



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201219030**

Release Date: 5/11/2012

Date: February 14, 2012

XXXXXX

XXXXXX

XXXXXX

UIL Code: 501-04-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(4).

We made this determination for the following reason(s):

You are primarily engaged in carrying on a business with unrelated section 501(c)(3) charitable organizations and with the general public in a manner similar to entities that are operated for profit. Therefore, you are not operated primarily for the promotion of social welfare within the meaning of section 501(c)(4).

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.

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,

Lois G. Lemer
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 16, 2011
UIL: 501.04-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND

Parent =
Foundation =
Affiliate =
Subsidiary =
Facility =
State =
Area A =
x =
y =
z =

Dear

We have considered your application for recognition of exemption from federal income tax under the Internal Revenue Code ("Code") section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below.

FACTS:

You are a nonprofit corporation organized under the laws of State. You state that you were incorporated by Parent to operate and lease the Facility. The Facility is a 181,000 square-foot building on 11 acres of land in the beach community of Area A, donated to Foundation for the benefit of the Parent. Foundation is a section 501(c)(3) public charity. You indicated that Facility is located next to a location designated for revitalization by Area A. However, Facility was not made part of Area A's redevelopment plan.

Currently, your only activity is subleasing the Facility to Subsidiary, an entity wholly owned by Affiliate, a related member of Parent. Subsidiary is your sole lessee, and the lease is for \$ per year. You hold the leasehold interest in Facility in order to protect it from liabilities arising from activities of Subsidiary.

Previously, until 2008, pursuant to a 50-year lease, you leased the Facility from the Foundation for \$ per year, and you used the Facility to carry on office space, conference/meeting room and lodging rental activities (rental activities).

The information you submitted shows that during this period, you rented your office space to 17 organizations. Out of these 17 organizations, one was a for-profit entity. Of the remaining 16 tax-exempt organizations, 13 were not affiliated with you. You state that your office rental activity generated half of your revenues. Revenue from your office space rental activity totaled \$z, and this amount represents % of your office space rental activity operating cost exclusive of depreciation. Your website advertises that you have over 43,000 square office space. You indicated that you rent office space at approximately \$y. An informal appraisal of fair rental value conducted by you shows comparable space in the surrounding area rented out at approximately \$x.

You also rented conference and meeting space to Christian ministries, including those whose offices are located in Facility for use in conducting conferences, retreats, meetings, training seminars, and social events. You represent that other than set-up and clean-up of the conference/meeting rooms, you rendered no direct services in connection with your conference/meeting room rental activity. However, you state that in a limited number of instances, and only upon the request of the tenants, you previously contracted with a food caterer for its services and then passed that cost directly to your tenants. You state that you generated 11.9% of your revenues from the rental of conference and meeting room space. This amount also represents 59.4% of your conference/meeting room rental activity operating costs exclusive of depreciation. You also rented out your conference/meeting room for private events such as weddings, which generated 6% of your revenues. An informal comparison of the rate charged by four nearby conference centers shows that your conference space rental charges were lower than the rates charged by the other conference centers.

Furthermore, you operated a hotel and rented fully furnished rooms and suites to patrons of your tenants and the public. The Facility's website represents that the Facility has 74 guest rooms and suites that are available for rent on a daily, weekly and monthly basis. The website also states that rooms "come complete with all the conveniences of home" such as a hair dryer, high-speed internet, cable TV, coffee maker and more. There are also two community lounges per floor that include couches, Wi-Fi, big screen televisions, vending machines, a refrigerator, microwave oven and a guests' laundry room. The website also states that the Facility provides a non-smoking and alcohol free environment, has numerous worship services onsite daily, and guests to Facility also receive a complimentary breakfast. Fees for lodging to ministry-related visitors and the general public generated 33% of your revenues. An informal comparison of rates charged by seven nearby hotels shows that your rates were lower than those charged by the other hotels.

You stated that lodging and conference facilities are prevalent in the local vicinity. The website advertises that Facility is "ideal" for corporate meetings, church retreats, or social events. You indicated that in addition to the website, you rely on word-of-mouth references and church connections to advertise the services rendered. You also advertise the Facility as a "conference and retreat center" in Christian directories and newspapers.

You indicated that in addition to the rental fees charged for the use of Facility, you relied on loans from the Foundation and the Affiliate to operate. However, no formal loans ever existed between you and the Foundation and between you and the Affiliate, and the loans have never been repaid. Other than the funds from the Foundation and the Affiliate, you have not received any grants or loans from any other sources, and you do not anticipate receipt of any grants or loans in the future.

LAW:

Section 501(c)(4) of the Code provides that an organization will be recognized as exempt from federal income tax under that subsection if it is a civic league or organization not organized for profit but operated exclusively for the promotion of social welfare, and no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations ("regulations") provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. A "social welfare" organization will qualify for exemption as a charitable organization if it falls within the definition of "charitable" set forth in section 1.501(c)(3)-1(d)(2).

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

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, among others: advancement of religion; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or to combat community deterioration.

Rev. Rul. 66-150, 1966-1 C.B. 147 concluded that an organization which holds title to a building housing its parent, maintains the building, and operates the social facilities located in the building does not qualify for exemption from federal income tax under sections 501(c)(2) or 501(c)(4) of the Code.

Rev. Rul. 69-572, 1969-2 C.B. 119, concluded that a nonprofit organization created to construct and maintain a building for the exclusive purpose of housing and serving exempt member agencies of a community chest is exempt under section 501(c)(3) of the Code. Because of the close connection between the organization and the charitable functions of the tenant-organizations and the rental of the facilities at rates substantially below fair rental value, the organization furthers the charitable purposes of the tenants. The organization primarily relied on charitable contributions from the public and loans from charitable organizations to pay expenses and costs.

In Rev. Rul. 71-529, 1971-2 C.B. 234, an organization that managed the endowment and investment funds of section 501(c)(3) organizations qualified for tax-exempt status under section 501(c)(3) of the Code because the section 501(c)(3) member organizations managed the organization and the organization relied on charitable contributions and grants to pay expenses and costs. This organization also rendered these investment services at substantially below cost.

In Rev. Rul. 76-419, 1976-2 C.B. 146, an organization that purchased blighted land, developed it into an industrial park, and rented space in the park at favorable terms to industrial enterprises that would not ordinarily locate in the area, was held to be organized and operated for the charitable purpose of promoting social welfare, relieving the poor and distressed, and combating community deterioration. The organization required tenants to hire a significant number of presently unemployed persons and it required tenants to train workers in needed skills. Tenants that hired low skill workers were favored over those who had high initial job skill requirements.

Rev. Rul. 77-111, 1977-1 C.B. 144 involved two situations. In the first situation, an organization was formed to increase business patronage in a deteriorated area mainly inhabited by minority groups. It provided information to the public on the area's shopping opportunities, local transportation and accommodations. The ruling concluded that the primary purpose of the organization was to promote business, which was not an exempt purpose. As such, the organization did not qualify for exemption under section 501(c)(3) of the Code. In the second situation, the organization's purpose was to revive retail sales in an area suffering from continued economic decline by constructing a retail shopping center. The organization purchased land, which it sold to the city at no profit. The city acquired additional land for the project. The city required that minorities be utilized in both the construction and the operation of the project. Stores located within the project were also required to employ a certain percentage of minority group employees. Nevertheless, the ruling concluded that the organization's activities resulted in major benefits accruing to the stores that will locate in the shopping center. The ruling concluded that the organization's activities were directed to benefit the businesses in the shopping center, rather than to accomplish exclusively 501(c)(3) purposes. Therefore, the organization did not qualify for exemption under section 501(c)(3).

Rev. Rul. 77-366, 1977-2 C.B. 192 concluded that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption.

Rev. Rul. 85-2; 1985-1 C.B. 178 sets out a two-part test for determining whether an organization's activities lessen the burdens of government. First, it is necessary to determine whether the governmental unit considers the organization's activities to be its burden. The second part of the test is whether these activities actually lessen the burdens of government. An activity is a burden of government if there is an objective manifestation by the government unit that it considers the activities of the organization to be its burden. The interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden. Whether the organization is actually lessening the burdens of government is determined by considering all relevant circumstances. Thus, an organization that provides legal assistance to guardians ad litem who represent abused neglected children before a juvenile court that requires their appointment lessens the burden of government and therefore, qualifies for exemption under section 501(c)(3) of the Code.

In Comm'r v. Lake Forest, 305 F.2d 814 (4th Cir. 1962), the court concluded that an organization that provided substantial and material advantages to its members did not have exclusively social welfare purposes. The court also found that an organization seeking exempt status under section 501(c)(4) of the Code must primarily offer or propose to offer a service or program for the direct betterment or improvement of the community as a whole.

In People's Educational Camp Society, Inc. v. Comm'r, 331 F.2d 923 (2nd Cir.1964), cert. denied, 379 U.S. 839 (1964), a nonprofit corporation supported its social welfare activities by operating a commercial resort. The court held that the resort's primary activities were business activities and did not promote social welfare. The court noted that the corporation reinvested a large portion of its revenue back into its commercial operation and concluded that the business activities were of such magnitude in comparison with the social welfare activities that the organization could not be said to be exclusively or primarily engaged in the promotion of social welfare. The court held that the organization did not qualify for tax-exempt status as an organization described under section 501(c)(4) of the Code.

In Schoger Found. v. Comm'r, 76 T.C. 380 (T.C. 1981), the court held that a not-for-profit corporation that owned and operated a mountain lodge as a religious retreat facility and made available to lodgers recreational and social activities comparable to activities offered by vacation resorts does not qualify for tax-exempt status as an organization described under section 501(c)(3) of the Code.

In Mutual Aid Association of the Church of the Brethren v. U. S., 759 F.2d 792 (10th Cir. 1985), aff'g 578 F. Supp. 1451 (D.Kan.1983), a church created an association to provide insurance to members of the church and their families. The association also insured the church structures and some small businesses owned by the church members against natural disasters, among other casualties. Based on these activities, the association sought tax-exempt status as an organization described under section 501(c)(4) of the Code. The court affirmed the district court's holding that the association did not qualify as an organization described in section 501(c)(4). The court concluded that even if the advancement of religion is the promotion of social welfare, here, regardless that the organization was formed and promoted by church members and limited its policy sales to church members, it does not advance religion. Instead,

it sells insurance coverage, an admitted economic activity run similar to any mutual insurance company.

In Junaluska Assembly Housing, Inc. v Comm'r, 86 T.C. 1114 (1986), the court held that an organization formed to construct, sell, and lease additional housing for its parent's religious retreat programs qualified for exemption under section 501(c)(3) of the Code. The court found that the housing will predominately enhance its parent's religious purposes. The court found that the organization will house only individuals that are active participants in the church's operations and religious programs; it has not advertised its services, and it is not competing with commercial developers or operators of vacation homes in the area.

In Airlie Found. v. Comm'r, 283 F. Supp. 2d 58 (D.D.C. 2003), the court found that an organization that operates its conference center in a manner consistent with that of a commercial business does not qualify for tax-exempt status under section 501(c)(3) of the Code. Although the organization carries out a number of charitable and educational activities, the court found that the charitable and educational activities are incidental to its primary activity of operating a conference center. The court relied on the "commerciality" doctrine in applying the operational test. The court held that "among the major factors courts have considered in assessing commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations." While the court found that the fee structure and subsidization practices are indicative of non-commercial activities, other factors, such as the nature of the clients and competition with other local centers and fellowship halls, its advertising, and income from weddings and special events, show commerciality.

RATIONALE:

To qualify for exemption from federal income tax under section 501(c)(4) of the Code, an organization must establish that it operates exclusively for the promotion of social welfare. Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. In Comm'r v. Lake Forest, supra, the court reaffirmed that an organization seeking tax-exempt status under section 501(c)(4) of the Code must primarily perform activities that "directly" better or improve the community as a whole.

Your present activities, which consist of holding a leasehold interest in Facility and subleasing the Facility to Subsidiary in order to protect Facility from liabilities arising from the activities of Subsidiary, do not bring about civic betterment or improve the community as a whole and so do not promote social welfare. This activity is similar to that of the organization in Rev. Rul. 66-150, supra, which held title to a building housing its parent and was found not to qualify for exemption under section 501(c)(4) of the Code. Your lease and sublease of Facility each for only \$1 per year was for protection against liabilities, not for a purpose of bettering the community as a whole.

Your previous activities, which included renting office space, meeting/conference rooms, and lodging to tax-exempt entities, ministry-related visitors, and the public, did not primarily promote social welfare and were not charitable. Instead, through these activities you were carrying on a business with the general public in a manner similar to organizations organized for profit. See section 1.501(c)(4)-1(a)(2)(ii) of the regulations. You advertised Facility and your rental activities on a website and marketed it to the general public and to non-affiliated organizations in addition to tax-exempt organizations. Your advertisements do not state that Facility is restricted to use by charitable tax-exempt organizations and churches. According to Facility's website, the Facility is "ideal" for corporate meetings, church retreats or social events. Advertisements in Christian business directories and newspapers describe Facility as a "conference and retreat center." You operated your lodging facilities in a manner similar to for-profit commercial hotels. The Facility's website states that rooms "come complete with all the conveniences of home." Unlike the organization in Junaluska Assembly Housing, Inc. v. Comm., supra, you advertised your services to the general public, did not limit tenants, renters, or lodgers to church members or participants, or even religious organizations, and you competed with other commercial hotels and halls in the local area. Again unlike the situation in Junaluska, individuals, families, and organizations or businesses renting space or lodging are not necessarily active participants in related religious programs, or even religious programs in general. You offered amenities similar to that provided by non-exempt resorts and hotels, similar to the organizations in People's Educational Camp v. Society, Inc. v. Comm'r, Airlie Found., and Schooger Foundation v. Comm'r., supra. See also Rev. Rul. 77-366, supra.

In Mutual Aid Ass'n of the Church of the Brethren v. U. S., the court concluded that even if an organization advances religion, a substantial non-exempt purpose will bar tax-exempt status as an organization described under section 501(c)(4) of the Code. In summary, your rental activities were commercial business activities, and you carried them on in a manner comparable to for-profit entities in Area A. Thus, we conclude that your activities did not promote social welfare as required under section 501(c)(4) of the Code.

You assert that you operated the Facility in a non-commercial manner because you offered services at substantially below market rate and below operating costs. While the information you provided shows your rates are lower than the rates charged by a few nearby similar businesses, similar to that described in Rev. Rul. 69-572, supra, there is no indication that your rates are below market rate. As you pointed out, there are numerous similar facilities in the area. In addition, you stated that Facility is located in a less desirable location. Therefore, charging a discount rate may be necessary to compete against other similar businesses. In addition, there is no indication that your rates are substantially below cost. Operating at below market rate is not necessarily operating at below cost. Unlike the organization in Rev. Rul. 71-529, supra, you have not provided information showing that your rates are nominal or that substantially all of your operating costs are subsidized. You do not rely on donations. Instead, the information shows that your revenue comes primarily from your rental fees.

You assert that you did not operate a business in a commercial manner because your activities can be described as charitable under section 1.501(c)(3)-1(d)(2) of the regulations. You maintain that you promoted social welfare through the advancement of religion because Facility is a Christian-centered building, its tenants included churches, religious groups, and a Christian

pre-school. You state that as such, you served as a catalyst for your tenants to address the social welfare of the surrounding community. You stated that the Christian atmosphere allowed for evangelization, a central mission of advancement of religion. You further assert that without the Christian atmosphere and discounted rent, many of the nonprofit tenants would not have located to the area. We disagree. While many of your tenants may have religious purposes or be Christian-centered, you were primarily engaged in commercial rental activities.

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit. In Mutual Aid Ass'n of the Church of the Brethren v. U. S., the court held that even if an organization advances religion, a substantial non-exempt purpose will bar tax-exempt status as an organization described under section 501(c)(4) of the Code. Because you performed substantial commercial activities (office space, conference/meeting room and lodging rental activities) that did not promote social welfare, you do not qualify for tax-exempt status as an organization described under section 501(c)(4). See also Schoger Found. v. Comm'r and Rev. Rul. 77-366, supra. Therefore, we conclude that you did not primarily carry on activities that promoted religion but, rather, primarily carried on business with the general public and your tax-exempt patrons similar to organizations which are operated for profit.

You claim that your activities promoted social welfare by combating community deterioration and promoting economic development. You state that operation of the newly renovated Facility, which was vacant for many years, attracted visitors to the area. However, in order to establish that your activities combated community deterioration and promoted economic development, you must do more than show that you are operating in a blighted or economically depressed area.

You must establish that you actually promoted social welfare by engaging in activities that lessen neighborhood tensions. You have not shown that you assisted specifically targeted groups, such as minorities, the unemployed, or the underemployed, or that you assisted businesses, which have experience economic difficulty, either due to their minority composition or to the deteriorated nature of the area where they are located. See Revenue Rulings 76-419 and 77-111, supra. Other than hiring your employees, you have not shown you carried on any activity to create employment or improve employment skills. In Comm'r v. Lake Forest, Inc., supra, the court reaffirmed that an organization seeking tax exempt status under section 501(c)(4) must primarily perform activities that "directly" better or improve the community as a whole. You have not provided sufficient information to establish that your primary activities directly promoted social welfare as described in section 501(c)(4). Therefore, we conclude that you did not promote social welfare by combating community deterioration and promoting economic development.

Finally, you contend that you promoted social welfare because your activities lessened the burdens of government. You state that because of the work by you and your related organizations, the redevelopment project, with boundaries next to the Facility property, did not include the Facility site since it was not necessary for the city to incur the expenses to redevelop that site. You state that you and your related organizations took on that expense. Thus, you

and your related organizations lessened the burdens of the local government as to the redevelopment expense of the Facility property. We disagree for the reasons stated below.

Pursuant to Rev. Rul. 85-2, supra, an activity lessens a burden of government if there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact that the government sometimes undertakes the activity is insufficient to establish a burden of government. Further, the fact that the government or a government official expresses approval of an organization and its activities is also insufficient to establish that the organization is lessening the burdens of government.

You have not established that a governmental unit considered your activities to be its burden. You stated that there was no joint venture agreement between you and any governmental unit. Nor have you provided additional information to show that there was an objective manifestation by the government that it considered your activities to be part of its burden. Furthermore, you have not shown that your activities actually lessened the burdens of any governmental unit. You have not shown that you performed a duty that a governmental unit was required to perform. Therefore, we conclude that your activities did not lessen the burdens of government.

Because you have not provided sufficient information to show that you were engaged in activities that promoted social welfare, you do not qualify for tax-exempt status as an organization described under section 501(c)(4).

CONCLUSION:

Based on the information you provided, you are not an organization described under section 501(c)(4) of the Code, and as such, you do not qualify for exemption from federal income tax under section 501(a).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the 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. Your protest statement should 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 the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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, Forms and Publications.

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 this address:

Internal Revenue Service
[SE:T:EO:RA:T:3]
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also 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,

Lois G. Lerner
Director, Exempt Organizations