



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200839037**
Release Date: 9/26/2008

Date: July 2, 2008

UIL: 501.03-23
501.03-27

Contact Person:

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Dear :

This is in reply to your ruling request dated May 25, 2007 regarding approval of your proposed provision of financial and other support to on-campus fraternity and sorority houses in need of improvements to meet your safety, security, and infrastructure standards for all on-campus student housing.

Facts:

You are an organization recognized as an exempt educational organization described in section 501(c)(3) of the Internal Revenue Code ("Code"), and classified as an organization described in sections 509(a)(1) and 170(b)(1)(A)(ii). You are a private, accredited university.

Most of your students reside in various types of housing on your campus. Your campus serves an integral role in the fulfillment of your educational purposes because it furthers the faculty and student exchange of ideas outside as well as within the classroom and permits the students the benefit of experience in governing themselves and living with others.

You offer many housing options for your student body. First-year students are required to live in one of your traditional residence halls. Thereafter, students may live in other less traditional residence halls, fraternity and sorority houses (Greek houses), or University owned apartments and houses. Almost half of your students live in Greek houses. All student housing, including the Greek houses, are located on your campus.

Your campus hosts an active Greek system. Each of the Greek organizations with housing on campus is a member of a larger, national fraternity or sorority. Each Greek house is owned by a separately incorporated section 501(c)(7) or 501(c)(2) "House Corporation." The land on which each house is located, although within the confines of your campus, is also owned by the corresponding House Corporation.

One of your top priorities is ensuring the safety, habitability, and security of the housing in which your students live. Recently, you lost a major residence hall due to a large electrical fire. No students were injured. The displaced students were housed in other on-campus facilities, including Greek houses and other campus residence halls, for the remainder of the semester.

Due to the significant and irreparable damage caused by the fire, you razed what remained of the building and constructed seven smaller residence halls in its place.

As a result of the fire, the campus community refocused its attention on health and safety issues for your student residents. As you were overseeing the construction of the seven new residence halls, you and a few House Corporations with sufficient independent financial resources also began making improvements to existing housing stock. These improvements included the installation of fire suppression sprinklers and smoke detectors as well as safety renovations.

Last year, you focused on the safety of the Greek houses. You appointed a special committee and engaged a team of professionals, including architects, engineers, and other contractors and consultants, to inspect each of the houses, to assess safety, health, and security conditions, and to make recommendations regarding needed repairs and improvements. The result of the professionals' inspections revealed various states of disrepair and confirmed the need for significant repairs and renovations to bring the standard of living in the Greek houses to a level consistent with the safety, security, and habitability standards of other campus housing. The inspections revealed that fewer than half of the Greek houses were equipped with fire-suppression indoor sprinkler systems; several houses featured traditional sleeping "cold dorms" (bunkers) with only a single exit and other structural features that posed serious fire-safety concerns; other houses had inadequate bathroom and kitchen heat exhaust and mold prevention moisture ventilation systems; and others had various other defects.

After reviewing the results of the professional inspections of the Greek houses, you concluded that a comprehensive set of new housing standards applicable to all campus housing, including Greek housing, should be adopted. While the special committee was developing proposed housing standards and a related funding program, a campus fire occurred in a Greek house. Fortunately, a fire-suppression indoor sprinkler system previously installed by the House Corporation prevented the spread of that fire. No students were harmed, and only minimal damage to the house occurred.

After this fire incident occurred, you approved and adopted a comprehensive set of new housing standards applicable to all campus housing, including University-owned housing and the Greek houses. The Housing Standards address the need to maintain appropriate physical standards for residential living that are consistently applied to all residential units. Among many other requirements, the new standards include the following:

1. All units must have University monitored fire suppression systems or an outside professional monitoring service.
2. Cold dorms in which more than eight students sleep must have a minimum of two exits and appropriate ingress and egress, continuous airflow with fresh-air ventilation, and appropriate space between beds, such that there are no obstructions to the fire detection and suppression systems.
3. All units must comply with applicable building codes.
4. All units must design and produce appropriate emergency response plans addressing, among other items, fire and weather emergencies.
5. Entry doors to all units must be equipped with swipe card security lock systems or equivalent security systems.

6. All bathrooms, laundry facilities, and kitchens must have appropriate exhaust systems, and all units must maintain satisfactory heating, ventilation, and facility infrastructure.
7. All units must maintain clean, properly functioning bathroom facilities with an appropriate number of showers and stalls.
8. All units must implement plans for frequent and regular cleaning, and items that create health or safety hazards must be addressed immediately.
9. Once a year, designated University staff members (along with a Greek house representative where appropriate) must conduct an analysis of structural and infrastructural needs of each unit and develop a plan to address such needs and any other major deficiencies.

Living units that fail to comply with the above Housing Standards will be subject to progressive penalties, including your withdrawal of approval to house University students.

To address the varying financial and physical conditions of the Greek houses, you propose to adopt a program to provide financial assistance to House Corporations in meeting the new mandatory standards. Eligibility for financial assistance under this program will be limited to Greek houses with at least an 80 percent occupancy rate or which otherwise are able to demonstrate their financial viability. All Greek houses, regardless of eligibility for financial assistance, will be required to meet the Housing Standards.

You propose to offer the following types of financial assistance:

1. Grants:

- Grants may be used only for those improvements you identify in advance as reasonably necessary to address safety, health and security concerns and as are consistent with local, state and federal building, fire, health, and other safety codes. Items that improve comfort, such as air conditioning or cleaning services are not considered to improve the safety, health or security of your students under the Housing Standards and are not eligible for grants.
- A House Corporation may offer recommendations for improvements and contractors but all such recommendations, including, but not limited to, recommendations as to the size, character, and architecture of the University funded improvements, must be approved in advance and in writing. You reserve the right to modify proposed recommendations.
- A budget must be agreed upon in advance and work may not commence until you approve the proposed budget.
- Grants will not be paid directly to the participating House Corporation or other Greek affiliates. You will pay contractors and other vendors directly for the budgeted improvements as invoices are rendered and as payments become due.
- House Corporations will be required to provide you with periodic reports describing the progress of the construction and comparing actual to budgeted expenses.
- With the exception of University approved adult house directors, the Greek house may only house university students.
- You retain the right to inspect the Greek house both during construction and annually thereafter.

- Greek houses participating in this program may not be sublet or assigned without your prior written consent and the house and premises must be used solely for the purpose of operating a chapter house.
- Should the Greek house be sold or cease to house University students, the House Corporation must repay you the value (as determined at the time of sale) of any and all improvements made with grant funds.

2. Loans:

- Loans may be used only for those improvements you identify in advance as reasonably necessary to address safety, health and security concerns and as are consistent with local, state and federal building, fire, health, and other safety codes. Items that improve comfort, such as air conditioning or cleaning services are not considered to improve the safety, health or security of your students under the Housing Standards and are not eligible for loans.
- A House Corporation may offer recommendations regarding improvements and contractors but all such recommendations, including, but not limited to, recommendations as to the size, character, and architecture of the University funded improvements, must be approved in advance and in writing. You reserve the right to modify proposed recommendations
- With the exception of approved adult house directors, a Greek house may only house university students.
- You retain the right to inspect the house both during construction and annually thereafter.
- Greek houses participating in this program may not be sublet or assigned without your prior written consent and the house and premises must be used solely for the purpose of operating a chapter house.

3. Purchase Program

You will consider purchasing Greek housing and land from any House Corporation wishing to sell. You will pay no more than the appraised fair market value of the house and/or land. In the event of such purchase, you will be responsible for ensuring that the house satisfies the Housing Standards. You will require the House Corporation to use funds it receives from the sale either to repay debt or to contribute to the refurbishment of the house.

If you become the owner, you will enter into a renewable short-term lease agreement (no longer than a five year term) with the House Corporation so it may continue to be used as a Greek house. Lease terms will include the following:

- Rental rates will be based on a rate per occupant and will be substantially comparable to the room rental rates in comparable university-owned housing.
- As provided in the Housing Standards, you will have the right to regularly inspect the facility.
- The house may not be sublet or assigned without your prior written consent and the premises must be used solely for the purpose of operating a Greek house.

- With the exception of approved adult house directors, a Greek house may only house university students.
- Any improvement to the premises will require your advance written approval.
- You may terminate the lease at any time if the House Corporation breaches the contract or upon 18 months written notice.

Rulings Requested:

1. Your financial support of existing and future campus Greek organizations within the parameters of and consistent with your Housing Safety Program, including provision of financial support for repairs or improvements to Greek houses owned by House Corporations is in furtherance of your educational and charitable purposes within the meaning of section 501(c)(3) of the Code.
2. Your financial support of existing and future campus Greek organizations within the parameters of and consistent with your Housing Safety Program, will not constitute prohibited private inurement or private benefit and will not otherwise jeopardize your exempt status under section 501(c)(3) of the Code.

Law:

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), 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.

Section 1.501(c)(3)-1(c)(1) of the regulations 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 the exempt purposes specified in section 501(c)(3) of the Code. But an organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations 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) defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations 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, to meet the requirements of this subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" refers to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 60-367, 1960-2 C.B. 73, the taxpayer was a college with an enrollment of approximately 600 students, of which 350 lived in fraternity houses and 115 in college owned dormitories. The remaining students lived in private homes or apartments in the town surrounding the college. The fraternities at the college were having difficulty properly maintaining their fraternity houses, and as a result the fraternity houses were not in a physical condition up to the standards desirable for the housing of college students. The college organized a fund raising program for the purpose of acquiring or constructing housing for particular fraternities. The college permitted donors to designate a particular fraternity for their contributions, but the college was not bound by this designation. While the ruling was targeted at the deductibility of such contributions, the ruling also stated that:

The college might properly adopt as incident to its educational activities a program to assist in the housing of all its students by providing dormitories, . . . by exercising control over housing for its students, by purchasing or constructing, owning and operating houses for fraternity students, or by a combination of such activities. Furnishing housing for fraternity members would not cease to be a college activity because the college participated in or undertook plans to have the whole or a part of the cost of a fraternity house defrayed by gifts from alumni of a particular fraternity.

Rev. Rul. 67-217, 1967-2 C.B. 181, holds that an organization formed to provide housing and food service exclusively for students and faculty of a university in accordance with the rules and regulations of the university and offers the university an option to acquire the property at any time upon payment of the outstanding indebtedness qualifies for exemption under section 501(c)(3) of the Code. The facility is located near the university and is managed by a commercial firm in accordance with the rules and regulations of the university and made available to the student body at rates comparable to those charged by the university for similar facilities. By providing a housing facility under these circumstances, the organization was fulfilling the 'charitable' purpose of advancing education by aiding the university to fulfilling its educational purposes.

Rev. Rul. 76-336, 1976-2 C.B. 143, holds that an organization formed by community leaders to provide housing for students of a particular college unable to provide adequate student housing is operated exclusively for charitable purposes and qualifies for exemption under section 501(c)(3) of the Code. The organization operated the facility adjacent to the college campus and in an area where other suitable housing was not available. Only students of the college were eligible to apply for housing. The organization and the college consulted and cooperated to ensure that the needs of the college and its students were served by the operation of the facility. By providing a housing facility under these circumstances, the organization was both helping the college to fulfill its educational purposes, and aiding the students to attain an education. Therefore, the activities of the organization were advancing education.

Providing dormitories and food for students is recognized as one of the universities and colleges' functions, and is incidental to their educational purpose. See Phinney v. Dougherty, 10 A.F.T.R. 2d 5531 (1962); Milton Smith, Jr. v. Commissioner, 28 B.T.A. 422, 4-27 (1933).

Analysis: Ruling No. 1

It has long been recognized that providing dormitories and food for students is one of the functions of universities and colleges, and is incidental to their educational purpose. See, Phinney v. Dougherty, supra, and Milton Smith, Jr. v. Commissioner, supra. In Rev. Rul. 67-217 and Rev. Rul. 76-336, the Service ruled that such housing both helped the colleges to fulfill their educational purposes and aided the students to attain an education within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

You indicate that your campus serves an integral role in the fulfillment of your educational purposes in that it furthers the faculty and student exchange of ideas outside as well as within the classroom and permits the students the benefit of experience in governing themselves and living with others. A large percentage of your students live in Greek housing. You determined that the condition of the Greek houses impacts on the safety, health and security of your students and have adopted Housing Standards to address the deficiencies. Your plans to assist the Housing Corporations in meeting these standards through a program of grants, loans and purchases as described above, allow you to exercise control over housing for your students.

Like the housing contemplated in Rev. Rul. 60-367, the Greek houses on your campus serve substantially the same function as your campus dormitories and, like dormitories, are operated incidental to your educational and charitable purposes. Accordingly, we conclude that the proposed funding programs designed to bring the Greek houses into compliance with your Housing Safety Program, are in furtherance of educational and charitable purposes within the meaning of section 501(c)(3) of the Code.

Analysis: Ruling No. 2

In designing the proposed funding plans for assisting Housing Corporations to bring Greek housing up to your new Housing Standards, you have adopted procedures in each program to safeguard against impermissible private benefit and inurement.

Both your grant and loan programs are limited to improvements related to student safety, health and security and only as approved in advance. Items that improve comfort, such as air conditioning or cleaning services are specifically excluded as they are not considered to improve the safety, health or security of your students under the Housing Standards and are not eligible for grants or loans. Periodic reports are required and you reserve the right to inspect the house both during construction and annually thereafter. Greek houses participating in either the grant program or the loan program may not be sublet or assigned without your prior written consent and the house and premises must be used solely for the purpose of operating a chapter house. In the event the Greek house is sold or ceases to house University students, the House Corporation must repay you the value of any and all improvements made with grant funds.

The purchase program ensures that all Greek houses will meet the Housing Standards by permitting you to purchase the property under certain circumstances and to bring it into compliance. In the event of such purchase, you will require the House Corporation to use funds it receives from the sale either to repay debt or to contribute to the refurbishment of the house. You will then rent the house back to the House Corporation for use as a Greek house. The lease will preserve your right to inspect the Greek houses at any time, prohibit the sublet or assignment of the premises without your consent, and limit the use of the premises solely for the purpose of operating a Greek house. If any covenants in the lease are breached, you may terminate the lease and you may also terminate the lease without cause upon eighteen months prior written notice. This program ensures that you will be able to maintain your current student housing stock.

Under your proposed Housing Safety Program, you will retain the control to approve, deny and modify House Corporations' uses of all funds, retain the right to continued inspections of all housing and require that House Corporations participating in the improvement program limit their purpose to housing University students or sell the property to you. You have adopted these safeguards to ensure that all charitable assets will be protected, that your educational purposes will be served and that non-University owners of the Greek houses will not be improperly enriched. Because you will retain ultimate oversight and authority over all University-funded improvements to Greek houses, we conclude that your operation of the proposed funding programs as described will not result in prohibited private benefit or inurement to any participating House Corporation and will not otherwise jeopardize you exempt status under section 501(c)(3) of the Code.

Rulings:

1. Your financial support of existing and future campus Greek organizations within the parameters of and consistent with your Housing Safety Program, including provision of financial support for repairs or improvements to Greek houses owned by House Corporations is in furtherance of your educational and charitable purposes within the meaning of section 501(c)(3) of the Code.
2. Your financial support of existing and future campus Greek organizations within the parameters of and consistent with your Housing Safety Program, will not constitute prohibited private inurement or private benefit and will not otherwise jeopardize you exempt status under section 501(c)(3) of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven Grodnitzky
Manager, Exempt Organizations
Technical Group 1

Enclosure
Notice 437