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200511020

Internal Revenue Service

Department of the Treasury

Date: August 30, 2004

Attn: _____

Person to Contact:

Badge Number:

Contact Telephone Number:

Contact Address:

Employer Identification Number:

CERTIFIED MAIL

Dear _____

This is a final revocation letter as to your exempt status under section 501(c) (3) of the Internal Revenue Code. Recognition of your exemption under Internal Revenue Code section 501(c) (3) is retroactively revoked to _____ for the following reason(s):

You have not been operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c) (3). You have not demonstrated that you primarily engage in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) as required by Treas. Reg. section 1.501(c)(3)-1(d).

Contributions to your organization are no longer deductible effective _____

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 Claims Court, or the district court of the United States for the District of Columbia before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment.

The last day for filing a petition for declaratory judgment is _____

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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 the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

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 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.

We will notify the appropriate State officials of this action, as required by section 6104(c) of the Internal Revenue Code.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,


Betty A. McClernan
Acting, Director, EO Examinations *BM*

Enclosures:
Publication 892



DEPARTMENT OF THE TREASURY
Internal Revenue Service
TEGE:EO EXAMINATIONS

COPY

Taxpayer Identification Number:

Form:
990

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear Sir or Madam:

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.

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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 _____ 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

EXPLANATION OF ITEMS

Schedule or Exhibit No.

A

Name of Taxpayer

Year/Period Ended

ISSUES:

Whether an organization has provided sufficient evidence to satisfy their exemption under section 501(c) (3) of the Internal Revenue Code.

Whether the receipts from the bingo and pull tabs inured to the benefit of the association members.

Whether any compensation was paid to the bingo workers.

FACTS:

The [redacted] was granted exemption on February [redacted] the organization provides and supports competitive sports travel and tournament baseball teams. Cost incurred for the baseball program includes help with baseball team fees, uniforms, hotels, and equipment costs. The organization also assists with other organizations, including proceeds to wrestling club and Fire Department donations.

The organization did not provide information to fully disclose the operations and finances of the bingo account and general fund. In addition we did not receive any records to fully disclose the activities of the organization. Our information was determined from the initial interview and review of some organization documents. Document request which were provided with the initial appointment letter and with the initial interview have not been fulfilled. We further asked the organization to delinquent file information return form 990.

We are not aware of the bingo operations or the internal control from the operations in its entirety. We received partial statements as to how the organization was managed. At the initial interview we learned there are usually ~~3-4 pull tabs and bingo games per night and 3-4 bingo card sellers. Bingo is operated on Mondays and Saturdays in~~ [redacted]. The organization maintained a separate account for the bingo operations and disbursed funds to their general account. The general account information was not provided at any time.

Our follow-up document request was to get complete books and records for the period under examination and tax returns for the period [redacted] and subsequent years. We also requested their information returns. No returns have been provided at this time.

Several calls were made to [redacted] treasurer and Secretary for the organization, regarding follow-up appointment or a request to have her provide information. All subsequent requests have been futile at this point.

LAW:

An organization that is exempt from federal income tax other than as an organization described in section 501(c)(3) may, if it desires, establish a fund, separate and apart from its other funds, exclusively for religious, charitable, scientific, literary, or educational purposes, fostering national or international amateur sports competition, or for the prevention of cruelty to children or animals.

Form 886-A

EXPLANATION OF ITEMS

Schedule or Exhibit No.

A

Name of Taxpayer

Year/Period Ended

If the fund is organized and operated exclusively for these purposes, it may qualify for exemption as an organization described in section 501(c) (3), and contributions made to it will be deductible as provided by section 170. A fund with these characteristics must be organized in such a manner as to prohibit the use of its funds upon dissolution, or otherwise, for the general purposes of the organization creating it.

Section 1.6033-2(i)(2) of the income tax regulations, states, in part as follows:

"Every organization which I exempt from tax, whether or not is it required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for ht purpose of inquiring into its exempt status...."

If the organization is exempt under IRC 501(c) (3), determine if the gaming activity serves a non-exempt purpose. If the organization's gaming activity serves a non-exempt purpose and the non-exempt purpose is substantial, the organization is not exempt. An organization that conducts a large pull-tab operation may be engaged in an unrelated trade or business; but, if it has a charitable program (such as making grants to other charities), the commercial or business aspects may be considered incidental to the organization's charitable purpose. See Reg. 1.501(c) (3)-1(c) (1), 1.501(c) (3)-1(e) (1).

The following cases provide examples of organizations that were denied exemption on the basis of substantial non-exempt purposes.

(a) In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), the Tax Court held that bingo games conducted by a scholarship fund in a commercial establishment serving food and drink were not operated exclusively for exempt purposes. The court stated that the fund raising activities were designed to enhance the profitability of the commercial establishment and agreed with the Service that the organization was not exempt under IRC 501(c) (3).

(b) In Make a Joyful Noise v. Commissioner, T.C.M. 1989-4, the court held that operating regularly scheduled bingo games on behalf of other exempt organizations was a trade or business unrelated to the organization's exempt purposes. In that case, an exempt organization that had been conducting bingo games lost its state permit due to a change in state law. The organization began to lease its premises to other organizations and participate in the operations of the bingo games, receiving a portion of the gross receipts. The court found that the organization did not prove that its participation in the games was an insubstantial part of its activities. Because the organization could not demonstrate that it conducted any charitable activities, other than unfulfilled charitable objectives, the court upheld the Service's revocation. See also Pius XII v. Commissioner, discussed *infra* at Text 22.10.4(5).

Determine the status of the recipients to determine the standard that applies to any excess benefits. Identify the recipients who are "disqualified persons" within the meaning of IRC 4948(f) (1) and "private shareholders or individuals" within the meaning of IRC 501(c) (3).

| | | |
|------------------|-----------------------------|------------------------------|
| Form 886-A | EXPLANATION OF ITEMS | Schedule or Exhibit No. A |
| Name of Taxpayer | Year/Period Ended | |

- a. IRC 4958, which imposes an excise tax on certain excess benefit transactions occurring on or after [redacted] was added to the Code to provide an "intermediate sanction" short of revocation for transactions resulting in inurement of earnings.
- b. Inurement of earnings to private shareholders or individuals is prohibited by IRC 501(c) (3) and can result in loss of exemption. However, for transactions occurring after [redacted], the excise tax of IRC 4958 should be imposed in lieu of revocation unless inurement is to such a degree that the organization no longer functions as an exempt organization.
- c. The term "private benefit" is used here to refer to excessive benefits provided to persons other than "private shareholders or individuals" within the meaning of IRC 501(c)(3) or "disqualified persons" as defined in IRC 4958(f)(1).

State Law "Bingo Tax Law and Regulations"

74-4706(b) Games of bingo managed, conducted, or operated by a licensee, shall be managed, conducted, or operated only by a bona fide member or spouse of a bona fide member of the licensee or parent organization, or an auxiliary unit or society of such unit.

74-4706(e) No person may receive any remuneration or profit for participating in the management, conduct or operation of any game of bingo managed, conducted, or operated by a licensee.

Conclusion:

During the examination of the organization we requested information to establish whether the organization met its 501(c) (3) purpose. Although the organization provided the incorporated documents and received exemption it has not established the conduct of the organization, actual activities operated, or financial records were proper.

Further, the maintenance of the financial records were held by [redacted] Treasurer/Secretary and spouse [redacted] President. Organization did not provide any information to indicate whether funds were used for the personal benefit of the husband and wife. No other officers were drawn in or involved.

Inasmuch as the organization has not provided the information necessary to conduct an examination for the year ended [redacted] we propose to revoke the organization's exempt status under section 501(c)(3) of the internal Revenue Code effective [redacted]. As a taxable entity, the organization will be required to file the appropriate federal income tax return.