

**Internal Revenue Service**

**Department of the Treasury**

**Release Number:** 200710012  
**Release Date:** 3/9/07  
**UIL:** 501.03-01

**Date:** June 1, 2005

**Org.**

**Attn:**

**Taxpayer Identification Number:**

N

**Form:**

990

**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.

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:

TAO

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  
Exempt Organization Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

June 12, 2006

UIL: 501.03-01

Org  
Employee 2

Person to Contact:  
Identification Number:  
Contact Telephone Number:  
In Reply Refer to: TE/GE Review Staff  
EIN: N

**LAST DATE FOR FILING A PETITION  
WITH THE TAX COURT: Date 2**

Dear

This is a Final Adverse Determination Letter as to the Org's  
exempt status under section 501(c) (3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

Org has not been operating exclusively for exempt  
purposes within the meaning of Internal Revenue Code section 501(c) (3). Org  
also is not a charitable organization within the meaning of Treasury Regulations section 1.501(c)  
(3)-1(d). You are not an organization which operates exclusively for one or more of the exempt  
purposes which would qualify it as an exempt organization. You operate substantially for a non-  
exempt purpose, for private benefit, and its earnings inure to the benefit of private individuals.  
Org completely dissolved as of January Date 3.

Based upon these reasons, we are retroactively revoking your IRC section 501(c) (3) tax exempt  
status to January Date 4.

Contributions to your organization are no longer deductible under section 170 of the Internal  
Revenue Code.

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 December Date 5, and for all years  
thereafter.

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 91<sup>st</sup> 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.

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 Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling \_\_\_\_\_, or writing to: Internal Revenue Service, Taxpayer Advocates Office, TAO.

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 determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax 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.

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

Sincerely yours,

Marsha Ramirez  
Director, EO Examinations

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		Year/Period Ended Date 1
Name of Taxpayer	Org. EIN N	

**ISSUE**

Should the exempt status of Org under section 501(a) of the Internal Revenue Code (IRC) as an organization described in IRC Section (§) 501(c)(3) be revoked effective January Date 9?

**FACTS:**

**Organizational and Operational tests:** Org was incorporated under the laws of the state of State as a nonprofit corporation on November Date 2.. In a determination letter issued August Date 3 and retroactive to its formation, it was granted exemption as a charitable organization within the meaning of §501(c)(3). In addition, in a letter dated January Date 4, Org. was determined not to be a private foundation because it was described in §509(a) (2). The original application for exemption was requested from the Records Division, but wasn't available on microfiche. On September Date 5, Org. was administratively dissolved as a State Nonprofit Corporation, by the state of State.

In its initial and subsequent license applications for bingos and raffles with the state of State, Org. stated that the specific purpose for which the bingo proceeds were to be devoted was to provide a place, where individuals who are or have been physically or mentally challenged, alcoholics, drug addicts, or the homeless and their families, to gather for the purpose of socialization, education, support and relaxation, and to help members in need.

Employee 1, former President and Games manager of Org. during the audit year, left an array of incomplete records as well as several questionable expenditures. During the same period of time that she was President and Games Manager of Org, Employee 1 was also president of a State non-profit corporation, that Date 5, was administratively dissolved as a corporation in State. This State non-profit was not recognized as tax-exempt under 501(a).

During her tenure as President and Games Manager of Org., a large number of expenditures were made to this State non-profit, for items such as "expenses, rent, donations, help with expenses, consulting, office supplies, computer/marketing, phone bills, etc." Payments were also made to three private entities for various amounts designated as rents for the benefit of this State non-profit, No payments were made to any of these organizations after Employee 1 left.

Employee 1 also approved numerous Org automatic bank debits many of which were for telephone bills and cell phone bills of an unknown origin. In addition, numerous checks were drawn to "Cash" which is prohibited under State Constitutional Amendment, Laws, Rules and Regulations Covering and Regulating Conduct of Bingo and Raffles Games Rule 21 (3)(h) and do not show an exempt purpose.

Numerous payments were made to or for the benefit of individuals, the first of which was , to a financial institution for the car payment of another individual, who at the time, was the games manager. Numerous checks were written to another individual for "Rents" during the first and second quarters of totaling During the second quarter, 2003, numerous checks were written to individuals or cash with no documentation of expenses.

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**LAW:**

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

Treas. Reg. § 1.501(c)(3)-1(a) provides that to be exempt as an organization described in IRC § 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.

Treas. Reg. 1.501(c)(3)-1(c)(1) provides 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 IRC § 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.

IRC § 6001, requires that every person liable for any tax imposed by the Code keep sufficient records to enable the proper determination of said tax and the filing of required returns.

Treas. Reg. § 1.6001(a), and in conjunction with § 6001-1(c) requires that every organization exempt under § 501(a) keep permanent books of account or records, including inventories, sufficiently detailed enough to show items of gross income, receipts and disbursements and any other information to substantiate amounts reported on any returns or taxes imposed under § 511 relating to unrelated business income, or on returns required under § 6033.

Treas. Reg. § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (§ 501 and the following), chapter 1 of the Code and § 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of its exempt status.

IRC § 6033(a)(1) provides, except as provided in section 6033(a)(2), that every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the

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secretary may from time to time prescribe.

Amounts paid to individuals for services provided for tax years and which under §6041(a) and § 6041A(a) require the submission of an information return reporting such amounts paid in the course of Orgs' trade or business. Said information returns were not provided as required.

Penalties are imposed for the failure to furnish a correct information return as required under IRC § 6041A(e); however because Org. has no assets and was liquidated January, it is recommended that penalties not be assessed.

**ANALYSIS:**

The original 1023, "Application for Recognition of Exemption Under § 501(c)(3) of the Internal Revenue Code", was unavailable for review. On the initial and subsequent Bingo License applications, Org. stated that the purpose for which the bingo proceeds were to be used was, "To provide a place, where individuals who are or have been physically or mentally challenged, alcoholics, drug addicts, or the homeless and their families, to gather for the purpose of socialization, education, support and relaxation, and to help members in need."

Charitable organizations may limit their services to individuals who are members of a "charitable class." This term includes persons who are aged, ill, handicapped, unemployed, or otherwise distressed, children and, of course, the poor, indigent, and underprivileged. A charity established to benefit a specific person cannot qualify for § 501(c)(3) status, even if that person is in need. To have a true "charitable class," the specific individuals who will benefit cannot be known or selected ahead of time.

The individuals who benefited from the Bingo funds may have been part of a charitable class, but with the private benefit/inurement evidenced by the disbursements to "cash" and individuals (many of whom were not members), and no other records, I was unable to establish any charitable purpose. Merely providing funds to pay member (and non-member) bills and rents is not a charitable purpose.

In addition, providing funds for a State non-profit's support [which is not exempt under § 509(a)] is not a charitable purpose.

The conduct of bingo games, pull-tab sales and raffles are legal in the state of State if conducted by a charity. Gaming is not a charitable activity; rather it is a means of raising funds to carry out the exempt activity. Evidence of an exempt purpose was not evident in any records observed. Org. is no longer in business, and no assets remain following a "liquidating bingo" required by the state of State.

When a § 501(c)(3) organization dissolves, it must have a provision for the distribution of assets to another organization with a similar § 501(c)(3) purpose. As specified in its Exhibit A attachment to their Articles of Incorporation of a State Nonprofit Corporation:

"Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of § 501(c)(3) of the Internal Revenue Code, or corresponding

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section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for public purposes..."

There was no evidence that any of these assets were disposed of properly. A call to Employee 2 indicated that the assets disappeared about the same time as Employee 2, former Games Manager and President. Employee 2, the subsequent former President and Games Manager, assumed both positions in Date 6 after the abrupt resignation of her predecessor, Employee 1, in Date 7.

It has been determined that Org. does not qualify for exemption as an organization described in IRC §501(c)(3) as it does not meet the operational test under IRC § 501(c)(3) and Treas. Reg. §501(c)(3)-1(a)(1) in that it is not operated exclusively for an IRC § 501(c)(3) purpose as required by Treas. Reg. § 501(c)(3)(c)(1). It is not operated exclusively for an IRC §501(c)(3) purpose as it serves the private interests of non-members and non-exempt organizations, rather than public purposes as required in Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

The organization had no employees at any time during their period of exemption. Only the founder who devoted her time to Org. until Employee 1 took over (also a volunteer) took any responsibility for recordkeeping. Because Org. is now completely disbanded and no assets remain, it is recommended that no penalties be asserted. Although she is no longer the president, Employee 2 has assumed the responsibility to file the returns for the last two bingo winners at the liquidating bingo in Date 8.

Org. is not in compliance with the record keeping requirements as required under § 6033(a)(1). Due to the circumstances concerning the departure of Employee 1, many records are simply not available. It is recommended that the exempt status of Org. be revoked effective Date 9 and that no penalties be imposed.