

**Internal Revenue Service**

Appeals Office  
San Jose Appeals, MS-7100  
55 S. Market St., Suite 440  
San Jose, CA 95113

Release Number: **201425013**

Release Date: 6/20/2014

Date: March 24, 2014

**Department of the Treasury**

Taxpayer Identification Number:

Person to Contact:

Refer Reply to:

In Re:

Tax Period(s) Ended:

UIL:  
0501 .04-00

Dear

This is a final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Code section 501(c)(4).

The revocation of your exempt status was made for the following reason(s):

- Your primary activity is the regular operation of rentals of chairs and tables. The rental activity does not, in and of itself, further tax exempt purposes. You have not demonstrated that you operate for the promotion of the social welfare of the community as described in section 501(c)(4) of the Code.
- You operate for the primary purpose of carrying on a trade or business for profit and your profits are distributed to other organizations. We hereby determine that you are considered a feeder organization not exempt from taxation as described in section 502(a) of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit [www.irs.gov](http://www.irs.gov).

Please show your employer identification number on all returns you file and in all correspondence with Internal Revenue Service.

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 that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit [www.irs.gov/advocate](http://www.irs.gov/advocate) for more information.

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.

Sincerely Yours,

Appeals Team Manager

Enclosure:



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities Division  
4330 Watt Ave SA 6209 EO/MV  
Sacramento, CA 95821

Date:  
May 3, 2013  
Taxpayer identification number:

Form:  
990 EZ  
Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Manager's name / ID number:

Manager's contact number:

Response due date:

### **Certified Mail - Return Receipt Requested**

Dear

#### **Why you are receiving this letter**

Enclosed is a copy of our report of examination explaining why revocation of your organization's tax-exempt status is necessary.

#### **What you need to do if you agree**

If you agree with our findings, please sign the enclosed Form 6018-A, *Consent to Proposed Action*, and return it to the contact at the address listed above. We'll send you a final letter revoking your exempt status.

#### **If we don't hear from you**

If we don't hear from you within 30 calendar days from the date of this letter, we'll process your case based on the recommendations shown in the report of examination and this letter will become final.

#### **Effects of revocation**

In the event of revocation, you'll be required to file federal income tax returns for the tax year(s) shown above. File these returns with the contact at the address listed above within 30 calendar 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.

#### **What you need to do if you disagree with our findings**

If you disagree with our position, you may request a meeting or telephone conference with the supervisor of the contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information, including a statement of the facts, the applicable law and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

If you and Appeals don't agree on some or all of the issues after your Appeals conference, or if you don't 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.

You may also request that we refer this matter for technical advice as explained in Publication 892. Please contact the person identified in the heading of this letter if you're considering requesting technical advice. If we send a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, then no further IRS administrative appeal will be available to you.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

You have the right to contact the office of the Taxpayer Advocate Service (TAS). **TAS is your voice at the IRS. This service helps taxpayers whose problems with the IRS are causing financial difficulties; who have tried but haven't been able to resolve their problems with the IRS; and those who believe an IRS system or procedure is not working as it should. If you believe you are eligible for TAS assistance, you can call the toll-free number 1-877-777-4778 or TTY/TDD 1-800-829-4059. For more information, go to [www.irs.gov/advocate](http://www.irs.gov/advocate).** If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service  
Office of the Taxpayer Advocate

**For additional information**

If you have any questions, please call the contact 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,

Nannette M. Downing  
Director, EO Examinations

Enclosures:  
Report of Examination  
Form 6018-A  
Publication 892  
Publication 3498

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended

**ISSUES:**

Whether section 501(c)(4) exempt status should be revoked effective January 1, 20XX because is not operated exclusively for social welfare purposes as required by IRC 501(c)(4).

**FACTS:**

**Form 1024 Page 2, Part II – Activities and Operation Information:**

This organization has been in existence since 19XX. However, it was unaware until this year that it had not established exempt status when the organization tried to file Form 990-N. Since the organization has filed payroll reports for many years, the directors were under the assumption they had established exempt status. Once it was established that the organization did not have exempt status, the directors immediately sought the help of a CPA firm to file for the status. At the time the organization was formed, the did not have any buildings or facilities where its citizens could assemble for various community functions. This organization began to raise funds to establish such a building and to purchase chairs and tables that could be used in the community for these events. About this same time, an building with a large gym/open area was built. The . negotiated with the to establish a storage area for the tables and chairs inside the building. (See attached copies of the conditional sales contract and the minutes from 09-24-XX in which the original purchase of the tables, chairs, dishes etc were purchased for the benefit of the community.) From that point until this day the has been used to host Community Activities using this organization's tables and chairs. Since then there have been other buildings built in the community and many outdoor activities in which the tables and chairs are used. Since tables and chairs wear out with use, it became necessary to charge for the use of the items so they could be repaired and replaced as needed. Anyone can rent the tables and chairs however; they are often used by other non-profit organizations in the community. (See attached copy of lease agreement). Some of the organizations that have used them include the Club, and organizations, Charities, Fundraisers, local Bazaars or Craft Show, class reunions. Fairs. Cinco de Mayo celebration, local music events, Creek Festival, and numerous weddings. Each year the Board of Directors meets and discusses which items need to be replaced and repaired. If there are additional proceeds, the directors then look at other non-profit organizations in the community and determine how they can best benefit the community. Some of the organizations they have helped in recent history include the . The Organization on and the . The organization has also pledged funds to restore a Community Landmark at the local college and help maintain an outdoor equipment and cabin museum at a local park. The donation to other organizations does not require a formal application. The Board currently relies on word of mouth and the recommendations of the directors. The organization has hired one person to rent out the tables and chairs. This person is also responsible for repairing, replacing, storing and counting the tables and chairs. Although this organization does not have plans at this time to build a community building, it reserves the right to do so if there becomes an additional need in the community.

\*\*\*\*\* End of Activities and Operational Information \*\*\*\*\*

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
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was incorporated on April 11, 19XX in the state of . applied for recognition under IRC 501(c)(4) in February 2011. They were granted exemption on March 25, 20XX retroactively to 19XX. Their articles of incorporation stated their purpose as: To build, erect, maintain, equip, manage and operate a community civic building or buildings to be used as a meeting place for civic clubs, service organizations and public meetings.

Currently, 's only activity is to rent tables and chairs to customers in the area. The operation is primarily ran by two individuals, the Vice President and the Secretary/Treasurer. The Vice President is paid at the rate of \$21.00 per hour while the Secretary/Treasurer draws a salary of \$360.00 per month. 's assets consist of approximately 365 tables and 1736 chairs. During the 20XX year they rented these items out at the rate of \$3.00 for tables and .50 for chairs (commercial rental companies in the area rent comparable items for around \$6.00 for tables and .75 for chairs in 2013. has increased the table rental rate to \$3.50) Per the terms of their invoice there is also a minimum transaction fee. does not have a building or office of their own. They use two storage rooms located in government buildings in the city of that are provided to them free of charge. Rentals are not restricted to any particular class of customers but are made to any organization or individual. Rentals are primarily made to charities, civic organizations, gun shows and churches. This is not a membership organization. 's only source of income is from the rental of tables and chairs, they do not receive donations. All of their rentals are at the stated rate, they do not give discounts or donate the use of their equipment.

Although still uses a storage room located in the social events open to the general public were discontinued after 9/11 for security reasons.

The Vice President takes telephone calls for orders on a cell phone that is paid for by , he then negotiates the terms and dates for rental. If the customer agrees to the terms, arrangements are made to pick up the equipment at one of the two storage facilities, at which time they also complete a rental agreement and pay for the rental. Payment must be made either in cash or by check as does not accept credit cards. It is up to the customer to pickup, load and return the equipment. Other than the rental of tables and chairs, renders no direct services in connection with the activity of the customer. did not organize or participate in any community events of their own during 20XX, other than to provide tables and chairs for a fee.

At semi annual board meetings they discuss the finances of then decide which local charity will receive grants. There is no formal application process for the grants, the board decides where to donate the money based on community needs. For the 20XX year donated \$6,800 to local causes. Since 19XX other buildings were built in the area with the capacity to host community events, currently does not have plans or a cash reserve set aside to construct a building for that purpose.

On April 3, 20XX we had a follow up telephone interview with 's CPA. She reiterated that s activities are the same as described on their Form 1024. She also confirmed that the renting of tables and chairs are their only activity.

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
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**LAW:**

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

Treas. Reg. § 1.501(c)(4)-1(a) states:

(1) A civic league or organization may be exempt as an organization described in Section 501(c)(4) if —

- (i) It is not organized or operated for profit; and
  - (ii) It is operated exclusively for the promotion of social welfare.
- (2) Promotion of social welfare.

(i) In general. 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 people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements....

(ii) Nor is an organization operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

Rev. Rul. 66-150, 1966-1 C.B. 147 concluded that an organization which holds title to a building housing its parent, maintains the building, and operates the social facilities located in the building does not qualify for exemption from federal income tax under sections 501(c)(2) or 501(c)(4) of the Code.

Rev. Rul. 68-46, 1968-1 C.B. 260, describes a veterans' post. After an analysis of all the facts and circumstances, the Service determined that the post's primary activity was the conduct of a business rather than social welfare activity. The organization's business activities involved the rental of its commercial office building and operating a public banquet and meeting hall with a bar and dining facilities. Although the organization carried on veterans' programs and other social welfare activities, based on an analysis of the whole operation, it was concluded that the business activities relating to the operation of the facility exceeded all other activities, and the social welfare programs were not its primary activity.

Rev. Rul. 70-535, 1970-2 C.B. 117 describes an organization formed to provide management, development and consulting services for low income and moderate income housing projects for a fee. The revenue ruling held that the organization did not qualify under section 501(c)(4) of the Code. The revenue ruling stated: Since the organization's primary activity is carrying on a business by managing low and moderate income housing projects in a manner similar to organizations operated for a profit. The organization is not operated primarily for the promotion of social welfare. The fact that these services are being performed for the tax exempt corporation does not change the business nature of the activity.

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
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In Rev. Rul. 73-349, 1973-2 C.B. 179, an organization was formed to purchase groceries for its membership at the lowest possible prices. It received orders from its members, consolidated them, and purchased the food in quantity. Each member paid for the cost of his food, and each member was assessed an equal monthly service charge for the monthly operating costs. Membership was open to all individuals in a particular community. This revenue ruling stated that the organization described was a private cooperative enterprise for the economic benefit or convenience of its members. Any benefits to the community were not sufficient to meet the requirement of the regulations that the organization operate primarily for the common good and general welfare of the people of the community. Accordingly, it did not qualify for exemption under section 501(c)(4) of the Code.

### ANALYSIS:

rents tables and chairs to various organizations and individuals in the area. Some of these rentals are made to non-profits, government entities and churches in the area. Merely renting tables and chairs to these type of organizations does not constitute an exempt purpose standing alone. It was found in Rev Rul 66-150 that the organization did not qualify for exemption under IRC 501 (c)(4) even though they held title to the building, maintained the building and operated the social facilities for the non-profit activities of it's parent exempt organization. Originally when was formed in 19XX there were plans to purchase a building where community functions could be held. This never materialized. Although they facilitated exempt functions, this in itself did not rise to the level necessary to become exempt themselves. In the instant case, merely rents tables and chairs providing substantially less service than the fore mentioned organization that was denied exemption under IRC 501(c)(4). Even if had purchased a building for others to hold community events they still would not qualify for exemption. Per their application they currently don't have plans to procure a building.

The organization described in Rev. Rul. 68-46, 1968-1 C.B. 260 did not qualify for recognition under IRC 501(c)(4) because although they carried on some social welfare activities, based on an analysis of the whole operation, it was concluded that the business activity was the primary activity. The business activity is 's only activity.

IRC 501(c)(4)-1(a)(ii) states in part that: Nor is an organization operated primarily for the promotion of social welfare if it's primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for a profit. The only difference in the operation of 's operation and that of a commercial rental company is that rents their equipment for less. It should also be noted the does not pay rent or have some of the others expenses that a commercial rental company would have. The rental activity is 's primary activity as it is their only activity. Any benefits that may be rendered to the community by renting tables and chairs are not sufficient to meet the requirement of the regulations that operate primarily for the common good and general welfare of the people of the community. Accordingly, it does not qualify for exemption under section 501(c)(4) of the Code. The rental fee increase from \$3.00 to \$3.50 (roughly 15%) for tables without a corresponding increase in expenses shows a profit motive.

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Social welfare organizations are not precluded from engaging in business activities as a means of financing their social welfare programs. However, the regulations provide that an organization is not operated exclusively for the promotion of social welfare if its primary activity is carrying on a business with the general public. In Rev. Rul. 70-535 an organization that provided various services for low and moderate income housing projects for a fee was not exempt under section 501(c)(4) of the Code because its primary activity was carrying on a business in a manner similar to organizations operated for profit. In the same manner, 's primary activity is carrying on a table rental business, and not promoting social welfare.

### TAXPAYER POSITION:

Taxpayer position is being solicited.

### CONCLUSION:

Since the renting of tables and chairs is 's only activity this activity is their primary activity. The revenue rulings make it clear that mere facilitation of the activities of a non-profit is not an activity described under IRC 501(c)(4). There is a profit motive. In addition has not demonstrated that their rental activities substantially differ from that of a commercial rental company. IRC 501(c)(4)-1(a)(ii) of the code states that an organization that carryings on a business with the general public does not qualify for exemption under IRC 501(c)(4).

A social welfare organization can raise funds to finance exempt activities, however, that can't be their only activity. Per Rev. Rul. 70-535 running a commercial business is not an exempt activity. This is true even if the services are for a tax exempt corporation.

's activities are similar to Rev. Rul. 73-349 because the benefits they provide to the community are also not sufficient to meet the requirement of the regulations. does not operate primarily for the common good and general welfare of the people of the community.

has provided no information showing that they conduct their activity differently from a commercial entity. Their sole source of income is from the rental of tables and chairs. Although they donated some of their income to community projects, this is not enough to make their activity exempt. The rental of tables and chairs, even to an exempt organization does not constitute a social welfare activity as described by IRC 501(c)(4).

Based on the foregoing reasons is not exempt, and should file forms 1120 for 20XX and all subsequent years.