



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201050033**
Release Date: 12/17/2010

Date: 9/22/2010

UIL Codes: 501.03-30, 501.32-00, 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: June 24, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

Gym =

UIL Codes

501.03-30
501.32.00
501.33-00

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code (the "Code"). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Facts

You were incorporated in as a non-stock corporation under state law. Your Articles of Incorporation state that your purposes are:

[T]o financially support the gymnasts in the competitive program of [Gym]. The association will also financially support the coaches and the gym. Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Your Bylaws state that to accomplish your purpose, "each family must fulfill their financial requirements and work their assigned number of hours at each fundraiser." Fundraising activities are held throughout the year, on almost a quarterly basis. Non-compliance results in a fee charge of \$

Your Bylaws further provide that membership is open to "those persons who are parents or

guardians of gymnasts who are members of the competitive teams and pre-teams at Gym" (the "members" or "member-parents"). The children of two of your directors participate in Gym and receive financial assistance from you to the extent they participate in fundraising activities. In your application for exemption, you indicate that Gym is a for-profit organization. According to your Bylaws, the owner of Gym (the "owner") takes part in all meetings and "has a say" in your decision making. You are required to inform the owner of all pending major decisions, and the owner may be invited to submit input.

You use the funds you receive to cover gymnastics meet entry fees, coaches' fees, USA Gymnastics ("USAG") fees, coaches' meals, lodging and travel expenses, and your operating costs. The remainder of the fees you charge are pooled into "block fees," which are payable in installments throughout the year. Costs for leotards, warm-up suits and bags are separate from block fees and charged to the gymnasts as necessary. The amount of the leotard, warm-up suit or bags will be added to the member's installment obligation at the time of purchase and the member may raise those amounts, along with their normal block fees, through participation in your fundraising programs.

Your Bylaws state that most of the gymnastics meets are held within 75 miles of Gym. The Gym competitive program runs year-round, although the actual competition season begins in early November and runs through May. The competition season ends with the State Competition, where the gymnasts compete against gymnasts throughout the state at their age level and ability.

If a gymnast's family does not raise enough funds through the various fundraising activities to cover the costs of its portion of the block fees, the family must pay the difference in cash or not participate in the Gym competitive program. If payment is not received promptly, the gymnast is not allowed to compete at the following meet. You are entitled to any surplus funds on a gymnast's block fee account if the gymnast leaves the competitive program before the end of the competition season. Any surplus funds are used at your members' discretion.

You also use a portion of the funds you receive to purchase and replace equipment that is on loan to Gym for the gymnasts' use.

Law

Section 501(c)(3) of the Code describes a corporation organized and operated exclusively for charitable, educational, and other 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), provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

Section 501(j)(1)(A) of the Code provides that in the case of a qualified amateur sports organization the requirement of section 501(c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply.

Section 501(j)(1)(B) of the Code further provides that a qualified amateur sports organization will not fail to meet the requirements of section 501(c)(3) merely because its membership is local or regional in nature.

Section 501(j)(2) of the Code defines a qualified amateur sports organization as any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports. Typical qualified amateur sports organization activities include promulgating official rules and standards of play, chartering and supervising teams, providing coaching, equipment and facilities, organizing inter-team competition, and promotion and advertising of a sport.

Section 1.501(a)-1(c) of the Income Tax Regulations ("regulations") defines "private shareholder or individual" as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the regulations states that to be described in section 501(c)(3) of the Code, 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.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iii) of the regulations states that an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to carry on, as more than an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations states that no organization will be considered to be organized exclusively for one or more exempt purposes if, under its articles of organization, its purposes are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be regarded as exempt if more than an insubstantial part of its activities further a non-exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1) of the regulations provides that an organization may be recognized as exempt under section 501(c)(3) of the Code if it is operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirements of this subsection, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. It also includes the promotion of social welfare by relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations includes in the definition of educational activities the instruction or training of the individual for the purpose of improving or developing his capabilities and the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 65-2, 1965-1 C.B. 227, describes an organization that is organized and operated exclusively for the purpose of teaching a particular sport to the children of a community by providing free instruction, free equipment, and facilities. The foundation was formed to provide educational and character building programs for the children of the community. Its activities consist of conducting clinics for student players at playgrounds and at parks, coaching clinics for instructors of the student players, providing free instruction in schools, playgrounds, and parks and furnishing free equipment to those children who are unable to afford such equipment, stimulates interest in its program through the use of film and other instructional devices. Its program and facilities are available to any child in the community who desires to participate, and is physically able, and has reached the qualifying age level.

The ruling concludes that the organization's activities of instructing individuals to develop their capabilities are educational. Further, its furnishing of free instruction, equipment, and facilities to children of the community is accomplishing the charitable purpose of combating juvenile delinquency. Accordingly, the organization qualified for exemption under section 501(c)(3) of the Code.

Rev. Rul. 69-175, 1969-1 C.B. 149, states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children the organization is enabling the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization

serves a private rather than a public interest. Accordingly, it was not exempt from federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 80-215, 1980-2 C.B. 174, describes an organization that is organized and operated to develop, promote, and regulate a sport for junior players, and to promote sportsmanlike competition for junior players in a particular state. The organization is comprised of affiliated individual associations, clubs, leagues, and teams. Each club may be comprised of any number of teams. The organization organizes local and state-wide competition for individuals under 18 years of age; promulgates rules; organizes officials; and presents seminars for players, coaches, and referees. The organization provides a framework for protests, appeals, and procedures. It also distributes a newsletter, and otherwise encourages the growth of the sport throughout the state. This ruling holds that the organization's activities combat juvenile delinquency and promote the education of children. Therefore, the organization qualified for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. C.I.R., T.C. Memo. 1986-348, the Tax Court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The Court found that the family coma victim was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family of the economic burden of providing medical and rehabilitation care for their family member and therefore, constituted inurement to the benefit of private individuals.

Analysis

Organizational Test

Section 1.501(c)(3)-1(b)(1)(iii) of the regulations states that an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to carry on, as more than an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes. Article III of your Articles of Incorporation specifically states that you are organized to support gymnastic coaches and for-profit Gym. Neither supporting the coaches nor Gym are charitable purposes within the meaning of section 501(c)(3) of the Code. While supporting the gymnasts in Gym's competitive program may qualify as a charitable activity under section 501(j), the organizational language expressly authorizing the support of the coaches and for-profit Gym violates section 1.501(c)(3)-1(b)(1)(iii) of the regulations. Therefore, you fail the organizational test.

Operational Test

Tax-Exempt Purpose

An amateur athletic organization may qualify for section 501(c)(3) exemption under four different rationales. First, an amateur athletic organization may be classified as "educational" under section 501(c)(3) of the Code on the grounds that it teaches sports to youth or is affiliated with an exempt educational organization. See Rev. Rul. 65-2, Rev. Rul. 80-215, *supra*. Second, an amateur athletic organization may be classified as "charitable" under section 501(c)(3) on the grounds that it combats juvenile delinquency. See Rev. Rul. 80-215, *supra*. Third, an organization may be exempt on the grounds that it is designed "to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)" as provided in section 501(c)(3) of the Code. Fourth, an organization may be a qualified amateur sports organization described in section 501(j), which supports and develops amateur athletes for national or international competition in sports.

You are not operated exclusively for educational purposes or to combat juvenile delinquency like the organizations in Rev. Rul. 65-2 and Rev. Rul. 80-215. While some of your fundraising activities are open to the community and involve a combined effort of the parents and your athletes, you do not provide free gymnastics instruction to the children in your community, nor do you offer financial assistance to individuals in the community at large or based on financial need; only families with children participating in the competitive gymnastics program at Gym, a for-profit organization, are eligible to receive proceeds from you.

Your activities focus primarily on raising funds to offset the costs of participating in Gym. These fundraising activities do not relate to an athletic activity, and they do not fall within the scope of "fostering national or international amateur sports competition" as defined in section 501(c)(3) of the Code.

Section 501(j)(1)(A) of the Code provides that in the case of a qualified amateur sports organization the requirement of subsection 501(c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply. Section 501(j)(1)(B) of the Code further provides that such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature. Section 501(j)(2) of the Code defines a qualified amateur sports organization as any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports.

While many of your activities are consistent with supporting a qualified amateur sports organization under section 501(j), you do not qualify as a 501(j) organization because the class of gymnasts you support is not limited to those eligible to compete in the sport. You have not shown that you are devoted to developing or improving the performance of a small group of outstanding athletes. Your bylaws provide that membership is open to parents of gymnasts who are members of the competitive teams and pre-teams at Gym. Pre-competitive team gymnasts are not eligible to compete under USGA rules, the sanctioning body for your sport.

Therefore, because you do not operate for an exempt purpose under either section 501(c)(3) or 501(j) of the Code, you fail the operational test under section 1.501(c)(3)-1(d)(1) of the regulations.

Private Benefit

Organizations seeking exemption under sections 501(c)(3) and 501(j) of the Code must otherwise be described in those sections to qualify for recognition of exemption. Specifically, such organizations are subject to the prohibitions regarding operating for private rather than public purposes contained in section 1.501(c)(3)-1(d)(1)(ii) of the regulations, which provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

To meet the requirements of section 1.501(c)(3)-1(d)(1)(ii), an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The private benefits conferred on your parent-members are not incidental, they are intentional. If a gymnast's family does not raise enough funds through your various fundraising activities to cover the costs of their portion of the block fees, the family must pay the difference in cash or not participate in Gym's competitive program. Therefore, your parent-members controlling the organization expect and receive direct benefits. Your primary activities are similar to the organization described in Rev. Rul. 69-175, where a group of parents pooled resources to provide bus transportation for their own school children to and from the school their children attended. The organization was found to serve a private rather than a public interest and was not exempt under section 501(c)(3). See also Wendy L. Parker Rehabilitation Foundation, Inc., supra; and Better Business Bureau of Washington D.C., Inc., supra.

In addition to the private benefit conferred to your member-parents through your fundraising activities, the equipment you own and loan to Gym for no charge results in more than incidental private benefit to the gym and its owner, because the for-profit gym gets the benefit of the use of the equipment for free. Purchasing such equipment for use by a non-exempt entity is not an exempt purpose.

Private Inurement

Organizations seeking exemption under sections 501(c)(3) and 501(j) of the Code are also subject to the inurement provision contained in section 1.501(c)(3)-1(c)(2) of the regulations, which states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals (often referred to as "insiders"). The inurement proscription applies to persons who because of their particular relationship with an organization have an opportunity to control or influence its activities. Your parent-members are insiders because they are in a position to have control over

your activities through participation in and influence over the board of directors and your activities.

Your primary purpose is raising funds to offset the costs of participation in the competitive program of Gym, a for-profit organization, for children of your member-parents. Members are credited with funds raised based upon participation in fundraising events. If members do not raise sufficient funds through fundraising activities, the parents pay the balance of the fees required for their child to participate in Gym's competitive program. You state that you do not provide financial or any other assistance to gymnasts outside of the Gym's competitive program.

Because of the direct financial benefits that your member-parents receive, your activities violate the prohibition against inurement, thereby preventing you from qualifying for exemption as an organization described in section 501(c)(3) of the Code. The requirement that each parent-member participate in your fundraising activities in direct proportion to the benefits they expect to receive causes a direct benefit to flow to these member-parents. Consequently, your earnings are being used to pay for benefits to specific individuals rather than to a charitable class, which allows your earnings to inure to the benefit of specific insiders, namely the parents of Gym's participants.

In addition, the owner of Gym sits on your board of directors and is also considered an insider. You have purchased equipment that is used for no charge by Gym, a commercial business. This transfer of your financial resources to the owners of Gym is in violation of the inurement proscription and is also sufficient to defeat exemption under section 501(c)(3) of the Code.

Conclusion

We have concluded that you are not organized and operated exclusively for charitable purposes under section 501(c)(3) of the Code, or to further any other tax-exempt purpose described in section 1.501(c)(3)-1(d) of the regulations. Your activities violate the prohibition against private benefit under section 1.501(c)(3)-1(d)(1)(ii) of the regulations and the prohibition against inurement contained in section 1.501(c)(3)-1(c)(2) of the regulations. Therefore, we cannot recognize you as an exempt organization under section 501(c)(3) of the Code.

Accordingly, contributions to you are not deductible under section 170 of the Code, and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements