



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

**Release Number: 201744020**  
Release Date: 11/3/2017  
UIL Code: 501.00-00  
501.03-30  
501.33-00

**Date: August 10, 2017**

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Form you must file:**

**Tax years:**

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Date: May 31, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date  
C = State  
D = Mobile home park  
E = Organization  
F = Organization  
g dollars = Amount  
h = Number

**UIL:**

501.00-00  
501.03-30  
501.33-00

Dear \_\_\_\_\_ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

**Issues**

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

**Facts**

You were incorporated on B in the state of C. Your Articles of Incorporation state that you were formed on a nonprofit basis for the purpose of acquiring, producing, building, operating, furnishing, exchanging, or distributing manufactured housing in a manufactured housing park, as well as services primarily associated therewith for the benefit, recognized as both public and private, of the current and future homeowners of the community, who are the ultimate consumers of the housing opportunity you provide. You amended your Articles, which reiterated the purposes stated in the original Articles of Incorporation. The amendment also included proper Section 501(c)(3) purpose and dissolution clauses.

You are formed as a member-owned corporation for the purpose of acquiring a mobile home park called D, which is currently owned by a for-profit corporation. You assert that your acquisition of the property would lead to more stable lot rents and would ensure that households are no longer susceptible to displacement due to redevelopment or park closure. All of your board members are also current residents of the mobile home park you plan to purchase.

Your membership fee is g dollars, which you say makes membership affordable to everyone. Your bylaws contain covenants which guarantee that the cost of membership will remain the same for future homeowners and will not be subject to market appreciation. You will reduce discrimination and prejudice by providing decent, affordable, secure housing and financial and organizational training, giving a 'voice' to a traditionally underserved and stigmatized community. You will give residents an opportunity to form new relationships, thus reducing tension and increasing a sense of belonging.

You define a "member" as each household occupying, or wishing to occupy, one of the lots in the community and approved for membership by the Board of Directors, provided that all adult members of the household (18-years-or-older), without regard to their social, political, racial, religious, age, sex, sexual orientation, disability, or marital status:

- Meet membership criteria as established by the Board,
- Own and reside in a manufactured housing unit in the park,
- Is current on lot rent, and
- Is/are willing to accept membership responsibilities, including voluntary participation in the governance and in the operation of the community.

Member rights include:

- A perpetual right to occupy a lot within the community as long as he or she continues payment of the lot rent and complies with the other terms of the Member Occupancy agreement, the Bylaws and the Community Rules established by the members, and
- The right to vote on all matters put before the members.

You have one class of members. The number of the membership shall not exceed the total number of manufactured housing lots in the manufactured housing community you will own. There are h mobile home sites in the community. The maximum percentage of capital that may be owned or controlled by any member shall be the percentage of the membership fees owned by them in relation to the total membership fees. Each member shall be limited to a single membership interest. Membership is open to all homeowners currently residing in the community. Renters are not eligible for membership.

Residents in investor-owned parks, such as D, face a number of risks, including:

- No control over rising lot rents
- Displacement or loss of housing due to park closure
- Onerous park rules or inconsistent rules enforcement, and
- Inadequate maintenance and performance of basic infrastructure such as water, sewer and roads.

You want to be a resident-owned community. A resident-owned community is formed by the homeowners in order to:

- Preserve owner-occupied affordable housing
- Stabilize lot rents
- Build assets for low and moderate income families and individuals, and
- Support leadership development within the community.

If the resident purchase is successful, you will own and operate the manufactured home community and engage in other activities on a not-for-profit basis. After you purchase the park, new residents who move in must become members and meet member eligibility requirements. Everyone pays the same amount of lot rent.

After the purchase, you will own the land currently occupied by manufactured homes. The residents will each own their own mobile home and you will not have any ownership interest in them. Additionally, you will own an office building and garage/storm shelter located on the property. Approximately % of the homes are owned by third party investors and the rest are owner occupied.

You have entered into an agreement with E, a non-profit organization. This agreement states that you wish to purchase the D mobile home park and that E will provide you with technical assistance. The agreement states that E is willing to help you achieve this goal and other post-purchase goals related to the governance and operations of the park. E currently has an executed and assignable purchase agreement on record with the current owner of D. E wishes to assign you all of their rights and responsibilities under the contract as soon as practicable. The contract is in effect for years.

The agreement states that E provides assistance to you through another organization, F, which is described as a social enterprise organized exclusively for charitable and tax exempt purposes. F's purpose, per the agreement, is to aid people living in manufactured home communities so that as a group they can purchase their communities and operate them as a resident-owned and/or controlled corporation. The agreement states that you will reimburse E for their earnest money deposit for the purchase as well as legal fees. At the closing of the purchase, you will pay a fee, which is set as a percentage of the purchase price, to E. Additionally, if you use a specific company related to F to finance the purchase, you will not need to pay for any post-purchase training fees. If you do not use this specific company to finance the purchase, you must sign an agreement to purchase support from them at a certain rate.

You said you comply with the affordability restrictions and certify, pursuant to Rev. Proc. 96-32, that your residents meet requirements of Section 3, Safe Harbor for Relieving the Poor and Distressed. At least % (actual is %) of the homeowners surveyed have a household income less than % of the area median income as established by HUD, and at least % of the homeowners responding (actual is %) are residents that also meet the very low income limit for the area. You also said the mobile home park is currently occupied by poor and distressed residents and your housing is affordable to residents. Your Bylaws state that low-income individuals or families must have first choice to purchase any home that is offered for sale by one of your members.

You assert that you meet Section 4 of the Facts and Circumstances Tests for Relieving the Poor and Distressed of Rev. Proc. 96-32 as:

- You are developing a budget that will ensure the housing continues to be affordable for low-income and very-low-income residents
- You will be governed by a Board of Directors elected by members
- You will be supported for the life of your mortgage by D, and
- As a resident-owned community, you have been organized to provide an affordable and sustainable home ownership opportunity. Not only will housing be preserved, but residents will have land tenure and control over infrastructure improvements, all of which would otherwise be unaffordable.

If a resident becomes unable to pay their lot rent you will address it through a collections policy, which is currently under development. The policy will be consistent with the state law that governs the legal process for eviction from a manufactured home park.

Your projected budgets include all revenues from admissions, merchandise sold or services performed, or furnishing of facilities related to your exempt purposes.

### **Law**

Section 501(c)(3) of the Code provides for the exemption from federal income tax to organizations 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.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that in order to be exempt as an organization described in Section 501(c)(3) of the Code, 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.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operating exclusively for exempt purposes if it engages primarily in activities that accomplish 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides 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, the organization must establish that it is not organized or operated for the benefit of private interests such individuals.

Rev. Proc. 96-32, 1996-1 C.B. 717, sets forth a safe harbor under which organizations that provide low-income housing are considered charitable as relieving the poor and distressed, and a facts and circumstances test that applies in determining whether organizations that fall outside the safe harbor relieve the poor and distressed. The safe harbor requires that certain percentages of the units be occupied by residents that meet certain low-income standards, and that the housing be affordable to the charitable beneficiaries. In the case of rental housing, this requirement will ordinarily be satisfied by the adoption of a rental policy that complies with government-imposed rental restrictions or otherwise provides for the limitation of the tenant's portion of the rent charged to ensure that the housing is affordable to low-income and very low-income residents.

Rev. Rul. 73-306, 1973-2 C.B. 179, held not exempt under Section 501(c)(4) of the Code a nonprofit organization formed to promote the common interest of tenants who resided in an apartment complex. Any person regularly living in the complex was eligible for membership. The organization represented its member-tenants in negotiations with the management of the complex in order to secure better maintenance and services, and to secure reasonable rentals. The organization also provided legal representation for members as a group in litigation and before local and federal regulatory agencies involving matters of mutual concern to the members as tenants. The Service reasoned that the organization operated essentially for the private benefit of its members rather than for the common good and general welfare of the people of the community.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy a charitable exemption.

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), a corporation was organized by World War II veterans for the purpose of purchasing a government housing project and converting it to cooperative, nonprofit housing for its members. Individuals became members in the corporation by purchasing an apartment unit and, as such, the number of members was limited to the number of units available. The court held that the organization was not described in Section 501(c)(4) of the Code because it was “a public-spirited but privately-devoted endeavor” that provided only incidental benefit to the community. *Id.* at 818. The organization did not promote social welfare because it furnished housing only to a certain group of individuals, rather than on a community basis, and did not offer a service or program for the direct betterment or improvement of the community as a whole.

In Old Dominion Box Co. v. United States, 477 F.2d. 344 (4th Cir. 1973) cert. denied, 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In Syrang Aero Club Inc. v. Commissioner, 73 T.C. 717 (1980), the United States Tax Court held that an organization organized and operated for the benefit and recreation of its members did not qualify for exemption under Section 501(c)(3) of the Code.

### **Application of law**

You are not described under Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the operational test. If an organization fails either the organizational or operational test, it cannot qualify as an exempt organization under Section 501(c)(3).

Your planned activity of purchasing a mobile home park and maintaining the common areas and providing related services are not exempt activities and are substantial in nature. A single, substantial non-exempt purpose will preclude an organization from exemption as described in Better Business Bureau v. United States. Because more than an insubstantial portion of your activities accomplish non-exempt purposes, you are not exempt per Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are formed by current residents of the mobile home park that you plan to purchase. The residents that own their own mobile homes (not renters) are your members. You are purchasing the mobile home park so that you can keep lot rents low. You do not offer other subsidies. Your activities serve the private benefit of your members, and not the general public, which precludes you from exemption as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

The acquisition and operation of a mobile home park could be a charitable activity, depending on the structure of the organization and its manner of operation. However, you do not own any actual housing. You will, after acquisition, only own the land. Individuals will have to purchase their own mobile home to place on the lot. Ensuring a portion of the residents' housing cost remains low is not sufficient to qualify as a charitable low income housing activity under Rev. Proc. 96-32. Further, you do not have a policy for maintaining in residence those who become unable to pay their lot rent; rather, you said you will follow collections and eviction procedures.

Rev. Proc. 96-32 describes units occupied by residents. The Rev. Proc. requires the “housing [to be] affordable to the charitable beneficiaries.” The terms “units” and “housing” are understood to be shelters with walls and ceilings. The affordability criteria of the Rev. Proc. only make sense if compared to an entire dwelling. A unit can be a manufactured housing unit, but it must be the entire unit. The affordability criteria are designed to measure the complete expense of housing against the income of a resident. You do not provide a complete housing unit; therefore, Rev. Proc. 96-32 does not apply.

You are formed by current residents in an effort to obtain and maintain control over lot rental amounts. Similar to the organizations described in Rev. Rul. 73-306 and Commissioner v. Lake Forest, Inc., you were formed to promote the common interest of tenants who reside in your mobile home park. While the organizations in these rulings were seeking exemption under Section 501(c)(4) of the Code and did not qualify, logically, they also would not have qualified under Section 501(c)(3). In the same way, you are operated to benefit your members and not the general public. As discussed in Old Dominion Box Co. v. United States and Syrang Aero Club Inc. v. Commissioner, operating for the benefit of private parties constitutes a substantial non-exempt purpose and prevents you from qualifying from exemption under Section 501(c)(3).

### **Conclusion**

You fail the operational test because you are formed for the private benefit of your members for a substantial non-exempt purpose. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

### **If you don't agree**

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

**For an officer, director, trustee, or other official who is authorized to sign for the organization:**

Under penalties of perjury, I declare that I examined this protest statement, 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.



**For authorized representatives:**

Under penalties of perjury, I declare that I prepared this protest statement, 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.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. 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*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

**Where to send your protest**

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

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

**If you agree**

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at [www.irs.gov/formspubs](http://www.irs.gov/formspubs). If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892