



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: 200950047
Release Date: 12/11/09
Date: September 15, 2009
UIL Code: 501.03-05

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:
All

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,

Rob 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: 11/14/2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Third Party Communication

Date:

Category: N/A

LEGEND:

B =

C =

D =

M =

N =

O =

P =

Q =

R =

S =

UIL:

501.03-05

501-03-30

501.32-00

512.00-00

512.01-02

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 M qualify for exemption under section 501(c)(3) of the Code?

Facts

Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal

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Revenue Code, was submitted on Q. Information submitted with the application indicates that M was incorporated in the State of O on R. M is requesting exemption as a public charity described in Sections 509(a)(2).

Section Third (a) of the articles of incorporation stated in pertinent part, "the purposes for which the Corporation is organized are to receive and maintain real, tangible and intangible property, or all three, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income there from and the principal thereof exclusively for charitable, scientific, literary or educational purposes either directly or by contributions to organizations that qualify for as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986."

Article Third (c) of the articles of incorporation states, "without detracting from the generality of the permitted and prohibited activities described hereinabove, the Corporation may also engage in the following activities in connection with its broader purpose of building, refurbishing and otherwise providing a variety of building and related structures suitable for the operation of schools:

(i) The acquisition of improved and unimproved real property with a view to constructing and refurbishing the property for the operation of a school, including but not limited to charter schools;

(ii) The construction or refurbishment of such properties to meet the specific requirements for the operation of such school or schools;

(iii) The construction and/or refurbishment of subsidiary structures in connection with the operation of a school, including, but not limited to, residential facilities for teachers and/or administrative staff;

(iv) Charging rent for the use of such property with a view to covering the amortization of any indebtedness that may be incurred in connection with the construction and/or refurbishing of such propert(ies), reasonable administration expenses and a reasonable risk premium in those situations in which the lease term to the school is materially less than the term of the associated indebtedness;

(v) Making application for grants and/or gifts with a view to reducing the rental and related charges for the leasing of the properties to the school(s);

(vi) Incorporating into the rental charged for use of the property all other costs that may be absorbed by the Corporation, including cost of insurance, real property and other taxes and any and all other charges, fees and other exactions that may be assessed by state, federal and local governments;

(vii) Serving as a facilitator in connection with the establishment and operation of schools, including counseling and consulting regarding applicable federal, state and local laws and regulations as they may impact upon the operation of the school and any of its related activities, including the serving of food or providing a range of other services to students and teachers;

(viii) Developing expertise in a wide range of laws, rules, regulations and know-how, with a view to generally making that expertise available to groups proposing or actually operating a school on property leased from the Corporation;

(ix) Making gifts of cash and real and personal property to any school which may come into the possession of the Corporation through gifts and grants;

(x) Providing consulting services and/or counseling services that may assist the school organizers in seeking funding from various public and private sources or complying with applicable laws, rules, and regulations;

(xi) Either contracting out or operating its own facilities for the construction, refurbishing and maintenance of its leased properties;

(xii) Issuing bonds, debentures, notes and other forms of indebtedness under such terms and conditions as determined by the Board of Directors, and issuing such instruments with or without a trust indenture and selling such instruments by such instruments by such means or intermediaries as shall be lawfully available; and

(xiii) Engaging in such other lawful activities as shall advance the overall cause and objectives of the Corporation.

Item 1 of the Mission Statement states that M will, "acquire improved and unimproved real property which will be converted or developed into schools and other subsidiary structures. These structures will then be leased to various charter and other schools at generally competitive rates, but absent a significant or imposition of a reduced risk premium. By and large the neighborhoods in which such schools will be located will be considered high risk because of crime, urban blight and other negative factors.

M has three directors; B, President and CEO; C, Vice President; and D, Vice President. Page 2 of the application stated that each of the directors will receive compensation of \$ per year. B owns a Company named S, which is a real estate development corporation located in P, O. It is not clear of the role that C & D have with S. The application states that C & D are employees of S. In one of their replies M stated that C & D do not receive compensation from M or S.

Even though M is requesting exemption as a public charity described in section 509(a)(2) of the Code, it submitted Schedule D, which is to be completed by applicants that request to be supporting organizations described in section 509(a)(3) of the Code. The application stated that they were unable to identify the organizations that it will support. It has three applications under consideration from organizations requesting assistance.

The primary activity of M is to purchase and refurbish facilities to lease to Charter Schools. The first property to be rehabilitated by M has been purchased from the Archdiocese of P. This facility was renovated and is being leased to two charter schools. The archdiocese has other properties in run-down and crime infested neighborhoods that it wishes to sell and M is

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interested in purchasing. Based on the success of the first property sold to M, Archdiocese of P may decide to sell other properties to M.

The property contains two buildings. Per the application one of the buildings will be used to house two charter schools. The other building was to be converted into five or six apartments for use by the school as residences for some of its teachers. The reason is because the rent in P is expensive and qualified teachers are under paid. M has decided not to proceed with the housing activity and they plan to convert the building into a gymnasium.

The total square footage of the school building is approximately 48,000 sq. ft. One school is leasing 14,000 square feet and the other is leasing 7,946 square feet. The remainder is common area used by both schools such as bathrooms, Gym/Cafeteria, hallways and stairs, and boiler/maintenance. Both schools have entered into a lease agreement that commences on the later of (a) August 1, 2008 or (b) substantial completion of Landlord's work, and shall continue until July 31, 2023.

Per the lease agreement, the Charter schools shall pay M a base rent in an amount equal to Tenant's Proportionate Share of all "Property Expenses". "Property Expenses" shall include all of the Landlord's expenses relating to the ownership, use, and operation of the Property, including by way of example and not limitation, all acquisition costs, hard and soft construction and renovation cost, a reasonable administrative fee and Operating Expenses, plus reasonable reserves for roof repairs and maintenance, plus any amounts necessary to increase the total operating income for the property to an amount sufficient to meet any debt service requirements imposed by Landlord's lender. The base rent is to be adjusted every five years. In addition, the charter schools shall pay to M their Proportionate Share of all real estate taxes, assessments, metropolitan charges and other government charges levied against the Property. The Charter Schools must also pay for providing snow removal, landscape maintenance, and trash removal for the property.

The total rent paid by the two Charter Schools for the first five years will be \$. The "Property Expenses" for the first five years is \$. An additional \$ was added as "General Conditions". Therefore, the total amount is \$. M states that the rents are below market rate and are only enough to cover operating costs plus a small contingency reserve. Using the figures provided by M, (\$ \$) M's revenue will exceed its costs by \$.

M states that the fair market rental value of property in the surrounding areas is approximately \$12.50/sq. ft. No appraisal was submitted to substantiate this figure. The rent charged to the charter schools is approximately \$8/sq. ft.

The officers and directors of M will have only limited contact with the Charter School group. M will not engage in any facet of teaching. M will not be involved in the operation or funding of the school. M states its only relationship to the school will be that of a landlord. M states it will provide some advice and consulting services in the area of developing budgets, hiring a staff, applying for grants, and locating a facility.

M has a close relationship with N, which is a private foundation. N contacted S when they
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became aware that charter schools were in need of suitable properties. Shortly after, S formed M and started to do renovation on the school building. The only agreements between M & N are loans. N has made 10 loans to M from December 21, 200 through October 15, 200 for a total of \$. In November of 200 N also guaranteed a commercial loan of \$. N was also involved in the negotiations with the Archdiocese of P and with several banks regarding the commercial loan.

M purchased the facility from the Archdiocese of P for \$. Once the renovation is completed the project will cost approximately \$. The renovation was done by S. S is owned by B. A review of S's webpage shows they have developed a number of properties for both nonprofit organizations and for-profit organizations. S will sub-contract out most of the work needed. Neither S nor B is related to any of the sub-contractors.

The application contained a number of references regarding the relationship between M and S. This includes, S may obtain management fees in connection with the adaptive reuse of the properties that are acquired; C & D may receive compensation from S, all three of the directors may also serve as project manager and construction manager, and M will share the same office space as S.

The projected budgets for the first three years include \$ in contributions and \$ in unrelated business income. The expenses included \$ in board compensation for each of the first three years, \$ in other salaries for the first three years; \$ in occupancy expense; and \$ in interest expense.

The application stated that all three of the board members will receive a salary and possible bonuses. When this issue was addressed they stated that none of the board members will receive a salary from M or S and no bonuses will be issued. The only related-party fee that is paid to M by S was for actual hours billed for two employees at below market rates. S will act as the property manager and receive an annual fee of \$.

The application stated that M will be funded by grants, contributions, and rental income. It will also acquire funds through the sale of interest bearing debentures, notes, and other forms of indebtedness. When asked for an explanation they stated that their only source of funding will be rental income from the school.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax that organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 514(b)(1) of the Code defines the term "debt-financed property" to mean any property which is held to produce income and with respect to which there is an acquisition indebtedness as defined in section 514(c).

Section 514(c)(1)(A) of the Code provides that the term “acquisition indebtedness” means, with respect to any debt-financed property, the unpaid amount of the indebtedness incurred by the organization in acquiring or improving such property.

Section 514(b)(1)(A)(i) of the Code excludes from the definition of debt-financed property substantially all of the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of the purpose or function constituting the basis for exemption.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. 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 Regulations states 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 is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of IRC 501(c)(3) even though it operates a trade or business as a substantial part of its activities, unless its primary purpose is carrying on of a trade or business that does not further charitable purposes.

Section 1.514(b)(1)(b)(1)(ii) of the Regulations provides, in part, that if substantially all of a property is devoted to the organization’s exempt purpose it shall not be considered “debt-financed property” and the extent to which the property is used for a particular purpose shall be determined on the basis of facts and circumstances.

In Revenue Ruling 58-547, 1958-2C.B. 275 a lease, the parties to which are both exempt from tax under section 501(c)(3) of the Code and which constitutes a business lease within the meaning of section 514 of the Code, will not be considered as substantially related to the charitable, educational, etc. purposes of the lessor solely because the lessee is likewise an exempt organization.

In Revenue Ruling 69-572, 1969-2 CB 119 a nonprofit organization, created to construct and maintain a building for the exclusive purpose of housing and serving exempt member agencies of a community chest, at a rate substantially below their fair market rental, may qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 67-5, 1967-1 C.B. 123, holds that a foundation controlled by the creator's

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family was operated to enable the creator and his family to engage in financial activities that were beneficial to them, but detrimental to the foundation. This resulted in the foundation's ownership of common stock that paid no dividends of a corporation controlled by the foundation's creator and his family, which prevented it from carrying on a charitable program commensurate in scope with its financial resources. This ruling concluded that the foundation was operated for a substantial non-exempt purpose and served the private interest of the creator and therefore, was not entitled to exemption under section 501(c)(3) of the Code.

Revenue Ruling 71-529, 1971-2 CB 234 holds that a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(C)(3) of the Code.

In **Better Business Bureau v. United States, 326 U. S. 279 (1945)**, the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Thus the operational standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

In **The Schoger Foundation v. Commissioner of Internal Revenue Service, 76 T.C. 380 (1981)** the court held that if one of the purposes of an organization's activities is substantial and non-exempt (e.g. commercial), the organization will be denied exempt status under section 501(c)(3), even if its activity also furthers an exempt purpose.

Leon A Beeghly v. Commissioner 35 T.C. 490 (1960), provided that where an exempt organization engages in a transaction with a related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

In **Salvation Navy v. Commissioner, T.C.M. 2002-275(2002)**, the court found that one of reasons why the organization did not qualify for exemption from federal income tax was because it could not prove that its net earnings would not inure to the benefit of a private individual, its founder.

In **Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104 (9th Cir. 1981)**, the court affirmed the tax court's decision that held that the organization supplied no evidence showing that the payments to its controlling members were reasonable and the court also found that the potential for abuse created by the family's control of the organization required open candid disclosure of facts.

Application of Law

Section 501(c)(3) of the Code and Section 1.501(c)(3) -1(a) of the Regulations sets forth two main tests for qualification for exempt status. An organization must be organized and operated exclusively for purposes described in **Section 501(c)(3) of the Code**. Because M's articles of incorporation states purposes described in section 501(c)(3) of the Code and upon

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dissolution all assets will go to organizations that are exempt under section 501(c)(3) of the Code, M passes the organizational test.

M must, however, satisfy the operational test. The key requirement is that an organization be operated exclusively for one or more purposes described in section 501(c)(3) of the Code. The facts submitted show that the primary activity conducted by M is that of being a landlord. Furthermore, M's activities significantly benefit S and B. Therefore, M is not operated exclusively for purposes described in section 501(c)(3) of the Code.

M purchased a school facility from the Archdiocese, renovated the facility, and then leased the facility to two unrelated charter schools. The property being leased is "debt financed property" as described in **Sections 514(b)(1) and 514(c)(1)(A) of the Code.**

On November 19, 200 the property became available and N contacted S regarding the development of the property. A month later M was formed and the first of ten loans were given to M by N. At the time the building was purchased neither M or N had selected a charter school to occupy the facility. Three charter schools applied for the space in the facility and two were selected and signed 15 year leases. Based on the timeline of the events it appears that the activity conducted by M is simply to secure a project of S. M has a non-charitable purpose that is substantial in nature. **See Better Business Bureau v. United States, Supra.**

Section 1.501(c)(3) -1(e)(1) of the Regulations clarifies that if the organization's primary purpose is carrying on a trade or business it will not qualify for exemption under section 501(c)(3) of the Code. M stated that the only relationship that they will have with the charter school is that of a landlord. They will not be involved in the day-to-day operations of a charter school. Similar to the organization described in **The Schoger Foundation v. Commissioner, Supra**, M is conducting a non-exempt activity substantial in nature and therefore does not qualify for exemption under section 501(c)(3) of the Code.

M is not as described in **Revenue Ruling 69-572**, because the rental of the organization's facilities are not at rates substantially below their fair rental value. M has not demonstrated that the rent charged is substantially below the fair market rental value. M states that the fair market value of the property in the surrounding areas is approximately \$12.50/sq. ft. The rents to the charter school are about \$8/sq. ft. However, no appraisal was submitted to substantiate these figures. The Service and the courts have declined to set a fixed percentage as the test of substantiality. However, in **Revenue Ruling 71-529**, we know that 85% below cost satisfied the requirement in that case. Further, the facts show that M's rates cover all costs plus additional amounts for reserves.

Per the lease agreement the charter schools shall pay M a base rent in an amount equal to Tenant's Proportionate Share of all "Property Expenses", plus reserves for roof repairs and maintenance, plus any amounts necessary to increase the total operating income for the property to an amount sufficient to meet any debt service requirements imposed by the Landlord's lender. In addition, the charter schools shall pay to M their proportionate shares of all real estate taxes, assessments, metropolitan charges and other government charges levied against the Property. The charter schools must also pay for providing snow removal, landscape maintenance, and trash removal for the property.

Engaging in an ordinary commercial activity does not entitle an organization to tax exemption, even when the goods and services are provided exclusively to exempt organizations. M is similar to the organization describe in **Revenue Ruling 58-547** in that they are leasing a facility to an unrelated 501(c)(3) organization.

M has not demonstrated that their activities do not benefit B & S. S is a real estate development company that is owned by B. S was contacted by N to do the renovation of the school facility so the school could open in August 200 . The first board meeting was held on November 15, 200 and the only item discussed was the financing of the property. On the same day that M was formed M held their second board meeting and selected S to be the General Contractor. B was not present when this issue was decided. S was not selected through a bidding process. There is no indication that any board meeting was held in 200 .

As the general contractor, S will be providing construction and project management of the renovation. There are no written agreements or leases between M & S and none are contemplated within any specific time frame. The purchase price of the facility was \$

. The total cost of the project will be about \$. This leaves a difference of \$ that was used to renovate the facility. Similar to the organizations described in **Salvation Navy v. Commissioner, Supra** and **Bubbling Well Church of Universal Love, Inc. v Commissioner, Supra**, M has not supplied enough evidence to show that the net earnings would not inure to the benefit of B, C, D, & S.

The initial application stated that all three of the board members were to receive an annual salary of \$ plus bonuses they might receive for larger projects. The application also indicated that B or his firm S may receive management fees in connection with the adaptive reuse of the properties they acquire; C & D may receive compensation from S in connection with their work for the firm, and all three of the board members may serve as property and project managers on some of the projects that they put in motion. In the event that they do so, they propose to draw reimbursements and fees consistent with the market for their efforts.

M has been using the offices, telephones and other resources of B without charge. At some future date B's company, S, may charge M a modest rent and will allocate portions of the salaries of some of his employees who work on the project. This may include leasing a portion of the S business premises.

When these issues were questioned M stated that none of the directors have ever received any compensation, nor will they ever receive any compensation from M and no bonuses will be paid. M has never leased any space from S and it is anticipated that they never will. B explained that the previous attorney who put the application together had submitted inaccurate information. However, the application was signed by B under penalties of perjury that he examined the application, including the accompanying schedules and attachments.

Control is an important factor in determining whether an organization operates for the benefit of private interests. Similar to the organizations in **Leon A Beeghly v. Commissioner, supra** and **Rev. Rul. 67-5**, M is controlled by B, C, & D. B is the owner and founder of S, a real estate

development organization. S is the general contractor for the school project. S was not selected through a bidding process and allows M to use their office space, shares employees, and other resources of S. There are no signed agreements or contracts between M and S outlining the work that needs to be done and the fees that are to be assessed. Based on the information that was submitted it appears that M was created by S and S will benefit through its contractual arrangements as a service provider.

Applicant's Position

M states that it is more than a landlord, but is an unpaid nonprofit consultant to P charter schools. M has been instrumental in developing the strategic plan for two charter schools, as well as finding programmatic solutions for that plan. This includes being directly responsible for developing the facilities plan for the schools, identifying potential properties, negotiating and structuring the acquisition, and developing and financing packaging for the property that was selected. M has begun to assist another charter school in southwest P.

M asserts that it happens to be the landlord as a matter of circumstance, because it made the most sense in that particular situation. In all likelihood, M will not be the landlord or owner of another building.

M's position is that they are excluded from the definition of "unrelated business or trade" and should not be treated as debt-financed property pursuant to **Section 1.514(b)-1(b)(1)(ii) of the Regulations**. M agrees that the property is debt financed. However, they claim the property is used to further their exempt purpose which is to further education through the advancement of charter schools.

M also cited **Revenue Ruling 81-138** that ruled a chamber of commerce that borrowed money to construct a building on a site it developed to attract new industry to the community, was not "debt-financed property" because the organization was furthering its purpose of promoting the development of the community.

Service Response to Applicant's Position

The purpose of M is to further education through the advancement of charter schools. However, they are not conducting any educational activities. M mentioned many times during the development of this case that they will not be involved in any facet of teaching. The only relationship to the school is that of a landlord. Therefore, they are not excluded from the definition of "unrelated business or trade" as described in section 1.514(b)-1(b)(1)(ii). As such, M only indirectly furthers education in the provision of the facility leased to the charter school.

In the initial application, M stated that their only relationship with the charter school will be that of a landlord. M later stated that this was incorrect and that this was the fault of the first attorney. However, M's letter dated August 28, 200 states that M was created specifically to acquire and renovate property in order to create a facility for two charter schools. M did not make any reference to consulting activities. The letter was signed by B.

The consulting activities that M performs include identifying suitable properties, structuring financing, and managing the development process. These activities are primarily related to real estate. M is not conducting any educational or charitable activities. M did not make any references to the consulting activities until we noted that the only activity that they are conducting is that of a landlord. There is no agreement or contract that describes the consulting M is to perform. The only connection between M and the charter schools is the lease agreement. If M is conducting consulting services it is very minimal and is not the primary activity.

In M's letter dated January 27, 200 they state that it is not likely that they will be the landlord or owner of any other property. The phrase "not likely" leaves open the possibility that they might consider being a landlord for other charter schools in other circumstances.

The only activity that M describes in detail is renting a facility to two unrelated charter schools. M may or may not become the landlord of other facilities for charter schools. Should they obtain another facility they would continue to operate in a nonexempt manner because they would be similar to the organization described in Revenue Ruling 58-547.

M is not similar to the organization described in Revenue Ruling 81-138. In this ruling the exempt organization created by the Chamber of Commerce has an exempt purpose - to attract new industry, in order to develop the community. The leasing of the property is substantially related to the organization's exempt purpose, and the property is not debt-financed property. By contrast, M has not demonstrated that it is conducting any activities other than leasing to exempt organizations. Since this is not sufficient as an exempt purpose, M's rental income cannot be excluded from the definition of unrelated business or trade. Therefore, the bulk of M's projected revenues will constitute unrelated business income. This is itself a bar to exemption under IRC 501(c)(3)

Conclusion

Based on the information provided in your Form 1023 and supporting documentation, we concluded that you are not operated exclusively for purposes described in section 501(c)(3) of the Code. You have not shown that your activities are exclusively for purposes described in section 501(c)(3) of the Code. The only activity that you are conducting is that of a landlord to two unrelated charter schools. In addition, you have not demonstrated that your activities do not benefit B & S. Based on the above facts M is operating in a commercial manner and is primary for the benefit of B & S.

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*.

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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". The statement of facts (item 4) must be accompanied by the following 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."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

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

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,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892