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Surname [REDACTED]

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EP/EO DIVISION

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INTERNAL REVENUE SERVICE  
CINCINNATI, OHIO

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

You are an association providing a home for the aged, formed to associate elderly men and women for mutual economic and social/psychological support in the nature of a family relationship, in a homelike atmosphere.

You provide resident-members with housing, food, laundry service, and transportation to religious services and for recreational purposes. You provide a manager and resident manager to handle the business affairs of the home and to provide the above listed services.

You require your resident-members to be age 65 or older and ambulatory, which you define as being able to move about, with or without mechanical devices.

You require the mandatory resignation of resident-members who become non-ambulatory or otherwise become ill for any extended period of time, and of resident-members who are deemed uncooperative by 25% of the total household. You presently have [REDACTED] resident-members, the maximum number of unrelated persons presently allowed by law to cohabitate. With the implementation of recently passed legislation, the number of resident-members will be increased to [REDACTED]. You are self-sustaining in that your operation funds are derived principally from fees charged for residence in the home.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations both organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states, in part, that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes the relief of the poor and distressed.

Providing for the special needs of the aged has been recognized as a charitable purpose for federal tax purposes where the regulative elements of relief of distress and community benevolence have been found to be present.

Rev. Rul. 72-14, 1972-1 C.B. 145, and Rev. Rul. 78-18, 1978-1 C.B. 194 set forth requirements that houses for the aged must meet in order to qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 72-124 states that a home for the aged will be deemed "charitable" if it meets the special needs of the elderly such as the need for health care, financial security, and residential facilities designed to meet specific physical, social, and recreational requirements of the elderly.

The need for housing will generally be satisfied if the organization provides residential facilities that are specifically designed to meet some combination of the physical, emotional, recreational, social, religious, and similar needs of aged persons.

The need for health care will generally be satisfied if the organization either directly provides some form of health care, or in the alternative, maintains some continuing arrangement with other organizations, designed to maintain the physical and mental well-being of its residents.

The need for financial security will generally be satisfied if two conditions exist. First, the organization must be committed to an established policy of maintaining in residence any persons who become unable to pay their regular charges. Second, the organization must operate so as to provide its services to the aged at the lowest feasible cost.

Rev. Rul. 78-18 provides that the aged's need for financial security will not where housing, specially designed for elderly persons, is provided at a cost within the financial reach of a significant segment of the community's elderly persons, and when the organization commits itself to operating such housing at the lowest feasible cost and to maintaining those tenants who become unable to pay the monthly fees.

Based on the above authority and the information you submitted, we conclude that you do not qualify for exemption under section 501(c)(3) of the Code.

You do not satisfy the need for housing, as you provide no special facilities for the aged. You do not satisfy the need for health care, as you do not provide any form of health care, nor, in the alternative, do you maintain some continuing arrangement with other organizations designed to maintain the physical and mental

well-being of the residents. In fact, you require the mandatory resignation of a resident-member who becomes ill for any extended period of time. You do not satisfy the need for financial security. Although you appear to operate at the lowest feasible cost, and you have a policy for maintaining those unable to pay, the security of the resident-members is undermined by your policy requiring a members' resignation upon demand of 2/3 of the other resident-members, or upon becoming ill.

Accordingly, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(3) of the Code. You are therefore required to file federal income tax returns.

You have the right to protest our ruling in regard to your private foundation status if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted, in duplicate, within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Franchise Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 1412(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Washington, D.C. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with Code section 1412(c).

Sincerely yours,

Chief, exempt Organizations  
Bulldog Branch