



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
1100 Commerce Street, MC 4920DAL  
Dallas, TX 75242

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

UIL: 501.03-00

Number: 202110022  
Release Date: 3/12/2021

Date:  
September 18, 2020  
Taxpayer ID Number:

Form:

Tax Period(s) Ending:

Person to Contact:

Identification Number:

Telephone Number:

Fax Number:

**CERTIFIED MAIL – Return Receipt Requested**  
**LAST DAY FOR FILING A PETITION WITH THE TAX COURT:**

Dear

This is a final determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501 (a) as an organization described in IRC Section 501(c)(3), effective January 1, 20XX. Your determination letter dated May 15, 20XX is revoked.

Our adverse determination as to your exempt status was made for the following reasons:

Organizations described in IRC Section 501(c)(3) and exempt under Section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of 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 IRC Section 501(c)(3) and Treasury Regulations Section 1.501(c)(3)-1(a), in that you have not established that you were organized and operated exclusively for exempt purposes and that no part of your earnings inured to the benefit of private shareholders or individuals.

Contributions to your organization are no longer deductible under IRC Section 170.

Organizations that are not exempt under IRC Section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information please visit [www.irs.gov](http://www.irs.gov).

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of IRC Section 7428 in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

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

U. S. Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20439

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

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under IRC Section 7428.

We'll notify the appropriate state officials (as permitted by law) of our determination that you aren't an organization described in IRC Section 501(c)(3).

You may be eligible for help from the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS 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 TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 1-877-777-4778.

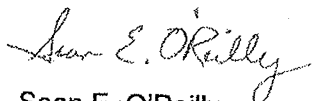
Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer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

You can get any of the forms or publications mentioned in this letter by calling 800-TAX-FORM (800-829-3676) or visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs).

If you have any questions you can contact the person listed at the top of this letter.

Enclosures:  
Publication 892

Sincerely,



Sean E. O'Reilly  
Director, Exempt Organizations Examinations



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

Date:  
January 7, 2020  
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

ID number:  
Telephone:  
Fax:

Manager's contact information:

ID number:  
Telephone:  
Response due date:

**CERTIFIED MAIL – Return Receipt Requested**

Dear :

**Why you're receiving this letter**

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

**If you agree**

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

**If you disagree**

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

**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 adverse determination letter.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS 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 TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

**Additional information**

You can get any of the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact the person shown at the top of this letter.

Sincerely,

*Peter Jensen*

for Maria Hooke

Director, Exempt Organizations Examinations

Enclosures:  
Form 886-A  
Form 6018

**EXPLANATIONS OF ITEMS**

Name of taxpayer

Tax Identification Number

Year/Period ended  
12/31/20XX

**ISSUES**

Whether (the Organization) qualifies for exemption from federal income tax under Internal Revenue Code (IRC) Section (Sec.) 501(c)(3).

**FACTS**

**Formation**

In June 20XX, the Organization was incorporated in the state of . Paragraph Two of Articles of Incorporation stated that:

*This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes for which this corporation is organized are to provide advocacy for the community, provide community leadership, represent a unified voice for the community, and support and organize community projects.*

**Application for Recognition of Exemption**

In December 20XX, the Organization submitted a Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Part II of Form 1023 provided the following activities and operational information of the Organization:

A. is a non-profit entity formed to provide the traditional and cultural activities to its community.

The activities include the special events such as,

1. New Year
2. Traditional dance of
3. Other events
  - a. beauty pageant
  - b. Singing contest and
  - c. Sport activities

B. The activities are initiated in a particular time and period, for example, the New Year is usually celebrated on and ended in the next three days.

C. For the past few years, New Year celebration was conducted at by the and supported by Police Department, Volunteers, and non-profits in the area.

**Exemption**

In May 20XX, the Organization received recognition of exemption under IRC Sec. 501(c)(3). The Organization was not a private foundation because it was an organization described in IRC Sec. 509(a)(2).

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended 12/31/20XX

**Financials Per Form 990**

Revenue:			
Contributions from Related Orgs			\$ 0
All Other Contributions, Gifts, Grants, & Similar Amounts			\$ 0
Total Revenue			<u>\$ 0</u>
Expenses:			
New Year/Cultural Celebration Expenses			\$ 0
Community Engagement Expenses			\$ 0
Total Expenses			<u>\$ 0</u>
Assets:			
Cash – non-interest-bearing		<u>BOY</u>	<u>EOY</u>
Total Assets		\$ 0	\$ 0
		<u>\$ 0</u>	<u>\$ 0</u>
Liabilities:			
		<u>\$ 0.00</u>	<u>\$ 0.00</u>

**Public Support Test**

The Public Support Percentage Computation provided on the Form 990, Sch. A, Part III, Section C appears to be incorrect, but it shows a Public Support Percentage for 20XX (line 15) of 0% and a Public Support Percentage for 20XX (line 16) of 0%. During the examination the Public Support Percentage was computed to be 0%, still below the 0.0% required.

**Examination**

In July 20XX, Examiner issued an initial contact letter, Information Document Request (IDR), and attachment to inform the Organization of the examination.

**Initial Meeting**

On August 26, 20XX, President and Secretary of the Organization provided the following information in the meeting:

**New Year Celebration ( )**

*The event is held annually at the end of \_\_\_\_\_ at \_\_\_\_\_. The event was staffed by volunteers and contracted cleanup crews as necessary. The event was held for one day; however, the Board of Directors (BOD) began planning the event at least 0 months from the event date. The event had different areas and stages. Each area/stage had different cultural performances and contests throughout the day. Additionally, various vendors and exhibitors had booths at the event. Vendors were divided into food vendors, merchandise vendors, and information booths. Each type of vendor was charged a different vendor fee to participate in the event. The event was open the public. The public could purchase pre-sale tickets (\$0) or tickets at the door (\$0). Each ticket allowed one entry for one vehicle. All tickets were the same price regardless of the number of people per vehicle. \$0 of each ticket sold was remitted to the city for parking fees.*

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended 12/31/20XX

**Ticket Sales on Consignment and Cash Receipts**

*Pre-sale tickets were sold on consignment by volunteers. Volunteers were distributed numbered tickets to sell. The ticket numbers distributed to each volunteer was recorded. Ticket sales receipts and unsold tickets were returned to the Organization. BOD members collected cash receipts and reconciled to their inventory tickets sold. Tickets could also be purchased at the door at the event. Volunteers sold the numbered tickets to event participants at the door. Volunteers selling tickets were always accompanied by a BOD member who was responsible for cash management.*

**Funding of the Organization and Event**

*The event was primarily funded through contributions and grants. The Organization applied for grants for funding from the Port of City of , and other organizations and individuals. Contributors may provide a cash donation or donations of bottled water, supplies, volunteer time, or other games and prizes. The event program had a sponsor section that highlights each sponsor for their contribution. No other benefits were provided to event sponsors or donors. The event was also funded by ticket sales, vendor fees, and advertisement income. The Organization provided participants with an event program. The program included advertisement space that was sold to local businesses.*

**Payments to Other Organizations or Individuals**

*Officers stated that the Organization did not issue payments as grants or scholarships, but the Organization issued about \$0 to ( ) as a sponsorship for their activities. provided a space of ads on their publication to the Organization in exchange for the sponsorship payment.*

**Sponsorship of the**

*The Organization was a fiscal sponsor of the (" "). As a fiscal sponsor, the Organization received donations from contributors to contribute to the . In 20XX, the Organization received a contribution from the Foundation, which was earmarked for donation to the . The fiscal sponsorship agreement was documented.*

**Activities Held by the Organization**

*The Organization did not host any other event or activities during the year. The Organization hosted the annual celebration at and no other events or activities were hosted.*

On August 26, 20XX, the Organization provided the following documents:

**Minutes**

*The organization provided Board of Director monthly meeting minutes from January 20XX through July 20XX. A review of the 20XX meeting minutes revealed the organization's discussions and*

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
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operations with respect to raising funds, soliciting event volunteers, soliciting vendor booths, securing the venue, coordinating the volunteer appreciation event, and coordinating the event. Furthermore, the minutes also illustrated the various grants and donations the organization provided to other local cultural non-profit organizations.

However, the monthly meeting minutes and associated emails provided revealed that only an insubstantial amount of the organization's operations and activities were related to the 501(c)(3) purposes under which it received its tax exemption. Instead, the monthly minutes and emails discussed the ticket sales, sponsorship revenues from booth space rental and advertising, other advertising sales, and further financial planning for the upcoming event. No significant information in the minutes and associated emails indicated much, if any, discussion regarding educational events or services or soliciting contributions from the public, which is consistent with the failure to meet the Public Support Test as discussed previously.

**Publications**

Furthermore, the organization provided the 20XX and 20XX event program booklet produced for each annual event. The program booklet included celebratory letters from local, state, and officials, a list of vendors and exhibitors, highlights of local community members, advertisements, honorable mentions of event sponsors, and honorable mentions of volunteers and committee members. In addition, the program booklet detailed the program schedule for each area/stage. A review of the program schedule revealed three different stages/areas including the Main Stage, a , and . Events held at the Main Stage consisted of various traditional dance performances by local arts academies, traditional and non-traditional live music performances by local arts academies, various cultural speakers, and a singing contest.

**Contracts and Agreements**

The organization also provided grant agreements for grants received in 20XX. Grant agreements with for detailed that funds granted were to be remitted to the . The organization also received unrestricted grants from the county and city.

**LAW**

**Internal Revenue Code (IRC)**

IRC Sec. 501(c)(3) exempts from income tax entities organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.



Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
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**Treasury Regulations (Treas. Reg.)**

§1.501(c)(3)-1(a) of the Federal Tax Regulations ("Regulations") states that in order to be exempt as an organization described in section 501(c)(3), an 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.

Regulations §1.501(c)(3)-1(c) states that 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 exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

**Court Cases**

In *Spanish American Cultural Association of Bergenfield v. Commissioner, T.C. Memo 1994-510*, the court agreed with the Respondent (Internal Revenue Service) that the organization failed to meet the operational test required under § 501(c)(3) of the Code. Although the organization engaged in essentially three types of activities, social, charitable, and educational, the court agreed with the Respondent that "the amount and extent of petitioner's social purpose and activities render its charitable and educational activities insubstantial by comparison." As such, the court determined that the organization did not qualify for tax exemption under § 501(c)(3) of the Code. However, the court also agreed with the Respondent that since the organization was created in order to foster the cultural heritage of Bergenfield, New Jersey's Spanish-American residents it was to be granted exemption under § 501(c)(4) of the Code. The organization engaged in activities designed to provide Bergenfield's Spanish-American residents with a sense of community. Furthermore, the purpose for which the corporation was organized was to preserve, present, and enhance the cultural heritage of Spanish-Americans and to provide for the unification of the community.

**GOVERNMENT'S POSITION**

It is the Government's position that the Organization did not qualify for exemption under IRC Sec. 501(c)(3).

Under Regulations Sec.1.501(c)(3)-1(c), 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 exempt purposes specified in IRC Sec. 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Under the ruling of *Spanish American Cultural Association of Bergenfield v. Commissioner*, the Court decided that an organization primarily engaged in social activities designed to preserve, present, and enhance cultural heritage and provide unification of a community is not operated exclusively for an IRC Sec. 501(c)(3) purpose.

Here, the \_\_\_\_\_, an annual one-day event, was the sole activity conducted by the Organization. the Organization's Officers expressed that the purpose of the \_\_\_\_\_ event is to bring people together to educate, promote and preserve \_\_\_\_\_ culture. The Organization's minutes, publications, and contracts entered with other organizations showed that the event's social activities are more than insubstantial in comparison to its charitable or educational activities, if any.

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Here, the Organization's Officers provided that the event's vendors were divided into food vendors, merchandise vendors, and information booths. Each type of vendor was charged a different vendor fee to participate in the event. The Officers claimed that fees were waived on some organizations in the information booths where some activities consisted of religious or educational characteristics. The Organization or Officers did not provide information or documents to show how much of fees was waived, what were these religious or educational activities, and how they were delivered to the event participants.

Here, the Organization's Officers stated that, in addition to the annual event, the Organization also subsidized activities of other exempt organizations to fulfill its exempt purpose. Source documents revealed that the disbursement was paid for an advertisement space on a publication of a student organization. No document showed whether the student organization was exempt under IRC Sec. 501(c)(3).

Therefore, the Organization was not considered as operated exclusively for one or more exempt purposes specified under IRC Sec. 501(c)(3).

### **TAXPAYER'S POSITION**

On October 23, 20XX, the Organization provided a written statement indicating that there are no additional records to provide to substantiate their qualification for exemption under IRC Sec. 501(c)(3).

The Organization is being solicited for its position at this time.

### **CONCLUSION**

The Organization does not qualify for exemption from federal income tax for it failed to substantiate that it is operated exclusively for one or more exempt purposes, resulting in its failure to comply with the requirements of IRC Sec. 501(c)(3) and Treas. Reg. Sec. 1.501(c)(3)-1(c).

It is the Government's position that the Organization failed to operate exclusively to accomplish one or more of such exempt purposes specified in IRC Sec. 501(c)(3). Because the Organization was not operated exclusively for the exempt purpose under IRC Sec. 501(c)(3), its Federal tax-exempt status under such section should be revoked effective January 1, 20XX. The Organization is liable for filing Form 1120, *U.S. Corporation Income Tax Return*, for the tax year ended December 31, 20XX and all years thereafter.