



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201414024**
Release Date: 4/4/2014

Date: 1/8/2014

UIL: 501.03-20; 501.03-30; 501.33-01;
501.35-00; 501.36-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear _____ :

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

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

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

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

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

Sincerely,

Kenneth Corbin
Acting 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: November 19, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

C = Name of Founder/Director
D = Name of Founder/Director
E = Name of LLC
O = State
P = State
S = Date

UIL:

501.03-20
501.03-30
501.33-01
501.35-00
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

- 1) Are you operated exclusively for exempt purposes as described in Section 501(c)(3) of the Code? No, for the reasons explained below.
- 2) Is inurement present, which would preclude you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons explained below.
- 3) Are private, rather than public, interests being served, therefore prohibiting you from qualifying for exemption under section 501(c)(3) of the Code? Yes, for the reasons explained below.

Letter 4036(CG) (11-2005)
Catalog Number 47630W

Facts

You incorporated in the State of O on S. Your articles of incorporation provides that you are organized for religious purposes and that you are a retreat center for missionaries, pastors and volunteer church workers and their families. You do not have any bylaws.

Your incorporators and board members are and D and and C. The D's have operated a church in another state for approximately 15 years. It has been a dream of theirs to retire and start a retreat. The C's are friends of the D's and offered to lease a property along with a house and the adjoining barn for livestock owned by them in P. The property and house will be the primary residence of the D's. The property is being offered to the D's at an amount significantly lower than fair market value. You added 2 individuals from the community to your board. However these two board members will not be involved in your day to day operations.

You plan to start a retreat center for pastors and missionaries' on this property which you will lease from E which is an LLC owned by the C's. C's acquired the property in September 2010. Your brochure describes your retreat

It also states that it

is

It is for

Although counseling will be available the retreat center will provide an opportunity to be , and , and get participants back to their ministry, area of influence, and continue to make a difference for God and his kingdom.

Funding for your activities will be from gifts of your partners to support the ministry. Financial data you provided shows that the majority of your funds were received from the C's. You do not charge your guests for their stay at the retreat. However your brochure invites people to become partners and asks either for a one time gift or an amount of monthly giving. You depend on the generosity of faithful supporters who want to make this a dream for Christian leaders a reality.

Your retreat offers several on-site and off-site activities. The on-site activities include horseback riding, mountain bike riding, hiking, camping, backpacking, archery, target shooting and games galore. Off-site activities include river rafting, fishing, ATV rentals, 4WD trails, gorge, peak, and many other local attractions. You are similar to a ranch where guests can experience the great outdoors, open fire cooking, barbecues, campfires, sunsets on horseback and memories of a lifetime.

You executed a residential lease agreement with E as landlord. In the future you plan to build two guest bungalows on the property to be used exclusively for guests. Since

these will directly benefit you, you will pay for these. The bungalows will be around 450-500 Square feet and will have two bedrooms, one bathroom, an outside deck and a living area at a cost of approximately \$50,000 each. Luxurious guest cabins and a sizeable recreation and dining hall are also being built. Your existing building in which the D's live and a guest room in the barn can also accommodate guests. The D's live on the property and are the primary caretakers, primary care givers and also take care of the livestock. You did not provide information on who owns the livestock. C will pay for all upkeep and maintenance of existing structures and you will pay for all new structures which will benefit you and your purposes. The lease is for 20 years with an option to extend another 10 years. This was done because you thought after 30 years you would be too old to continue to keep up the ranch and fulfill your purpose. C's son who is a contractor may be hired to perform the construction work but you will do so after getting estimates from other contractors. Since they are the primary caregivers of the property, livestock and guests, the D's live at the ranch. The Ds have three children of which two still live with them.

Your donation wish list includes a portable generator 7500W or greater, an air compressor, freshwater fishing equipment, backpacking and camping equipment, equestrian tack and saddle equipment, small tractor, Rototiller, newer used mountain bikes, a ranch truck and a newer SUV to pick up guests, workout equipment and ATV's etc.

Your retreat is accessible to the general public. All people are welcome through your gates and will find a warm welcome. You will be open every week of the year except the weeks of Thanksgiving and the week between Christmas and New Year. You provide meals, mentoring, counseling and specific programming as it relates to each guest and family.

You help church leaders focus through a guided study. The study takes about 4 hours and then a few hours to go over it. You help church leaders connect through personal counseling and quiet times together and with their family and children through programmed events. You help church leaders find refuge by providing a place to go and escape the pressures of ministry and you help them find recreation and rest free of charge and experience things they may be otherwise not be able to.

About 60% of your time will be spent on hosting, counseling and caring for pastors, missionaries and their families. 10% will be spent on leadership training and seminars, 10% on fundraising and 20 % on caring for livestock and ranch maintenance. You are a place where missionaries and their families come for rest, recreation, and pastoral care. At your place they will find a number of recreational activities they can enjoy or they can do nothing but find solitude. They can also get counseling from the D's. All the recreation activities are designed to help the guests relax and spend quality time with their family. Structured and non-structured counseling is offered, and is done on the

ranch except those activities that the guests choose to do on their own outside your gates such as dinner's out, sight seeing etc. All are welcome specifically pastors, missionaries, church leaders and people of faith. You will use word of mouth and your website to attract people to the ranch.

You provided a schedule that indicates how a typical 12 hours of the day is spent by guests. About half of the time (6 hours) is spent on _____ and _____. The rest of the time guests have the opportunity to experience many of the activities at or near the ranch.

Law

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

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). 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 regulations states that an organization is not operated exclusively for one or more exempt 501(c)(3) purpose if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Regulations section 1.501(a)-1(c) defines a private shareholder or individual as "persons having a personal and private interest in the activities of the organization."

Section 1.501(c)(3)-1(d)(ii) 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 requirements, an organization must establish that it is not organized or operated for the benefit of private interests such as those of its creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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

Revenue Ruling 77-430, 1977-2 CB 194 held that an organization, which conducted

religious weekend retreats at a rural lakeshore site where participants enjoyed recreational facilities during their limited free time, qualified for exemption under section 501(c)(3).

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), 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.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the Sixth Circuit court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse.

In The Schoeger Foundation v. Commissioner, 76 TC 380, 1981 the applicant organization, which was characterized as a religious retreat facility, owned and operated a mountain lodge. Numerous religious, recreational and social activities were available to the lodge's guests none of which were 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 Court held that the organization did not qualify for exemption because the lodge's recreational and social activities were those of a vacation resort

The Church of Eternal Life and Liberty v. Commissioner, 86 T.C. 916 (1986) describes an organization in which the court wrote that private inurement is strongly suggested where an individual or small group of individuals are the principle contributors to an organization and that individual or small group of individuals have exclusive control over the management of the organization's funds.

Application of Law

You are not described in section 501(c)(3) and do not meet the operational test as described in section 1.501(c)(3)-1(c)(1) of the Regulations because you have failed to establish operations are exclusively charitable, religious or educational and because you have failed to establish no more than an insubstantial part of your activities are social and recreational. In addition your operations also benefit your founders and directors and their families.

You lease a property belonging to a for-profit LLC owned by your founder, incorporator and director. The lease is signed by another director who will reside on the property along with his family and serve as caretaker. The rental payments are below fair

market value. Compensation will be paid based on budgetary needs of your director. You will undertake several capital improvements to the leased property including adding new buildings and other infrastructure. Some of the construction will be performed by a contractor who is related to your directors. You are not described in sections 1.501(c)(3)-1(c)(2) and 1.501(c)(3)-1(d)(ii) of the regulations because these facts indicate your operations are structured to allow income to inure to your directors and other private individuals.

Like the organization described in Revenue Ruling 77-366 the extensive amount of time, energy, and other resources which are regularly devoted to the conduct of social and recreational activities, together with the manner in which such activities are scheduled in relation to other programs, and all the other attendant facts and circumstances here present demonstrate that your activities serve substantial independent purposes of a noncharitable nature. You are unlike the organization described in Revenue Ruling 77-430. Your retreats are not conducted by ministers and priests of the various denominations on property donated by the founder with no scheduled recreational time. You do not provide structured programs or religious events. You offer a place where pastors, religious workers and their families will be able to refocus, reconnect and recharge through refuge, recreation, and rest.

You are similar to organization in the Better Business Bureau because you operate for a substantial non-exempt purpose.

You are similar to Basic Bible Church in that you too serve religious purposes and also exist to serve the private benefit of your founders. Like Basic Bible your financial affairs are controlled by your founders and create an opportunity for abuse. Your lease agreement was not executed in an arms length manner and & D, your founders benefit from the transaction. Further compensation to D is based on budgetary needs of D. Finally you have failed to establish that & C will not benefit from the capital improvements to their property.

You are similar to The Schoeger Foundation because you too characterize your operations as a religious retreat facility. You too offer a number of religious and recreational activities and do not require your guests to participate. Accordingly you have failed to substantiate that your operations are exclusively religious.

You are similar to the Church of Eternal Life because you are also formed by a small group of individuals who have exclusive control over the management of your funds and operations. As a result of their exclusive control your founders benefit through the use of your facility, the setting of compensation based on their needs as well as your operations.

Applicants Position

You are a Christian training and retreat center, a place where pastors, missionaries, church leaders and their families can come, free of charge to _____ and _____, rest and enjoy the various recreational opportunities at or near your ranch. A majority of your guests' time is spent in furtherance of religion and not rest or relaxation.

Service Response to Applicant's Position

The fact show that you have no structured programs and activities and that more than an insubstantial amount of your guests' time at the retreat is spent on various recreational activities on and outside the ranch that are more like activities conducted at a vacation resort. Moreover your directors and founders and their family live on the property, pay a less than fair market rental and are compensated based on their budgetary needs to look after the property. You will make capital improvements to the property and also repairs and replacements and you have failed to establish that _____ & _____ C will not benefit from these improvements and replacements.

Conclusion

You do not qualify for exemption under section 501(c)(3) of the code because,

You are not operated for an exclusive exempt 501(c)(3) purpose. Further you have failed to establish that your founders do not benefit from your operations.

Accordingly, we conclude you do not qualify for exemption under section 501(c)(3) of the code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of why you disagree. Your protest statement must be filed within 30 days of the date of this letter and should include:

- Your organization's name, address, EIN number and a daytime phone number.
- A statement that the organization wants to protest the proposed determination.
- A copy of this letter showing the findings that you disagree with (or the date and IRS office symbols from the letter.
- An explanation of your reasons for disagreeing including any supporting documents.

- The law or authority if any, on which you are relying.

The protest statement may be signed by one of your officers or your representative. 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, *How to Appeal an IRS Decision on Tax-Exempt Status*.

The protest statement should also include the following declaration.

“Under penalties of perjury, I declare that I have examined this protest including accompanying documents and, to the best of my knowledge and belief, the statement contains all relevant facts, and such facts 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 protest will be considered incomplete without this statement.

If an organization’s representative signs and submits the protest, a substitute declaration must be included stating that the representative prepared the protest and any accompanying documents; and whether the representative personally knows (or does not know) that the statement of facts in the protest and any accompanying documents are true, correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. In that case you must file a 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 seek a declaratory judgment in court at a later date because the court requires that you first exhaust administrative remedies at the IRS. 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

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance

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,

KENNETH CORBIN
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892