



TAX EXEMPT AND
GOVERNMENT ENTITIES

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

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E.I.N.

LEGEND

K =
M =

Dear _____ :

K is requesting a ruling its tax-exempt status under section 501(c)(3) of the Internal Revenue Code will not be adversely affected if it expends funds to renovate a fraternity house located on its campus.

FACTS

K is a private, liberal arts university exempt under section 501(c)(3) of the Code and is described in sections 509(a)(1) and 170(b)(1)(A)(ii).

K states it has a defined policy of providing safe and proper housing for all its students, including those students who belong to fraternities. Many of the dormitories have been repaired to conform to K's policy. M, a fraternity recognized by K, owns a house on K's campus. K proposes to renovate M's fraternity house. K states the renovation will be consistent with the repairs K has undertaken on other student residences on campus. M's fraternity house is one of only two residence houses on campus K does not own. However, K is leasing to M the property on which the house is situated under a ground lease and

closely controls M's house, its use and eventual disposition. Furthermore, M is subject to the same policies, standards and regulations that apply to all student housing, including other fraternities housed on campus.

K has a written ground lease agreement with M for a 5-year term. The lease is automatically extended for an additional year, but K is not obligated to extend the lease at the end of the term. K states this permits it to take possession of the house upon expiration of the 5-year term, to use however it sees fit. The rental rate is based on a rate per occupant and is substantially comparable to the rental rate K charges other students in comparable residences. The lease agreement provides K may inspect M's house at any time, M may not sublet or assign the premises without K's consent, M must use the premises solely for the purpose of operating a chapter house and any improvements require K's written approval. Additionally, only K students may live in the house and the determination of which and how many students may live in the house is made in a manner consistent with the principles K has established for all student residences.

K may terminate the lease at any time if M breaches the contract or upon providing one year's written notice, if it has "compelling reasons," which is defined to include "substantial academic needs," "roadway needs" and certain disasters or other occurrences beyond K's control. K states M does not have any equity in the house and will not have any equity as a result of the improvements discussed in this ruling. However, M has the right to remove any personal property and certain fixtures that can be removed without causing any structural damage to the house.

M's alumni want to donate to K to help pay for M's fraternity house renovations. All funds will be paid directly to K, although contributors may earmark their contributions for renovations. K states it will honor the designated donations provided it does not restrict or limit K's full ownership rights under the lease or upon termination of the lease. K states it will give donors a receipt that satisfies the conditions of section 170(b)(8) of the Code and will hold all contributed funds in its general investment account. K further states it will exercise control with respect to the size, character and design of the renovations, which will be consistent with K's renovation policy and all gifts or donations will be spent on improvements owned only by K.

RULING REQUESTED

K's tax exempt status under section 501(c)(3) of the Code will not be adversely affected if it expends funds for the renovation of a fraternity house located on campus.

LAW

Section 501(c)(3) of the Code provides for the exemption from federal income tax for nonprofit organizations organized and operated exclusively for charitable and educational purposes stated in that section.

Section 1.501(c)(3)-1(d)(3)(a) of the Income Tax Regulations provides the term "educational" as used in section 501(c)(3) relates to the instruction or training of the individual for the purpose of improving or developing his capabilities.

Providing dormitories and food for students is recognized as one of the universities and colleges' functions, and is incidental to their educational purpose. See Phinney v. Dougherty, 307 F.2d 357 (5th Cir.1962).

Rev. Rul. 60-367, 1960-2 C.B. 73, holds contributions made to a college to acquire or construct a housing facility for use by a designated fraternity, under certain terms and conditions, constitutes allowable deductions by donors for federal income tax purposes. The college described in Rev. Rul. 60-367 owns the houses and rents the dwellings to fraternity groups on short-term leases at rates closely comparable to the rentals charged by the college for similar housing facilities. Although donors are permitted to designate a particular fraternity, the only practical benefit of the designation is a specific chapter house might be finished ahead of the others. The funds are used for improvements on structures owned only by the college.

Rev. Rul. 60-367 further states in order for the gift to be deductible, it must be in reality a gift to the college and not a gift to the fraternity by using the college as a conduit. The college must have the attributes of ownership in respect of the donated property, and its rights as an owner must not, as a condition of the gift, be limited by conditions or restrictions that in effect make a private group the beneficiary of the donated property. In addition, as an owner, the college must be free to use the property acquired with the gift as its future policy suggests or requires.

ANALYSIS

K is similar to the organization described in Rev. Rul. 60-367. K states it has a clearly defined policy of providing safe and proper housing for its students, including those students who belong to fraternities. Because the physical condition of the fraternity house does not measure up to K's standard, M's alumni want to donate to help renovate M's fraternity house. Contributions will be made directly to K and K will give donors a gift receipt that satisfies the conditions of section 170(f)(8) of the Code. K states it regularly accepts contributions from

donors designated for construction or renovation of buildings. In this case, gifts will be similarly designated for renovations and capital improvements to M's house.

K has a written ground lease agreement with M for a short term of 5 years at a rental rate closely comparable to the rentals K charges for similar housing facilities. The lease is automatically extended for an additional year, but K is not obligated to extend the lease at the end of the term. K states this permits it to take possession of the house upon expiration of the 5-year term, to use however it sees fit. The lease agreement provides K may inspect the chapter house, M may not sublet or assign the premises without K's consent, M must use the premise solely for the purpose of operating a fraternity house and any improvements require K's written approval. If M breaches any of the contractual provisions, K may terminate the lease and assume ownership of the house.

K states it will control the amount spent on the fraternity house, and the character and design of the renovations, which is uniformly applied to all residences in need of renovation. K states it will accept gifts designated for M's benefit with the understanding the designation will not restrict or limit K's full ownership rights or future uses of the donations that K might determine to make. In addition, only K can use or expend the funds raised for improvements on structures it owns.

CONCLUSION

Based on the facts and information submitted, K's tax exempt status under section 501(c)(3) of the Code will not be adversely affected if it expends funds for the renovation of a fraternity house located on campus.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative. This ruling letter does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling letter is directed only to the organizations that requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Please keep a copy of this ruling letter in your permanent records.

If you have any questions about this ruling, please contact the persons

whose name and telephone number are shown above in the heading of this letter.

Sincerely yours,

Debra J. Kawecki
Manager, EO Technical
Technical Group 1

Enclosure: Notice 437