



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examination

625 Fulton Street, Room 503

Brooklyn, NY 11201

Release Number: **200649034**

Release Date: 12/08/2006

UIL: 501.03-01

Date: May 10, 2006

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

LAST DATE FOR FILING A PLEADING
WITH THE TAX COURT, THE CLAIMS
COURT, OR THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
COLUMBIA:

Dear :

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

Recognition of your exemption from Federal Income Tax as an organization described in Internal Revenue Code section 501(c)(3) is retroactively revoked effective January 1, 2002 for the following reasons:

You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes. You operate for the benefit of private interests and your net earnings inured to the benefit of private shareholders or individuals.

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 January 1, 2002, 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 file a pleading seeking a declaratory judgment in the United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia before the 91st day after the date this final determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing pleadings for declaratory judgments and refer to the enclosed Publication 892. You may write to these courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, D. C. 20217

United States Court of Federal Claims
717 Madison Place, NW
Washington, D. C. 20005

United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, D. C. 20001

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 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,

Marsha A. Ramirez
Director, EO Examinations

Enclosure:
Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
TEGE EO Examinations

Taxpayer Identification Number:

Form:

990

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

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:

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 REV JANUARY 1994	EXPLANATION OF ITEMS		
NAME OF TAXPAYER	TAX IDENTIFICATION NUMBER	YEAR/PERIOD ENDED	

FACTS:

The O was incorporated in the state of S on The Organization was organized and operated exclusively for charitable and educational purposes within the meaning of section 501(C)(3) of the internal Revenue Code. The Corporation shall instruct individuals primarily minority youth, to develop and improve their capabilities in the game golf, through clinics, workshops, lessons and seminars, using sites at schools, playgrounds, municipal golf courses, parks or other recreation areas. The Corporation shall also provide worthy or needy minority youth with such resources as are available to develop or enhance their opportunities for education and improvement through scholarships or otherwise, using grants, loans or other subsidies.

The O received exemption from income tax on July 20, 2000. It was determined that the organization was not a private foundation because it was an organization described in section 509(a)(1) and 170(b)(1)(A)(vi).

On, the organization signed an agreement with the C1 to become a chapter of P. P is a division of C1. P is a program to make golf more accessible to people of all diversities and social strata, particularly young people who otherwise may not have an opportunity to learn and play the game by creating facilities and programs at selected sites nationally and internationally.

D is the President of the Organization. D owns G. G is a located in S.

D donated acres of land at the G to the organization on X1. received grants from the C1 and C2 to build a driving range, practice putting green and chipping green on this acres he donated. The driving range has sand traps, target greens Telephone poles for lighting. The Contract to build the driving range target green, putting green and chipping green was signed on X2. The construction was started in X3 and completed in X4. The range distance signs are numbered so that they can be read from both directions. On the north end of the range he built a pavilion and hitting stations for use of the golf course customers and on the south end there are hitting stations. The pavilion was built on golf course property with the Organization's funds. The hitting stations are metal dividers where one can stand and hit practice balls on the range. The south end is used for children's activities. The dividers are portable. When I arrived for the audit there was no hitting stations on the south end. The golf course workers set them up while I was touring the facilities.

In the application for exemption he stated that the G had a hole golf course and a commercial driving range and club house. The golf course does not have a driving range. D stated the golf course patrons drive balls on the foundations driving range. No payments are made to the organization for the use of the driving range,

Form 886-A REV JANUARY 1994	EXPLANATION OF ITEMS		
NAME OF TAXPAYER	TAX IDENTIFICATION NUMBER	YEAR/PERIOD ENDED	

practice putting green or chipping green.

G billed the organization \$ for access to facilities, instruction fees and tournament expenses. See attached.

Bank transfers were made to G and A for \$. See attached documents.

G issued Statements to the Organization for access to G facilities from through . This was before G's facilities were built.

In the application for exemption, D said his G would not use the organization's equipment or capital improvements unless a fair rental value has been established and paid. No payments were ever made for the use O's facilities. Instead his G billed the Organization for access. G also billed the organization for access, instruction fees, and Tournament expenses. None of these expenses could be substantiated.

When applying for exemption D stated that "there will be no (zero) fees charged to the exempt organization for the use of G to carry on these activities." He also stated "G is an 18-hole golf course with commercial driving range and club house, set up for a profit making company." He stated "there are not any leases or agreements between the two organizations because there are not any fees or other charges between the two organizations."

Participants in the program are charge an annual registration fee of \$ per year. D stated that they started charging the fees in . He stated that the kids use the driving range and the golf course for free. If kids come out on their own to play they have to pay \$ for holes and \$ for holes.

B stated that the golf course was only open for 3 weeks in of because the greens were burned due to greens keeper error.

D purchased property insurance from Insurance companies for his for profit company under the name of O. See attached documentation.

D was commingling funds of the organization with his for-profit businesses, A and G. In D transferred to G, to his personal account and \$ to the A. See workpapers attached.

LAW:

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

Form 886-A REV JANUARY 1994	EXPLANATION OF ITEMS		
NAME OF TAXPAYER	TAX IDENTIFICATION NUMBER	YEAR/PERIOD ENDED	

Treasury Regulations section 1.501(c)(3)-1(c)(2) " Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes of its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

Treasury Regulations section 1.501(a)-1(c) "Private shareholder or individual" defined. The words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization."

Treasury Regulations section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

In A.H. Nittler and Dorothy L. Nittler, et al, v Commissioner, 39 TCM 422 (1979) The court upheld the denial of tax exempt status to both a corporation and a trust which were found to have served the business and private interest of their creators rather than any public interest specified in code Section 501(c)(3).

In John Marshall Law School and John Marshall University v. The United States, 81-2 U.S.T.C. 9514 (Ct. C1. 1981) the court found that the Commissioner acted properly in revoking exemption under IRC 501(c)(3) on the grounds of inurement to the controlling officers and their families.

In Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), the Court held that although separate requirements, the "private inurement" test and the "operated exclusively for exempt purposes" test often overlap substantially.

In Unitary Mission Church v. Commissioner, 74 T.C. 507 (1980), it was held that the prohibition against inurement or private benefit is absolute, the amount or extent not being determinative.

GOVERNMENTS POSITION:

is the founder and President of the
is also the owner of
received a benefit from the use of the organizations property and income.

TAXPAYERS POSITION:

B indicated that they will agree to the revocation of the exempt status.

CONCLUSIONS:

EXPLANATION OF ITEMS

NAME OF TAXPAYER

TAX IDENTIFICATION NUMBER

YEAR/PERIOD ENDED

O no longer qualifies for exemption under section 501(c)(3) of the Code. Therefore, your exempt status under section 501(c)(3) of the Internal Revenue Code should be revoked effective January 1, 2002.

We offered you an informal conference with the case manager. However, you declined to hold this conference.

Should this revocation be upheld you are required to file Form 1120 for the tax periods after December 31, 2002, whether or not you have taxable income.

Form **886-A**
REV JANUARY 1994

EXPLANATION OF ITEMS

NAME OF TAXPAYER

TAX IDENTIFICATION NUMBER

YEAR/PERIOD ENDED