

Internal Revenue Service

Department of the Treasury

North-Atlantic Region

Address any reply to Appeals Office at:

100 Summer Street, Room 1720
Boston, MA 02110

Person to Contact

Telephone Number

Refer Reply to:

Date: APR 2 1986

Gentlemen:

This is a Final Adverse Determination/Ruling Letter indicating that your organization does not qualify for tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1954.

The administrative file of your organization disclosed that you were incorporated as stated in your Articles of Organization are "to raise money for the Town of [redacted] for low and moderate income housing through the purchase and sale of condominium units at [redacted], a condominium development located in [redacted]."

Section 501(c)(3) of the Internal Revenue Code provides, in pertinent part, for the exemption from Federal income taxes for corporations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt under Section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in Section 501(c)(3). If an organization fails to meet either the organizational or operational tests it is not exempt.

In Retired Teachers Legal Defense Fund, Inc. v. Commissioner, 78 TC 280 the court held that the organization failed to meet the organizational and operational tests because it was organized and operated for the substantial private purposes of promoting litigation to protect the pension funds of retired teachers.

Your organization is organized and operated to purchase for resale [redacted] condominiums units, the net income from these sales are then "turned-over" to the Town of [redacted] to assist the Town in its low and moderate income housing. This activity, by itself, does not further charitable purposes as defined in Section 501(c)(3) of the Code. In addition, since this activity (purchase for resale of the condominium units) was mandated by the [redacted] Housing Authority as a precondition for approval of the [redacted] development project your activities indirectly benefit the developers.

Accordingly, your organization does not qualify for exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

Contributions to your organization are not deductible by donors.

If you decide to contest this determination under the declaratory judgment provisions of Section 7428, a petition to the United States Tax Court, The United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

As provided by Section 6104(c) of the Internal Revenue Code of 1954 and applicable regulations, the appropriate State Officials will be notified of this determination.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

[Redacted Signature]

Commissioner

by: [Redacted Signature]

cc: [Redacted]

District
Director

INTERNAL REVENUE SERVICE
P. O. BOX 1680, GPO
BROOKLYN, N. Y. 11201

Date: **MAR 27 1965**

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Gentlemen:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

The information provided shows that you were incorporated on [REDACTED], as a Not-for-Profit corporation in [REDACTED].

The purpose for which the organization was formed is to raise money for the Town of [REDACTED] for low and moderate income housing through the purchase and sale of condominium units at [REDACTED], a condominium development located in Lexington, Massachusetts.

The organization's sole source of support will be proceeds from the sale of [REDACTED] units at [REDACTED].

[REDACTED] is the developer for [REDACTED]. The development consists of a total of [REDACTED] units. As a condition to approving the development, the Town of [REDACTED] required that [REDACTED] of the [REDACTED] units be used for low and moderate income housing.

[REDACTED] is President of [REDACTED]. [REDACTED] is Treasurer. Both gentlemen are also directors of the organization.

Also, both [REDACTED] and [REDACTED] are general partners of [REDACTED].

The real estate broker for the sale of the units is [REDACTED].

Section 501(c)(3) of the Code provides for exemption from Federal income tax of organizations organized and operated exclusively for charitable, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, etc.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Income Tax Regulation 1.501(c)(3)-1(a)(1) provides that if the organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not organized or 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.

In Letter Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Although raising funds to be used for low and moderate income housing may be considered an exempt purpose under section 501(c)(3), the facts in this case, stated previously in the letter, indicate that the primary benefit is to the partners of [REDACTED], namely, [REDACTED] and [REDACTED].

In accordance with the above, the organization does not qualify for exemption under section 501(c)(3) of the Code.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

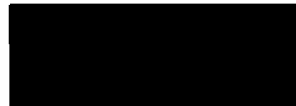
If you do not agree with this determination you may protest in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completions.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue 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."

Sincerely yours,

A solid black rectangular redaction box covering the signature of the District Director.

District Director

Enclosure: Pub. 892