

Internal Revenue Service
Appeals Office
One Cleveland Center-Suite 815
1375 East Ninth Street
Cleveland, OH 44114-1739

Number: **200909072**
Release Date: 2/27/2009

Date: December 1, 2008

A

B

LEGEND:

A -

B -

C -

CERTIFIED MAIL

Dear :

This is a Final Adverse Determination as to your exempt status under section 501(c)(4) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

Your organization fails to meet the requirements for exemption under IRC section 501(c)(4). IRC section 501(c)(4), provides for the exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

As a result of a recent audit of your organization's activities and Forms 990, it was determined that your organization is operated primarily for social purposes, rather than for the promotion of social welfare.

Based on the above, we are revoking your organization's exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code effective January 1, 20 .

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel: *****

Fax: *****

Refer Reply to:

In Re:
EO Examination
Tax Period(s) Ended:
12/20 and 12/20

EIN:

C

UIC: 501.04-00

You are required to file converted Forms 1120, U.S. Corporation Income Tax Return, for any years which are still open under the statute of limitations beginning with the year ending December 31, 2005 and ending with the year ending December 31, 2007. You should file any returns due for these years with the Internal Revenue Service TEGE: EO: 1100 Commerce St. MC 4920 DAL: Mandatory Review, Dallas, TX 75242-1027 by March 31, 2009. Forms 1120 for tax periods beginning on and after January 1, 2008, should be filed with the Cincinnati Service Center, Cincinnati, OH, 45999-0012.

You 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 call the Taxpayer Advocate for the IRS office that issued this letter. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"* for Taxpayer Advocate telephone numbers and addresses.

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.

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

Sincerely yours,

Douglas H. Schulman
Commissioner
By



Charles F. Fisher
Appeals Team Manager

Enclosure:
Notice 1214 Helpful Contacts for your "Notice of Deficiency"

Internal Revenue Service

Department of the Treasury
Internal Revenue Service
230 S Dearborn, 17th Floor, MC 4923 CHI
Chicago, IL 60604

Date: **DEC 01 2008**

ORG
ADDRESS

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 organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains 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.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter revoking your exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

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,

Marsha A. Ramirez.
Director, EO Examinations.

Enclosures:
Publication 892
Publication 3498
Form 6018
Report of Examination
Envelope

Letter 3610 (Rev. 11-2003)
Catalog Number: 34801V

Form 886A Revised Report	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit Form 990
Name of Taxpayer ORG		Year/Period Ended 20XX12 20XX12

LEGEND

ORG = Organization name XX = Date City = city XYZ = State Country =
country CO-1, CO-2, CO-3, CO-4, CO-5 & Co-6 = 1st, 2nd, 3rd, 4th, 5th & 6th
Companies.

ISSUE

1. Whether the tax exempt status of ORG (ORG) recognized under Internal Revenue Code 501(c)(4) should be revoked?

BRIEF EXPLANATION OF FACTS

Organization Features

The subject organization is recognized as a 501(c)(4) tax-exempt organization. They received individual exemption on January 06, 20XX. According to its constitution, the primary purpose of the organization is to raise funds to help members within CO-1 and to donate to charitable organizations chosen by the members. Article 2 of the constitution described the objectives as;

Section 4: "...but extend to all types of economic, social, including but not limited to activities of fraternal, charitable, welfare and of social nature which further the interest of this organization, chapters and members directly or indirectly...."

Section 5: "...to unite as brothers and sisters and ride motorcycle for the enjoyment of the ride and to be family oriented association, and watch each others back..."

Section 6: "...to help brothers and sisters who are on the strike line by riding in and joining them....."

The organization is located in City, XYZ and has chartered chapters across Country and Country. Currently, they have over 11 chapters.

Application for Recognition of Tax-Exempt Status

The organization filed Form 1023 with the Internal Revenue Service under penalties of perjury to apply for recognition of tax-exempt status under Internal Revenue Code 501(c)(3) section on May 27, 20XX. The application described the objective as

"...to raise funds to help our brother and sister members within the CO-1 and to donate to charitable organizations especially children's organization. It shall further be an object of this organization to receive, manage, invest, expend, or otherwise use the funds and property of this organization to carry out the duties of the president and to achieve the objectives set forth in the bylaws for such additional purposes and objects not inconsistent therewith as will further the interest of the organization, chapters and its members directly or indirectly. It shall also be the objective of this organization to unite as brothers and sisters and ride motorcycles for the enjoyment of the ride and to be a family oriented association. It shall also be the objective of

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this organization to help our brothers and sisters who are on the strike line by riding in and joining them....."

The organization's sources of financial support were listed as " Dues, Initiation Fees, Investment income including gains/loss from sales of investments (if any), sales of patches/Logos/Vests indicating club affiliation, Per Capita tax and fines.

Question 5 of the Form 1023 asked if the organization is controlled by any other organization. The answer was "Yes". The organization stated that CO-2 (CO-3) will control various local chapters when/if established.

Question 11 of Form 1023 asked if the organization is a membership organization. The answer was "YES" The explanation provided in part, that "the organization shall be composed of members and associate members of individual chapters which have been chartered by CO-3"

The following correspondences occurred between the IRS determination office and CO-2 during the application process:

August 09, 20XX: Request to amend organizing documents for proper purpose clause, dissolution clause and description of activities.

August 25, 20XX. Taxpayer responded to the August 09 letter, provided requested information, and amended the organizing documents. Taxpayer described the activities as primarily benefiting needy families. Important extracts from the letter include:

- 1) "The only criteria needed in order for the CO-2 to provide assistance is to show a need for help. The numerous families we assist each year could range from 1-5 or more if the participant demonstrates that he/she needs our help"
- 2) "CO-4, City, XYZ, in 20XX and 20XX, we sponsored a pledge run for the children of CO-4 donating all proceeds to the hospital. In 20XX, we had a member who was stricken with Multiple Sclerosis, we sponsored a run and donated all proceeds to the CO-5. Both of these activities are annual events"
- 3) "...We gather pledge donation from members and the public, we hold raffles on the day of the event, the purpose of this function is to help the children of CO-4 and to help them with the construction of a new wing of the hospital, we also ride a bike show at the hospital, the children of the hospital participates as judges in the bike show giving out trophies to the participants of the run, the purpose of this is to get the children involved with the people who are providing assistance for them..."
- 4) "The CO-6: we gather donations from members and the public, we hold raffles on the day of the event, the purpose of this function is to help the CO-5 defeat Multiple Sclerosis, to create awareness of Multiple Sclerosis and to assist its local chapter in City, XYZ with program (such as the aquatic program) to help there members cope with multiple sclerosis."

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- 5) "The dues for members are \$ per month, the dues are used to help run the fundraisers, organize new CO-2 chapters in other states, to stock vest and patches for new members, and to make donations to charitable organizations".

October 04, 20XX.

Agent from Internal Revenue Service determination office sent a letter to inform the organization that the activities are not exclusively charitable, educational or religious but are promoting community welfare. The agent suggested that the organization request exemption under IRC 501(c)(4) with a signed letter from the officer and other information regarding activities to substantiate recognition under IRC 501(c)(4).

November 07, 20XX.

Taxpayer responded on this date with the additional information and request to be exempted under IRC 501(c)(4).

January 06, 20XX.

Letter 948 (Exemption Letter) was issued to CO-2 as an organization recognized under IRC 501(c)(4). The organization received an individual organization exemption, not a group ruling.

Activities

ORG (ORG) is an association of motorcycle riders who conducts motorcycle runs for member's pleasure and for charitable purposes. The association is open to all ORG, who ride any brand of bike, and who are interested in joining the group. ORG in City is referred to as "CO-3" and represents the main/parent organization. CO-3 chartered other ORG chapters (over 11 chapters) all over Country including one chapter in Country.

There are two types of motorcycle runs as described below and extracted from the constitution:

- 1) "Runs will be for raising moneys for charities that the chapter has chosen to raise money for. Each chapter will have at least one party or event per year to raise moneys for their charitable organization. All chapters shall make attempt to attend other chapters events to raise moneys for their charitable organization"
- 2) "Other runs will be to unite as CO-2 brothers and sisters and ride for the enjoyment of the ride". "There shall be one designated mandatory run. CO-3 or chapter may call additional mandatory runs if need be. All members on mandatory runs will dress uniformly for such runs. Any member missing a mandatory run will be charged...".

Basically, this organization operates motorcycle runs to unite as ORG brothers and sisters, ride for the enjoyment/pleasure of members and raise money for selected charitable organizations.

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Some of the runs conducted in 20XX include "Defeat M.S Ugly Pledge Run - \$ each, CO-4, Multiple Sclerosis Run and CO-6.

Payment for the runs includes Breakfast, Lunch, Music, 50/50, raffles, door prizes and other social activities for members.

There are no educational or training activities involved in the runs or in any of the events described above.

Membership

As noted above, "membership is open to all ORG who ride any brand of Bike who are interested in joining". The preferred type of bike is Harley Davidson, but not required.

The extracts below described the membership structure as reported in the constitution of the organization:

The organization is composed of "members and associate members of the chapters which have been chartered by CO-3 and which are within the geographical jurisdiction of CO-3, which includes the Country and Country....".

In order to be an associate member " you must be an immediate family, wife, husband, son daughter, girlfriend or significant other and be sponsored by a member in good standing"

Furthermore, each new chapter member is required to sign a pledge agreement obligating her to pay a national initiation fee and annual fees directly to the founding chapter (CO-2).

"...members are required to attend four (4) runs or meetings per year or be put on the inactive member status which makes the member relive the three (3 to 6) month probation period...."
"All members are required to attend four (4) meetings or runs per year or be suspended from membership...."

All new members are put on probationary status until other members vote on their status to convert to full members.

Members are required to wear vest, patches (logos) that distinguish them from other ORG. The logos are sold by CO-3 to all members of CO-3 and members of the other chapters. The logos cannot be purchased elsewhere.

"All chapters will have a 2 patch back logo, a 1-patch front chapter number logo, a 1 patch front association logo with your state, a 1 patch front flag on left chest, with the option of CO-3"

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"Any motorcycle jackets, vests, denim, Levi jackets, T-shirt or any other type of materials with the CO-2 Logo affix to it shall be bought only through CO-3..."

All new chapters and new members are required to pay initiation fee before starting a new chapter.

"Any chapter or member becoming three (3) months in arrears will be revoked and their Logo wearing rights shall be revoked....."

Reporting:

Form 990 return filed for the year ended did not include financial activities of the chapters. Information document request was issued to taxpayer to provided financial documents relating to the chapters on 04/20/XX. Taxpayer's response regarding the information is as follows, "...Article 15 of the by-laws clearly states the chapter's responsibilities for maintaining their own books and records and filling their own Form 990 as applicable. Therefore, this organization is unaware of each chapter's EIN, location and financial activities. That information is not part of our records"

Chapters Affiliations:

ORG created chapters all over Country and Country. and gave authority to the various chapters to operate using their name as the parent organization. The chapters purchase all logos and membership dues from ORG (CO-2) as stipulated in the constitution.

The review of exempt's status of these chapters disclosed that the chapters are not exempt organization and do not have separate EIN number and did not file a separate Form 990 return.

Although, in the process of the audit, the president confirmed that the chapters have their separate EIN number and are required to file their own separate 990 return. I requested for the EIN numbers and financial information for these chapters, they were never provided.

Extracts from the constitution regarding this arrangement of chartered chapters include:

"In order to be chartered, each officer of the Charter must be a member and remain a member in good standing of CO-3"

"All chapters will apply for their own (FEIN) Federal Employer Identification Number from the IRS, you need to fill out SS4 form, call in for number, then fax form in within 24 hours to be used to open their bank accounts....."

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"All chapters will be responsible for filing their own 990 tax forms, where applicable"

The chapters operating under ORG's IRC 501(c)(4) exemption are listed below:

- | | | |
|-------------|-----------|-------------|
| 1) Chapter | City, XYZ | Parent |
| 2) Chapter | City | Subordinate |
| 3) Chapter | City | Subordinate |
| 4) Chapter | City | Subordinate |
| 5) Chapter | City, XYZ | Subordinate |
| 6) Chapter | City | Subordinate |
| 7) Chapter | City, XYZ | Subordinate |
| 8) Chapter | City, XYZ | Subordinate |
| 9) Chapter | City, XYZ | Subordinate |
| 10) Chapter | City, XYZ | Subordinate |
| 11) Chapter | City | Subordinate |
| 12) Chapter | City, XYZ | Subordinate |
| 13) Chapter | City, XYZ | Subordinate |

LAW

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterments and social welfare.

Reg. 1.501(c)(4)-1(a)(2)(ii) states that social and recreational activities are not social welfare activities. However, even if a substantial part of an organization's activities consists of social functions for the benefit, pleasure, and recreation of its members, it may qualify for exemption under IRC 501(c)(4) if it is primarily engaged in social welfare activities.

IRC section 501(c)(4)(B), applicable to all section 501(c)(4) organizations, requires that no net earnings inure to the benefit of any private shareholder or individual with respect to such organization.

Regulation 1.501(c)(4)-1 - Social activities for the benefit, pleasure, or recreation of members do not promote accomplishment of social welfare purposes and thus are not qualifying social welfare activities. However, such social activities do not preclude exemption under IRC section 501(c)(4) so long as those social activities, along with any other activities that do not promote social welfare purposes, are not the primary activities of the organization.

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In Rev. Rul. 75-286, 1975-2 C.B. 210, the residents of a city block formed an organization to preserve and beautify that block, to improve all public facilities within the block and to prevent physical deterioration of the block. Much of the public area improved by the organization is part of the public roadway lying between the sidewalk and the street in front of private property owned by members of the organization. This revenue ruling concluded that since the organization's activities promote social welfare because they beautify and preserve public property, although they are limited to a particular block, the community as a whole benefits. Thus, the organization qualifies for exemption under section 501(c)(4) of the Code.

Compare Rev. Rul. 78-69, 1978-1 C.B. 156, which holds that an organization providing rush hour commuter bus service to all residents of a community qualifies for exemption under section 501(c)(4), with Rev. Rul. 55-311, 1955-1 C.B. 72, which holds that a local association of employees operating a bus primarily for the convenience of its members does not so qualify.

Regulation §601.201.(n)(3) Rulings and determination letters

(3) Effect of exemption rulings or determination letters

(i) A ruling or determination letter recognizing exemption is usually effective as of the date of formation of an organization, if its purposes and activities during the period prior to the date of the ruling or determination letter were consistent with the requirements for exemption.

(ii) A ruling or determination letter recognizing exemption may not be relied upon if there is a material change inconsistent with exemption in the character, the purpose, or the method of operation of the organization.

Regulation §601.201. (n)(6)(1) Rulings and determination letters

(6) Revocation or modification of rulings or determination letters on exemption

An exemption ruling or determination letter may be revoked or modified by a ruling or determination letter addressed to the organization, or by a revenue ruling or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph. In any event, revocation or modification will ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked or modified.

Section 1.6033-1(h)(2) of the regulations provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return

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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 (section 501 and the following), chapter 1 of the Code and section 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and 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 provisions 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 exempt status.

In accordance with the above cited provisions of the Code and regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

GOVERNMENT'S POSITION

Section 501(c)(4) of the Code provides for exemption of organizations not organized for profit but operated exclusively for the promotion of social welfare. An organization may be exempt under section 501(c)(4) of the Code only if it is not organized or operated for profit, and if it is operated exclusively for the promotion of social welfare. Operating exclusively means that a larger percentage of activities and expenses must be towards promotion of social welfare and not towards membership pleasure or enjoyment.

Basically, in order to be recognized under IRC 501(c)(4), the primary activity must be the promotion of social welfare and civic betterment in the community. The benefit from such organization must accrue to the community as a whole, not the membership.

In determining the extent of the social welfare, we reviewed the primary activities and the financial records of CO-2.

ORG is a membership organization and the review of activities indicated that the organization's primary activity is to enjoy the art of riding motorcycle with members. This is evident from the way the membership is structured, such as wearing the same uniform, patches, logos e.t.c. to identify members and also the mandatory requirement to attend runs during a designated functions or event. Members are expected to dress certain way and require mandatory participation in motorcycle runs.

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The membership is restricted to motorcycle riders only, within and outside of Country. Collection of national membership fees is enforced by the power of the executive council, and they can withdraw national membership privileges from delinquent members.

The 20XX Form 990EZ return as filed by ORG reported \$ in revenue and \$ in expenses. The revenue consisted of \$ from contributions and \$ from membership dues and membership program activities. Out of the total expenses reported, only \$ was spent on grants and donations to support social welfare. Thus, the organization spent 16% on social welfare activities and spent over 77% on membership activities while the remaining 7% was spent on general expenses.

The 20XX Form 990EZ had \$ in revenue and \$ in expenses. Revenue consisted of \$ from contributions and \$ from membership dues and membership program activities. \$ was spent on grants and donations promoting social welfare, which amounted to 19% of total expenses. Over 70% was spent on membership activities while the remaining 11% was spent on general administrative expenses.

ORG provides some social welfare programs to the community by making donations to hospitals, scholarship fund, individual's e.t.c. The amount was reported as grants and donations in the books. Overall, amount spent as contributions and donations was less than 20% of total expenses.

The flow of expenses indicated that this organization spend more on member welfare than social welfare of the community. Analysis of program and financial activities disclosed that membership social activities outweigh social welfare benefit to the community.

To be a social welfare organization, the organization must be primarily engaged in promoting in some way the common good and general welfare of the community. In this case, ORG do promotes good and welfare of the community, but that is not the primary activity. In as much as the organization's social welfare program is not its primary activity, the organization is not exempt from Federal income tax under section 501(c)(4) of the Code.

A social welfare organization will jeopardize its exemption under Code section 501(c)(4) if it ceases to operate primarily to further social welfare purposes. Substantial social activities, and operating for the benefit of private individuals (members) are activities present in ORG that do not further social welfare purposes.

In addition, taxpayer failed to provide financial information regarding chapters that operate within the same exemption provided to the EO. Section 6033 provided that failure to provide accurate and required information return 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 exempt status.

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Individual exemption issued to an organization is meant for that organization for which it was issued. Unless the organization applied and received a group exemption, they cannot apply the individual exemption to other organizations not included in the exemption letter. Such organization cannot operate in a manner similar to a group ruling, unless they were issued a group ruling and the subordinate's name were included on the ruling. The claim that "the chapters" chartered by the EO are exempt organization is false and misleading the general public. If ORG is not operating in accordance to the individual exemption received, this may jeopardize exempt status.

Since your services and programs are benefiting your members (private group of individuals) rather than the community and the income from the public is inuring to the benefit of your members because it is used for the maintenance and improvement of social activities, you do not meet the requirements of section 501(c)(4) of the Internal Revenue Code.

CONCLUSION

Based on all the facts and circumstances, you have not established that you operate primarily for the purpose of bringing about civic betterments and social improvements as required by section 1.501(c)(4)-1(a)(2)(i) of the regulations. In addition, you are not operating in accordance with individual exemption received, and failed to provide accurate information return regarding activities/operation of organizations that claim to be your "chapters".

Thus, you are not primarily engaged in promoting the common good and general welfare of the people of the community as required by section 1.501(c)(4)-1(a)(2)(i). Consequently, you do not qualify for recognition of exemption under section 501(a) of the Code.

Revocation of exemption is hereby proposed, effective from January 01, 20XX. You are required to file Federal income tax returns on Form 1120 for 20XX and going forward.

TAXPAYER'S POSITION

Taxpayer's position regarding the revised report is unknown.