



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Number: **201729023**
Release Date: 7/21/2017

Date: April 25, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-30
501.32-00
501.33-00

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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

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*

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Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: January 12, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:/

Contact fax number:

Legend:

B = Name of Individual
C = Name of Individual
D = Name of Individual
F = Name of Individual
L = State
M = Date
N = Date
P = Date
Q = Date
S = Name of Entity
T = Address
W = Address
Z = Year

UIL:

501.03-30
501.32-00
501.33-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we determined that you don't qualify for exemption under section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issue

Do you meet the operational test for recognition of tax exemption under section 501(c)(3)? No, for the reasons stated below.

Facts

You were formed as a nonprofit corporation in the state of L on M. Your purpose as stated in your Articles of Incorporation is the "Operational and educational support of mentally disabled, homeless, and people in

transition looking for long term residential care." Your Articles of Incorporation also provide that, "The assets of the corporation will be distributed upon dissolution to other like-minded organizations within the general metropolitan area."

Your Bylaws state that your specific objectives and purposes are "to provide representation to the community at large fostering charitable and educational opportunities empowering the masses. [Your] commitment is to Training, Empowering, Encouraging and Restoring."

Article 7, Section 3, of your Bylaws state that "Upon the dissolution of this foundation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this foundation, shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code..."

However, Article 12, Section 1, of your Bylaws provides:

In the event of dissolution, assets will be divided equally among Executive Board Members and Trustees. These assets will then be dispersed to like minded organizations of the Executive Board or Trustee's choosing. If members of the board prefer to subdivide assets, it will be at their discretion. The President or Chief Executive Officer may chose to have his portion of the assets deposited into a trust account for his children and or the grand children of [B] for the furthering of their educational requirements and associated cost related to the completion of their or their children's studies. Once the type of trust is designated paperwork attesting to this process will be submitted.

Article 12, Section 2, of your Bylaws goes on to say:

If building or land is involved in the dissolution, whatever building or land assets that were purchased or acquired as an organization will be divided equally among those members who were directly involved with the purchase of the asset. The President or Chief Executive Officer may chose to have his portion of the assets deposited into a trust account for his children and or the grand children of [B] for the furthering of their educational requirements and associated cost related to the completion of their or their children's studies. Once the type of trust is designated paperwork attesting to this process will be submitted.

Additionally, Article 12, Section 3, of your Bylaws state:

Capital equipment that is not auctioned off shall be donated to any worthwhile charity or organization that has a useful need for the items donated. Any excess will be divided among board and executive staff members. The President or Chief Executive Officer may chose to have his portion of the assets deposited into a trust account for his children and or the grand children of [B] for the furthering of their educational requirements and associated cost related to the completion of their or their children's studies. Once the type of trust is designated paperwork attesting to this process will be submitted.

Upon our questioning of the Bylaw provisions allowing distribution of your assets to B's children and grandchildren, you indicated on your response faxed on P that "The dissolution clause has been changed to indicate that assets from the organization being dissolved will be divided among like-mined 501(c)(3) organizations." However, you have not submitted to us a copy of your amended Bylaws.

Your board is made up of your founder, B, who also serves as your President and Chief Executive Officer; his wife, C (Treasurer); and two unrelated individuals who hold the positions of Vice President and Secretary. B is described in the attachment to your Form 1023 as the "original organizer of the business." You went on to state on the attachment to your Form 1023 that C originally inherited the business and then married B. Because of B's background in building/operations management, he was ideally suited to run the day to day operations of the

business. D, your Vice President, "owns a similar business for more than 36 years and has served as a mentor for B and C." No description was provided for the Secretary, F, other than that she is not related to the others.

We asked you about the business C inherited and the relationship or connection this business has to you. In your response faxed on Q, you stated that the information previously provided about any family or business relationships your board members have to each other was a misunderstanding. You indicated that C's inherited business is S, a for-profit entity engaged in operating a transitional housing program, but that you are a separate organization seeking nonprofit status.

Your response letter faxed on Q and subsequent correspondence also indicated that C, either in her own name or through S, owns the facility located at T. You stated that your facility is not yet built or acquired. You had given the T address as your own address on your Form 1023, in your Articles of Incorporation, and in your correspondences with us. You further indicated on your response faxed on Q that you are looking to purchase a building located at W, and as soon as you obtain recognition of tax exemption under IRC 501(c)(3), you would be able to show your address as W.

You did not include a description of your activities with your application. We therefore asked you to describe the activities you will engage in to accomplish each of your stated purposes.

With regard to fostering charitable and educational opportunities, you responded in your letter dated N that:

Our organization will work closely with not for profit community based organizations who will in turn offer programs that foster charitable and educational opportunities that can empower the current mass of underprivileged individuals within the community to get out of poverty...

With regard to training, empowering, encouraging and restoring the community, you responded in your letter dated N that:

Our organization plans to partner with training schools...to provide internship training programs. For example...through [other non-profit organization's] training programs, whereby individuals looking to become Certified Nursing Assistants or Medical Assistants can complete their externship training at our facility. This would really be an asset to those individuals living in the community without transportation by empowering them to find a job right in the community. Our staff will participate in training programs to help encourage these individuals to working capacity thereby restoring a part of the community, if we can help one individual on the road back from poverty our work will be a success.

With regard to how you will support the mentally disabled, homeless, and people in transition looking for long-term residential care, you responded in your letter dated N that, "We are an approved facility by the state of L to provide support for mentally disabled, homeless and people in transition looking for long term residential care. Please see certification by the state." A copy of the state certification of your facility was not included with your application or any of your subsequent correspondences.

You went on in the same response letter to provide that:

Our first step is to complete application to the IRS for not for profit status then consult with professionals on the direction the organization should go. Presently we are in the planning stages to include decision of where a final building will be, the building or renovation of such a building, then hiring staff etc. Once we complete the IRS portion then our board will meet to plan the next phase of our development.

You further indicated, with regard to your activities, in your response faxed on Q that:

In describing the past, present, and planned activities...[you are] presently in a 'waiting' period. Through an examination of the grant making requirements of most funding organizations who would fund us as a Not for Profit, nothing can be done until an organization receives their 501c3 designation from the IRS. Therefore, we have postponed making any future plans past or present until this designation is received.

...Beyond the mission statement, we are still in the planning stages of our specific activities. We have not developed representative copies of newsletters, brochures, or purchased a building or published similar documents at this time; however once our application for designation is approved we will gladly enter into the planning stages of specific programs and services.

We then asked you for more specific information about your transitional housing program. To our questions, you repeatedly responded that you are waiting on the determination of your tax exempt status before making any plans. You made the following statements in your response faxed to us on Q:

[Our] immediate plan is to provide transitional housing; however, at the time of filing, no plans were made beyond getting 501c3 approval. Once approval is made we will be able to move forward with our and vie for clients to include in our program

No plans have been made at this time as to the number of residents we will house until a determination is made. I can provide the number of rooms available for the pending location once a determination has been made

No decisions regarding fees to residents will be made until an IRS determination is made; therefore, any copies of fee schedules or funding to pay expenses for the housing program have not been proposed or decided. Once a determination is made these fees can be provided

I believe this question is being posed because of the mistake in thinking that the facility at [T] is [that of our organization] and it is not. Once a decision is made and a facility is purchased, [Our organization] will come up with a policy to deal with residents who become unable to pay the fees we charge, but at this time, we do not have a policy to deal with residents who become unable to pay these fees. Once the decision is made and we are able to move forward on the pending location, we will draw up the policies and procedures regarding this matter.

Again this is a question that is aimed at the owner of the [T] address indicating that [our organization] owns the building at [T] address when in fact we are waiting for a designation by the IRS. Once this designation is made and we can purchase the pending location we will explain our process for selecting residents.

Again this is a question that is aimed at the owner of [T] address indicating that [our organization] owns the building at the [T] address when in fact we are waiting for a designation by the IRS. N/A

Per our indication, we are not an approved long term care facility, we are seeking to become a long term care facility; however, first we must become a not for profit entity. Until we get that designation we have only formed organizational material to become a not for profit organization

Our facility has yet to be built or acquired therefore no description is needed

[Our organization] does not have a facility to own; therefore this question is N/A

It is believed that this indication is based on the belief that the [T] address is in fact the new building of the [organization] when in fact it isn't and [our organization] is not presently in operation as a long term care facility. Because of this fact we do not have a \$ per year in operational expense. We have zero profit and zero revenue; therefore we respectfully do not have gross revenues in excess of per year. We will respectfully pay the dollars due smaller organizations and wait on our application to be accepted.

You have not submitted any financial information with your Form 1023 application. You responded to our request for budget information by stating in your letter dated N that "we have no budgeted expenses for the years , or ." On the other hand, in several of the sample solicitation letters included with your Form 1023 application, you indicated that you have been operational since the year Z.

Law

Section 501(c)(3) of the Code describes, in part, an organization organized and operated exclusively for charitable or educational purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. section 1.501(c)(3)-1(a)(1) states that in order to qualify under 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 or operational test, it is not exempt.

Treas. Reg. section 1.501(c)(3)-1(c)(1) states 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 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.

Treas. Reg. section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earning inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, *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.

Rev. Rul. 72-16, 1972-1 C.B. 144, describes an organization that provides a residence facility and therapeutic program for rehabilitating individuals recently released from a mental institution to aid in reducing the rate of readmissions to a mental institution. The residence facility serves as both a temporary residence for those who are discharged and a permanent home for those unable to make the transition to a fully independent existence in society. The organization qualifies for tax-exemption under section 501(c)(3) of the Code.

Rev. Rul. 75-472, 1975-2 C.B. 208, describes an organization that operates a halfway house to provide room, board, therapy, and counseling for persons discharged from alcoholic treatment centers after receiving short-term intensive care for alcoholism. The organization's activities serve to promote the health of the individual and improve his capabilities and thus further charitable and educational purposes. The organization qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 79-19, 1979-1 C.B. 195, describes an organization that provides specially designed housing to physically handicapped persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees. Because the organization tailors its program to relieve the major forms of distress to which the physically handicapped are susceptible, the organization qualifies for exemption under section 501(c)(3) of the Code as an organization operated exclusively for charitable purposes.

Rev. Proc. 2017-5, section 6.07 (2), provides that exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed.

- (i) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.
- (ii) 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.
- (iii) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter.

In *Harding Hospital, Inc. v. United States*, 505 F.2d 1068 (1974), the court provided that exemption is an exception to the norm of taxation. An organization which seeks to obtain tax exempt status, therefore, bears a heavy burden to prove that it satisfies all the requirements of the exemption statute. The Supreme Court repeatedly has said that exemptions from taxation are not granted by implication. The Tax Court has stated consistently that a statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power.

In *Bubbling Well Church of Universal Love, Inc. v. Commissioner*, 74 T.C. 531 (1980), the Tax Court considered an adverse ruling by the IRS on an application for exempt status. The applicant had declined to furnish some information, and the answers to other inquiries were vague and uninformative. On the basis of the record, the Court held that the applicant had not shown that no part of its net earnings inured to the benefit of its founders or that the organization was not operated for private benefit of the founders.

In *Basic Unit Ministry of Alma Karl Schurip v. Commissioner*, 511 F. Supp. 166 (1981), aff'd, 670 F.2d 1210 (1982), the court upheld the Service's denial of exempt status in a declaratory judgment action. The court held that in factual situations where there is evident potential for abuse of the exemption provision, the organization must openly disclose all facts bearing on its operation and finances. The organization in the case did not proffer sufficiently detailed evidence of its charitable disbursements, or the extent of the maintenance and support of the members. Each time the Service requested additional information, the organization responded that it had already provided the data, or that it was unable to furnish anything further. The court found that the organization did not meet its burden to positively demonstrate that it qualified for exemption.

The Court of Appeals for the District of Columbia Circuit, in affirming that the organization had not met its burden of establishing that no part of its net earnings inured to any private individual, observed that:

...[T]axpayer confuses a criminal prosecution, in which the government carries the burden of establishing the defendant's guilt, with a suit seeking a declaratory judgment that plaintiff is entitled to tax-exempt status, in which the taxpayer...bears the burden of establishing that it qualifies for exemption.

In *Pius XII Academy, Inc. v. Commissioner*, T.C. Memo 1982-97, aff'd, 711 F.2d 1058 (6th Cir. 1983), the court found that throughout its application and supporting documents, the organization recited only vague generalizations of the type of operations it had planned. So vague, in fact, that the organization had no real plan, but merely a concept or idea that at some point in the future it would, if economically feasible, operate a school. Additionally, it had not planned a curriculum, had no idea how many students would be in attendance or how

many faculty would be needed, it could not predict how much money would be needed to start the school, or to operate it once it had begun; it did not know where the school would be located, or what grades taught. All in all, the inability of the organization to even predict the answers to these questions indicated that it had no plan to operate a school in the foreseeable future. The organization failed to establish that it will conduct all of its activities in a manner which will accomplish its stated exempt purposes and did not qualify for exemption under section 501(c)(3) of the Code.

In *La Verdad v. Commissioner*, 82 T.C. 215 (1984), an organization was organized to provide education and charity, but failed to provide sufficient details regarding its proposed operations. The court provided that an organization must supply sufficient information about its proposed activities to warrant a conclusion that it will operate in furtherance of exempt purposes. The organization in this case provided broad, vague generalities as to how it intended to carry out its objectives. The organization did not furnish the number or amount of the grants to be awarded, defined the criteria for selecting recipients, or developed procedures for supervising grants. The court held that the organization failed to prove that it would operate exclusively for exempt purposes under section 501(c)(3) of the Code.

In *American Science Foundation v. Commissioner*, T.C. Memo 1986-556, the court determined that an organization was not eligible for recognition of tax exemption because it failed to provide sufficient information to permit the conclusion that its activities will be exclusively in furtherance of exempt purposes. The court stated that an organization may seek tax exempt status before beginning operation, it must provide sufficient detail to permit the conclusion that its operations will meet the necessary requirements of the exemption. The organization must carry the burden of establishing that its operations will be exclusively in furtherance of exempt purposes. The denial of exemption may be based solely upon the failure by the organization to provide information describing in adequate detail how the operational test would be met.

In *Peoples Prize v. Commissioner*, T.C. Memo 2004-12 (2004), the court upheld the Service's determination that an organization failed to establish exemption when the organization failed to provide the requested information. The court stated, "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities Such generalizations do not satisfy us that [applicant] qualifies for the exemption."

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the organization brought to challenge the denial of its application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service's denial, stated:

It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant. As noted by the Seventh Circuit, 'courts can draw inferences adverse to a taxpayer seeking exempt status where the taxpayer fails to provide evidence concerning its operations, or where the evidence is vague or inconclusive.'

Application of law

We hold that you not satisfy the operational requirements to be recognized as exempt under section 501(c)(3) of the Code. To satisfy the operational test, you must be operated exclusively for one or more exempt purposes as provided in Treas. Reg. section 1.501(c)(3)-1(a)(1) and Treas. Reg. section 1.501(c)(3)-1(c)(1). You have not provided a description of your activities demonstrating that you are operated exclusively for exempt purposes under section 501(c)(3) of the Code. You responded, to our repeated requests for information, that you are unable to provide us information about your specific programs or activities you will carryout to accomplish your stated purpose because you are not yet operational. To our request for a description of your activities, you

responded that you are presently in a waiting period and nothing can be done until you receive your recognition of exemption under section 501(c)(3) of the Code. You have postponed making any plans until you have received this recognition. Furthermore, you stated that you will gladly enter into the planning stages of your specific programs and services once you received recognition of tax-exempt status under section 501(c)(3) of the Code. You have not established that you are operated exclusively for one or more exempt purposes under section 501(c)(3) of the Code.

Section 6.07 of Rev. Proc. 2017-5 states that an 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. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. It further states where an organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter. Although exempt status may be recognized in advance of an organization's operations, you have not described your proposed activities in sufficient detail to permit a conclusion that you will clearly meet the particular requirements of section 501(c)(3) of the Code as required by section 6.07 of Rev. Proc. 2017-5.

As indicated in *Harding Hospital, Inc.*, supra, exemption is an exception to the norm of taxation. An organization which seeks to obtain tax-exempt status, therefore, bears a heavy burden to prove that it satisfies all the requirements of the exemption statute. You have not proved that you satisfied all the requirements of exemption under section 501(c)(3) of the Code.

You are similar to the organization described in *Pius XII Academy, Inc.*, supra, where the organization recited only vague generalizations of the type of operations it had planned. So vague, in fact, that the organization had no real plan, but merely a concept or idea that at some point in the future it would, if economically feasible, operate a school. Your stated purpose is to provide transitional housing. However, you indicated that you have not made any plans regarding your transitional housing program because you are waiting on the determination of your tax exempt status. You have failed to establish that you will operate exclusively in an exempt manner and do not qualify for exemption under section 501(c)(3) of the Code.

Although a transitional housing program may be operated in such a manner as to further charitable purposes, you have not shown that your program will either help alleviate poverty or provide relief for the distressed. You are unlike the organization described in Rev. Rul. 79-19, which provided specially designed housing to physically handicapped persons at the lowest feasible cost and maintained residence those tenants who subsequently become unable to pay. You do not know what admissions policy you will follow or factors you will take into account to select from among potential residents in the event you cannot accommodate everyone. You have not determined how long a resident can stay at your facility. You have no projections of how many residents you will house in your facility, or what fees you will charge them; nor have you considered what provisions you might make for your residents, if they should become unable to pay your fees.

You are unlike the organizations described in Rev. Rul. 72-16, which provided residence facility and therapeutic program for rehabilitating individuals recently released from a mental institution, or in Rev. Rul. 75-472, which operated a halfway house to provide room, board, therapy and counseling for persons discharged from alcoholic treatment centers. You have not provided any information that your transitional housing program would provide services such as therapy, counseling, life skills or job training, to help needy individuals recovering from illness or addiction transition back into society.

You have not submitted sufficient information to meet your burden of establishing that your operations will be exclusively in furtherance of exempt purposes. Information that is vague, unresponsive, incomplete, uninformative or in the form of broad generalities is not sufficient to show that you meet the requirements of tax exemption. *La Verdad* and *Peoples Prize*, supra. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. *American Science Foundation*, supra. Despite indicating that you were looking to purchase the facility located at W, you have not provided specific details regarding the facility that you will use for your transitional housing program. Additionally, you have not provided any budget information showing the nature and amounts of your expected revenues and the nature and amounts of your expected expenses.

Moreover, Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii) states that to meet the requirement of exemption under section 501(c)(3) of the Code, *it is necessary for the organization to establish* that it is not 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.

You have not established that you are not operated to serve the private benefit of S more than incidentally. You stated on your exemption application S is a for-profit business providing transitional housing that C inherited. Although you share a facility and a common officer with S, you have not provided information to explain your relationship with C's for-profit business, S. On the one hand, you stated in one response letter that you are "an approved facility by the state of L", only to indicate elsewhere in the letter and in subsequent correspondence that you are not operational. While you later assert that you are a separate organization from S, you have not shown that your operations are clearly distinguished from that of S, and that you are not operated for the private benefit of S more than incidentally.

It is well-accepted that, in initial qualification cases, gaps in the administrative record are solved against the applicant. Courts can draw inferences adverse to a taxpayer seeking exempt status where the taxpayer fails to provide evidence concerning its operations, or where the evidence is vague or inconclusive. *New Dynamics Foundation*, supra. Furthermore, in factual situations where there is evident potential for abuse of the exemption provision, the organization must openly disclose all facts bearing on its operation and finances. Like the organization in *Basic Unit Ministry of Alma Karl Schurip*, supra, you have not openly disclosed all facts bearing on your operations including your relationship with the related for-profit entity, S. You have not established that you are not operated to serve the private benefit of S more than incidentally.

In addition, you have not established that your income will not inure to the benefit of you founder, President and Chief Executive Officer, B and his family. Inurement is strictly prohibited under section 501(c)(3) of the Code. Additionally, Treas. Reg. section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earning inure in whole or in part to the benefit of private shareholders or individuals.

Article 12 of your Bylaws provide that in the event of dissolution, your President and Chief Executive Officer may choose to have his portion of your assets deposited into a trust account for his children and or the grand children for the furthering of their educational requirements and associated cost related to the completion of their or their children's studies. Although you state that you have amended the dissolution provisions of your Bylaws, you have not provided us with a copy of your executed, amended Bylaws. Based on provisions of your Bylaws, you have not established that your income will not inure to the benefit of your founder, President and Chief Executive Officer and his family.

You have failed to provide details of your proposed operations in response to our repeated requests for information. You are similar to the organizations described in *Bubbling Well Church of Universal Love, Inc.*,

supra, in that you have not shown that no part of your net earnings inure to be benefit of your founders or board members.

Your position

Your stated purpose is to operate a transitional housing program. As you are not yet operational, you have stated that you can only provide specific details of your programs and activities once you receive recognition of tax exemption.

Our response to your position

Although exempt status may be recognized in advance of an organization's operations, you have not described your proposed activities in sufficient detail to permit a conclusion that you will clearly meet the particular requirements of section 501(c)(3) of the Code.

Conclusion

An organization that fails to meet the operational test is not exempt under section 501(c)(3) of the Code. You do not meet the operational test because you have not provided sufficient information to demonstrate that you will be operated exclusively for exempt purposes within the meaning of section 501(c)(3) and that no part of your net earnings will inure to the benefit of your founders or other private individuals. You have also not shown that you do not serve private interests more than incidentally. Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I 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.

For authorized representatives:

Under penalties of perjury, I declare that I prepared 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 representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. 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*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

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

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations
Rulings & Agreements

Enclosure:
Publication 892