

**Internal Revenue Service**

**Department of the Treasury**

TEGE: EO Examinations  
24000 Avila Road MS 3000  
Laguna Niguel, CA 92677

Release Number: **201121027**

Release Date: 5/27/2011

Taxpayer Identification Number:

Date: August 16, 2010

Form:

501.05-00

Tax Year(s) Ended:

ORG  
ADDRESS

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 organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains 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.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

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

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter revoking your exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

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,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Form 6018  
Report of Examination  
Envelope

Form <b>886-A</b> (Rev. January 1994)	Department of the Treasury- Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Organization/Taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>	Year/Period ended <b>12/31/20XX &amp; 12/31/20XX</b>

**LEGEND**

ORG = Organization name      XX = Date      City = city      State = state      Phone =  
 phone      President = president      CPA = cpa      BM-1 - 1<sup>st</sup> BM      Vice President = vice  
 president      CO-1, CO-2 & CO-3 = 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> COMPANIES      FIELD-1 THROUGH FIELD 20 =  
 1<sup>st</sup> THROUGH 20<sup>th</sup> FIELD

**Issue:**

Whether ORG tax exempt status under Internal Revenue Code §501(c)(5) should be revoked.

**Facts:**

**Organizational Information**

According to the State Secretary of State's website, ORG (ORG) was incorporated on August 27, 19XX. ORG applied for exemption using Form 1023 on October 19, 19XX. The application was withdrawn and replaced by Form 1024. Its ruling date is January 19XX.

The organization's administrative file does not include the organizational documents, determination letter, or the Form 1024. The organization has not retained a copy of the organizational documents either.

An examination was conducted with President, President, and CPA, CPA, at CPA's office on August 27, 20XX. Based on the interview, ORG was organized for providing football officials for CO-1. It provides officials from City to City to City. During the year 20XX, the organization had 100-125 members. President said that every member is an independent contractor and no benefits are given. Every member receives a Form 1099. ORG does not allow non members to participate in the organization.

ORG was operated by BM-1 until his death in 20XX. President then took over the organization. During the year 20XX, ORG had two directors: President, President and his wife, Vice President, Vice President. President's duties include talking to the officials, scheduling, noting weather changes, and administration. President receives a Form 1099 from ORG. His 20XX Form 1099 reported \$\$\$. During post football season (January-March), the organization works on new rules and contracts for the league. Vice President works an average of two hours per week. Her duties include writing checks, organizing paperwork, and taking phone calls during President's absence. She did not receive pay.

**Operational Information**

**Activities**

ORG's primary activities are meetings and assigning football officials to football games. ORG has approximately 100-125 members, who pay membership dues of \$ per year. There are no different classes of membership. Members show up at meetings with certification from training received at a high school association- CO-2 (State Football Official Association). ORG advertises through word of mouth and in local newspapers. Meetings are held once a year at a hotel since the organization does not have its own facility. Meeting activity includes going over the pay scale, rules, handouts, and

Form <b>886-A</b> (Rev. January 1994)	Department of the Treasury- Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Organization/Taxpayer  ORG	Tax Identification Number  EIN	Year/Period ended  12/31/20XX & 12/31/20XX

verifying certification. ORG does not provide any newsletters or publications to its members. Members are informed of rule interpretations and game changes via e-mail. ORG does not work with any other organizations or employers.

ORG members complete a form and in exchange receive their game schedule to work as game officials. President distributes forms to the officials or they can pick them up at the meeting, complete it and return it back to him. Two forms are posted on ORG's website.

### Website

ORG's website have tabs labeled "Home", "Fields", "Maps", "Forms", and "Schedules".

An example of the homepage reads, "This is week 11 of the 20XX CO-3, Elimination Round, Saturday November 20, 20XX". A link directs the user to a weekly schedule page. The homepage instructs members to send dues of \$ to President, whose contact information is also listed.

The field tab did not provide any information but a single sentence, "Field links for routing available by September 1, 20XX". The bottom of the page reads, "ORG".

The maps tab provides 28 local area maps for ORG's 20XX field locations:

- 1) FIELD-1 Stadium (City)
- 2) City High School (City)
- 3) City High School (City)
- 4) FIELD-2 (City)
- 5) City High School (City)
- 6) City High School (City)
- 7) City High School (City)
- 8) FIELD-3 (City)
- 9) City High School (City)
- 10)FIELD-4 (City)
- 11)FIELD-5 (City)
- 12)FIELD-6 (City)
- 13)FIELD-7 (City)
- 14)FIELD-8 (City)
- 15)FIELD-20 (City)
- 16)FIELD-9 (City)
- 17)FIELD-10 (City)
- 18)FIELD-11 (City)
- 19)FIELD-12 (City)
- 20)City High School (City)
- 21)FIELD-13 (City)
- 22)FIELD-14 (City)
- 23)FIELD-15 (City)
- 24)FIELD-16 (City)
- 25)FIELD-17 (City)

Form <b>886-A</b> (Rev. January 1994)	Department of the Treasury- Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Organization/Taxpayer  ORG	Tax Identification Number  EIN	Year/Period ended  12/31/20XX & 12/31/20XX

- 26)ICity High School (City)
- 27)FIELD-18 (City)
- 28)FIELD-19 (City)

The forms tab provides two forms:

**Form #1**

The first form is an application for ORG membership. The application's directions state to complete the application and mail a due payment of \$ to President. Checks or money orders are made payable to ORG. The application asks the following information:

1. Name
2. Address
3. Contact information
4. Years of experience as a football official
5. Time available on Saturdays
6. Names of preferred crew members
7. Any restrictions or unavailability for dates specified from September 12, 20XX to November 7, 20XX.

**Form #2**

The second form is an Incident/Ejection Form. It is used by the officials during a game. The form asks for information such as date, team name(s), final score, name of player(s)/coach(es) ejected, reason for ejection, and incident description.

The schedules tab provides a game schedule for five games. The schedule provides information such as division, location, name of game time official, and three other officials. Bottom of schedule page reads "Home chapter must e-mail scores by 10am Sunday: website. \*Jersey conflict: Home team responsible for change of jersey color. Call PHONE to report late/absent officials on your field".

**CO-1 (CO-3)**

ORG works only with CO-3 in providing officials for their games. The league pays game fees to ORG, and % of the revenue goes towards the pay of game officials. Four officials are required per game. The football games are played at a high school or park as indicated on ORG's website under the "Maps" tab. Football season is September through December. Every official is issued a Form 1099 by ORG. President mentioned that everybody is an independent contractor and that no benefits are given.

**Minutes**

The minutes for 20XX to 20XX were provided. ORG's minutes show that the organization meets every June. The minutes are very brief, consisting of between two to four sentences and show that the topics of discussion only included the officials' pay and their independent contractor status. The minutes for 20XX, 20XX, and 20XX show that the officials were advised that they are independent contractors.

**Financials:**

Form <b>886-A</b> (Rev. January 1994)	Department of the Treasury- Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Organization/Taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>	Year/Period ended <b>12/31/20XX &amp; 12/31/20XX</b>

Form 990 for the year 20XX reports total income of \$. The income statement for the year 20XX reports game fee income of \$. ORG's game fee income constitutes 100% of total income for 20XX.

Form 990 for the year 20XX reports total expenses of \$. Form 990 for the year 20XX Part III *Statement of Program Service Accomplishments* reports its achievement as "To provide officials for football games". Its achievement expense is \$. The income statement for the year 20XX reports officials' fees expense of \$. ORG's officials' fees expense constitutes % of total expenses for 20XX.

	<u>Per Return</u>
<b><u>Income:</u></b>	
Program service revenues	
ORG	
Game fees	
Membership dues	
<b>Total Revenues</b>	
<b><u>Expenses:</u></b>	
Management and General	
Supplies	
Telephone	
Printing and publications	
Travel	
Conferences, conventions, meetings	
Advertising	
Bank service charge	
Education	
Insurance	
Internet expenses	
License and permits	
Miscellaneous	
Adjustment to misc exp	
Observer fee	
Professional fees	
Tax	
Training materials	
Program service expense	
Program service expense	
<b>Total Expenses:</b>	
<b>Net Income:</b>	

Form <b>886-A</b> (Rev. January 1994)	Department of the Treasury- Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Organization/Taxpayer <b>ORG</b>	Tax Identification Number <b>EIN</b>	Year/Period ended <b>12/31/20XX &amp; 12/31/20XX</b>

Form 990 for the year 20XX reports total income of \$. The income statement for the year 20XX reports game fee income of \$. ORG's game fee income constitutes % of total income for 20XX.

Form 990 for the year 20XX reports total expenses of \$. Form 990 for the year 20XX Part III *Statement of Program Service Accomplishments* reports its achievement as "To support youth sports through the education and provision of officials for football competition". Its achievement expense of \$. The income statement for the year 20XX reports officials' fees expense of \$. ORG's officials' fees expense constitutes % of total expenses for 20XX.

	<u>Per Return</u>
<b><u>Income:</u></b>	
Program service revenues	
ORG	
FL fame fee	
Reg game fee	
Missing official	
Playoff game fees	
Tax refund	
<b>Total Revenues</b>	_____
<b><u>Expenses:</u></b>	
Management and General	
Professional fees	
Accounting	
Legal fees	
Miscellaneous	
Bank services charges	
All other expenses	
Taxes	
Program service expense	
Compensation of current officers	
Assignor fee	
Contract officials	
Official fees	
Telephone	
Telephone	
Education	
Education	
<b>Total Expenses:</b>	_____
<b>Net Income:</b>	=====

Law

Form <b>886-A</b> (Rev. January 1994)	Department of the Treasury- Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Organization/Taxpayer  ORG	Tax Identification Number  EIN	Year/Period ended  12/31/20XX & 12/31/20XX

Section 501(c)(5) of the Code provides for the exemption from Federal income tax of labor, agricultural, and horticultural organizations organized and operated with the objectives of:

- (a) the betterment of the conditions of those engaged in such pursuits
- (b) the improvement of the grade of their products, and
- (c) the development of a higher degree of efficiency in their respective occupations.

Section 1.501(c)(5)-1 of the Income Tax Regulations provides that an organization have no net earnings inuring to the benefit of any member, and have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations. It is also provided that a labor organization is not directly or indirectly established or maintained in whole or in part by one or more employers, governments or agencies or instrumentalities thereof; or government controlled entities.

Revenue Ruling 78-288, 1978-2 CB 179, held that an organization whose members are engaged in harness racing in a specific geographic area as drivers, trainers, and horse owners, most of whom are independent contractors rather than employees. To be a labor organization under section 501(c)(5) of the Code, an organization must primarily serve the interests of labor. The term "labor" is commonly accepted as meaning the performance of service as employees. Accordingly, the Revenue Ruling did not find in favor of the organization. The organization does not qualify for exemption from Federal income tax as a labor organization under section 501(c)(5) of the Code.

**Effective date of revocation:**

An organization may ordinarily rely on a favorable determination letter received from the Internal Revenue Service. Treas. Reg. §1.501(a)-1(a)(2); Rev. Proc. 20XX-4, §14.01 (cross-referencing §13.01 et seq.), 20XX-1 C.B. 123. An organization may not rely on a favorable determination letter, however, if the organization omitted or misstated a material fact in its application or in supporting documents. In addition, an organization may not rely on a favorable determination if there is a material change, inconsistent with exemption, in the organization's character, purposes, or methods of operation after the determination letter is issued. Treas. Reg. § 601.201(n)(3)(ii); Rev. Proc. 90-27, §13.02, 19XX-1 C.B. 514.

The Commissioner may revoke a favorable determination letter for good cause. Treas. Reg. §1.501(a)-1(a)(2). Revocation of a determination letter may be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Treas. Reg. § 601.201(n)(6)(i), § 14.01; Rev. Proc. 20XX-4, § 14.01 (cross-referencing § 13.01 et seq.).

**Government's Position**

In order for an organization to retain its exempt status it must demonstrate to the Internal Revenue Service that it meets both the organizational and the operational tests. The facts stated above indicate that ORG failed the organizational and operational test.



Form <b>886-A</b> (Rev. January 1994)	Department of the Treasury- Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Organization/Taxpayer  ORG	Tax Identification Number  EIN	Year/Period ended  12/31/20XX & 12/31/20XX

A labor organization should be organized with a majority of employees. The term "labor" is commonly accepted as meaning the performance of service as employees. ORG is not organized in a manner that establishes that it serves the interest of employees. ORG's membership consists of independent contractors only. See Revenue Ruling 78-288.

A labor organization's activities should be directed to have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations. ORG does not operate in a manner that establishes that its primary purpose is to improve the working conditions of employees. ORG operates like an employment agency. Members pay a due and receive a work schedule in return. See section 501(c)(5) of the Code and section 1.501(c)(5)-1 of the Income Tax Regulations.

### **Taxpayer's Position**

Taxpayer's position is unknown at this time.

### **Conclusion**

Since ORG was not organized and operating exclusively for the exempt purpose under IRC section 501(c)(5), its Federal tax exempt status under such section should be revoked effective January 1, 20XX. ORG is liable for filing Form 1120 U.S. Corporation Income Tax Return for the tax year ended December 31, 20XX and all years thereafter.