

UIL 7428.00-00

Internal Revenue Service
Appeals Office
1000 S. Pine Island Road, Suite 350
Plantation, FL 33324

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Refer Reply to:

In Re:

Tax Period(s) Ended:

Form Required to be Filed:

Employer Identification Number:

Release Number: 201213036
Release Date: 3/30/2012
Date: January 5, 2012

A = Name

B = Address

Certified Mail

Dear

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under IRC Section 501(c)(3).

Our adverse determination was made for the following reason(s):

You do not qualify for exemption under section 501(c)(3) of the Code since your primary activity is to furnish, on a rental basis, a facility to a sorority and to carry out the day to day operations of that sorority's alumni activities. Your historic preservation activity is incidental to your primary purpose of supporting the activities of the active members and alumni of the sorority. The public receives only an incidental benefit from your ongoing maintenance and preservation of the Sorority House which is found on the National Register of Historical Places. Your primary purpose is serving the sorority through housing and social activities which are not qualifying under 501(c)(3).

You do not qualify for exemption as an organization described in section 501(c)(3) of the Code. Contributions to you are not deductible under section 170. You do remain exempt under IRC section 501(c)(7).

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate by calling 1-877-777-4778 and ask the Taxpayer Advocate for assistance or you can contact the Taxpayer Advocate for the IRS office that issued this adverse determination by writing to the Office of the Taxpayer Advocate, 10 West 15th Street, Suite 2319, Helena, MT 59626.

We will notify the appropriate State officials of this action, as required by Code section 6104(c). 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, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

CHARLES FISHER
TEAM MANAGER



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: August 4, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

C = sorority
H = university
P = state
U = date

UIL:

501.03-27
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.

Issue

1. Do you meet the organizational test under 501(c)(3) of the Code? No, for the reasons below.
2. Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons below.

Facts

You are a corporation formed on (U) , and operate pursuant to the laws of the State of (P). You are currently a 501(c)(7) organization that owns and operates property for the benefit of the (C) sorority at the (H).

Your Amended Articles of Incorporation state your purposes in part as:

- (1) To acquire by lease, purchase, construction, acceptance of gift or otherwise a proper and suitable house or home for (C) at (H); and to acquire by lease, purchase, construction, acceptance of gift or otherwise proper and suitable houses or homes for any Chapter of the sorority, and to acquire by lease, purchase, construction, acceptance of gift or otherwise, all proper and suitable rooms, quarters, house or homes for the use of sorority alumnae.
- (2) To purchase own lease or rent, use construct, accept gifts of, occupy and maintain rooms, buildings, houses, homes and premises for the purposes herein mentioned, either for or on behalf of the corporation itself, or for hire.

The Articles of Incorporation also state you are formed exclusively for charitable, religious, educational, and scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Your Bylaws state:

The purposes of this corporation shall be as stated in the Articles of Incorporation of the corporation, as amended, and to acquire, hold, lease and convey such real and/or personal property for the purpose of furnishing financial aid and assistance in the education of students at the (H) with (C); to preserve the real property that is the chapter house owned by the corporation, a "Certified Historic Structure"; to cultivate fraternal relations among alumnae, professors and active members of (C); to advance and promote the general interests of (C); to assist with the need for education support of (C) members as they pursue college degrees at the (H).

You state the specific purposes and description of activities for which you were formed are as follows:

First, to acquire, hold, lease and convey such real and/or personal property for the purpose of furnishing financial aid and assistance in the education of students at the (H) with (C). Access to study facilities includes a library and study rooms.

Second, a very significant purpose of yours is to preserve the real property that is the chapter house owned by the corporation. The property owned is on the National Register of Historic Places.

Third, to cultivate fraternal relations among alumnae, professors and the active members of (C).

Fourth, to advance and promote the general interests of (C).

Fifth, we determined that there was a need for educational support of members of (C) as they pursue college degrees at the (H). As the members of the sorority struggle to balance the need to work with the amount of time that must be devoted to educational pursuits, it has become increasingly difficult to focus the required attention to studies and to achieve academic excellence. Educational support from our group will allow members to focus more time on academics

Your initial activity description was as follows:

Capital Campaign -- This is being conducted by alumnae members of (C). The capital campaign is centered in (P) but will reach across the country to all living members of (C) and family of deceased members. This capital campaign will further our tax-exempt purpose in that the money we raise will be given to members of (C) for scholarships, educational improvements to the chapter facility and the betterment and long term preservation and maintenance of the historically registered facility. Initially about % of our total time will be dedicated to preparing for and executing the capital campaign, and post campaign activities. Very little funds will be used to support the capital campaign. Necessary expenditures are covered by funds that are budgeted for this purpose.

Your "info for Potential Members" is the same information provided to all prospective members of (C).

Your Mission Statement: (C) is an organization of women, which seeks for every member throughout her life bonds of friendship, mutual support, opportunities for self-growth, respect for intellectual development, and an understanding of and an allegiance to positive ethical principles. Ten Reasons to Join:

- (C) embraces ancient Greek values of goodness, truth, beauty and ethical living.
- (C) stresses social responsibility and philanthropy as integral to citizenship
- (C) is a single sex oasis in a mainly coed campus environment.
- (C) is a "family" away from home, breaking down campus-size and impersonality.
- (C) provides sisterhood support via alumnae organizations in hundreds of cities.
- (C) sustains members in bad times, celebrates good times and shares all times.

- (C) offers a surprising diversity of background and interest among its members.
- (C) focuses on academics and helping its members to appreciate learning.
- (C) provides leadership and organizational management opportunities.
- (C) helps members in personal growth, self-awareness, esteem and confidence.
- (C) emphasizes the importance of inter-personal cooperation despite different viewpoints

Your financial data for years 20 through 20 shows that over % of total revenue was used to directly support the day to day operations of (C).

Rent from (C) was only % of your income while over % came from various fees from members of (C) to cover the cost of the day-to-day operations of (C).

Some of these fees were described as follows:

- Maintenance Fee: (C) is paying you for routine maintenance of facility and contacts and insurance premiums for the academic year;
- Regular Board Fee: (C) is paying you for operating costs of the facility, including kitchen, meals, house upkeep, salaries and wages for the academic year;
- Transient Board Fee: (C) is paying you for some meals for live-out members of (D) as well as operating costs of facility, including kitchen, meals, house upkeep, salaries and wages for the academic year;
- House Fee: (C) is paying you to ensure operating costs of facility are covered, including kitchen, meals, house upkeep, salaries and wages for the academic year.

These fees are paid to you directly support the day-to-day activities of (C) which is a 501(c)(7) organization.

Your financial data for years 20 through 20 also shows % of total expenses were used to directly support the day to day operations of (C).

Some of these expense accounts were described as follows:

- House Department Account: Used for salaries, food, supplies, utilities and minor repairs. Any excess at end of year is to be used for maintenance and upkeep of house for the academic year;

- Insurance Account: Used for property and content insurance of the facility as well as Directors' and Officers' insurance.
- Routine Upkeep/Repairs Account: Used for building repairs, computer repairs, summer cleaning, summer lawn care, equipment repairs, painting and other routine upkeep/repairs.
- Major Repairs/Redecorating Account: Used for redecorating and major improvements that are not designated or restricted in any way for historical restoration or historical preservation.

Minutes from meeting agendas show along with reports on the Chapter house that you also discuss events among current and former students that belong to (C). This includes bids for potential new members, fundraising events and activities for alumni such as brunches, balls, conventions and payments of dues. E-mail correspondence shows discussions relating to certain events for fundraising of the alumni association of (C) and the recruitment of new members into that alumni association including events such as homecoming, banquets and various fundraisers. You included with your application information forms for new alumni members and how their dues would be used.

A chart of your activities shows along with multiple fundraisers supporting the house you conduct brunches, celebrations, dinners, parties and various other social functions to further the purposes of serving your alumni. You have indicated interactions with parents and family members, the school football team, school professors and social functions for members and guests as activities. You open your building for photo shoots, weddings and related services, and for school related celebrations in addition to renting the house to current members of (C).

Law

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

Section 501(c)(7) of the Code Clubs provides for the exemption from federal income tax of corporations organized for pleasure, recreation, and other nonprofit purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that 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 purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3) - 1(b)(1)(i) of the Regulations state that an organization is organized exclusively for one or more exempt purposes only if its articles of organization: (a) Limit the purposes of such organization to one or more exempt purposes (b) Do 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)(1) of the regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Section 1.501(c)(3) - 1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Rev. Rul. 64-118, 1964-1 C.B. 182, An organization does not qualify for exemption from federal income taxation under section 501(c)(3) of the Code where its primary activity is to furnish, on a rental basis, a chapter house to a fraternity which is composed of students. A corporation, fund, or foundation so organized may, however, under proper circumstances, be classified as a club organized and operated exclusively for pleasure, recreation and other nonprofit purposes and exempt from federal income tax under the provisions of section 501(c)(7) of the Code.

Rev. Rul. 67-391, 1967-2 C.B. 190. A nonprofit organization formed to develop and distribute a community land-use plan may be exempt from tax. §1.501(c)(3)-1. (Sec. 501, '86 Code.)

Rev. Rul. 69-573, 1969-2 C.B. 125, holds that a college fraternity that maintains a chapter house for active student members is exempt from federal taxation under section 501(c)(7), rather than section 501(c)(3). Therefore, contributions to the fraternity are not deductible under section 170. Rev. Rul. 69-573, citing *Phinney v. Dougherty*, 307 F.2d 357 (5th Cir. 1962), and *Davison v. Commissioner*, 60 F.2d 50 (2d Cir. 1932), states that although the typical college fraternity does in some degree contribute to the cultural and educational growth of its members during their student years, that is not its primary purpose. Such an organization is primarily a social club in that its major functions are to provide a meeting place for its members, living quarters, and the headquarters for their entertainment.

Rev. Rul. 75-470, 1975-2 C.B. 207 Preservation of buildings having historical or architectural significance. A nonprofit organization formed to promote an appreciation of history through the acquisition, restoration, and preservation of homes, churches, and public buildings having special historical or architectural significance and to open the structures for viewing by the general public qualifies for exemption. §1.501(c)(3)-1. (Sec. 501, '86 Code.)

Rev. Rul. 86-49, 1986-1 C.B. 243.

Preservation of properties having historical or architectural significance.

An organization formed for the purposes of preserving the historic or architectural character of a community through the acquisition and occasional restoration of historically or architecturally significant properties, and subsequent disposition of these properties qualifies for exemption under section 501(c)(3). §1.501(c)(3)-1. (Sec. 501, '86 Code.)

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326

U.S. 279 (1945), the U.S. Supreme Court ruled that an organization which engaged in some educational activities, but pursued non-profit goals outside the scope of the statute, was not exempt under IRC section 501(c)(3). The Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Application of Law

Based on the information you provided in your application and supporting documentation, we conclude that you are not operated for exempt purposes under section 501(c)(3) of the Code. You have a mix of charitable and social/recreational activities therefore you are not serving exclusively 501(c)(3) purposes.

Per Section 1.501 (c)(3) - 1(b)(1)(i) of the Regulations you fail the organizational test as your Articles of Incorporation do not limit your purposes to those compliant under 501(c)(3). Your organizing document lists acquiring a suitable home for (C), any Chapter of (C), or any alumnae of (C), as one of your purposes. This does not further an exclusively 501(c)(3) purpose.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. You engage in substantial non-exempt activities by supporting the social and recreational activities of (C). This is done by promoting the general purposes of (C) and in the recruitment of new members. For this reason you fail the operational test.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that 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 purposes specified in such section. As shown above, you fail both the organizational and operational tests and therefore do not qualify for exemption under 501(c)(3).

You are not organized or operated exclusively for exempt purposes unless you serve a public, rather than a private interest per section 1.501(c) (3) -1(d) (1) (ii) of the Regulations. While one of your purposes is to maintain the house, which constitutes a 501(c)(3) activity for historical preservation, this is not an exclusive purpose or activity. You also serve social and recreational purposes in a more than substantial manner by supporting the alumni

functions of C which are consistent with your designation as a social club under 501(c)(7). Since you are not serving exclusive 501(c)(3) purposes you do not meet the qualifications for exemption under the Section.

You are very similar to Rev. Rul. 64-118, where your primary activity is to furnish, on a rental basis, a chapter house to a fraternity composed of students. Your given activities are to acquire, hold, lease and convey such real and/or personal property for the purpose of furnishing financial aid and assistance in the education of students at (H) with (C). Second, to preserve the real property that is the chapter house. For this reason you do not meet the qualification for exemption under 501(c)(3).

Similar to Rev. Rul. 69-573, you are a college sorority alumnae association that maintains a chapter house for active student members and are exempt from federal taxation under section 501(c)(7), rather than 501(c)(3). Although the typical college sorority does in some degree contribute to the cultural and educational growth of its members during their student years that is not its primary purpose. Such an organization is primarily a social club in that its major functions are to provide a meeting place for its members, living quarters, and the headquarters for their entertainment. Your given activities include various alumni social gatherings and events and documents provided with your application show your intent on increasing and maintaining alumni members. Your given purposes also are not limited to those that are exclusively 501(c)(3) and include cultivating fraternal relations among alumnae, professors and the active members of (C). While you have indicated your intention to maintain a building on the historical register as a qualifying activity as separate from the existing alumni activities details given with your application (e mails, agendas, the membership materials) show that you remain one in the same.

The ruling in Better Business Bureau held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. Though the maintenance of a historical building furthers a 501(c)(3) purpose this is not your only activity nor is it an exclusive activity. You have listed various events that demonstrate a social purpose for the benefit of and to further the existence of the alumni association. While your given purpose is to maintain the house the facts show that you are still conducting the ongoing activities of a membership and alumni chapter and any 501(c)(3) purposes are incidental.

Applicants Position

You are preserving a "certified historic structure" (on the National Historic Registry) under IRC Section 170(h) (4) (C) (iv) and IRC Section 170(h) (4) (C) (ii), and just renting that structure to a sorority chapter. You support this position by citing Revenue Rulings 86-49, 75-470 and 67-391. You state the key differences between Revenue Ruling 64-118 and you is that preservation of a historical structure has come into play between 1964 and today. Public policy has changed to consider saving and preserving historical structures as conservation and conservation is considered a charitable purpose as a part of that broad public policy. You also cited several Private Letter Rulings that cannot be used as precedent here.

Service Response to Applicant's Position

You do not qualify for exemption under section 501(c)(3) of the Code since your primary activity is to furnish, on a rental basis, a facility to a sorority and to carry out the day to day operations of that sorority's alumni activities. Your preservation activity is incidental to your primary purpose of supporting the activities of the active members and alumni of the sorority. The public receives only an incidental benefit from your ongoing maintenance activities. Your primary purpose is serving the sorority through housing and alumni activities which are not qualifying under 501(c)(3).

You differ from RR 75-470 and 86-49 in that you are not maintaining the house for the benefit or education of the general public but rather to allow for members of sorority to have a residence. While you have indicated the house is on occasion opened for tours this was only done during parents and homecoming weekend and for events such as weddings and school related celebrations. The organization in RR 67-319 formed to provide land use plans and on rare occasions would acquire land. The plan would eliminate future blight and provide education to the general public and was therefore serving 501(c)(3) purposes. You own and maintain one building in addition to other activities not serving exclusive 501(c)(3) purposes and are therefore dissimilar to the organization in that ruling.

Conclusion

Based on the facts and information provided, you fail the organizational test as you are not organized or operated exclusively for 501(c)(3) exempt purposes. You conduct more than an incidental amount of social and recreational activities and exist to serve members rather than the general public. Therefore, you are not described in section 501(c)(3) of the Code.

You do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170. You do remain exempt under IRC section 501(c)(7).

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". 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 7428You(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

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

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

Mail to:

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

Deliver to:

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

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

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

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure:
Publication 892