



Department of the Treasury
Internal Revenue Service
Independent Office of Appeals

Date: JUL 28 2022

Person to contact:
Name:
Employee ID number:
Telephone:
Fax:
Hours:
Employer ID number:

Number: 202242016
Release Date: 10/21/2022

Uniform issue list (UIL):
501.00-00
501.03-05
501.33-00
501.35-00

Certified Mail

Dear :

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") Section 501(a) as an organization described in Section 501(c)[Subsection] of the Code.

We made the adverse determination for the following reasons:

You have not established that you are operated exclusively for exempt purposes as required by section 501(c) (3) of the Code. Your activity of owning and maintaining land in a manufactured home community and collecting rent from member owned homes located there does not serve an exempt purpose and is substantial in nature. In addition, you have failed to establish that your operations do not more than insubstantially serve the private interests of your members or other designated individuals.

You're required to file federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return . Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Section 6110 of the Code after deleting certain identifying information. We provided to you, in a separate mailing, Notice 437, Notice of Intention to Disclose. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court	US Court of Federal Claims	US District Court for the District of Columbia
400 Second Street, NW	717 Madison Place, NW	333 Constitution Avenue, NW
Washington, DC 20217	Washington, DC 20005	Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under Section 7428 of the Code.

You also have the right to contact the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have questions, contact the person at the top of this letter.

Sincerely,

Charles P Rettig
Commissioner

Enclosures:

cc:



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

Date:
January 28, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

W = State
X = Date
Y = Organization
Z = Organization
q dollars = Amount
r dollars = Amount

UIL:

501.00-00
501.03 05
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501.35-00

Dear :

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

Issues

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

Facts

You were incorporated in W on X to own and operate a manufactured housing community. Your Articles state that you are formed for the purpose of acquiring, producing, building, operating, furnishing, exchanging, or distributing manufactured housing in a manufactured housing park and services primarily associated therewith for the benefit, recognized as both public and private, of the current and future homeowners of the community. It further states you are organized exclusively for charitable purposes and states that notwithstanding any other provision, you shall not carry on any other activities not permitted to be carried on by an organization exempt under IRC Section 501(c)(3).

Your Articles state that you will have members. Membership is limited to households which are owners of homes in the manufactured housing community you own. Membership is appurtenant to, and may not be separated from, tenancy of any lot you own. The number of members shall not exceed the number of manufactured housing lots in the community you own.

Your Bylaws state that your broad purpose is to gain control of the rental costs, preserve the community for the current residents, and to preserve the affordability of the sites within the community for low to moderate-income homeowners. You are governed by a Board of Directors and elected officers, who must be members in good standing.

You describe yourself as a resident-owned community. Resident-owned communities are not-for-profit resident corporations that have been formed by homeowners to own the community in order to:

- Preserve and improve affordable communities
- Build assets for low and moderate-income families and individuals
- Support mutually-supportive communities and leaders
- To have control over rents so they are not continually rising, and
- To provide sufficient maintenance and repair to basic infrastructure.

You own land with lots and a shop. Individuals who own mobile homes can rent a lot from you to place their mobile home on it. Owners of mobile homes seeking to lease a lot in your community, or buyers of homes already located in your community, must become your members. However, membership is open to anyone who owns (or co-owns) and resides in a manufactured housing unit in your community. A one-time membership fee of q dollars is required but it can be paid over time.

All tenants are responsible for lot rent and must follow the community rules. Failure to comply with the community rules or to pay the appropriate lot rent is cause for eviction. The lot rental fee you charge is a pro rata share based on the budget for operating costs and debt services. The lease agreement states that the lot rent can be increased with a 30-day written advance notice given. The rent is due the first of the month and you charge a late fee of r dollars if the rent is received after the tenth of the month. Any member whose activity is contrary to the basic cooperation principles, or who endangers your effective operation, may be expelled. Expulsion or termination carries with it the loss of all membership rights, including the right to occupy the lot.

You have entered into an agreement with Y, a non-profit organization, to provide you with technical assistance. Y is part of Z, a social enterprise which you say is organized and operated exclusively for charitable and tax-exempt purposes as set forth in IRC Section 501(c)(3). Z'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. Y provided you with a loan for the purchase of the property and will provide post-purchase technical assistance. As a condition of the loan you are required to keep a technical assistance agreement with a Z-related provider, in this case Y, or pay fees to Z if an outside provider is used.

You are funded by the membership fees and rents paid by member/owners/tenants. Your largest expenses are for maintenance and repair, interest, and management fees.

Law

IRC 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 IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or

more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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 IRC 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.

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.

Revenue Procedure 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.

Revenue Ruling 73-306, 1973-2 C.B. 179, held not exempt under IRC Section 501(c)(4) 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 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 IRC Section 501(c)(4) because it was "a public-spirited but privately-devoted endeavor" that provided only incidental benefit to the community. 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. 340 (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 IRC Section 501(c)(3).

Application of law

You are not described under IRC Section 501(c)(3) 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).

Operating and maintaining a mobile home park and related services for your members is not an exempt purpose and is substantial in nature. 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 purchased 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).

You own and operate a mobile home park, but you do not own any actual housing. Individuals will have to have their own mobile home to place on one of your lots. 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. Additionally, Rev. Proc. 96-32 describes units occupied by residents. You are not providing housing units; rather, you are providing the plot of land where a person can place their mobile housing unit. Therefore, Rev. Proc. 96-32 does not apply.

You are formed by current residents in order to maintain control over lot rental amounts and collectively maintain the mobile home park. Similar to the organizations described in Rev. Rul. 73-306 and 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 IRC Section 501(c)(4) and did not qualify, logically, they also would not have qualified under Section 501(c)(3).

You are operated to benefit your members and not the general public. As discussed in Old Dominion Box Co. and Syrang Aero Club Inc., operating for the benefit of private parties constitutes a substantial non-exempt purpose and prevents you from qualifying from exemption under IRC Section 501(c)(3). A single, substantial non-exempt purpose will preclude an organization from exemption as described in Better Business Bureau.

Conclusion

You fail the operational test because you are formed for the private benefit of your members by operating a mobile home park, which is a substantial non-exempt purpose. Therefore, you do not qualify for exemption under IRC Section 501(c)(3).

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.

If you don't agree

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

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:
Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information 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 later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements