



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **201517008**

Release Date: 4/24/2015

UIL code: 501.00-00

501.36-01

503.00-00

Date: 1/27/2015

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,

Director, Exempt Organizations

Enclosure:

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  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: 11/25/2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = individual  
C = state  
D = bank  
E = city  
F = date  
g = dollar amount

**UIL:**

501.00-00  
501-36-01  
503.00-00

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

This supersedes our previous letter dated April 6, 2012.

**Issues**

1. Do your operations fail to further a charitable purpose, precluding you from exemption under section 501(c)(3) of the Code? Yes, for the reasons described below.

**Facts**

You were previously granted exemption under Section 501(c)(3) of the Code. Your exemption was revoked due to non-filing of Form 990 for three consecutive years. Accordingly, you submitted another Form 1023, reapplying for exemption. Despite having been in existence for over ten years you have raised little income and have conducted none of the housing activities as described below.

You incorporated on date F in the state of C. Your Articles of Incorporation state you were formed to develop "...low income housing for charitable purposes." B is your founder and president, as well as your only board member. You indicated you have not adopted Bylaws.

You will provide low-income housing or housing for the elderly or handicapped. Housing will be affordable to a significant segment of the elderly or handicapped persons in the community, as well as low-income residents. You will impose restrictions to make sure that your housing remains affordable to low-income residents.

Candidates selected for your housing program will show a real need for affordable housing. Admissions will not be limited to persons of a particular age or handicap. You will select those clients first that have exhausted all housing options. You do not have any copies of admission paperwork because the project has not been developed on your vacant land. You did not indicate or define how need was being determined for candidates, methods or criteria you would use to evaluate candidates, or information that would be asked of candidates to validate exhausting their personal options.

You submitted a copy of a proposal to the Children's Court in your locality dated almost four years prior to the submission of your current Form 1023. In this proposal, you stated your priority is to assist parents who are trying to reunite with their children but have limited resources to meet the Court's orders. This proposal states you would like to fill this need by providing parents with housing, employment, individual counseling, day care and funding to pay for other necessary services that they need to complete the Court orders for family reunification with their children. Although this document is dated several years ago, you did not conduct any of the activities described therein in the interim.

You said you would create other types of housing for rental at market value, as allowed by the city where the housing will be located. You said once you receive grant funding, you "could offer 60% of your units for low-income affordable housing." You believe that with government support "...we can continue to assist individuals and families to achieve the American Dream of becoming homeowners." You also would like to develop low-income affordable housing for veterans, for individuals and families that need it the most, as well as individuals and families who have dependency court cases looking to regain custody of their children.

You believe these programs will decrease the number of renters in your community as well as provide the stepping-stone to homeownership. You want to conduct a housing program to assist individuals and families regain custody of their children as well as obtain their own housing.

When asked to describe all of your activities since your inception, you simply indicated

that you have worked with the Congressional Office of the State of C "...to develop low-income afford[able] sic housing as well the public and private sectors to assist those in need of housing." You have worked with D bank to develop low-income housing as well as the city of E. You did not elaborate on what the development included.

You will not charge an entrance fee or monthly fee. Charges will be subject to one's ability to pay. You provided an example of an individual that can only afford a monthly payment of \$100. You said the renter could pay it in four installments of \$25 per week. When asked to compare your charges with similar facilities in your area you said you have "...lower or no rates because it will still [sic] clients into program that can not afford to pay."

You do not have any arrangements with government agencies to absorb the cost of residents who may become unable to pay for your services because you are not a profit making organization and the agencies have very limited funding available to absorb your costs should someone not be able to pay. You are committed to helping renters who may lose their ability to pay by not evicting them. You said you have reserves for future expenditures, but your balance sheet showed a balance of only g dollars in cash, which was your only asset listed.

You purchased a piece of vacant land approximately eight years ago for a minimal amount of money. You intend to build an apartment building on this land. Your proposed apartment building is a two-story residence consisting of eight bedrooms that can hold two individuals per room, totaling sixteen renters. Local zoning laws prevent any larger development. As of now, the land is still vacant.

You will have a social worker at the facility to assist residents with their physical, emotional, recreational, social, religious and similar needs, as you want your elderly renters to have a very good quality of life. You will provide these services at a "reasonable cost."

You plan to begin your low-income housing project within the next six months. When asked how you will serve charitable purposes by complying with the safe harbor provisions of Revenue Procedure 96-32, you indicated you disagree with the Revenue Procedure. You have not made any provisions for who will occupy these units with regard to meeting safe harbor guidelines, as certain cities where you would like to provide housing may not agree to set aside certain percentages for those of low and/or very low income. You said the "...cities may be incline[d] to setting aside 25% for low-income affordable housing."

The financial data you provided includes a minimal amount of revenue received for the last 4 years. All of your expenditures were fundraising expenses.

## Law

Section 1.501(c)(3)-1(a) of the regulations states that 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 an organization does not qualify for exemption if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501-1(d)(2) of the regulations defines the word "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed.

Rev. Rul. 67-138, 1967-1 C.B. 129, holds that the provision of housing for low-income persons accomplishes charitable and educational purposes by relieving the poor and distressed. An organization created to provide instruction and guidance to low-income families in need of adequate housing and interested in building their own homes may be exempt under section 501(c)(3). The organization's activities include (1) conducting a training course relative to various aspects of house building and homeownership, (2) coordinating and supervising joint construction endeavors, (3) purchasing building sites for resale at cost, and (4) lending aid in obtaining home construction loans. No charge is made for any of these services.

Rev. Rul. 70-585, 1970-2 C.B. 115, describes four scenarios for an organization providing housing – 1. an organization formed to aid low income families, 2. to eliminate prejudice and discrimination, 3. to combat community deterioration and to 4. to provide moderate income families with housing in a particular community. All but scenario four were held to be exempt. Where an organization is formed for charitable purposes and accomplishes its charitable purposes through a program of providing housing for low and it is entitled to exemption under section 501(c)(3) of the Code.

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 is affordable to the charitable beneficiaries. In the case of rental housing, this requirement is ordinarily 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. Relevant facts and circumstances under the facts and circumstances test may include, but are not limited to, the following:

- (1) A substantially greater percentage of residents than required by the safe harbor with incomes up to 120 percent of the area's very low-income limit.
- (2) Limited degree of deviation from the safe harbor percentages.
- (3) Limitation of a resident's portion of rent or mortgage payment to ensure that the housing is affordable to low-income and very low-income residents.
- (4) Participation in a government housing program designed to provide affordable housing.
- (5) Operation through a community-based board of directors, particularly if the selection process demonstrates that community groups have input into the organization's operations.
- (6) The provision of additional social services affordable to the poor residents.
- (7) Relationship with an existing 501(c)(3) organization active in low-income housing for at least five years if the existing organization demonstrates control.
- (8) Acceptance of residents who, when considered individually, have unusual burdens such as extremely high medical costs which cause them to be in a condition similar to persons within the qualifying income limits in spite of their higher incomes.
- (9) Participation in a homeownership program designed to provide homeownership opportunities for families that cannot otherwise afford to purchase safe and decent housing.
- (10) Existence of affordability covenants or restrictions running with the property.

Rev. Proc. 2012-9, superseding Rev. Proc. 90-27, 1990-1 C.B. 514, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.02 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. It further states:

- (1) The applicant is responsible for the accuracy of any factual representations contained in the application.
- (2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the

signature of an officer or director of the taxpayer under a penalties of perjury statement.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Section 4.03 states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

In Better Business Bureau of Washington, D.C. v. U. S., 326 U.S. 279 (1945), the court held that an organization was not organized and operated exclusively for charitable purposes. The court reasoned that the presence of a single nonexempt purpose, if substantial in nature, would destroy the exemption regardless of the number or importance of truly exempt purposes.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial.

In Easter House v. United States, 12 Cl. Ct. 476 (1987), affd, 846 F. 2d 78 (Fed. Cir. 1988) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3).

### **Application of Law**

You are not operated exclusively for one or more of the purposes specified in Section



1.501(c)(3)-1(a) of the regulations as your purposes are not exclusively charitable. You are planning a housing program that will provide housing at fair market rates and that will not provide services to a charitable class.

By charging market rents for a large percentage of your housing, more than an insubstantial part of your activities are in furtherance of a nonexempt commercial purpose, in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Therefore, you are not operated for an exempt purpose.

Furthermore, your activities are not charitable as defined in Section 1.501-1(d)(2) of the regulations as only an incidental amount of your activities are directed towards relieving the poor and distressed.

Your low-income housing program will not accomplish an educational purpose as described in Rev. Rul. 67-138, as you are not conducting any types of home buyer or builder training or directly assisting low-income individuals in obtaining outside housing. Instead, you will be building and then renting more than an insubstantial amount of your units at market value. Further, you have described no activities that will meet the situations described in Rev. Rul. 70-585. You intend on operating a housing program that, while serving some low-income and needy individuals, will also provide housing to individuals at market rates. Your program will not exclusively serve the poor or distressed.

You do not meet the safe harbor provisions provided by Rev. Proc. 96-32, which allow exempt organizations to provide a certain amount of housing for income groups other than low income. In order to meet the safe harbor provisions, low and very low-income tenants must occupy certain percentages of units. You indicated you do not agree with the Rev. Proc and will not adhere to any of the requirements therein.

As required by Rev. Proc. 2012-9, you have not established that you are organized and operated exclusively for exempt purposes and not for the private benefit of your creators. You have one individual controlling your organization. You have also continued to provide very few details regarding how your housing program will be operated. As required by Section 4.03 of this Rev. Proc., you must fully describe all of the activities in which you expect to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities. You have failed to provide adequate details to allow us to determine that any portion of your housing activities would qualify for exemption; however, the information you did provide indicates you do not qualify for exemption under Section 501(c)(3) of the Code.

Your housing program is operated for a nonexempt purpose, which precludes exemption as seen in Better Business Bureau of Washington, D.C. v. U. S. Other than the small percentage of low-income housing units, you plan on renting units out for market value. You are similar to the organization described above in B.S.W. Group,

Inc., which did not satisfy the operational test under IRC section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit.

As in Easter House v. United States, you are operated for a business purpose, and not the advancement of educational and charitable purposes, precluding you from exemption under Section 501(c)(3) of the Code. Any amount of charitable activity you have planned is incidental to the non-exempt function of providing housing at market rates.

### **Applicant's Position**

You said you further 501(c)(3) purposes because you will partner with the city for block grant programs and other home investment programs. You believe with this kind of grant funding, you "...could offer 60% of our units at low-income affordable housing." You believe with this kind of government support that you can assist individuals and families to achieve the American dream of becoming a homeowner.

### **Service Response to Applicant's Position**

Providing individuals or families with housing is not in and of itself a 501(c)(3) activity. Although you assert that if you receive some government assistance you may be able to offer 60% of your units to low-income individuals, this still does not allow you to qualify for exemption as an organization described in Section 501(c)(3) as you do not meet the safe harbor provisions of Rev. Proc. 96-32.

### **Protest from Applicant**

In response to our statement regarding your lack of activities since your incorporation almost 15 years ago, you simply reiterated your relationship with a congressman and your attempt to secure funding. You were not able to obtain a building or grant funding because neither was available. You also contacted a Councilmember in your region. You did not receive any assistance from the Councilmember's office in obtaining housing funding. You again stated you were able to obtain a small grant from a D, but because you are a new non-profit organization to them, they would like to slowly fund you over the next five to ten years. You said these are the reasons you have raised little money. You provided no other detail regarding your proposed housing activities.

Your proposed activities involving the Children's Court was not implemented because funding from the Congressman's office was rescinded five years ago. You were not able to secure funding at the Federal, State or County levels of government or through any foundations.

You now say you have a full board. It is composed of six individuals, including B. Four of the five additional board members are B's family members and one is a friend/business associate.

You say you meet 70-585 because you only intend on operating a housing program that will serve low-income and needy individuals. You will only exclusively serve the poor and distressed individuals and family. You say you incorporated under this mission statement.

You asserted that you agree with Rev. Proc. 96-32. You submitted a Low Income Housing Resolution that stated you agree that (a) at least 75% of the units will be occupied by residents that qualify as low-income; and (b) either at least 20% of the units will be occupied by residents that also meet the very low-income limit for the area or 40% of the units will be occupied by residents that also do not exceed 120% of the area's very low-income limit. Up to 25% of the units may be provided at market rates to persons who have income in excess of the low-income limit. Poor and distressed residents will occupy each housing project and the housing will be affordable to charitable beneficiaries.

### **Response to Applicant's Protest**

You continue to fail to provide any evidence that you have done anything but attempt to fundraise and contact government officials since your inception. As required by Section 4.03 of Rev. Proc. 2012-9, you must fully describe all of the activities in which you expect to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities. You have failed to provide any new information or details regarding your activities.

You also assert that you meet 70-585 because you only intend on operating a housing program that will serve low-income and needy individuals and that you incorporated under this mission statement. Although you make this statement, you have not provided any documentation to describe what you consider needy or how you define low-income.

Although you previously stated you disagree with Rev. Proc. 96-32, you now have signed the resolution stating you will comply with it. You provided nothing to substantiate this change or how you will implement it. You still have provided no admission criteria or similar documentation. You still have not conducted any activity over the decade since you were formed.

### **Conclusion**

Based on the facts presented above, we hold that you are not exclusively charitable within the meaning of section 501(c)(3) of the Code. Providing housing at market rates for an undefined class of individuals is a nonexempt purpose. Further, you were revoked for failure to file Form 990, and despite proposed operations, you have conducted no charitable or educational activities in over ten years. Accordingly, we conclude you fail the operational tests and do not qualify for exemption under IRC section 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of why you disagree. Your protest statement must be filed within 30 days of the date of this letter and should include:

- a. Your organization's name, address, EIN number and a daytime phone number.
- b. A statement that the organization wants to protest the proposed determination.
- c. A copy of this letter showing the findings that you disagree with (or the date and IRS office symbols from the letter.
- d. An explanation of your reasons for disagreeing including any supporting documents.
- e. The law or authority if any, on which you are relying.

The protest statement may be signed by one of your officers or your representative. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. 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*.

The protest statement should also include the following declaration.

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

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your protest will be considered incomplete without this statement.

If an organization's representative signs and submits the protest, a substitute declaration must be included stating that the representative prepared the protest and any accompanying documents; and whether the representative personally knows (or does not know) that the statement of facts in the protest and any accompanying documents are true, correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. In that case you must file a Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

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

**Mail to:**

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

**Deliver to:**

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

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Director, Exempt Organizations

Enclosure, Publication 892