



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: *MAY 24 2017*

Release Number: **201750017**
Release Date: 12/15/2017
UIL Code: 501.03-00

Person to Contact:

Identification Number:

Contact Telephone Number:

Telephone:

Fax:

EIN:

CERTIFIED MAIL - Return Receipt Requested

Dear _____ :

This is a final determination that your exempt status under section 501(c)(3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective February 1, 20xx for the following reasons:

You have not demonstrated that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. Organizations described in I.R.C. section 501(c)(3) and exempt under section 501(a) must be organized and operated exclusively for an exempt purpose.

You have not established that you have operated exclusively for an exempt purpose.

As such, you failed to meet the requirements of I.R.C. section 501(c)(3) and Treasury Regulation Section 1.501(c)(3)-1 (a)(1) in that you failed to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3).

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code, effective February 1, 20xx.

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 31, 2015, and for all subsequent years.

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 91st 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. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit taxpayer.irs.gov or call 1-877-777-4778.

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

Enclosures:
Publication 892

Director, EO Examinations



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Exempt Organizations Examinations

Date:
December 21, 2016
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Manager's Name/ID Number:

Manager's Contact Number:

Response due date:

UIL: 501.03-00

Certified Mail – Return Receipt Requested

Dear

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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:

Internal Revenue Service

For additional information

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,

Acting Director, Exempt Organizations
Examinations

Enclosures:

Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer:		Year/Period Ended: January 31, 20xx

Issues:

Does _____ continue to qualify for exemption from Federal income tax under Internal Revenue Code (Code) section 501(c)(3)?

Facts:

History – _____ incorporated on March 21, 20xx in _____'s Articles of Incorporation (attachment 1), Third Article states _____ is organized to *provide monies for any educational needs for _____ students and families. All monies will be earned by group members working on a volunteer basis.*

_____ original Bylaws (attachment 2) provide no information regarding specific purposes or activities. The Bylaws are not dated but were included with exemption application.

_____ submitted Form 1023 (attachment 3), *Application for Recognition of Exemption Under Section 501(c)(3)*, to the Internal Revenue Service (IRS) on November 8, 19xx.

The narrative description in Part II, Activities and Operational Information, question 1, states in part *students and parents will work on a volunteer basis. Time logs are kept of the hours worked. This organization will receive money from the above described Service organizations based on the number of hours worked. This organization will help financially in all aspects of educational needs. Students may receive money for scholarships, educational supplies, equipment and educational travel.*

Question 2 asks about _____ support sources, _____ stated its support will be _____ % public donations.

Question 3 asks for a description of _____ fundraising program and provided _____ an attachment. The attachment provided four fundraising programs; _____ provided a short description of each program and all programs are to be conducted on a volunteer basis.

Part III, Technical Requirement, _____ indicates it will provide or administer scholarships benefits, student aid, etc. and completed Schedule H. Line 1a states the scholarships will be issued for educational purposes; it will be a gift, based largely on personal accomplishment, and overall needs. Recipients will be chosen by a committee, no one will be prohibited from applying, and one will be discriminated against. The scholarships will be administered through a written process and students will be required to submit proof of school term completion before the grant is sent to the college's financial aid office.

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Name of Taxpayer:		Year/Period Ended: January 31, 20xx

provided a subsequent letter (attachment 4) to the IRS to provide clarification and details of proposed activities. Item 3 states in part that a five member committee will select the recipients of the scholarships and none of the committee members will be in a position to derive private benefit directly or indirectly. Item 6 states in part that some grants will be made to children or other persons, however the individuals will follow the same criteria.

The IRS issued Letter 1045 (attachment 5), dated April 5, 20xx recognizing as an exempt organization under Code section 501(c)(3) and as a public charity under Code section 509(a)(2).

Current Examination – representative, , stated in a phone conversation that he would not permit Revenue Agent to conduct an interview with officers.

' current Bylaws (attachment 6), states in part, that it was formed to create an avenue to help fund the cost of educational activities and fee. Members working on a volunteer basis will earn all monies for . Monies will cover educational fees discussed in the Rules and Regulations of the group. Funds can be used for State certified, educational venues from kindergarten through college. funds are allocated based on a member's contribution to the group and a member must be active to make requests.

A flyer (attachment 7) soliciting membership into states a participant can join to volunteer with the group staffing concessions at . The flyer states the benefit for joining is active member can request payments for educational expenses and list 14 examples including college tuition.

organizes workers, usually parents of students, to staff concessions stands at arenas hosting professional sporting events in the area. provided two contracts related to the concession staffing, one contract is with (attachment 8) and the other with (attachment 9).

The , first page, Commission section 3 states will receive x% and y% in commissions based on alcohol and non-alcohol sales respectively. The commissions will be paid to on a weekly basis.

The contract, Contributions section 4 states will receive x% commission based on food and alcohol sales for working one type of concession stand.

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Name of Taxpayer:		Year/Period Ended: January 31, 20xx

will receive % commission based on beer sales for working beer portable concession stands. The contribution will be paid to within 45 days of the event.

did not provide the exact accounting method it uses to track the worker's participation and credit amount provided to the individual's account but did provide a brief description (attachment 10). tracks the number of hours worked and credits a corresponding dollar value and makes disbursement from the worker's account to pay directly or reimburses the worker for what considers educational expenses. The workers accumulate a credit by working the concession stands on behalf of and receive disbursements limited to the credit amount.

Profit & Loss Statement (attachment 11) for the period under examination shows paid a combined total of \$\$ to ; which represents % of revenue. The Profit & Loss Statement does not show any scholarship expense.

General Ledger (attachment 12), Money Out Section, for the period beginning 01/01/xx to 02/01/xx and the Money Out Section beginning 02/01/xx to 01/31/xx (attachment 13) show the disbursements. The notes provide a category, date, amount, and references the payee; the categories are similar to the categories described in the flyer.

The disbursements for the period under examination were tabulated (attachment 14) and total \$; which represents % of expenses. The General Ledger does not show any scholarship expenses.

Law:

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

Federal Tax Regulations:

Federal Tax Regulations (Regulations) section 1.501(c)(3)-1(a) states in part that in order to be exempt as an organization described in Code section 501(c)(3), the organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3).

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Regulations section 1.501(c)(3)-1(b)(4) states in part that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Regulations section 1.501(c)(3)-1(c)(1) provides that 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.

In **Capital Gymnastics Booster Club v. Commissioner**, T. C. Memo 2013-193, a booster organization operated similarly to . The booster club primary function was to conduct fundraising activities and provide a dollar credit via a point system to the participating members. The Court found the booster club provided a benefit and inurement to its members disqualifying the club from tax exemption under Code section 501(c)(3).

Taxpayer's Position:

has not provided a definitive position at the time this report was prepared.

Government's Position:

does not continue to qualify for exemption from Federal income tax under Code section 501(c)(3) because it failed to demonstrate that it is organized and operated exclusively for a charitable purpose and its net earnings inure to the benefit of its members.

Paying for educational activities and fees, depending on facts and circumstances, may be charitable. In this case it is not because did not demonstrate the recipients or benefactors were a charitable class.

did not prepare a concise statement to detail its processes to distribute support but the process can be sewn together from the partial and incremental information it provided.

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The Third Article does not provide any details as to how the money will be earned by group members working on a volunteer basis. The Article does not provide any detail as to what constitutes educational needs. The Article does not provide any detail of how or what students and or families will be selected for receive support.

The narrative in Part II of Form 1023 states students and parents will work on a volunteer basis, time logs will be kept of all the hours worked, and will receive compensation based on the number of hours worked. The narrative does not mention a credit amount to be provided to a worker for hours worked. The narrative states will help financially in all aspects of educational needs, students may receive money for scholarships, educational supplies, equipment, and educational travel. The narrative does provide details as to what constitutes educational needs, educational supplies, educational equipment, or educational travel. The narrative does not provide any detail of the recipient selection process and it does not mention that the benefits will only be provided to the workers or the worker's children.

did not provide any support to demonstrate that it issued scholarships in the method described on Schedule H. The assistance provided by is not available to all students as stated on Schedule H, its only available to those who work the concessions stands as stated in flyer.

The current Bylaws do not describe a charity purpose but rather describe activities similar to a staffing agency. The Bylaws state members work to earn monies for but the workers are considered volunteers. funds are allocated based on the member's time contribution to the group and the funds are ultimately provided to the workers. Distributions can only be made to active members, meaning only to individuals that worked the concession stands.

The credit earned by the workers is no different than compensation. The compensation is not provided directly to the worker, but instead circumvented and applied directly to a worker's expense. The end result is a financial benefit to the workers regardless of the method received. The arrangement is no different than the arrangements provided by staffing agencies to their clients. The staffing agency provides workers for a client, the client pays the staffing agency, and the staffing agency pays the worker.

The disbursements classified as reimbursements are not true reimbursements because the expenses were not incurred in the course of performing business for benefit. Regardless of the name given to the transaction or method of payment the individual received a financial gain from working the concession stands.

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The examination established that _____ does not receive any public donations. received _____ % of its revenue from non-charitable activities and disbursed at least _____ % of its expenses for non-charitable purposes.

Private benefit exists because _____ provides a financial benefit to its members only. did not provide any documentation to show any distributions other than to its members. However, even if documentation was provided to show a charitable distribution it would not erase the existence of private benefit to its members.

Conclusion:

_____ does not continue to qualify for exemption under Code section 501(c)(3) because it is not organized or operated for any charitable purpose(s) and its tax exempt recognition should be revoked effective on February 1, 20xx.