



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE:GE EO Examinations
1100 Commerce Street
Dallas, Texas 75242

January 29, 2009

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ORG
ADDRESS

UIL: 501.03-00

Taxpayer Identification Number:

Form:

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.

Letter 3618 (04-2002)
Catalog Number 34809F

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,

Renee Wells
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer ORG		Years Ended June 30, 2006

LEGEND

ORG - Organization name XX - Date City - city State - state CO-1
through CO-5 - 1st through 5th COMPANIES

ISSUES

Issue 1

Whether the tax-exempt status of ORG under 501(c)(3) be revoked.

BRIEF EXPLANATION OF FACTS

ORG (hereafter "ORG") is a State non-profit corporation domiciled at City, State. ORG organized exclusively for charitable purposes within the meaning of IRC 501(c)(3). ORG was recognized as exempt from Federal income tax under IRC 501(a) as an organization described in IRC 501(c)(3) by the Internal Revenue Service in a letter dated January 3, 20XX. In that same letter, the Service also ruled ORG was reasonably expected to by a publicly supported organization described in IRC section 509(a)(2).

ORG in its application for exemption described its activities as the following. This organization intends to acquire from the CO-1, % of the interest in CO-2 a singer member limited liability company (disregarded for federal tax purposes), owned by the CO-1. The CO-1 is a recognized as exempt from Federal income tax under IRC 501(a) as an organization described in IRC 501(c)(3). CO-2 owns 236 acres of land in City, on which there haven been and will be constructed eight barns, two arenas, a 4-H building and a forestry building at an estimated construction cost of million. CO-2 will file a form 8832, to be disregarded for tax purposes, ORG is referred to herein as the owner of the facilities, although CO-2 will remain legal title.

ORG is organized primarily for charitable and educational purposes with respect to equestrian, cattle, sheep, hog, and general agricultural programs. Because the organizations to whom the facility will be available will themselves be exempt organizations. ORG is being formed as a non-profit section 509(a)(2) organization so as to reduce the amount of rent which would have to be charged to the exempt organizations using the facility. The purpose is to foster equestrian and agricultural interests and education in City, State.

The specific purposes are to house the following types of events: Equestrian events, Rodeos, Horse and cattle shows and sales, trade fairs, RV/Car/Truck shows, archery tournaments, science fairs, antique shows, tractor pulls, conventions of exempt agricultural and equestrian organizations, flea markets, craft shows, farm equipment demonstrations, gun shows, auctions, hog, sheep, dog, cat and bird shows, musical concerts. All shows will be open to the public.

Additionally when this project becomes fully operational, a school for at-risk youth in conjunction with the facility will function as a work therapy institution for students in connection with teaching tem responsibilities for the caring of large animals.

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Other Services will be livestock stall rentals including hay, shavings and clean out services, concessions, R/V hookup and parking, picnic grounds, holding pens and show office space rentals.

The service issued a tentative determination that ORG is not an organization described in 501(c)(3) of the IRC. In its letter dated August 23, 20XX the Service stated that more than an insubstantial portion of the utilization of the facilities of ORG will benefit organizations which are neither exempt under 501(c)(3) or government entities.

ORG in its reply in March 20XX indicated that % of the organizations which likely would utilize its facilities would not be described in section 501(c)(3). However in its reply dated September 20XX ORG provided virtually all of the organizations with whom CO-2 has contracted with are Section 501(c)(3) organizations or divisions of state, parish and local governments and of the United States. ORG provided less than .049% of the product of square footage and days of use of all buildings represents use by individuals or non-section 501(c)(3) organizations. In addition a gymnasium has been constructed for the local chapter of the CO-4 ("CO-4"), for the CO-3 offices and for the City parish Drug and Alcohol Rehabilitation Project (a division of City, State) ("DARE") which will be used by them on an essentially full time basis, which use is not included in Exhibit "A", so the actual percentage on non-501(c)(3) use is even less.

ORG further stated that over the long-term it will annually contract with organizations which are not Section 501(c)(3) organizations and which are not governmental units for less than (%) percent of the product of the total square footage of each building utilized and the days each building is used during the year.

ORG provided a schedule showing the rates per comparable building per day charged by ORG any other similar organizations. For each comparable facility, the charges by ORG will be less than those made by the other facilities, many of which are exempt organizations.

ORG indicated it will be involved in the planning or management of activities conducted by various organizations utilizing its facilities. Pursuant to paragraph 11.1 of the standard form contract with each organization the use of each organization of a facility is specified and the organization cannot vary that use. Furthermore when an organization applies to utilize a facility it must furnish information required by the enclosed form which sets forth the various agricultural or animal displays and the various events which will be produced.

Therefore, ORG believes that it is an organization described in section 501(c)(3) of the code either because it will be furnishing space to various public charities described in 501(c)(3) at rates substantially less than commercial rates charged by comparable facilities and thus is an organization similar to that described in RR 69-572 and because it will work closely with the various section 501(c)(3) organizations utilizing its facilities, it will qualify under RR 67-216.

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The Service relented its position by recognizing ORG as exempt from Federal income tax under IRC 501(a) as an organization described in IRC 501(c)(3) on January 3, 20XX.

On October 9, 200X, the Service's Office of EO Examinations informed ORG its Form 990 return had been selected for a case examination for the year ended June 30, 200X.

During the examination it was established the activities of ORG has been modified since it was granted exemption. ORG no longer contracts with directly with other organizations instead effective July 1, 200X it leases the facilities to the City Government. City signed a four year lease to purchase agreement and has exclusive rights to purchase the expo center for \$. City contracted with CO-5 to mangle the facilities and is responsible booking the events held at the facility and the daily management of the facilities.

CO-5 was founded in 19XX with the management of its first facility, the State Superdome. It now manages convention centers, exhibition halls and trade centers, arenas, stadiums, performing arts centers, theaters, and specific-use venues such as equestrian centers.

ORG reported gross receipts totaling \$ for the year ended June 30, 200X with \$ received from City Government for the lease of the . The other major source of receipts was from a insurance refund for the amount of \$. Thus during the year ended June 30, 200X the primary source of receipts for ORG related to the lease agreement with City.

In a letter received from ORG dated December 2, 200X the organization stated since ORG has been operated by CO-5 and City (since July 1, 200X), the ORG does not work closely with the various organizations that utilize the expo center. It was also provided the rates for events currently booked through CO-5 are normally at market rate and the tax status of the individual events is not known.

LAW

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations provides in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

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Section 1.501(c)(3)-1(d)(ii) of the regulations provides an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the promotion of education.

Better Business Bureau v. United States, 316 U.S. 279 (1945), holds the existence of a single non-exempt purpose, if substantial in nature, will destroy the exemption under section 501(c)(3). An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such purposes.

In Rev. Rul. 69-572, 1969-2 CB 119; The organization was created to construct and maintain a building to house member agencies of a community chest, thereby facilitating coordination among the agencies and making more efficient use of the available voluntary labor force. Membership in the organization is limited to the board of directors of the community chest. The agencies occupying the building are exempt from Federal income tax under section 501(c)(3) of the Code. Office space in the building is leased to member agencies at a rate that makes the organization's rental income approximately equal to its total annual operating costs without any allowance for depreciation. This results in a rental rate that is substantially less than commercial rates for comparable facilities. The organization has demonstrated its operations will materially aid its various tenants and other users of its facilities in the performance of their respective charitable functions. All tenants receive a direct financial benefit in the rental charges made are substantially less than the general commercial rate for comparable facilities.

Rev. Rul. 57-493, 1957-2 CB 314; A corporation organized to build a stadium and lease it to a school district, a political subdivision, which will eventually get title to such stadium, is not entitled to exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954. The corporation, however, is entitled to exemption from Federal income tax under the provisions of section 501(c)(4) of the Code as an organization not organized for profit but operated exclusively for the promotion of social welfare.

Rev. Rul. 67-216, 1967-2 CB 180; The organization's purpose is to instruct the residents of neighboring communities on agricultural matters by conducting annual public fairs and exhibitions. The principal activities and exhibits of the fair are educational. They are planned and managed by persons whose business it is to inform the public in general, and farmers in particular, about the resources of the region, and the methods by which they may be

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conserved, utilized, and improved. In addition, the overall activities of the fair are conducted in such a fashion and on such subjects as will enlighten the viewers and participants on the newest and best techniques of farming, and on other matters useful and beneficial to them and to the community. An organization whose purpose and reason for existence is to educate the public in useful and beneficial subjects does not fail to be operated to educate merely because some entertainment is provided to attract the public. This is true even though the recreational attractions and facilities provide an important source of operating revenue. Agricultural fairs have traditionally offered entertainment and recreational facilities to attract the public. In view of the above, this organization is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 77-3, 19XX-1 C.B. 140, describes an organization formed for the purposes of leasing housing to a city at cost and providing all necessary repairs, adequate winter heating, security guards, and other services normally associated with providing rental housing. The city uses the housing to accommodate families whose homes or apartments have been destroyed by fire and the housing is furnished on a temporary basis, pending relocation to permanent housing. The temporary housing is furnished to families by the city at no charge and without regard to their ability to pay. The revenue ruling concludes that although the providing of free temporary housing to distressed persons in need of adequate housing is a charitable activity, the organization is not exempt under section 501(c)(3) of the Code because the city rather than the organization that is providing free housing; the organization is merely leasing housing property and providing certain maintenance and other services in connection therewith to the city at cost in a manner similar to organizations operated for profit, and is not itself engaged in charitable activities.

TAXPAYER'S POSITION

Unknown at this time

GOVERNMENT'S POSITION

The government's position is that ORG does not qualify for exemption under section 501(c)(3) of the Internal Revenue Code, as it does not meet the operational test. The operational test outlined in section 1.501(c)(3)-1(c) of the Regulations states that an organization will not meet the operational test if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

In order to be deemed insubstantial according to the Regulations and court precedent (*Haswell v. United States*) an activity must be less than 15% of the organization's total operations. The Taxpayer's primary activity is leasing the facilities held by CO-2 to City, State. The Taxpayer's activities are similar to those described in Rev. Rul. 57-493, 1957-2 CB 314, where a corporation organized to build a stadium and lease it to a school district, a political subdivision, which will eventually get title to such stadium, is not entitled to

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exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code.

ORG activities meet the definition of social welfare under section 501(c)(4) of the Internal Revenue Code. Social welfare can also be considered a charitable activity under Treasury Regulation 1.501(c)(3)-1(d)(2).

After reviewing the facts and circumstances of this case -- it was determined that the social welfare activities undertaken by the ORG do not meet the definition of charitable as outlined by the Code and Regulations and as such these activities are not in furtherance of an exempt purpose under section 501(c) (3) of the Internal Revenue Code.

CONCLUSION

Based on the foregoing reasons, the organization does not qualify for exemption under section 501(c)(3) and its tax exempt status should be revoked as of the fiscal year ended June 30, 200X, The organization may reapply for exemption using a Form 1024, as a civic league under section 501(c)(4) of the Code.

Forms 1120, U.S. Corporation Income Tax Return should be obtained for the fiscal years June 30, 200X to the present unless exempt is obtained under section 501(c)(4) of the Code.

If this proposed revocation becomes final, appropriate State officials will be advised of the action in accordance with Internal Revenue Code Section 6104(c) and applicable regulations.

The organization may re-apply for tax exemption under 501(c)(3), as long as it can be determined their activities further their exempt purpose.