



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

Release Number: **201918020**
Release Date: 5/3/2019
UIL Code: 501.03-00, 501.32-00,
501.33-00, 501.35-00

Date:
February 7, 2019
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:
December 12, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

D = State
F = Date of formation
G = Date of restated articles
H = City name
J = Date of designation as a National Historical Landmark
K = Architect's name
p = Number of shares issued
q dollars = Share price
s = Number of separate buildings
t = Number of residential units
v percent = Percentage of revenues dedicated to tax exempt purposes
w = Age of historical buildings

UIL:

501.03-00
501.32-00
501.33-00
501.35-00

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 meet the organizational test under Section 501(c)(3) of the Code? No, for the reasons described below.
Do you meet the operational test under Section 501(c)(3) of the Code? No, for the reasons described below.
Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You incorporated in the state of D on F. You filed Restated Articles of Incorporation on G. According to your Restated Articles, you are organized for the following purposes:

- a. To construct, operate and maintain a housing project in the City of H;
- b. To sell, convey, assign, mortgage or lease any real estate or interest therein or any personal property or interest therein owned by this corporation;

- c. To borrow money and issue evidences of indebtedness in furtherance of any or all of the subjects of its activities and to secure the same by mortgage, deed or trust, pledge or other lien;
- d. To operate for the purposes set forth herein as a D nonprofit corporation; and
- e. In general, to have such power and to carry on any activity or activities in connection with or incident to the purposes of the corporation not forbidden by the laws of the State of D.

You represent that you are a nonprofit housing cooperative, with the authority to issue one class of common voting stock, having become a cooperative on the date of your incorporation, a non-profit in the state of D on G and designated a National Historic Landmark by the United States National Park Service on J. You listed a total of p shares, valued at q dollars per share.

Your Bylaws state your purposes are to provide your members with housing on a non-profit basis consonant with the provisions set forth in your Restated Articles of Incorporation and to maintain or improve the structures in accordance with the original design in keeping with its designation as a National Historical Landmark.

Any natural person may be eligible for membership in your cooperative, provided they execute an occupancy agreement covering a specific unit in the housing development. Application for membership is made in person to the Board of Directors. Approved members receive a number of shares of stock commensurate with the unit which they intend to occupy. All your shareholders are members occupying units in your development. Your business, property and affairs are managed by a Board of Directors, who also must be shareholders.

Members are required to pay a monthly assessment in an amount to be set by the Board of Directors. You own and maintain the units, t in number, under historical guidelines with funds from the monthly assessments. Your Operating Policies set forth the co-op's and the members' responsibilities. Members are responsible for any damage they cause to the cooperatively owned property. The assessment covers: auditor's fee, basic TV cable package, certain repairs and expenses, common area electricity, common area pest control, common water and sewer, legal expenses, maintenance of buildings and grounds, management company's fee, mortgage, property taxes, insurance, security services, snow removal, sprinkler system, trash removal and pick-up, and worker's compensation insurance. Much of the assessment revenue is spent to maintain the historical structures and landscaping so as to be in keeping with the site's designation as a National Historical Landmark.

In order to maintain and improve the quality of the historic buildings, money must be spent on the total site for:

- Trees and grounds to maintain the original theme of landscape architect K
- Occasional painting of the exterior iron beams to maintain beauty and prevent rust
- Annually clearing, maintaining and periodically replacing the flat roofs of the s buildings
- Payment to a management company to arrange services
- Property taxes (despite the non-profit status, you must pay city taxes)
- Other general repairs as they arise

According to an independent auditors' report you provided, you are a cooperative housing corporation, consisting of t residential units located in H. The primary purpose of the corporation is to manage your operations and to maintain the common elements. Tenant-shareholders are subject to monthly assessment to provide funds for your operating expenses, future capital acquisitions, and major repairs and replacements. It also states that you are qualified to prepare your tax returns pursuant to the provisions of subchapter T of the Internal Revenue Code.

According to your financial information, all your revenues are derived from occupancy charges, special assessments and fees related to occupancy. All expenses can be categorized as administrative, building and grounds operations, and utility expenses. After taking depreciation and amortization expenses, your excess revenues are added to your members' equity.

Law

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure 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 of the 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(b)(1)(i) provides 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; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) 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.

Treas. Reg. Section 1.501(c)(3)-1(c)(2) 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(a)-1(c) of the regulations defines the words "private shareholder or individual" to mean persons having a personal and private interest in the activities of the organization.

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

Rev. Rul. 71-395, 1971-2 C.B. 228 describes a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works that did not qualify for exemption under Section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375, (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.

The court case Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (4th Cir. 1962), describes a corporation organized by World War II veterans for the purpose of purchasing a government housing project and converting it to cooperative nonprofit housing for members. Individuals become members in the housing unit and the number of members was limited to the number of units. The court held that the organization did not qualify under Section 501(c)(4) of the Code because its activities were of the nature of an economic and private cooperative undertaking. The organization did not promote social welfare because it furnished housing to only a certain group of individuals as opposed to the community as a whole. It was a public spirited but a private endeavor that only provided incidental public benefit.

Application of law

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have failed both tests.

Organizational Test

To satisfy the organizational test under Section 501(c)(3) of the Code, an organization must establish that it is organized for exempt purposes, which requires a valid purpose clause and a valid dissolution provision.

Purpose Clause

An organization has a valid purpose clause only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes. Your organizing document contains purposes that are broader than those specified in Section 501(c)(3) of the Code. Therefore, you did not establish that you have a valid purpose clause.

Dissolution Clause

An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. Your organizing document does not contain a dissolution clause and you are not relying on the operation of state law. Therefore, you did not establish that you have a valid dissolution provision.

As a result, you have not satisfied the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

Operational Test

To satisfy the operational test under Section 501(c)(3) of the Code, an organization must establish that it is operated exclusively for one or more exempt purposes. 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.

You are not described in Section 501(c)(3) of the Code because you fail the operational test per Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You are not described in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are operating in substantial part for a non-exempt private purpose. As you indicated in your Bylaws, you are operated for two distinct purposes, (1) to provide your members with housing on a non-profit basis, and (2) to maintain or improve the structures in accordance with the original design in keeping with its designation as a National Historical Landmark. The first of these purposes is in furtherance of no purpose described in Section 501(c)(3) of the Code. A substantial part of your revenue from monthly member assessments are applied to operating expenses, future capital acquisitions, and major repairs and replacements affecting the units in which they themselves reside.

Furthermore, as provided in Treas. Reg. Section 1.501(c)(3)-1(c)(2), you are not operated exclusively for one or more exempt purposes because your net earnings inure in whole or in part to your shareholder members, including all the members of your board of directors. Any excess revenues from your operations are added to your shareholders' equity.

Furthermore, you are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you are a membership organization operating for the mutual benefit of members. For example, you pool members' resources, which lower the cost per member in all the services associated with residency. This demonstrates you are operating for substantial private interests, which precludes you from qualifying under Section 501(c)(3) of the Code.

You are like the cooperative art gallery described in Revenue Ruling 71-395 because you also operate on a cooperative basis for the private benefit of your members. In addition, new members are only admitted by approval of your board of directors.

You are like the organization in Better Business Bureau of Washington, D.C., Inc. v. United States. Although you may have some charitable and educational activities, the presence of the non-exempt purpose of operating for the private benefit of your members who are also in control of your operations precludes you from exemption under Section 501(c)(3) of the Code.

You are like the organization that failed to qualify under Section 501(c)(4) of the Code described in Commissioner v. Lake Forest, Inc., because you are operating a housing cooperative primarily benefiting a select few individuals. Moreover, your activities are characteristic of an economic and private undertaking; consequently, your activities primarily serve private interests disqualifying you from exemption under Section 501(c)(3).

Your position

You state that you are both a cooperative and a non-profit in the state of D. You were designated a National Historic Landmark on J, largely due to your building- and landscape-architectural significance. Therefore, while you were originally created as an ownership structure for a residential development, you have since taken on the additional responsibility of preserving, maintaining and improving a National Historic Landmark. Members of your co-op own shares in the whole complex of residential units, rather than owning their own unit outright, while holding occupancy rights to the unit through a proprietary lease. You are legally a nonprofit corporation, complete with a board of directors. Each resident is a shareholder. The number of shares allotted to each member depends on the size and location of the unit.

You state that, legally by D law and by practice since your founding, no part of your earnings shall inure to the benefit of, or be distributable to your members, trustees, officers, or other private persons, except that you shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and

distributions in furtherance of the purposes set forth in your bylaws, such as to the management company. No substantial part of your activities shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and you shall not participate in, or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. Notwithstanding any other provision of your articles, you shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2), or the corresponding Section of any future federal tax code.

You state that your application for Section 501(c)(3) status does not mean all co-op expenses will be considered tax deductible, but only those portions which preserve, maintain or improve the buildings and grounds which are designated a National Historic Landmark. You provided a sample list of expenses, which divided your total expenses as either a proposed Section 501(c)(3) expense or a resident expense. The list shows that you intend to attribute about v percent of your revenues to be used solely for the buildings and grounds and thus would be considered tax-exempt, with the exemption to be shared among the members in proportion to their shareholdings.

Your bottom line is stated as follows:

- You are a corporation and the members purchase shares in the coop, but do not own their unit. That is the law in D and the way your bylaws are written.
- All expenses within individual units are the responsibility of the members who reside there, such as painting or remodeling.
- In addition, you are a non-profit organization where no members, including the board of directors, may receive compensation.
- Not all expenses would be considered allowable under a 501(c)(3) determination.
- You anticipate major expenses in the future to preserve the historic buildings that are approaching w years of age, as well as to replace aging trees and other aspects of the landscaping which are an integral part of the National Historic Landmark.

Our response to your position

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in Section 501(c)(3) of the Code. Although part of your activities serves to maintain a historic building, your cooperative housing undertaking benefits designated individuals who control you as explained in the preceding facts and analysis. Therefore, you fail the operational test because your time and resources are primarily devoted to operating on a cooperative basis that benefits your members.

Conclusion

Based on the information submitted, you have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3). You are not organized exclusively for exempt purposes as required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and your assets are not dedicated to an exempt purpose as required by Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You are also not operating exclusively for exempt purposes as required by Treas. Reg. Sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1). You are operating for the benefit of your members; therefore, you do not meet the operational test as required by Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). You have not demonstrated that you do not allow your net earnings to inure to private individuals as required by Treas. Reg. Section

1.501(c)(3)-1(b)(2). You do not serve a public rather than a private interest as required by Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

Accordingly, 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.

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. 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