

**Internal Revenue Service**  
Appeals Office  
1000 South Pine Island Road  
Suite 350  
Plantation, FL 33324

Release Number: **201135036**  
Release Date: 9/2/2011  
Date: June 7, 2011

A

B

**Department of the Treasury**

**Person to Contact:**

Employee ID Number:

Tel:

Fax:

**Refer Reply to:**

**In Re:**

**EIN: C**

**UIL: 501.00-00**

**Form Required to be Filed:**

**Tax Period Ended:**

**Certified Mail**

Dear

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under IRC Section 501(c)(3) effective January 1, 2007.

When evaluating whether or not an organization meets the operational test of IRC §501(c)(3) we consider whether the organization engages primarily in activities that accomplish charitable purposes and whether more than an insubstantial part of its activities further non-charitable purposes. You have failed to establish you are operated exclusively for exempt purposes as defined in IRC §501(c)(3), because your activities serve mainly the private interests of toy manufacturers and as such they are in furtherance of non-exempt purposes. Although your activities may have an indirect benefit to the general public, there is substantial private benefit to toy manufacturers. Therefore, our adverse determination was made because we have determined you are not operated exclusively for exempt purposes described in section 501(c)(3).

You may qualify for exemption under §501(c)(6), although such determination was outside the scope of this Appeal. If you wish to pursue such you can file Form 1024, Application for Recognition of Exemption Under Section 501(a), to apply for such exemption.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. You should file these returns within 30 days from the date of this letter, unless a request for an extension of time is granted. File the returns in accordance with their instructions, and do not send them to this office. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

We will notify the appropriate State officials of this action, as required by Code section 6104(c). 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, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Charles Fisher  
Appeals Team Manager

cc:



DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
10 MetroTech Center; 625 Fulton Street  
Brooklyn, NY 11201  
TEGE:EO: 7909---5th Floor

**June 10, 2010**

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 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.

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer <b>ORG</b>		Year/Period Ended <b>12/31/20XX</b>

LEGEND

ORG = Organization name      XX = Date      Country = country

ISSUES

Whether the Internal Revenue Code (IRC) 501(c)(3) tax-exempt status of ORG (Foundation) should be revoked?

FACTS

The organization is recognized as a section 501(c)(3) tax-exempt organization. The Foundation's purposes as stated in its certificate of incorporation include the following:

(a) 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 IRC.

(b) The corporation is formed for charitable purposes within the meaning of section 501(c)(3) of the IRC with the power and purpose to receive and maintain a fund or funds of real or personal property, or both, and subject to the restrictions and limitations hereinafter set forth to use and apply the whole or part of the income there from and the principal thereof exclusively for international study, compilation, and distribution of information to members of the public, publications, and individuals and groups interested in safe and humane international manufacture and use of children's products.

The bylaws inspected contained the objectives and purposes of the entity which included implementing standards for humane and ethical working conditions including those set forth in ORG Process; safe and humane manufacture of products, the welfare and betterment of factory workers and elimination of child labor. The Foundation is overseen by a governance board. The mission of the ORG Governance Board is to provide leadership, oversight and to support funding of the ORG Process, ensuring that the operations are effective, credible and transparent to all stakeholders. The ORG Process was established to promote ORG's ethical manufacturing program, as set forth in the ORG Code of Business Practices (ORG COBP). The process is supported by the ORG

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The PROGRAM Process is the ORG' (ORG) program to promote manufacturing, in the form of fair labor treatment, as well as employee health and safety, in the toy industry supply chain, worldwide. Its initial focus is in Country, where of the world's toy volume is manufactured. Its intent is to provide a single, fair, thorough and consistent program to monitor toy factories' compliance with ORG's Code of Business Practices (the "Code").

The ORG was established to ensure that the Process is conducted in an open and correct manner. The heart of the ORG process consists of monitoring how well the factories abide by a set of rules governing working conditions. In addition to the monitoring the Foundation will focus on training and education programs aimed at factory managers, workers and auditors. Its governance board sets policy, raises funds, approves budgets, evaluates and decides on Technical Advisory Board recommendations, provides guidance and reports publicly. The board includes both industry and non-industry representatives. The Technical Advisory Boards provide advice and recommendations on all matters requiring technical expertise, including adjudication of disputes related to application of the Process.

The following material was gathered from the Foundation's website which describes the activities of the Foundation regarding the PROGRAM monitoring process:

*Audit Companies*

*Factories*

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<b>Name of Taxpayer</b> ORG		<b>Year/Period Ended</b> <b>12/31/20XX</b>

The process also involves the issuance of the following:

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 12/31/20XX

## LAW

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for charitable purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term “educational,” as used in section 501(c)(3) of the Code as relating to the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 71-504, 1971-2 CB 231 holds that a city medical society, exempt under section 501(c)(6) of the Code, that primarily directs its activities to the promotion of the common business purposes of its members may not be reclassified as an educational or charitable organization under section 501(c)(3).

Since the society in the above ruling has substantial noncharitable and noneducational purposes and activities, it is not a charitable organization. Accordingly, it was held that this association could not be reclassified as an organization exempt from Federal income tax under section 501(c)(3) of the Code.

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Revenue Ruling 73-567, 1973-2 CB 178 holds that a medical specialty board that devises and administers written examinations to physicians in a particular medical specialty and issues certificates to successful candidates is exempt from tax as a business league under section 501(c)(6) of the Code, but is not exempt under section 501(c)(3).

The ruling states, "By examining and certifying physicians under the circumstances described, the board promotes high professional standards. Although some public benefit may be derived from promoting high professional standards in a particular medical specialty, the activities of the board are directed primarily to serving the interest of the medical profession. Under these circumstances, the board is not organized and operated exclusively for charitable purposes. On the other hand, since the activities of the board consist of certifying physicians who are thereafter authorized to hold themselves out to the public as specialists, its purpose is to promote the common business interest of the physicians.

Revenue Ruling 74-553, 1974-2 CB 168 holds that a nonprofit organization formed by members of a State medical association to operate peer review boards for the primary purpose of establishing and maintaining standards for quality, quantity and reasonableness of costs of medical services qualifies for exemption from tax under section 501(c)(6) of the Code but not under section 501(c)(3).

The ruling states, "The organization's principal activity is directed to establishing and maintaining standards for the quality and costs of medial services. Although this activity may result in a measurable public benefit, its primary objective is to maintain the professional standards, prestige, and independence of the organized medical profession and thereby furthers the common business interest of the organization's members."

### TAXPAYER'S POSITION

Taxpayer believes that the activities of the entity meet the requirements of those described under 501(c)(3) for educational and charitable purposes.



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### GOVERNMENT'S POSITION

Based upon the audit findings, the primary activity of the Foundation is to promote and oversee the operation of the "Process" along with the related foreign entity. The Foundation establishes and maintains standards which may result in an indirect public benefit. However, there is private benefit of those in the toy industry being served from such activities. As such, the Foundation is not described as an entity exempt under IRC section 501(c)(3). Accordingly, the information collected during the examination, suggest that the activities target toy manufacturers and not the general public. The Foundation does not actually disseminate information to the general public. A 501(c)(3) organization must be operated for exclusively charitable and educational purposes which serve the public interest rather than the private interest of an industry.

However, your organization may be eligible for exemption under Internal Revenue Code 501(c)(6). Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual. In order to determine your qualifications under section 501(c)(6) of the Code, an application Form 1024, Exemption Application, must be filed with the Internal Revenue Service.

### CONCLUSION

The Foundation is not operated exclusively for charitable, educational or other purposes that are within the meaning of IRC 501(c)(3). The Foundation is operated to further the common business interest of the organization's members. The Foundation's exempt status should be revoked effective January 1, 20XX. Form 1120 returns should be filed for the tax periods ending on or after December 31, 20XX.