There are 5 M events that are multi-day events. **The total number of days you have used or is scheduled to use the property is 44 days – 15 days in your first year and 29 days in your second year.**

You have not submitted all invoices for your property maintenance expenses; however, you have submitted five invoices for lawn mowing, an invoice for pest control, an invoice for heating/air conditioning maintenance, an invoice for painting and upkeep, two invoices for swimming pool expenses, and an invoice for garage door repair. **According to your financial data, the aforementioned invoices were paid in full by you.**

The lawn services purchased include clean-up services, mowing, trimming, seeding, and fertilization. You have purchased these services from three different companies in addition to purchasing mowing services from J and K, the sons of H and I. These expenses have been paid monthly since your incorporation, with the exception of winter months. Your financial records show that you purchased other property related services from J and K during the winter months. These services include the clean up of destroyed/damaged trees as a result of an ice storm. In the same month, you paid \$150 to three of the daughters of H for housekeeping services. You held two 24-hour events in that month. You also paid for the installation of three new electric valves for the property's sprinkler system. From your date of incorporation through July of the following year, excluding the \$1,164 paid for clean-up after the ice storm, you have paid \$12,656 on lawn care. You have not indicated the quantity of services provided by volunteers or the amounts paid for personally by H and I.

Pest control services have been paid by you twice since incorporation. You have not provided information regarding any amounts paid for personally by H and I.

Regarding the heating and air conditioning unit maintenance, you have stated that part of the unit serves property used exclusively by the organization and the rest serves the personal residence. To ensure that the organization does not pay for portion used by the personal residence, you claim that the owners pay for the annual maintenance of the entire system from time to time. From your date of incorporation through July of the following year, you paid \$1,026 for the repair and maintenance of the heating/air conditioning unit on the property. You have not provided any additional information regarding amounts paid for personally by H and I.

The invoice for the painting services states that the following services were provided:

- Repaint picnic area posts
- Remove rust and repaint diving board base
- Prime rust and paint interior cabana and elec panel
- Remove and re-shingle playhouse roof

Replace hinges and repaint well house
Install new threshold in cabana

From your date of incorporation through July of the following year, you paid \$ _____ for the painting and upkeep of your picnic and pool areas. You have not provided any additional information regarding amounts personally paid by H and I.

You have stated that one of the invoices for swimming pool expenses was to repair and maintain the swimming pool after a season of heavy usage by you. The other invoice was to prepare for the following season which was expected to create heavy usage. From your date of incorporation through the date of the first invoice (approximately two months), you held nine 24-hour events. From your date of incorporation through July of the following year, you paid \$ _____ for pool maintenance. You have not provided any information regarding amounts personally paid by H and I.

With respect to the invoice for garage door repair, you have stated that the garage is used to store and maintain equipment used for organizational purposes. You have stated that two additional bays were added to the garage for this purpose. The invoice for garage door repair states that eight doors were serviced.

A large portion of your equipment maintenance expenses consists of ATV/4-wheeler repair and maintenance. You have provided proof that the ATVs/4-wheelers were purchased by H prior to incorporation. From your date of incorporation through July of the following year, you paid \$ _____ for ATV repair.

Additional expenses paid for by you include appreciation gifts to individuals, labor for ice storm repairs, a chainsaw carving at the property's entrance, new swings and chains for the swing set, replacement of trampoline pads, frisbee golf supplies, and snacks for volunteers. You have also paid for property maintenance supplies. An itemized list of those supplies has not been provided.

In addition to the aforementioned property maintenance expenses, the financial data provided for the period prior to incorporation shows that you had paid fees for the security alarm on the property and had paid to re-stock the pond, to have the septic tank pumped, to repair and maintain garage doors, to repair two well houses, and to sod and maintain the asphalt road leading to the entrance of the residence on the property.

You provided financial records for the two years preceding your incorporation, beginning when you opened your account under D. These records show monthly expense reimbursements to H. These reimbursements ceased during August 2006 and resumed in the first month in which you transferred your assets to E. Reimbursements consist of property/equipment maintenance expenses and food and supply purchases. There were two instances when H was reimbursed twice for the same expenses. These reimbursements have been made to E, G, and H.

Since your incorporation through July of the following year, the following summarizes your contributions, reimbursements, and payments for services:

<u>E</u>	
Contributed	\$ _____

Reimbursed	\$
Paid to spouse for services	\$
<u>G</u>	
Contributed	\$
Reimbursed	\$
Appreciation Dinner/Gift	\$
<u>H and I</u>	
Contributed	\$
Reimbursed	\$
Paid to children for services	\$
Paid to <u>F</u> 's program under <u>P</u>	\$

Law

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax for "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 509(a) of the Internal Revenue Code provides that a private foundation is a domestic or foreign organization described in section 501(c)(3) other than an organization described in sections 509(a)(1), 509(a)(2), 509(a)(3), and 509(a)(4).

P.L. 109-280, PENSION PROTECTION ACT OF 2006, Section 1231, provides for the taxation of a distribution made from a donor-advised fund to any natural person, or to any other person if such distribution is for any purpose other than one specified in section 170(c)(2)(B), or the sponsoring organization does not exercise expenditure responsibility with respect to such distribution in accordance with section 4945(h).

Section 1.501(a)-1(c) of the Income Tax Regulations states, the words private shareholder or individual in section 501 refer to persons having a personal and private interest in the activities of the organization.

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 or operational test, it is not exempt."

Section 1.501(c)(3)-1(c)(1) of the Income Tax 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 of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities in not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations provides that an organization is not

operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states 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 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(d)(2) of the Income Tax Regulations states that the term "charitable" is used in its generally accepted legal sense, and includes advancement of religion and combating juvenile delinquency.

Section 1.501(c)(3)-1(d)(3) of the Income Tax Regulations states that educational activities are defined as being the instruction or training of an individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 70-186, 1970-1 C.B. 129 held that a nonprofit organization formed to preserve and improve a lake used extensively as a public recreational facility qualifies for exemption under section 501(c)(3) of the Code.

Revenue Ruling 78-85, 1978-1 C.B. 150 held that a nonprofit organization with membership open to the general public that was formed by residents of a city to help preserve, beautify, and maintain a public park located in the city and whose support is derived from membership dues and contributions from the general public is operated exclusively for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code.

Revenue Ruling 75-286, 1975-2 C.B. 210 held that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, will not qualify for exemption under section 501(c)(3) of Code

In Benedict Ginsberg and Adele W. Ginsberg v. Commissioner, 46 T.C. 47, 1966, exemption was retroactively revoked from a corporation organized to conduct the dredging of certain waterways. It was held that the corporation was organized and operated primarily for the benefit of those persons owning property adjacent to the waterways dredged rather than for public or charitable purposes.

American Campaign Academy v. Commissioner, 92 T.C. No. 66, 92 T.C. 1053; 1989, the court stated that "When an organization operates 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, the organization by definition does not operate exclusively for exempt purposes."

In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279,283 (1945), the Supreme Court held that "the presence of a single [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of number or importance of truly [exempt] purposes.

In Old Dominion Box Co. v. United States, 477 F2d 344 (4th Cir. 1973) cert. denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In Manning Association v. Commissioner, 93 T.C. No. 50, descendants of an early New England settler, William Manning, formed the Association. The Association acquired a dwelling house which had been built by a grandson of William Manning. The Association renovated the house, gave it the name "the Manning Manse," and furnished it with colonial artifacts donated by family members. The Association built an extensive addition to the Manning house, as well as a large parking lot, and leased the premises to an unrelated party for the operation of a restaurant. The restaurant used the historic character of the house in attracting patronage. The Court found that the Association's "annual meeting" was in reality a family reunion. A newsletter published by the Association was directed toward promoting family pride and providing family members with an opportunity to share and receive news. The Court acknowledged that the Association's activities did further educational purposes to some degree. Nonetheless, the Court concluded that personal interest and nonexempt family purposes motivated the Association's activities to a substantial degree and therefore, the Association did not qualify for tax exemption under section 501(c)(3) of the Code.

In New Dynamics Foundation v. United States, 70 Fed. Cl. 782, 2006, a donor-advised fund was held to not be exempt under IRC 501(c)(3) because their earnings inured to the benefit of a founding board member, the organization's donors, and agents of related for-profit companies. The organization's earnings inured to the benefit of its donors because several donors established accounts through their own contributions and received some of their contributions back in the form of reimbursements.

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the Court denied a petition for declaratory judgment that the organization qualified for exempt status as a church. In addition to evidence of a pattern of tax-avoidance, the court noted a failure to respond completely and candidly at the administrative level. An organization may not declare what information or questions are relevant in a determination process. It cited a number of declaratory relief actions that upheld adverse rulings by the Service because of the failure of the applicants to provide full and complete information on which the Service could make an informed decision.

Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531, 1981, held that when an applicant's operations provides an obvious opportunity for abuse of the claimed tax-exempt status, it calls for open and candid disclosure of all facts bearing upon petitioner's organization, operations, and finances so that the Court, should it uphold the claimed exemption, can be assured that it is not sanctioning an abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that petitioner fails to meet the requirements of section 501(c)(3).

In The Schoger Foundation v. Commissioner, 76 T.C. 380, 1981, a not-for-profit corporation owns and operates a mountain lodge that it characterizes as a religious retreat facility. The lodge

makes available to its guests numerous activities, religious, recreational, and social, none of which are regularly scheduled or required. The religious activities revolve around individual prayer and contemplation, with optional daily devotions and occasional Sunday services available to the guests. The recreational and social activities are those of the usual vacation resort. The record does not show the extent to which the guests participated in any of the activities, religious or otherwise. It was held that the organization did not meet its burden to establish that it was operated exclusively for religious or other exempt purposes within the meaning of section 501(c)(3) of the Code.

Application of Law:

Section 501(c)(3) of the Code sets forth two main tests for qualifying for exempt status. An organization must be organized and operated exclusively for purposes described in section 501(c)(3).

To satisfy the organizational test, the organization must have specific language in its organizing document. You meet the organizational test.

To satisfy the operational test, you must be operated exclusively for one or more exempt purposes described in section 501(c)(3) of the Code. 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) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

You are dissimilar to the organizations described in Revenue Rulings 70-186 and 78-85 in the sense that you not engaged in preserving or maintaining public property. Rather, you are similar to the organizations described in Revenue Ruling 75-286 and in Benedict Ginsberg and Adele W Ginsberg, supra, in that your property maintenance is limited to the property of your board members, H and I, the maintenance of which is not useful and beneficial to the general public as a whole.

Similar to the organization described in American Campaign Academy, supra, by acting as a vehicle to facilitate tax-deductible property maintenance, you are operating for the benefit of your creator and his family. Expenses such as landscaping, pest control, and tree removal services on the property following an ice storm are expenses that H and his family would have had to pay regardless if the you were operating on the property or not. Thus, your payment of property maintenance expenses represents the payment of personal expenses on behalf of your Board members, H and I, resulting in prohibited inurement under section 501(c)(3) of the Code.

As in Better Business Bureau and Old Dominion Box Co, supra, you have shown that you operate for the benefit of the your creators and incorporators, which is a substantial non-exempt purpose.

You are similar to the organization described in Manning Association v. Commissioner, supra, in that personal interest of your founders and nonexempt family purposes motivate your activities to a substantial degree. Your founders/incorporators stand to gain substantially from your

payment of their personal property maintenance and equipment expenses.

With the passage of P.L. 109-280, PENSION PROTECTION ACT OF 2006, Section 1231, you ceased your pattern of making reimbursements to H through your operations under D, as the reimbursements would have been taxable expenditures. The fact that the reimbursements resumed in the first month in which you were no longer operating as a donor-advised fund under D showed the importance of this type of transaction to you. You are remarkably similar to the organization described in New Dynamics Foundation, *supra*. Your principal donors, H and I contributed their own funds to you and received some of their contributions back in the form of reimbursements and payment of property maintenance expenses. Your earnings inure to the benefit of H and I as you have not substantiated or shown that the property maintenance expenses paid by you are attributable to you.

Your earnings inure to the benefit of H with respect to employment of members of the H's family for the property maintenance. You have not shown that the expenses paid by you were anything other than payment of personal expenses on the maintenance of the private residence of H and I.

Your failure to respond completely and candidly to the questions on the Form 1023 application makes you similar to the organization described in National Association of American Churches and Bubbling Well Church of Universal Love, *supra*. As in Bubbling Well Church of Universal Love, *supra*, and National Association of American Churches, *supra*, with your reluctance to disclose pertinent facts in your application for exemption, it could be inferred that those facts, if disclosed, would show that you fail to meet the qualifications of section 501(c)(3) of Code.

Your activities are very similar to those of The Schoger Foundation, *supra*. In your original application, you referred to one of your programs as a retreat. Similar to The Schoger Foundation, *supra*, you have supplied guests with numerous activities, primarily recreational and social. The administrative record demonstrates your lack of organized or restructured activities to further educational or religious goals. Although you claim that your programs are religious in nature, your schedule of events clearly shows that the majority of time spent by guests at your facility is considered free time; a time when visitors may use the recreational facilities at their leisure. Your website markets your programs as a time for great fun and fellowship, supporting that your activities are substantially social in nature, rather than religious or educational.

While your O and M programs combat juvenile delinquency for the youth participants, the programs are not limited exclusively to youth. You have not shown how the M and N programs are otherwise religious or educational. By supplying participants with primarily social and recreational facilities, your programs further a substantial social purpose.

Furthermore, a substantial portion of your support is received from disqualified persons. You have not shown that you can reasonably be expected to meet the public support test to be classified as a public charity. Even if you were to be granted recognition of tax exemption under section 501(c)(3) of the Code, you should be classified as a private foundation as defined in section 509(a) of the Code.

Applicant's Position:

It is your position that the amounts paid for property and equipment maintenance were fair and based on the amount of time the property is used by you. You claim that your activities are religious in nature.

Service Response to Applicant's Position:

Your claim that the amounts paid for property and equipment maintenance are fair and reasonable has not been substantiated. Because you are operating on the private resident of H and his family, certain expenses such as landscaping, pest control, and tree removal and clean-up services following an ice storm are expenses that H and his family would have had to incur regardless if you were operating on the property or not. These expenses are incurred independent of your operations. Hence, you have not substantiated that the property and equipment maintenance expenses are ordinary and necessary expenses of your operations. Moreover, even if some expenses could be attributed to your activities, based on the limited number of events held annually, you have not substantiated your assertion that you use the facilities/equipment 80 to 100 percent of the time, nor have you substantiated how the payment of 40 to 70 percent of the expenses associated with said facilities/equipment is reasonable. We hold that you do not meet the requirements for tax exemption under section 501(c)(3) of the Code because you serve a private rather than a public interest as provided in Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations. Your earnings inure to the benefit of your founders/incorporators in contravention of section 501(c)(3) of the Code. Moreover, your activities and programs serve a substantial social purpose rather than an exclusive religious or charitable purpose.

Conclusion:

Based on the facts provided above, we hold that you do not meet the requirements for tax exemption under Section 501(c)(3) of the Code. You have not shown that the property maintenance expenses you paid to maintain the property owned by H and I and reimbursement to H and I were ordinary and necessary expenses. You have not demonstrated that the payment of property maintenance expenses and reimbursement of expenses to your board members do not result in inurement. You have not met your burden that you are formed to serve a public rather than a private purpose. Additionally, your activities serve a substantial social purpose rather than an exclusively educational, religious or charitable purpose. Therefore, you do not meet the requirements for recognition of tax exemption under section 501(c)(3) of the Code.

Even if you were to be granted recognition tax exemption under section 501(c)(3) of the Code, you should be classified as a private foundation as defined in section 509(a) of the Code as you have not shown that you can reasonably be expected to meet the public support test to be classified as a public charity.

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*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

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, 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
Attn:

Deliver to:

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

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements