



Department of the Treasury
Internal Revenue Service
Independent Office of Appeals

Date: **AUG 17 2022**

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

Release Number: 202245009
Release Number:11/11/2022

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

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: 3/8/2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

- B = State
- C = Date
- D = Name
- F = Date
- H = Name
- J = Name

UIL:

- 501.00-00
- 501.03-30
- 501.33-00

- k = Number
- m = Number
- n = Number
- p = Number
- q percent = Number
- r percent = Number
- s percent = Number
- t percent = Number
- v dollars = Amount
- w = Number

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

Per your Form 1023, you were formed as a corporation on C in the state of B. You submitted non-conformed Articles of Incorporation, that indicate you were formed for the purpose of owning and operating a manufactured housing community and carrying out related corporate activities, for the benefit of the community's current and future resident homeowners. The Articles provide that, in the event of dissolution, the

remaining assets will be distributed as a contribution to any corporation, association or other nonprofit association to which contributions are deductible from income tax under current Internal Revenue Service regulations.

Your narrative states that you were formed for the purpose of acquiring and preserving affordable housing property, and for the benefit of current and future low-income and very low-income residents. Specifically, you have purchased property consisting of m manufactured home sites, and n apartments for a community which was % low-income, % very low-income, and % owner-occupied based on the k survey respondent households. You then lease this property to manufactured homeowners who pay lot rent. Because you have acquired this property and lease it to the residents, the residents will no longer be vulnerable to displacement had the property been sold for commercial use and the affordability of the homes will also be permanently preserved.

Additionally, you define yourself as a "D", a not-for-profit resident corporation, formed by homeowners to own the community for their benefit to:

- Preserve and improve affordable communities;
- Build assets for low-and moderate-income families and individuals; and
- Support mutually supportive communities and leaders.

Your Bylaws provide that:

- Owners of homes seeking to lease a lot in the community, or buyers of homes already located in the community, must become members.
- Membership is limited to individuals who own and reside in a manufactured housing unit in the community and are in good standing.
- Members have a perpetual right to occupy a lot within the community as long as they continue payment of the lot rent and comply with the member lease agreement, bylaws, and Community Rules established by your members.
- Membership provides members with prevailing lot rent.
- Loss of membership rights will result in an increased lot rent in accordance with the Community Rules.
- Re-sale of all homes is generally restricted to owner occupants.
- Rental or leasing of homes in the community will generally not be allowed unless approved by the Board of Directors.
- Any member or non-member owner who plans to sell or move their home out of the community or demolish their home will give written notice to the Board of Directors. If a member receives more than one offer for the same price, terms, and conditions, and one of the offers is from a lower-income family or individual, your preference is that the member accept the offer from the lower-income family or individual.

Further members must pay an initial membership deposit of v dollars and are then provided with a Certificate of Membership which entitles them to one vote in your operations. Members will also receive a proprietary lease with rents established as a pro rata share of the budget adopted by your membership as well as agree to participate cooperatively in your operations and management. Members also agree to:

- Pay the monthly rental lot fee on time;
- Pay their property taxes and assessments when due; and
- Be responsible for all maintenance and repairs of their respective homes which they own individually.

Moreover, your members may vote on how to treat any excess collections from members, to return them or apply them to the coming budget to reduce future rents or to further fund necessary reserves.

The proprietary lease also states:

- A member must satisfy the following income limits:
 - Have income equal to or less than s percent of the area median income for your county.
 - Have income equal to or less than t percent of the area median income for your county.
- The failure of a member to pay any rent due w number days after it's due, you will have the immediate right of re-entry and may remove all persons and property from the leased premises with property stored at the expense of the member.

You provided a copy of your Community Rules, which are intended to help provide for a safe and tranquil environment. The rules state you are responsible for all underground utilities; snowplowing of roads; maintenance of roads and common areas; trees; utility poles; and enforcement of the Community Rules. They also provide that homeowners are responsible for but not limited to: hooking up to utilities and maintaining connections; upkeep of their lot; care, maintenance and snow removal of their own walk-ways and driveways; obeying community rules; and prominently displaying their street number on the front of their home; and the payment of all state or local taxes on the home.

You state you have complied with the affordability restrictions and certify that the composition of your residents meets the Safe Harbor provision of Rev. Proc. 96-32. Additionally, you stated that you meet the facts and circumstances test for relieving the poor and distressed of Rev. Proc. 96-32 as:

- A substantially greater percentage of residents than required by the safe harbor with incomes up to % of the area's very low-income limit;
- You place the homeowners themselves in charge of limiting a resident's rent payment
- You are governed by a community-based board of directors elected by residents that also reside in the community;
- You will maintain a relationship for at least p number years with H, which is a J and a 501(c)(3) organization active in low-income housing;
- By becoming a J community, members participate in a homeownership program designed to provide a true home ownership opportunity and safe and decent housing, by not only owning a home but having land tenure and control over infrastructure improvements with the home which they could not otherwise afford;
- Ongoing affordability covenants or restrictions running with the property in that the shares or membership interest entitling the homeowner to a vote is a small fixed amount.

You further indicated that:

- You are combatting community deterioration because the community was previously investor-owned and neglected, and you will prevent or relieve that deterioration by putting the homeowners in charge of the infrastructure;
- You eliminate discrimination and prejudice by providing decent housing, stability and asset building, financial and organizational training and experience and a voice in the community to persons in specific racial groups in that q percent of the respondent households to a survey report they have household members who are racial minorities.
- You serve to lessen neighborhood tensions by fighting poverty and community deterioration associated with overcrowding in a lower income area in which ethnic or racial tensions are high, as the residents of the community have not known their neighbors. Through democratic control and membership in the community, the households have had the opportunity to get to know each other and form better relationships.

Additionally, when families own homes in a community or park not owned by its members there are risks such as:

- No control over rising rents;
- Uncertain future of the property from closure or change of use resulting in displacement of homeowners and a loss of affordable housing;
- Undesirable rules; and/or
- Insufficient maintenance and repair of basic infrastructure.

Finally, you have a -member Board of Directors. To be eligible to serve as a Director, an individual must be a resident homeowner of a manufactured housing unit in your community and be a member in good standing. All members of your Board of Directors and each officer position are elected by your Membership at the Annual meeting. They serve on a volunteer basis.

Law

IRC Section 501(c)(3) 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(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- Limit the purposes of such organization to one or more exempt purposes; and
- 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)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in Section 501(c)(3) of the Code.

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 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.

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.

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.

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., 305F.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 F2d. 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

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set 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). Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Your Articles of Incorporation do not include a purpose clause that limits your purposes to one or more exempt purposes. The purposes for which you were created, to own and operate a manufactured housing community, are broader than the purposes specified in IRC Section 501(c)(3). Your organizing document also does not contain a dissolution clause that dedicates your assets to an exempt purpose. Therefore, you did not establish that you have valid purpose and dissolution provisions. As a result, you have not satisfied the organizational test described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i), 1.501(c)(3)-1(b)(1)(iv) and 1.501(c)(3)-1(b)(4).

You are also not described in IRC Section 501(c)(3) because you fail the operational test. Your activity of owning land and collecting lot rent from owner-occupied manufactured houses does not serve an exempt purpose and is substantial in nature. A single, substantial non-exempt purpose will preclude 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 were formed by current residents of the manufactured home community that you purchased. The residents that own their homes are your members. The purpose of purchasing the community was to keep lot rents low and to avoid displacement of residents. Your activities serve the private benefit of your members, 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 manufactured housing community 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 only own the land. Individuals will have to purchase their own manufactured 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 will follow 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 "unit" 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 maintain control over lot rents, avoid displacement, enforce rules and maintain infrastructure. 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 manufactured home community. 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). 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

Based on the facts and circumstances presented, you are not organized or operated exclusively for exempt purposes as set forth in IRC Section 501(c)(3). You are formed for the private benefit of your members for 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