

Number: 200636105  
Release Date: 9/8/06  
Date: January 10, 2006  
UIL: 501.03-01

Person to Contact:  
Identification Number:

ORG =  
NUM =  
Date1 =  
Local =

Contact Telephone Number:  
In Reply Refer to: TE/GE Review Staff  
EIN: NUM

LAST DATE FOR FILING A PETITION  
WITH THE TAX COURT: \_\_\_\_\_

Dear \_\_\_\_\_:

This is a Final Adverse Determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

\_\_\_\_\_ has not been operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). You are not a charitable organization within the meaning of Treasury Regulations 1.501(c)(3)-1(d). You have a substantial nonexempt purpose, you are operated for private benefit, and your earnings inure to the benefit of private individuals.

Based upon the above, we are revoking your organization's exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code prospectively to Date1.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending Date1, and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling or writing to: Internal Revenue Service, Taxpayer Advocates Office, Local.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

R.C. Johnson  
Director, EO Examinations



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service

TE/GE:EO

1122 Town & Country Commons

Chesterfield, MO 63017

Date: February 28, 2005

UIL: 501.03-1

ORG=Name Of Organization

Num=EIN Number

ORG

Taxpayer Identification Number:

Num

Form:

990

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear Taxpayer:

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "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 its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Local Taxpayer Advocate

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

R. C. Johnson  
Director EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer		Year Ended

**ISSUE:**

Whether the operation of a license fee office as the primary activity of \_\_\_\_\_ (hereinafter referred to as "Taxpayer") lessen the burdens of government and therefore meets the definition of charitable as described in section 501(c)(3)-1(d)(2) of the Income Tax Regulations.

**FACTS:**

\_\_\_\_\_ (hereinafter referred to as "Taxpayer") submitted Form 1023 "Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code" signed by its Secretary/Treasurer on October 3, \_\_\_\_\_. The application was received by the Internal Revenue Service on October 6, \_\_\_\_\_.

The taxpayer provided the following in response to the information about its activities and operations requested at Part II, Question #1 of Form 1023:

"The corporation was formed by the members of the \_\_\_\_\_ as a separate organization dedicated to raise funds to be used principally to provide support to disadvantaged neighbors of \_\_\_\_\_. One means of obtaining funds for this charitable endeavor was to obtain funds from the State \_\_\_\_\_. The State \_\_\_\_\_ provides a fee to the corporation in exchange for the corporation to process license applications for local residents in the \_\_\_\_\_ area. This is a non-commercial process which provides clerical support to the State. The State provides procedures and materials. It is a quasi-governmental function and does not operate in a competitive environment. Fee rates to local residents are set solely by the State. The corporation can have funds from this fund-raising only if they manage in such a manner to process the application efficiently. A member or members of \_\_\_\_\_ as members of this organization must sign the agreement with the State. All of the management of the organization is performed by \_\_\_\_\_ members on a volunteer basis. None of the members receive compensation in any fashion. Other State functions are housed and handled by the State at the same location."

The taxpayer provided the following in response to the information about its current and anticipated financial support requested at Part II, Question #2 of Form 1023:

"The State \_\_\_\_\_ provides the organization a fee for performing the initial stages of the paper work necessary to process licenses under certain state licensing laws.

The organization will also accept charitable contributions from individuals or corporations who are not members of \_\_\_\_\_ but no formal program is envisioned to do this at this time."

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The taxpayer provided the following in response to the information about its fundraising program requested at Part II, Question #3 of Form 1023:

"The organization raises funds by doing work for the State in a non-commercial manner. A license office is located in the City of where local residents can submit information which will eventually be processed at the State capitol and provide them with a license under various state laws.

This arrangement is currently in effect."

The taxpayer provided the following in response to the information about assets used in performance of its exempt function requested at Part II, Question #8 of Form 1023:

"The organization has furniture and equipment which was purchased from the prior owners. The office space is rented." Schedule I further provides that the name of the predecessor organization was License Center, Inc. The sale between the taxpayer and the unrelated party per the schedule was at a "negotiated arms length price".

The technical section of the application, particularly the information provided to determine the taxpayer's Private Foundation Classification provides that the taxpayer applied as a publicly supported organization under § 509(a)(1) and described at § 170(b)(1)(A)(vi). The ruling on the taxpayer's Private Foundation Classification was based on receipts received during the taxpayer's first 5 months (March through July ) of operation \$ , all from license and motor vehicle registration fees; as well as anticipated revenue for the next three years estimated at \$ per year all from "gross receipts from admissions, sales of merchandise or services, or furnishing of facilities in any activity that is not an unrelated business within the meaning of § 513" per line 9 of Part IV Section A of Form 1023 "Statement of Revenue and Expenses".

In a May 1, letter to the Determination Specialist, the taxpayer provided the following:

- The taxpayer does not hire handicapped persons.
- The taxpayer operates a fast paced license fee office for the State
- All monies earned must be donated to charity per "unwritten" terms of agreement the taxpayer has with the State

The taxpayer was incorporated on under the laws of the State . Its Articles of Incorporation provide that the taxpayer was organized for the following purposes:

Article 5A – "The corporation is organized and will be operated exclusively for charitable, educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code (the "Code")."

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Article 5B – “Without limiting the generality of the foregoing, the corporation is organized and will be operated for the purpose of conducting and operating a license fee office performing licensing and fee operations under contract with the Department of Revenue of the State .”

The taxpayer’s by-laws were adopted September 20, . Article I holds that “the purposes of the Corporation shall be those non-profit purposes stated in the Articles of Incorporation, as may be amended. No part of the net earnings or other assets of the Corporation shall inure to the benefit of, or be distributed to or among, or revert to any director, officer, contributor or other private individual having, directly or indirectly, any personal or private interest in the activities of the Corporation, except that the Corporation may pay reasonable compensation for services of the non-profit purposes stated in the Articles of Incorporation.

Article IV, paragraph A provides in part that “the affairs of the Corporation shall be managed, supervised and controlled by a self-perpetuating Board of Directors consisting of not less than three (3) nor more than twenty-one (21) persons (as decided, from time to time, by the Board of Directors) nominated by the President of the and elected by a majority of the Board of Directors of the Corporation....”

Based on the above, the taxpayer was issued a favorable ruling per Letter 1045 dated June 25, . The June entry on the Determination Specialist’s Case Chronology Record (Form 8327) provides the favorable ruling was issued because the taxpayer was determined to have been “formed to process State license applications for local residents. This activity falls under lessening the burdens of government. Any profits are distributed to charity.”

The determination letter advises the taxpayer that in the letter we are not determining whether any of its present or proposed activities are unrelated trade or business activities as defined in section 513 of the Code.

Additionally, the letter provides that the determination is based on evidence that the taxpayer’s funds are dedicated to the purposes listed in section 501(c)(3) of the Code. To assure its continued exemption, the taxpayer was advised to keep records to show that funds are spent only for those purposes. If the taxpayer provides funds to other organizations, its records should show whether they are exempt under section 501(c)(3). In cases where the recipient organization is not exempt under section 501(c)(3), the taxpayer must have evidence that the funds will remain dedicated to the required purposes and that the recipient will use the funds for those purposes.

The letter further advises the taxpayer that if it distributes funds to individuals, it should keep case histories showing the recipients’ names, addresses, purposes of awards, manner of selection, and relationship (if any) to members, officers, trustees or donors of funds to it, so that it can substantiate upon request by the Internal Revenue Service any and all distributions it made to individuals. [Cited] Revenue Ruling 56-304, C.B. 1956-2 page 306. The taxpayer received a Private Foundation classification as an organization described at section 509(a)(2) of the Code on its advanced ruling June 25, . The Private Foundation

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follow-up letter issued February 5, provided the taxpayer continued to qualify as a public charity described at section 509(a)(2) of the Code.

The opening conference of the examination of the taxpayer's Form 990 for the period ending (hereinafter referred to as "the exam year") was conducted on August 4, with , President of the taxpayer's Board of Directors, and , Manager of the taxpayer.

has been Board President since July 1, 2003. He explained that the progression to President begins with being on the Board of Directors of the (hereinafter referred to as "the "). As a member of the Board of Directors of the , ultimately became President of that Board. Being President of the Board of the , automatically placed him on the Board of Directors of the taxpayer. Once assigned to the taxpayer's Board, progression to President of that Board is automatic. went from Board member (and Past President of the ) to Secretary of the taxpayer, then Treasurer, Vice-President, and finally President.

The taxpayer provided during the opening conference that the organization has two activities:

1. Operating a Driver's License and Motor Vehicle Fee Office
2. Contributing the profits from the operation of the Driver's License and Motor Vehicle Fee Office to 501(c)(3) Organizations

The taxpayer's Board of Directors is scheduled to meet once per month. However, sometimes there are no meetings because there is no business to be discussed. Board meetings last 15 – 45 minutes each. The hours per month of the Officers and Directors listed on the Form 990 are inclusive of the time spent at Board meetings. Other time is time Directors and Officers meet with the Manager of the taxpayer on general fee office business aside from the business conducted at the Board meetings. Total time spent by Officers and Directors for the exam year in accordance with the above is 66 hours per month, or 792 hours. The inspection of the prior year form 990s ( ), as well as the Form 990 for the subsequent period provide that the average hours of Officers and Directors for all four years, including the exam year, is 822 average hours per year devoted to this activity.

Board meetings are for the purpose of voting on whether or not to disburse funds as contributions to organizations recommended by the . The Board meets once per month to go over written requests for funding from not for profit organizations. The reviews the funds requests and confirms that they meet the criteria for recommendation to the taxpayer's Board of Directors. All screenings of requests for contributions are conducted by the Board. By the time the



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requests get to the taxpayer's Board of Directors, it only has to confirm that the entity requesting the contribution is a 501(c)(3) organization and vote on whether or not to contribute. The Board may override a rejection by the taxpayer's Board, however that does not often occur, as it would defeat the purpose of having two separate Boards according to the taxpayer.

On occasion, the taxpayer's Board has had to do a little research on the requesting charity. For example, the taxpayer received a referral from the for contributions to an organization whose purpose was to maintain the Vietnam veteran's wall. After researching how the funds were to be used, the taxpayer discovered that only 75% of the contribution would actually go to maintaining the wall, while the remaining 25% would go for an ad campaign of the charity. The taxpayer rejected the referral.

The taxpayer has provided that because its Board only meets for a short time each month (when there is business to conduct), the taxpayer's time is primarily spent operating the Fee Office.

The taxpayer applied for exemption as an organization whose purpose is to operate a license fee office in order to raise money to be contributed to charitable organizations upon the recommendation of the . Its activities remain consistent with that purpose.

The taxpayer confirmed that the license fee office was purchased from a "for profit" entity. When inquiries were made regarding what if any changes were made in the operations that differ from those of the "for profit's" operations, the taxpayer provided that the only difference is that the profits of the taxpayer are disbursed to charitable entities rather than a private individual. Otherwise, the operation is the same as that of a for-profit, or state operated fee office ("Branch Office"). The state regulates the amount (fee) that can be charged for the taxpayer's goods and services. Effective July 1, , the State increased its fees and are now charging the same fee as privately owned fee offices. (Privately owned fee offices used to charge a slightly higher fee than state run offices. For example, the charge for a one year license plate would be the cost of the license plate, plus applicable taxes, and a \$2.50 additional charge by the privately owned fee office. The \$2.50 charge is the state's payment to the taxpayer and other fee offices for collecting revenues for the state. The July 1 change did not affect privately owned fee offices, except to raise their fees, from those charged prior to July 1, .

Review of the taxpayer's Board of Directors and Executive Committee meeting minutes for the period covering August through September provided:

- October 24, – Company has completed the annual report. It shows the bottom line we made about \$ more than last year, roughly \$ . It also shows that we spend \$ in charity contributions more than we made. This indicates that we need to make some adjustments as to the spending of the , or we will not have any income to distribute in the future. Discussion: since for the last two years we have netted over \$ , it is suggested that the Board budget that amount to be spent. At the end of that time period further adjustments can be made to make up the difference. Motion to budget spending for any fiscal year at \$ . Adjustments can be made at the end of this period.

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A motion was made to donate \$ \_\_\_\_\_ in \_\_\_\_\_ name to a children's organization in tribute to the man who gave us the license office.

- November 21, \_\_\_\_\_ - \_\_\_\_\_ ; a request has been made for \$ \_\_\_\_\_ ; \$ \_\_\_\_\_ of which shall be donated in the name of Mel Carnahan. \$5,000 will be donated in the name of Mayor Jim Eagan, and \$10,000 to be donated by Flo-Ro Management.
- January 29, \_\_\_\_\_ - A request for a donation has been received for \$ \_\_\_\_\_ for support dog training. (Approved). The donations by the customers at the license office for the \_\_\_\_\_ were a great success with some 60 lions being donated to \_\_\_\_\_ Hospital. They wrote a letter thanking the office for its contribution. Motion to write a letter to be posted thanking customers.
- February 27, \_\_\_\_\_ - The \_\_\_\_\_ Committee for the fine arts has requested a contribution for the \_\_\_\_\_ Festival in the amount of \$ \_\_\_\_\_ .
- March 20, \_\_\_\_\_ - A request for a contribution for computer equipment for their school has been received. They have asked for a donation of about \$ \_\_\_\_\_ . \_\_\_\_\_ has volunteered to find the best bang for the buck.
- April 24, \_\_\_\_\_ - There has been a request for donations, with the possibility of matching funds for Father \_\_\_\_\_ would get \$ \_\_\_\_\_ and Father \_\_\_\_\_ would get \$ \_\_\_\_\_ .
- August 28, \_\_\_\_\_ - A donation request for \$ \_\_\_\_\_ was received from \_\_\_\_\_ , which is an organization that trains assistant dogs. We have supported them in the past and they do good work.
- September 25, \_\_\_\_\_ - \_\_\_\_\_ has requested \$ \_\_\_\_\_ to finalize their purchase of the building previously occupied by the sheltered workshop. They have requested \$ \_\_\_\_\_ now and \$ \_\_\_\_\_ in March.

The taxpayer's records contained a copy of an "Agency Contract" printed on the \_\_\_\_\_ Department of Revenue letterhead entered into by and between \_\_\_\_\_ and the Department of Revenue. The contract was received March 16, \_\_\_\_\_ by "Field Services". Review of the contract between the Department of Revenue and \_\_\_\_\_ provides:

- The appointment under the contract is effective March 6,
- Fee Agent (taxpayer) will act on behalf of the Director of Revenue for:
  - Sale of motor vehicle, trailer, drivers licenses and decals, and sale of non-driver identification cards
  - Collection of motor vehicle, trailer, outboard motor, watercraft, motorized amphibious vehicle and all-terrain vehicle title and license fees
  - Collection of state sales and use tax
  - Collection of city and/or county sales tax
- Fee agent responsible for providing:
  - Office space, equipment, fixtures, and hours of operation subject to the approval and continuing supervision of Director of Revenue
  - Adequate parking facilities for customers

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- Adequate staff
- Adequate security for all license plates, permits, and documents consigned to [the taxpayer]
- A daily deposit:
  - i. To State Treasurer of each day's collection of fees and taxes no later than the close of second banking day following receipt with deposit slips forwarded to Dept of Revenue no later than end of next business day after deposit; and
  - ii. To credit of Dept of Revenue of each day's collection of city and county sales taxes no later than close of second banking day following receipt, with deposits slips forwarded to Dept of Revenue no later than end of next business day after deposit
- Daily business register and summary and daily accounting of inventory expended with all substantiating documents
- Proof of posting of surety bond
- Daily maintained perpetual inventory record of inventory expended and on hand
- Personal attention to supervision of employees
- Maintenance of Notary Public service
- Not engage in "lapping" (personal use of monies collected by a fee agent covering one day's obligation with receipts from a later day)
- Compliance with all provisions of Americans with Disabilities Act
- Fee Agent is solely responsible for any uncollectible checks tendered in payment for services, merchandise, and taxes
- Fee Agent shall allow the Director of Revenue to review, audit, inspect and make copies of books, records, files and inventory on hand at any time
- Fee Agent subject to temporary or permanent closing if fails to submit deposits, payments or documentation required by contract, or otherwise violates term of contract or procedures prescribed by Director of Revenue, or laws of
- Any collection costs incurred by Director of Revenue including legal fees and court costs to collect unpaid charges to Fee Agent shall be reimbursed by Fee Agent to Director of Revenue
- Fee Agent and Fee Office Manager are expected to become familiar with and abide by the policies and procedures of the Department of Revenue.
- Director of Revenue shall set a due date on all billings, including audit reports, inventory charge reports, long/short reports, and end of month statements.
- Director of Revenue agrees to furnish at least one hand validator, and all necessary official forms, license plates, tabs, permits, decals, vision test equipment, and photographic equipment.
- Signs replacing sign to identify fee agency must meet Dept of Revenue specifications
- Director of Revenue may require attendance of Fee Agent or Fee Office Manager at formal training sessions outside of normal fee agency location.
- Fee agent is entitled to collect from the party requiring services a set fee, per transaction, as compensation in full for all services rendered as payment for performances of duties.
- Director of Revenue may perform or cause to be performed each year, complete check of Fee Agent's federal and state tax return filing history.

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- Fee Agent, whether or not incorporated, and whether or not operated for profit, is personally responsible and liable for the performance of the terms and conditions required of a Fee Agent by this contract or by statute.
- Fee Agent shall not engage a lobbyist (who is not a fee agent) to pursue legislative action relative to fee agents, laws administered by fee agents, or the laws governing fee agents, unless all representations, positions, testimony, and any other action by the lobbyists are approved in advance by the Director of Revenue and are terminable at any time by the Director of Revenue.
- Fee Agent may advertise only through printed media such as newspapers, fliers and bulletin postings.
- Fee Agent serves solely at the pleasure of the Director of Revenue and may be dismissed at any time for any reason.

Title 12, Chapter 1(12 CSR 10-1.010) of the Code of State Regulations ( ) "Organization of the Department of Revenue" the purpose of which is to provide a description of the organization and the general courses and methods of operation of the Department of Revenue; provides the Department of Revenue is in charge of a director of revenue appointed by the governor, by and with the advice and consent of the senate. The department has divisions as provided by law. The department collects all taxes and fees payable to the state as provided by law. Those taxes and fees include, but are not limited to: income tax, sales and use tax, cigarette tax, motor fuel tax, inheritance tax, franchise tax and fees for certificates of title and registration of motor vehicles and for drivers' licenses. The department also administers the safety responsibility statutes.

Chapter 136 Section 136.030 of the Revised Statutes (Section 136.030, ) outlines the duties of the Director of Revenue:

- (1) organize the division of taxation and collection in such manner as he may deem necessary for its most efficient operation;
- (2) Make provisions for the collection of the state income tax, estate tax, motor vehicle drivers' license tax, motor vehicle registration fees, motor vehicle fuel tax, sales and use tax and all other taxes;
- (3) Arrange, administer and organize the division of taxation and collection so that employees may be interchangeable in work assignment, to the end that they may be shifted within the division of taxation and collection to meet seasonal and temporary demands and that the number of such employees shall be kept to the minimum consistent with efficient operation; and
- (4) Centralize all record keeping, filing, payroll and other services required by the division of taxation and collection.

The Department of Revenue web page ( )  
 Department of Revenue (department) was created by the 1945 Constitution to serve as the central collection agency for all state revenues. The primary duties of the department are to collect taxes, title and register motor vehicles, and license drivers.

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The department consists of three divisions; among them, the Division of Motor Vehicle and Drivers Licensing. The Division of Motor Vehicle and Drivers Licensing is responsible for licensing drivers and for the administration of Missouri's laws that relate to titling and registration of motor vehicles, trailers, all-terrain vehicles, manufactured homes, and marine craft.

The Division of Motor Vehicle and Drivers Licensing consists of three bureaus, among them the Customer Assistance Bureau. The Customer Assistance Bureau is responsible for managing the operations of the Department of Revenue's 11 branch offices and administers contracts with 171 agent offices that provide driver licensing and motor vehicle services to citizens throughout the state [ ].

Senate Bill Number 1285 of the 92<sup>nd</sup> General Assembly, is an act to repeal section 136.055 of the Revised Statutes, and to enact in lieu thereof one new section relating to motor vehicle fee offices. Accordingly, it was enacted by the General Assembly of the State as follows:

Section A. Section 136.055, is repealed and one new section enacted in lieu thereof, to be known as section 136.055, to read in part as follows:

136.055. 1. Any person who is selected or appointed by the state director of revenue to act as an agent of the department of revenue (Fee Agent), whose duties shall be the sale of motor vehicle licenses and the collection of motor vehicle sales and use taxes under the provisions of section 144.440, and who receives no salary from the department of revenue, shall be authorized to collect from the party requiring such services additional fees as compensation in full and for all services rendered on the following basis:

- (1) For each motor vehicle or trailer license sold, renewed or transferred—two dollars and fifty cents beginning January 1, ; and four dollars beginning July 1, ; and five dollars beginning August 28, , for those licenses biennially renewed pursuant to section 301.147, . Beginning July 1, , for each motor vehicle or trailer license sold, renewed or transferred—three dollars and fifty cents and seven dollars for those licenses sold or biennially renewed pursuant to section 301.147, ;
- (2) For each application or transfer of title—two dollars and fifty cents beginning January 1, ;
- (3) For each chauffeur's, operator's or driver's license—two dollars and fifty cents beginning January 1, ; and four dollars beginning July 1, ; and five dollars beginning July 1, , for six-year licenses issued or renewed;
- (4) For each notice of lien processed—two dollars and fifty cents beginning August 28, .

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Motor Vehicle & Driver Licensing Bureau, provided the difference between Branch Offices and Agent Offices is that Branch Offices are state run. The state hires the employees, and incurs the other expenses associated with the operation of the Branch Offices. Agent offices are offices run by entities with which the state has contracted. The entity is responsible for hiring its own employees, as well as the expenses associated with the operation of the Agent Office. further provided that in order that an individual or non-profit organization may receive license to operate a license fee office in , they must express an interest and complete a formal application. He pointed out that the applicants are usually somehow affiliated with the state government, i.e. former employees and aides of the governor or state executives (including the Director of Revenue). After a study is conducted on the feasibility and need of a fee office in the applicant's target area, a political process ensues, as the authority to operate a license fee office is appointed by the Governor's office. It is not uncommon that fee agent contracts be awarded to charitable organizations,

provided that as the Governor of Missouri changes, so then do the operators of the fee offices. That is to say that a Governor may revoke a license previously given. As there is a gubernatorial election in 2004, depending on whether or not the elected Governor is a Democrat or Republican, and who that Democratic or Republican Governor is, current fee office operators realize their license to operate may be in jeopardy.

provided that approximately 75% of the license fee offices are licensed to individuals and 25% to non-profit organizations.

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**Law – Does the activity of operating a License Fee Office relieve the burdens of government?**

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

Section 1.501(c)(3) – 1(d)(2) of the Income Tax Regulations provides that the term “charitable” as used in section 501(c)(3) of the Code is used in its generally accepted legal sense and is not to be construed as limited by the separate enumerations in section 501(c)(3). The term “charitable” includes other exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. The term “charitable” includes lessening the burdens of government.

Revenue Ruling 85-1, 1985-1 C.B. 177, sets out a two-part test for determining whether an organization's activities are lessening 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 the government. An activity is a burden of government if there is an objective manifestation by the governmental 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 facts and circumstances.

Revenue Ruling 85-2, 1985-1 C.B. 178, holds that an organization that provides legal assistance to guardians ad litem who represent abused and neglected children before a juvenile court that requires their appointment lessens the burdens of government, and therefore, qualifies for exemption under section 501(c)(3) of the Code. The revenue ruling states that the determination of whether an organization's activities actually lessen the burdens of government should be based on all the relevant facts and circumstances.

In *Indiana Crop Improvement Association, Inc. v. Commissioner*, 76 T.C. 392 (1981), the organization was the official seed certifying agency for the State of Indiana and conducted a seed certification program pursuant to the delegation of authority by the state legislature. The Tax Court found that as the official seed certifying agency for the state, the organization directly assisted the United States Department of Agriculture in enforcing the standards and procedures established under federal statute. Thus, the Tax Court found that the organization lessened the burden of the government.

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**Law – Does the activity of operating a License Fee Office qualify the organization as meeting the criteria of an organization described at section 501(c)(3) of the Code?**

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e) of the Income Tax Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization’s exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

Section 512(a)(1) provides the term “unrelated business taxable income” is defined as the gross income derived by any organization from any unrelated trade or business, as defined in section 513, regularly carried on by the organization, less certain deductions.

Section 513(a) of the Internal Revenue Code provides that the term “unrelated trade or business” means any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Section 513(c) of the Internal Revenue Code defines the term “trade or business” as any activity carried on for the production of income from the sales of goods or the performance of service.

Section 1.513-1(c)(1) of the Income Tax Regulations provides that business activities will be deemed “regularly carried on” if they manifest a frequency and continuity, and are pursued in a manner generally similar to comparable commercial activities of nonexempt organizations.

Section 1.513-1(d)(2) of the regulations provides that a trade or business is related to exempt purposes in the relevant sense, only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income) and is “substantially related,” for the purpose of section 513 of the Code, only if the causal relationship is a substantial one. For the conduct of a trade or business to be substantially related to the purposes for which exemption was granted, the production or distribution of the goods or the performance of the services from which the gross



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income is derived must contribute importantly to the accomplishment of the exempt purposes of the organization.

Revenue Ruling 76-94, 1976-1 C.B. 171, holds that an exempt organization's operation of a retail grocery store as part of its therapeutic program for emotionally disturbed adolescents, almost fully staffed by the adolescents, and on a scale that is no larger than reasonably necessary for the performance of the organization's exempt functions, is not an unrelated trade or business within the meaning of section 513 of the Code.

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**Rationale:**

Per Revenue Ruling 85-1, the first test in the determination of whether an activity lessens the burdens of government is whether the governmental unit considers the organization's activities to be the government's burden. The Department of Revenue (the Department) is in charge of a Director of Revenue appointed by the governor, by and with the advice and consent of the senate. The Department is responsible for the collection of all taxes and fees payable to the state as provided by law, including but not limited to the collection of fees for certificates of title and registration of motor vehicles for drivers' licenses. The actual burden of this unit of government is the collection of taxes and fees payable to the state, including the collection of fees for certificates of title and registration of motor vehicles for drivers' licenses. Assuming therefore for the purposes of this report, that the collection of the fees for certificates of title and registration of motor vehicles for drivers' licenses constitutes a burden of government; the fact that the activities are the burden of government alone does not resolve the issue.

The second test of Revenue Ruling 85-1 requires that the organization conducting the activity demonstrates that its activities actually lessen the burdens of government. The facts provide that the Department of Revenue is in charge of a Director of Revenue whose duties include making provisions for the collection of the state income tax, estate tax, motor vehicle drivers' license tax, motor vehicle registration fees, motor vehicle fuel tax, sales and use tax and all other taxes. In carrying out such duties, the Director of Revenue may select or appoint an agent to sell motor vehicle licenses, collect motor vehicle sales & use taxes, accept applications for transfer of title of motor vehicles, process notices of lien, and issue chauffeur's, operator's, and driver's licenses. The fee agent enters into an Agency Contract with the Department of Revenue, serves solely at the pleasure of the Director of Revenue, and may be dismissed at any time for any reason.

In this case, the government has merely contracted with the taxpayer to perform clerical duties associated with its burden. The facts provide that the government has contracted throughout the state with various individuals and for profit corporations to perform these tasks. As such, the relationship between the taxpayer and the government is more in the nature of a commercial contract for services as opposed to the lessening of a governmental burden.

In contrast to the taxpayer, the organizations in Revenue Rulings 85-1 and 85-2 were self-supporting. The taxpayer is in effect, compensated by the state government for services it performs. For each transaction for which a fee is charged, the taxpayer is allowed to retain a portion of the fee received: The remainder of the licensing fee is then turned over the Department of Revenue. In Revenue Ruling 85-2, the only support received by the organization from the governmental entity was in the form of grants to the organization for its general support and not in the form of fees for services. The fact that the taxpayer is paid by the government for the services it performs, augments the argument that the taxpayer is merely performing under a contract for services and is not engaged in activities that actually lessen the burdens of government.

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In examining the statutes, it is noted that any individual or corporation may be appointed by the Director of Revenue. As such, the statute, when viewed as a whole, indicates that the legislative body intended that the activities be performed by the private sector and not by a limited class of nonprofit organizations. This is evidenced by the fact that collection of taxes and fees associated with the operation of motor vehicles, one of the duties of the Director of Revenue, is conducted by various individuals and for-profit corporations throughout the state. Since the statute authorizes any individual or corporation to act as an agent of the Director of Revenue, whether or not the individual or corporation is seeking profit, the role of the Fee Agent is not considered to lessen a burden of government within the intendment of section 1.501(c)(3)-1(d)(2) of the Regulations.

The taxpayer is also distinguishable from the organization in *Indiana Crop Improvement Association, Inc.* in two material respects. First, whereas the organization in *Indiana Crop Improvement Association* was self-supporting and, thus, lessened the burden of government, the taxpayer is compensated for its services by the state government as evidenced by the contract outlined in the facts of this report. Since the governmental entity is paying for the services it receives from the taxpayer, the taxpayer is no different than any other organization providing services for hire and, more specifically, is no different than any of the for profit fee agents located throughout the state. A further distinction between the taxpayer and the organization in *Indiana Crop Improvement Association, Inc.* lies in the fact that whereas the seed certifying organization in the Tax Court case was the sole entity performing the role delegated to it by the state authority, the taxpayer is not the only entity within the state performing the role of fee agent. All the facts indicate that the role of motor vehicles division of the Department of Revenue is intended to be performed on a normal commercial basis. In fact, whereas the organization *In Indiana Crop Improvement Association, Inc.* was officially designated by the state to perform its operation, the taxpayer was not delegated the role of fee agent by the state. Rather, the related \_\_\_\_\_ applied for permission for the taxpayer to assume the role of fee agent. There is a material difference between a specific delegation of authority to a singly entity by a state, which was the case in *Indiana Crop Improvement Association, Inc.*, and the mere allowance by the state of any individual or corporation to perform, for a fee, a function which may be a burden of the state government.

Therefore, even though the taxpayer's activities may be a burden of government the taxpayer cannot be said to be actually lessening such burden within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations, and the cited revenue rulings, and the court cases listed above.

The taxpayer is engaged in the registration of motor vehicles and their operations for the state. Before an activity may be considered an unrelated business activity, the following three conditions must be satisfied: (1) the activity must constitute a trade or business; (2) the trade or business must be regularly carried on; and (3) the trade or business must not be substantially related to the organization's exempt purpose.

The taxpayer's operations are clearly a "trade or business" within the meaning of section 513(c) of the Code, in that the activity is carried on for the production of income from the performance of services. In fact, a large number of Fee Agents in the state are taxpaying individuals and corporations. The taxpayer

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stated in its application that the operation of the fee office is a "quasi-governmental function and does not operate in a competitive environment." The facts provide that the permission to operate an office to collect the aforementioned fees may be appointed to individuals and corporations operating for or not for profit. Accordingly, the activities of the taxpayer are no different from the activities of other taxable individuals and corporations who operate such fee offices.

Concerning the second part of the test, whether the activity is regularly carried on by M, there can be no doubt that the activity is regularly carried on. The fee office is open and operational on a daily basis for the production of income.

Finally, for an activity to produce unrelated business income, the trade or business must not be substantially related to the organization's exempt purpose. The taxpayer's Articles of Incorporation provide that it is (1) organized and will be operated exclusively for charitable, educational purposes, and (2) for the purpose of conducting and operating a license fee office performing licensing and fee operations under contract with the Department of Revenue and the State

As previously discussed, the operation of the fee office does not meet the provisions for lessening the burden of government, and therefore does not qualify as a charitable activity. The inclusion of the statement in the Articles of Incorporation causes the taxpayer to fail the organizational requirement for organizations exempt under section 501(c)(3) of the Code. However, realizing that the Articles of Incorporation may be amended to remove the non-exempt activity, the operations of the taxpayer will be considered for the purpose of this discussion.

The analysis of the operations of the taxpayer provides that it operates a license fee office for a profit. The profits are then apportioned to charities qualifying for exemption under section 501(c)(3) of the Internal Revenue Code. Section 513(a) provides that the term "unrelated trade or business" means any trade or business the conduct of which is not substantially related (**aside from the need of such organization for income or funds or the use it makes of the profits derived**) to the exercise or performance by such organization of its charitable, educational, or other purpose of function constituting the basis for its exemption under section 501 of the Code.

Removing the need for the income and the fact that profits derived are dedicated to charitable organizations, the trade or business, which again has been previously shown not to have a charitable purpose, is all that remains. As, the trade or business is not related to an exempt purpose, the income that is produced is as well unrelated to any exempt purpose.

In sum, the taxpayer in its application confirmed the fee paid to it to process license applications in the form of clerical support to the state. The taxpayer provides the process is non-commercial and the taxpayer does not operate in a competitive environment. The statutes directly conflict with the taxpayer's application. The Department of Revenue, by awarding contracts to entities operating for and not for profit, and offering all of its agents the same fee for services rendered under said contracts, the taxpayer enters into a competitive environment. Its competition, those organizations operating for a profit and paying

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taxes to state and Federal governments on those profits that exceed qualifying operational costs. The taxpayer is otherwise not self supporting. Finally, the Regulations provide that a trade or business is related to exempt purposes in the relevant sense, only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income). Revenue Ruling 76-94 illustrates. The fact that the taxpayer apportions its profits to charities is inconsequential, as the facts establish it does not cater to a charitable class of people otherwise.

**Conclusion:**

As the taxpayer's principal activity of operating a fee office for profit has been found not to be an activity qualifying the taxpayer for exemption under section 501(a) of the Internal Revenue Code, it is recommended that the taxpayer's exempt status be revoked.