



**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examination

1100 Commerce Street

Dallas, Texas 75242

501.03-00

Date: February 13, 2013

Number: **201322045**

Release Date: 5/31/2013

LEGEND

ORG - Organization name

XX - Date Address - address

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

(Phone)

(Fax)

ORG

ADDRESS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter dated March 19, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reasons:

ORG does not operate exclusively for charitable purposes as noted in section 1.501(c)(3)-1(c)(1) of the regulations. This section provides 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 section 501(c)(3). ORG failed to meet the operational test described in Treasury Regulation Section 1.501(c)(3)-1(c)(1).

ORG primary activity is providing recreational facilities and social congregation of members and their guests. Specifically, you have not shown you are operated for one or more purposes described in 501(c)(3) of the Code but a substantial part of your funds and activities serve the private interest of your members rather than a charitable purpose. Additionally, you have not demonstrated that no part of your net earnings inures to the benefit of private shareholders or individuals.

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. Those returns should be filed with the appropriate Service Center.

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, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the court at the following addresses:

You also 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 you have to file a petition in a United States court. The Taxpayer Advocate can, however see a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

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 in regards to this matter please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
10 Causeway Street Room 581
Boston, MA 02222

Department of the Treasury

Date: July 12, 2012

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:

ORG
ADDRESS

Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

Certified Mail – Return Receipt Requested

Dear :

We propose to revoke our recognition of your exempt status as an organization described in section 501(c)(3) of the Internal Revenue Code (the Code). We enclose our report of examination explaining why we are proposing this action.

If you accept our proposal, please sign and return the enclosed Form 6018, *Consent to Proposed Action – Section 7428*. We will issue a final revocation letter determining you are not an organization described in section 501(c)(3). After the issuance of the final revocation letter, we will publish an announcement that you have been deleted from the cumulative list of organization contributions to which are deductible under section 170 of the Code. If you do not respond to this proposal, we will similarly issue a final revocation letter. Failing to respond to this proposal may adversely impact your legal standing to seek a declaratory judgment because you may be deemed to have failed to exhaust administrative remedies.

If you do not agree with our proposed revocation and wish to protest our proposed revocation to the Appeals Office of the Internal Revenue Service, then 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. This written request is called a protest. For your protest to be valid it needs to contain certain specific information which generally includes a statement of the facts, the applicable law, and arguments in support of your position. For the specific information needed for a valid protest, please refer to page 6 of the enclosed Publication 3498, *The Examination Process*, and page 1 of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you do submit a valid protest, then 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. Please note that the Fast Track Mediation Services referred to in Publication 3498, generally do not apply after issuance of this letter.

You may also request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting Technical Advice. If we issue a determination letter to you based on a Technical Advice Memorandum issued by the EO Rulings and Agreements function, then no further administrative appeal will be available to you within the IRS on the matter.

If you receive a final revocation letter, you will be required to file Federal income tax returns for the tax period(s) shown above as well as for subsequent years.

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,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination
Form 6018

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

LEGEND

ORG - Organization name

XX - Date

EIN - ein

City - city

Country - country

ISSUE:

Should the tax exempt status of the ORG be revoked because it is not operated exclusively for educational and charitable purposes under Section 501(c)(3) of the 1986 Internal Revenue Code?

FACTS:

Original Incorporation: The ORG, (the ORG) filed Articles of Organization on August 14, 19XX, with the Secretary's Office of Corporations and Taxation in the City. ORG's purpose was: "the promotion of good citizenship and good government in the community, state and nation; the discussion of historical, literary and educational subjects, including Country history, literature and culture; the promotion of sociability and good fellowship among the members and their guests; the encouragement of musical, recreational and athletic activities; the establishment and maintenance of a suitable place for reading rooms, libraries, recreational facilities and social congregation of members and their guests; and to do all that is necessary and incidental to the carrying out of these purposes." The IRS granted ORG exemption from federal income tax in June 19XX as a social and recreational club [Section 501(c)(7) of the Internal Revenue Code (the "Code")].

Articles of Amendment: On March 28, 20XX, ORG filed Articles of Amendment with the Secretary of the City that changed the purpose and other lawful provisions of the corporation. The amended purpose was: "...charitable, educational and cultural. Specifically, the organization's purposes are the preservation and teaching of City culture, history, and literature; promotion of good citizenship and good government in the community, state and nation; the encouragement of musical, recreational and amateur athleticism amongst youth and the community; providing scholarships and to do all things necessary and incidental to the carrying out of these purposes." The amended other lawful provisions state: "this corporation is organized and operated exclusively for education and charitable purposes within the meaning of Section 501(c)(3) of the Code...the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code."

Application for Charitable Status: The IRS received Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, from ORG on October 15, 20XX. ORG's cover letter stated: "this organization has amended

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its Articles of Incorporation to reformulate as a charitable and educational organization in addition to its cultural mission. The organization was originally incorporated in 19XX, and has existed as a community and cultural club."

On Form 1023, ORG answered no to Part VII question 1: "are you a successor to another organization?" The instructions state that "you are a successor if you have substantially taken over all of the assets or activities or another organization; been converted or merged from another organization or; installed the same officers, directors, or trustees as another organization that no longer exists and that had purposes similar to your purposes". In Part IX, Financial Data, ORG completed the schedule for the current tax year, 20XX, and the 2 succeeding tax years, 20XX and 20XX. The Part IX instructions state: "for purposes of this schedule, years in existence refer to completed tax years. If in existence 4 or more years, complete the schedule for the most recent 4 tax years. If in existence less than 1 year, provide projections of your likely revenues and expenses for the current year and the 2 following years."

The Form 1023 instructions for Part IV, Narrative Description of Your Activities, state: "using an attachment, describe completely and in detail your past, present, and planned activities." ORG's attachment listed the following activities:

Weekly Bingo	Proceeds to pay operating cost and student scholarships
Facility Rental	For private events of members and the public
Education Program	Promote City History and Culture with other community-based organizations
Partnerships	Town of "No Room for Hate" and school cultural programs
Monthly Entertainment	Raise money for scholarships from music, dance, heritage days and golf tournaments
Liquor Sales	Licensed liquor sales establishment with bar service at events

On March 19, 20XX, the IRS granted ORG federal tax exemption as a public charity promoting education, with an effective date of October 12, 20XX. [Sections 501(c)(3) and 509(a)(2) of the Code].

Activities: ORG's principal activities have continued to be providing facilities and services for the pleasure and recreation of its members and their guests. ORG operates a function hall and bar and maintains a rental house and parking lot on the property. ORG allows nonmembers to rent the function hall for private events and ORG provides the bar staff, set-up, and clean-up services.

Law:

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An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503. [Section §501(a) of the Code].

The following organizations are exempt from Federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational 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), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. [Section §501(c)(3) of the Code].

In order to be exempt as an organization 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. [Treas. Reg. §1.501(c)(3)-1(a)(1)].

An organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes. [Treas. Reg. §1.501(c)(3)-1(b)(1)].

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 Section § 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. [Treas. Regs. §1.501(c)(3)-1(c)(1)].

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. The words "private shareholder or individual" refer to persons having a personal and private interest in the activities of the organization. [Treas. Reg. § 1.501(c)(3)-1(c)(2)].

An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the

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following purposes: (a) religious, (b) charitable, (c) scientific, (d) testing for public safety, (e) literary, (f) educational, or (g) prevention of cruelty to children or animals. [Treas. Reg. § 1.501(c)(3)-1(d)(1)(i)]

An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to 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. [Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii)].

The term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the promotion of education.
[Treas. Reg. § 1.501(c)(3)-1(d)(2)].

The term educational, as used in Section 501(c)(3) of the Code relates to:(a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community. [Treas. Reg. §1.501(c)(3)-1(d)(3)(i)].

Taxpayer's Position:

ORG agrees with the proposed revocation of its tax-exempt status as described in section 501(c)(3) of the Code.

Government's Position:

ORG's primary activity, as stated in its original Articles of Incorporation is for "the establishment and maintenance of a suitable place for reading rooms, libraries, recreational facilities and social congregation of members and their guests". ORG allows public use of their facilities for private events. Members of the public may rent the facility and purchase liquor and other beverages from the bar. ORG uses the income derived from the private events, as with other income, to operate and maintain the facility. Treas. Reg. § 1.501(c)(3)-1(c)(2) prohibits the earnings from rental income to inure to the benefit of ORG's members by maintaining their facilities. The rental income also benefits the private interests of the members and not a public interest which is prohibited by Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

ORG does not conduct any of the planned educational activities, programs and partnerships that were included in Part IV of its Form 1023 application. Treas. Reg. § 1.501(c)(3)-1(d)(2) and Treas. Reg. §1.501(c)(3)-1(d)(3)(i) require that a charitable

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organization's educational function is the promotion of education and the instruction of the public on subjects useful to the individual and beneficial to the community. ORG is not exempt because it is not organized and operated exclusively for educational purposes as required in Treas. Reg. § 1.501(c)(3)-1(d)(1)(i).

Based on the above facts and law cited, it is the Government's position that ORG does not operate exclusively for the educational purposes described in its application for charitable status. ORG has failed to meet the operational test required under section 501(c)(3) of the Code and applicable regulations and is not exempt from federal income tax for all years beginning on or after January 1, 20XX.

Conclusion:

The ORG no longer meets the requirements to qualify as exempt from federal income tax under IRC section 501(a) as described in section 501(c)(3). Therefore, its exempt status under 501(c)(3) of the Internal Revenue Code will be revoked effective January 1, 20XX.

As a taxable entity, ORG is required to file Form 1120, U.S. Corporation Income Tax Return, for the periods open under statute, whether or not there is taxable income. Under IRC 6501(g), these periods include the years ending December 31, 20XX and subsequent tax years.