



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201236033**
Release Date: 9/7/2012

Date: June 12, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-05; 501.03-20; 501.33-01; 501.36-01

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.

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

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

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

Sincerely,

Lois Lerner
Director, Exempt Organizations

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: April 3, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = individual
C = individual
D = state
E = date
f = dollar amount
g = dollar amount

UIL:

501.03-05
501.03-20
501.33-01
501.36-01

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

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You were incorporated in D on E. Your Articles of Incorporation provide that you were formed for religious, educational, and charitable purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

Your Articles of Incorporation further provide that your specific purpose is as follows: "To declare and demonstrate the good news of Jesus' dominion over all creation and to train others to do the same, utilizing biblical methods of stewardship; encouraging intimacy with Jesus; performing charitable acts to further these goals."

Your incorporators, and only board members, are B and C. B and C are related through marriage. You project B and C will be paid salaries; however, your application stated you would suspend compensation until operations and income increased. You were asked to expand your board of directors to ensure that compensation amounts could be determined in an unbiased manner, but you were "unwilling to do so because at this time no one shares in our vision".

Your Bylaws state B and C shall serve on the board of directors for life or until voluntarily resigning. Your Bylaws further provide that B and C must attend board meetings to meet quorum and B and C are responsible for electing all other governing board members. As long as B and C are acting board members, there will be no need to fill vacated elected positions within your board.

The activity narrative submitted with your application stated the following:

Future activities of this organization will include establishing, managing & maintaining gathering places for all who are weary, sanctuaries & havens for rest & refreshment for man & animals (including birds & sealife). They will be places of restoration & training for all who desire to declare the glory of God through the establishment of creation's rightful place w/man.

You clarified that you believe that the Presence of God will rest in and on your sanctuary and that His presence will provide the rest needed by those staying in the sanctuary. You stated that, "Without God's presence, this sanctuary will not be different from any other park, farm, retreat or like mannered facility." For this reason you lack commercial motivation.

B and C will establish, organize, maintain, and promote the sanctuaries. Your activities will consist of caring for animals and cultivating property gardens.

Anyone may stay at your sanctuary for any length of time, much like stays at retreats or hotels. Your fee structure is as follows:

Christians: \$0 per night, with a free-will offering being requested
Non-Christians: g dollars per night

The narrative supplied with your application stated that you would provide biblical training and art instruction; however, you subsequently stated that no such programs will be

provided. When asked, you indicated the services you will provide include transporting luggage and doing laundry for your guests, as well as offering food once per day. Tours of the facility will be offered and library facilities available. Guests are responsible for cleaning their quarters.

You have not yet acquired a facility, but you desire approximately 14 acres (with water). You intend to grow fruits and vegetables, as well as care for livestock on the property. Any food produced would be used on the premises, donated to local facilities, and/or sold at local farmers markets (or at the facility if sufficient traffic were to make the option feasible). The sale of produce was intended to be an income-producing activity. Your board members would be responsible for the care and upkeep of the crops, with residents being permitted to volunteer their assistance. The care and upkeep of the crops and livestock would be on a volunteer basis; however, your financial data indicates that you intend to compensate one individual f dollars per year.

You have stated your financial goal for your first four years will focus on raising funds for property purchase, state fees and taxes. By your third year, per budgeted data, you project over \$200,000 for the purchase and renovation of your property. You will support this from a small percentage of fees and contributions, with an 'unknown' amount of product sales. The remainder of your anticipated expenses consist of equipment purchases, gardening/livestock upkeep, one individual's salary, and administrative expenses. You also project expending up to \$5,000 annually on publicity.

Law

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 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 is 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.

Rev. Rul. 77-366, 1977-2 C.B. 192, held that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption.

Rev. Rul. 77-430, 1977-2 C.B. 194, held that an otherwise qualifying nonprofit organization that conducts weekend religious retreats, open to individuals of diverse Christian denominations, at a rural lakeshore site at which the participants may enjoy the recreational facilities in their limited amount of free time and that charges no fees qualifies for exemption as operated exclusively for religious purposes.

Rev. Rul. 79-18, 1979-1 CB 194, held a nonprofit organization that provides specially designed housing to elderly persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is an organization operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code.

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 sec. 501(c)(3).

In Salvation Navy Inc vs Commissioner T.C. Memo. 2002-275, 2002, the organization failed to meet operational test for tax-free organization, since it did not show that it was not operated for benefit of a private individual, its founder, sole director, and officer; affairs of organization were irretrievably intertwined with its founder such that benefits would inure to him, recipients of individual's services were not members of charitable class, and fees charged by the organization provided a source of income to the individual.

In Airlie Foundation v. IRS, No. 02-0785 (D. D.C. 9/24/2003), the court held Airlie did not meet the requirements to be recognized as an organization described in IRC 501(c)(3), because its operation of a conference facility was a commercial activity. The court identified the following factors in assessing commerciality:

- Competition with for-profit commercial entities;
- Extent and degree of below cost services provided;
- Pricing policies;
- Reasonableness of financial reserves;
- Use of advertising; and
- Receipt of charitable donations.

Application of Law

You fail the operational test as described in Section 1.501(c)(3)-1(a)(1) of the Regulations as you are not operated for exclusive 501(c)(3) purposes and you failed to establish private benefit will not occur. You do not provide any religious activities, therefore, you do not further a religious purpose. Providing lodging to the public for a fee, or a free will offering, furthers no exempt purpose. Based on Treas. Reg. 501(c)(3)-1(c)(1), you do not qualify because more than an insubstantial part of your activities are not in furtherance of an exempt purpose. Since more than substantial parts of your activities are devoted to simply providing housing for a fee, you are not exclusively religious.

B and C are shareholders because they have a personal and private interest in your activities. B and C will both have unlimited control over your operations and finances. This allows for the potential for excess benefit through compensation as well as the use of the facility and other assets. With complete control for life over your governance, B and C will be able set their own compensation amounts and you have not shown that they will not directly benefit from your earnings. (Treas. Reg. 1.501(c)(3)-1(c)(2))

By placing complete control in the hands of B and C whom you intend to compensate once income increases, you have not shown how you operate for public, rather than private interests. Providing B and C with a position for life serves a private, rather than a public, interest and does not further an exempt purpose. By operating for the benefit of private parties, you are similar to the organization described in Salvation Navy Inc. You also do not meet the qualification set forth under Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax regulations

Your activities are similar to those of the organization described in Rev. Rul. 77-366 and in The Schoger Foundation. In your response, you referred to your facility as being no different than a retreat. You allow individuals to stay at your facility for non-religious

purposes. You have no activities for residents and they can make use of your facilities at their leisure.

You are dissimilar to the organization described in Rev. Rul. 77-430 because you do not provide any structured programs or religious activities. By providing no religious programs or events, you have not shown that your activities are exclusively religious in nature.

You are not as described in Revenue Ruling 79-18. Where housing for the poor, distressed or elderly may qualify under 501(c)(3), you are distinguished as there is no limitation as to who may stay at your facility. Neither your purposes nor your housing activities are limited to the low income or needy, rather, you operate for the much broader reason of providing a sanctuary.

You are operating like the organization in Airlie Foundation v. Commissioner because your purpose is similar to those operating commercial entities in the same manner. by setting fees above cost which are comparable to those of similar for-profits, by operating at a significant surplus, and by spending significant resources on publicity, you are operated in a commercial manner. In addition, you have not shown how your livestock/produce sales are not commercial in nature. Further, you have admittedly no activities that can be deemed educational in nature for guests that would distinguish you or demonstrate an exclusively educational or charitable purpose.

Applicant's Position

It is your position that because your sanctuary is based on the Bible, it cannot be anything other than religious in nature. It is your view that an individual's experience at the sanctuary is in itself a religious experience and, therefore, you are exclusively religious in nature.

Service Response to Applicant's Position

You have no structured programs or activities, as described in the preceding facts and analysis. Your goal is raising funds for the purchase of property to renovate and/or construct a sanctuary at which anyone can stay for an offering or fee. B and C wholly control your operations and make all decisions regarding compensation, property acquisition, residents and guests. B and C will establish, maintain and promote the sanctuary. Food grown on site will feed guests and will be sold to the public. You have failed to establish B and C will not benefit from your operations through compensation, residency and product sales.

Conclusion

Based on the facts presented above, we hold that you are not exclusively educational or religious within the meaning of section 501(c)(3) of the Code. You have no structured activities and serve no 501(c)(3) purpose. You operate for the benefit of your directors

who hold control over all of your operations. Accordingly, you serve a private rather than public purpose. We conclude you fail the operational test and do not qualify for exemption under IRC section 501(c)(3).

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 that 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 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. To be represented 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. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

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

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892