



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201440021**  
Release Date: 10/3/2014

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Required To Be Filed:

Tax Years:

Date: July 7, 2014

UIL: 501.33-00; 501.03-00; 501.32-01

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, 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 Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Tamera Ripperda  
Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: May 15, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = Date  
C = State

**UIL:**

501.03-00  
501.33-00  
501.32-01

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.

**Issues**

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

**Facts**

You incorporated on B pursuant to the nonprofit corporation laws in the State of C. The purposes for which you were formed are to provide affordable housing and own, lease and operate houses and dwelling units. Your specific purposes for which you are organized are:

Letter 4036(CG) (11-2011)  
Catalog Number 47630W

1. To develop and nurture support systems and family structures outside of the limitations of heteronormative nuclear families;
2. To provide affordable housing to individuals and families for whom renting or owning a single dwelling unit is not a viable option;
3. To retain younger generations and their innovative participation in your community;
4. To encourage and empower people for working for social change.

Besides the above, your bylaws list the following for your mission:

1. To engage in educational programs to eliminate prejudice and discrimination in housing and further the principles of tolerance and cooperation;
2. To maintain an open and safe space, affirming to all people regardless of age, race, ethnicity, veteran's status, gender identity, sexual orientation, philosophical/religious beliefs, national origin or ability;
3. To reduce the ecological footprint of residents through conservation and improvements in building energy efficiency;
4. To keep monthly living expenses low for collective members through budgeting, chore sharing and long term planning.

You are primarily operating a housing cooperative and have purchased a single family house from Fannie Mae using interest free loans from individuals. In order to live in the cooperative, membership is required and you have less than 10 members. Membership is voluntary and non-discriminatory. Moreover, your bylaws about membership eligibility state:

- All, who have a genuine interest in cooperative living and agree to share in the responsibilities required to run the collective shall be eligible to join, regardless of race, sex, gender, sexual orientation, class, age national origin, cultural identity, spirit or religious affiliation, physical or mental ability, HIV antibody disease status, marital status, family structure, socioeconomic status, educational status or other factors not relevant to successful participation in a cooperative community.
- In adherence of your goal to provide housing to low income residents, you will access the income of current and potential members to ensure your membership is composed of least 75% low income members or that 40% of your membership is comprised of members earning not more than 120% of the very low income levels for that area. Members will complete and sign a yearly disclosure form.
- You have an open membership application without restriction as provided by law. If accepted, members must agree to follow your bylaws and policies approved by members.

Some other rights and responsibilities of members listed in your bylaws are:

- Members have the right to be involved in your consensus decision making;
- Members have the right to speak at meetings;
- Members have the right to make proposals and to amend bylaws;
- Members have the responsibility to promote your mission;
- Members have the responsibility to compost and recycle their waste.

Furthermore, your bylaws state all members are directors and everyone serving on the board of directors must be a collective member. In addition, there is no separation between the activities of your board and that of your membership in holding meetings, decision making, and/or otherwise. Officers cannot make any decisions on behalf of the membership. You have 4 officer positions consisting of the coordinator, assistant coordinator, and 2 co-financial officers. Officers will have no more decision making power other than any member.

All members are required to sign an agreement, which describes the rules, responsibilities and expectations required of your members and the role of the collective as a whole. For example, because you operate as a collective, each member is required to provide in kind labor to you as needed and in equal proportion to other members and agrees to provide such labor which may include clerical service, building maintenance and common grounds maintenance, as well as any other reasonable work approved by the collective. Moreover, according to the agreement, the collective as a whole on a consensus basis can terminate one's membership.

Members are required to pay monthly fees, which are determined at your annual meeting by a consensus of your members. These fees must cover the loan mortgage payments on the building, utilities, taxes, a percentage for the maintenance reserve fund, and for any funds the members agree to create. To ensure that low income residents are benefiting, your bylaws include provisions limiting the amount of monthly individual membership fees to not exceed 30% of your area's "monthly low-income rate." You will ensure your membership is composed of at least 75% low income members or that 40% of membership is comprised of members earning not more than 120% of the very low-income levels for the area. Once all loans/mortgages have been paid off, a new fund will be created to collect money from members that will be used to expand the availability of affordable housing in your area. You currently own and operate one house as a cooperative home.

In addition to operating the cooperative, you will provide educational workshops and other educational activities to eliminate prejudice and discrimination in housing and further the principles of tolerance and cooperation. For example, you will provide in house trainings and workshops about inclusion, anti-oppression, and discrimination as well as offering these workshops for the larger community at little or no charge. None will be turned away. Your first workshop was about racism and you invited an outside

educational organization to conduct this training. These workshops will use about 10% of your funds. You are also operating a community garden.

Finally, you explained "the main idea behind cooperative housing is to allow for members to own their own dwelling without having to shoulder all of the costs alone." "By owning one house we are already allowing people to receive this benefit, and once the current house is paid off another can be saved for and purchased." "Through living cooperatively, expenses are at minimum allowing members to own a home." "By working together to work on the building and grounds as well as sharing supplies for cleaning, kitchen appliances and dishes, and tools we have been able to make home-ownership possible."

## **Law**

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations states that, in order to be exempt as an organization described in Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such Section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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 such exempt purposes specified in Section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

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) of the regulations defines the words "private shareholder or individual" in Section 501 of the Code 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 exempt organization must serve a public rather than a private interest. The organization must establish that it is not organized or operated to benefit 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."

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

Rev. Rul. 72-147, 1972-1 C.B. 147 describes an organization formed to provide low income housing to families but giving preference for housing to employees of a farm proprietorship operated by the individual who created and controls the organization did not qualify for exemption under IRC 501(c)(3).

Rev. Proc. 96-32

## SECTION 1. PURPOSE

.01 This revenue procedure sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in Section 501(c)(3) of the Internal Revenue Code because they relieve the poor and distressed as described in Section 1.501(c)(3)-l(d)(2) of the Income Tax Regulations.

## SEC. 3. SAFE HARBOR FOR RELIEVING THE POOR AND DISTRESSED

.01 An organization will be considered charitable as described in S501(c)(3) if it satisfies the following requirements:

- (1) The organization establishes for each project that (a) at least 75 percent of the units are occupied by residents that qualify as low-income; and
- (b) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit. Up to 25 percent of the units may be provided at market rates to persons who have incomes in excess of the low-income limit.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

The court case Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (4th Cir. 1962), describes a corporation organized by World War II veterans for the purpose of purchasing a government housing project and converting it to cooperative nonprofit housing for members. Individuals become members in the housing unit and the number of members was limited to the number of units. The court held that the organization did not qualify under Section 501(c)(4) because its activities were of the nature of an economic and

private cooperative undertaking. The organization did not promote social welfare because it furnished housing to only a certain group of individuals as opposed to the community as a whole. It was a public spirited but a private endeavor that only provided incidental public benefit.

### **Application of Law:**

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

You are not described in Section 1.501(c)(3)-1(c)(1) of the regulations because you are operating for the non-exempt private purpose of providing housing on a cooperative basis to members. For example, your members who are also your directors and residents of your facility are contractually obligated to pay monthly dues to you. These dues are pooled for the purpose of paying your member's living expenses as determined by the members/residents. This non-exempt purpose is substantial and precludes you from exemption.

You fail the inurement provisions described in Sections 1.501(c)(3)-1(c)(2) of the regulations. Your bylaws specifically state that all members are directors and everyone serving on the board of directors must be a collective member. In addition, there is no separation between the activities of the board and that of the membership in holding meetings, decision making and/or otherwise.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations, because you are a membership organization operating for the mutual benefit of members. For example, you pool members' resources, which lower the cost per member in all the services associated with home ownership. Members are also required to provide in kind labor to you as needed and in equal proportion to other members. Your operations keep expenses at a minimum allowing members to own a home. This demonstrates you are operating for substantial private interests, which precludes you from qualifying under Section 501(c)(3).

You are like the cooperative art gallery described in Revenue Ruling 71-395 because you also operate on a cooperative basis for the private benefit of your members. In addition, new members are only admitted by approval of the existing members. Your members are being directly benefited by your operations which illustrates you are operating for the private purposes of your members.

You are also similar to the organization described in Revenue Ruling 72-147 because your housing for low income individuals benefit the same individuals who control you. Although your membership requirements are similar to the safe harbor provisions in Revenue Procedure 96-32, your operations primarily serve the private interests of your members.



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

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

### **Applicant's Position**

You state living on a cooperative basis helps conserve resources and assists low income individuals make home ownership possible. By working together and sharing resources you help keep monthly living expenses for members low and provide affordable and equitable housing.

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

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

### **Conclusion**

Based on the facts and information provided, you are not operating exclusively for exempt purposes as required by Sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. You are operating for the benefit of your members, therefore, you do not meet the operational test as required by Section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You have not demonstrated that you do not allow your net earnings to inure to private individuals as required by Section 1.501(c)(3)-1(b)(2) of the regulations. You do not serve a public rather than a private interest as required by Section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Accordingly, you do not qualify for exemption as an organization described in Section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you

are not deductible under Section 170.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a protest statement explaining your views and reasoning. You must submit the protest statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your protest 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.

*Types of information that should be included in your protest statement can be found in Publication 892. The protest statement must be accompanied by the following declaration:*

*"Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete."*

Your protest will be considered incomplete without this statement.

If an organization's representative submits the protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying documents; and whether the representative knows personally that the statements of facts contained in the protest and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, 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

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance

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,

Tamera Ripperda  
Director, Exempt Organizations

Enclosure: Publication 892