



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
1100 Commerce Street, MS 4920 DAL  
Dallas, TX 75242

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**Date:** 7/12/12  
**UIL:** 501.04-01

Release Number: **201443020**  
Release Date: 10/24/2014

**Employer Identification Number:**

**Legend:**

**Org= Name of Organization**  
**Address – Address of Org**

**ORG**  
**Address**

**Contact Person/ID Number**

**Telephone Number:**

Dear

This letter is a final adverse determination regarding your exempt status under Section 501(c)(4) of the Internal Revenue Code.

By a determination letter dated March 19xx, we recognized your exemption from Federal income tax under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(4).

We examined your activities in 20xx and 20xx and proposed revocation of your Section 501(c)(4) exempt status. You submitted a request for relief to limit the retroactive effect of the proposed revocation pursuant to Section 7805(b) of the Code.

By issuance of a technical advice memorandum, the Commissioner of TEGE has exercised Section 7805(b) discretionary authority to limit the retroactive effect of this revocation. The TEGE Commissioner granted relief from corporate income taxes for taxable years 20xx and 20xx and concluded that January 1, 20xx would be the effective date of revocation of your Section 501(c)(4) filing status.

You are not operated primarily for the purpose of bringing about civic betterments

and social improvements. Moreover, you carry on a business with the general public in a manner similar to organizations which are operated for profit. Consequently, you do not qualify for exemption under 501(a) of the Code as an organization described in section 501(c)(4).

The effective date of revocation of your section 501(c)(4) status is January 1, 20xx. Since you are not exempt from Federal income tax for periods beginning January 1, 20xx, you are required to file the requisite income tax 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. 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 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 for businesses at 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,  
Nanette M. Downing  
Director, Exempt Organizations

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 12/31/20xx and forward

**LEGEND:**

**ORG = Name of Organization**

**EIN = Identifying Number**

**Date = xx**

**State = Name of State**

**Issue:**

Does ORG, EIN, continue to qualify as an organization described in §501(c)(4) of the Internal Revenue Code?

**Facts:**

ORG, Inc. was incorporated in State on April 27, 19xx. ORG, Inc. amended its Articles of Incorporation in 19xx, 19xx, 19xx and 19xx. The Amended Articles of Incorporation filed in 19xx, which were in effect at the time that the IRS issued ORG, Inc.'s determination letter in 19xx, provided at Article Three that the principal purposes of ORG, Inc. are as follows:

To provide prepaid vision services to individuals residing and working in the State and to have and to exercise all power necessary and convenient to effect the purpose for which the corporation is organized and to exercise all powers prescribed by Law.

ORG, Inc.'s current Amended Articles of Incorporation, dated June 9, 19xx, provide at Article Three that the principal purposes of ORG, Inc. are a follows:

In addition to all statutory purposes granted nonprofit corporations, the purposes of this corporation are to provide prepaid vision services to individuals residing and working in the State and to have and to exercise all power necessary and convenient to effect the purpose for which the corporation is organized and to exercise all powers prescribed by law. More specifically, to educate the public to advantages of broad availability of vision care on a free choice bases for the patient; to provide programs by which the public may obtain quality vision care within their means on a free choice basis; to arrange vision testing of occupational and other groups; and to cover the costs of vision services by establishing funds from periodic payments by subscribers or beneficiaries from which said payments may be made to practitioners providing such services...

The Articles of Incorporation of ORG, Inc provide at Article Thirteen that:

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Upon dissolution of this corporation, after making adequate provision for debts and obligations, the balance remaining shall be distributed to a charitable, educational research, scientific, or health institution, organization or association, to be expended in the advancement of optometry.

Accordingly, the primary purposes of ORG, Inc., i.e., to provide prepaid vision services to individuals residing and working in the State, and its articulation of those purposes in its organizing documents, have not materially changed since it obtained recognition of qualification under Section 501(c)(4).

ORG, Inc.'s Form 1024 Application for Recognition of Exemption provides a description of its specific purposes and activities under Part II, Question 3. Specifically, its Form 1024 application dated December 6, 19xx, states that:

ORG, Inc. was formed to enable citizens of the state to obtain prepaid and/or group vision care of high quality within their means; to assume the costs of such vision care by the establishment of a fund from which these costs can be paid; to engage in visual testing of occupational groups; and to educate the public concerning benefits available through the optometric profession.

Furthermore, ORG, Inc.'s Form 990 for the 19xx tax year, the earliest Form 990 available, under the Statement of Program Service Accomplishments, at page 2, part III, states: "Provide prepaid vision care."

ORG, Inc. is a subsidiary of Parent . In 1960, Parent was granted exemption, pursuant to Internal Revenue Code §501(c)(4). To comply with requirements of the various State Departments of Insurance, subsidiaries needed to be organized as a non-profit corporation under the laws of the state where VSP performed its activities. They offered insurance coverage for vision care under group plans, contracted with a network of eye care providers and shared in benefits of related eye wear laboratories in the same manner as their parent and their related corporations. The Parent and its subsidiaries contract with employers, insurance companies, health maintenance organization and political subdivisions ("subscribers") to arrange for the provision of vision care services and supplies to the subscribers' employees or members. The services and supplies are provided by the independent vision care professionals with whom Parent contracts.

Following an examination conducted in 19xx, the IRS issued a final adverse determination letter, revoking the tax-exempt status for Parent effective as of January 1, 20xx. Underlying and justifying the revocation of Parent exempt status, Letter Ruling was issued to Parent in response to a request for technical advice, providing in relevant part:

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... L, had affiliated organizations located in states other than a state which were engaged in substantially the same activities as Parent. (Collectively, these organizations are referred to as "L Affiliates.") In general, each L Affiliate was organized as a non-profit corporation under the laws of the state where it performed its activities. In addition, as of December 31, 19xx, Parent owned all of the stock of a for-profit corporation that was engaged in the\*\*\*\*\* business and all of the stock of several other for-profit corporations that were engaged in\*\*\*\*\* activities.

Parent's social welfare activities during the examination years, whether considered in relation to Parent's total revenues, total expenses, accumulated surplus, or total enrollment, are minor, incidental and insignificant. See People's Educational Camp Society, Inc. v. Commissioner, supra. Therefore, based on any measure, it cannot be said that Parent is primarily engaged in promoting the common good and general welfare of the people of the community within the meaning of section 1.501(c)(4)-1(a)(2) of the regulations.

Further, a nonprofit corporation whose activities benefit primarily its enrollees, rather than the general public, does not promote the common good and general welfare of the people of the community within the meaning of section 1.501(c)(4)-1(a) of the regulations....

Finally, section 1.501(c)(4)-1(a)(2)(ii) of the regulation states that an organization is not 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. Parent has not established that its activities, including arranging for the provision of \*\*\*\*\* services for Medicare and Medicaid beneficiaries, are significantly distinguishable for the same activities carried on by for-profit\*\*\*\*\* service organizations.

In conclusion, based on all the facts and circumstances, Parent has not established that it is operated primarily for the purpose of bringing about civic betterments and social improvements within the meaning of section 1.501(c)(4)-1(a)(2)(i) of the regulations. Parent's operations benefit, almost exclusively, its enrollees. Its social welfare activities, in relation to its total activities, are minor, incidental and insignificant. Finally, Parent has not established that its activities are significantly distinguishable from the same activities carried on by a business operated for profit, as required in section 1.501(c)(4)-1(a)(2)(ii). Thus, Parent is not primarily engaged in promoting the common good and general welfare of the people of the community. As a result, it is not operated exclusively for the promotion of social welfare within the meaning of section 1.501(c)(4)-1(a)(2)(i).

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Consequently, Parent does not continue to qualify for exemption under 501(a) of the code as an Organization described in section 501(c)(4).

For tax years beginning January 1, 20xx, Parent filed Form 1120PC's with the IRS to report its net profit from operations and paid federal income tax on its earning. Parent filed claims for refund of these income taxes. The claim for 20xx was denied by the IRS. The Parent brought a suit for refund for the 20xx tax year in the United States District Court for the Eastern District of State on the grounds that it was a tax-exempt organization pursuant to IRC §501(c)(4).

On December 12, 20xx, the District Court held that Parent was not a tax-exempt organization within the meaning of IRC §501(c)(4). The Court stated that Parent is operating primarily for the benefit of its subscribers rather than for the purpose of benefiting the community as a whole, and Parent carries on business with the public in a manner similar to organizations which are operated for profit. Therefore, the District Court held and concluded, Parent is not operated "exclusively for the promotion of social welfare" as provided for in 501(c)(4).

Parent appealed the District Court decision to the United States Court of Appeals for the Ninth Circuit. On January 29, 20xx, the Ninth Circuit affirmed the decision of the District Court. Parent petitioned for a writ of Certiorari to the Supreme Court of the United States on August 7, 20xx. On January 12, 20xx, the writ of Certiorari was denied.

During all the years in operation which includes the examination years FYE 20xx to FYE 20xx, the Parent and its Subsidiaries, which include ORG, operated in substantially the same manner and under common control. All claims for benefit and payments to suppliers and contractors are processed through Parent. All accounting matters including payroll are processed through Parent. Parent and its Subsidiaries have the same manner and mode of operation. They have similar categories with different mixes of subscriber and enrollees, as well as subsidized and discounted care, and similar fee structure.

ORG, Inc.'s number of subscribers at various size levels (measured by the number of members, or enrollees), individual plan members and levels of subsidized and discounted care for the years FYE 20xx & FYE 20xx are as follows:

ORG, Inc.	# of Clients	20xx Members	Claim \$	# of Clients	20xx Members	Claim \$
25 or less Members						
26-50 Members						
51-100 Members						
101-1,000 Members						
Greater than 1,000 Members						
Medicaid/SCHIPs						
Medicare						
Sight for Students						0

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American Red Cross

Individual Plan

Total

0

Certain Parent subsidiaries began offering individual vision care plans under pilot programs in 20xx, 20xx, and 20xx. ORG, Inc. did not offer policies to individuals in 20xx and 20xx. However, individuals residing in the state serviced by this subsidiary could purchase coverage through another subsidiary. Affiliate, an affiliate incorporated in State, which is not under examination, issued a group policy dated January 1, 20xx to The Association, a State corporation with a membership structure. Any individual in any state may join The Association for a membership fee of \$18.00. Members received access to consumer goods, discounts, services, and information that may not otherwise be available to them, including health, travel, and business services. Individuals residing in any state (other than Florida) who wish coverage for vision care may pay the \$18.00 membership fee to join the Association and obtain vision care coverage under the Association policy by paying premiums. The individual may access this information and purchase coverage through the Parent.

ORG, Inc.'s address is the same as Parent :Address.. The structuring of the Board of Directors is similar to other subsidiaries with three individuals serving as members on all of the Boards. The ORG, Inc. has additional board members.

ORG, Inc., has been filing Form 990 until FYE 20xx. Beginning in FYE 20xx, all subsidiaries, which include ORG, Inc., filed on a consolidated basis with Parent and did not file separate Forms 1120.

#### **Law and Government's Position:**

Internal Revenue Code § 501(c)(4) provides exemption from income tax for organizations that are not organized for profit but "operate exclusively for the promotion of social welfare" and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Section 1.504(c)(4)-1(a)(2) of the regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and general welfare of the people of the community. These regulations also state that an organization is embraced within this provision if it is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Rev. Rul. 55-311, 1955-1 C.B. 72, the members of a local association of employees consisted solely of the employees of a particular corporation. The association operated a bus for the convenience of its members. The association's income was derived from bus fares used to

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pay for the operation of the bus. Since the bus operated primarily for the benefit of the association's member, the revenue ruling concluded that the association did not qualify for exemption under section 501(c)(4) of the Code.

In Rev. Rul. 73-349, 197302 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 cost. Membership was open to all individuals in a particular community. This revenue ruling stated that the organization was a private cooperative enterprise for the economic benefit or convenience of its members. Citing Commissioner v. Lake Forest, Inc., this ruling stated that the organization operated primarily for the private benefit of 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.

In Vision Service Plan v. United States, 956 A.F.T.R.2d 2005-7440 (E.D. Cal. 2005), VSP Parent requested a ruling by means of a motion for summary judgment that it is a social welfare organization under section 501(c)(4). The motion for summary judgment took place in the context of a suit for a refund of its 2003 income tax payment. The government asked for summary judgment in the refund suit on the grounds that VSP does not qualify for exemption under section 501(c)(4.)

The District Court found that VSP provides eyecare health coverage and related benefits to its members (enrollees) through participating employers (subscribers). VSP was required, under summary judgment practice, to demonstrate to the court's satisfaction that its operation were primarily for the promotion of social welfare and, further, that it was not organized for profit. While VSP maintained that it provided charity care to many non-enrollees, the District Court found that the number of these services was relatively small and did not establish VSP as primarily engaged in promoting social welfare.

Regarding the promotion of social welfare, the District Court concluded that VSP did not establish that they were primarily engaged in promoting social welfare, holding:

In sum these [charity and community] programs and services do not demonstrate that VSP is primarily engaged in the promotion of social welfare. While VSP does contribute to the betterment of society, like the organization in Lake Forest, it is a "publicly spirited but privately-devoted endeavor." Lake Forest, 305 F.2d at 818. VSP's work "incidentally redounds to society but this is not the "social welfare" of the tax statute."

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Put directly, the court must conclude that VSP's services are most beneficial to private paying members, the subscribers and the enrollees. Like the members of the plumbers cooperative in Contracting Plumbers, members of VSP enjoy the benefit of VSP's services precisely to the extent that members use and pay for the services. Contracting Plumbers, 488 F.2d at 687. Serving the interests of these private subscribers is clearly a non-exempt purpose. This non-exempt purpose destroys VSP's exemption status, regardless of the number or importance of truly exempt purposes.

Regarding if VSP was organized as a non-profit and operates like one, the District Court concluded that VSP carries on business with the public "in a manner similar to organizations which are operated for profit," holding:

This issue, however, is not whether plaintiff is a nonprofit corporation for corporation law purposes, but whether it is one for federal tax purposes.

To qualify for an exemption under 501(c)(4), an organization must establish that it operates exclusively for the promotion of social welfare. According to the Treasury regulations, an organization is not 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." 26 C.F.R. §1.501(c)(4)-1(a)(2)(ii). Moreover, a corporation that devotes much of its revenue to improving its ability to compete commercially through accumulation of large surpluses and expansion of its income producing facilities is not entitled to exemption under Section 501(c)(4). People's Educational Camp Soc. Inc. v. C.I.R., 331 f.2d 923, 932 [13 AFTR 2d 1319] (2d Cir.1964).

... VSP engages in cost-cutting measures common to for-profit businesses...

Second, VSP strives to remain competitive in ways that do not appear to be consistent with the operations of a non-profit.

The Ninth Circuit Court of Appeals affirmed the District Court's opinion, concluding that:

VSP is not operated exclusively for the promotion of social welfare because it is not primarily engaged in promoting the common good and general welfare of the community. See 26 C.F.R. §1.501(c)(4)-1(a)(2)(i) ("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.") While VSP offers some public benefits, they are not enough for

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us to conclude that VSP is *primarily* engaged in promoting the common good and general welfare of the community.

The government contends that ORG, Inc. is not operating for the promotion of social welfare, and is operated more like a business for profit; i.e., the same reasons supplied by the District Court's holding with regard to Parent .

Parent and its subsidiaries, including ORG, Inc., operate in substantially the same manner. The subsidiaries, including ORG, Inc., operate under the control and direction of Parent . They engage in the same activities, same fee structure and the same manner of operations. The mix of subscriber information with regard to ORG, Inc. is not materially different from the mix of subscriber information with regard to Parent . Parent and the subsidiary have not significantly changed its manner of operation between 19xx and 20xx.

For the FYE December 31, 20xx, the Subsidiaries have filed their 1120's on a consolidated basis with Parent . The Subsidiaries should have begun to file Form 1120's effective for years beginning 1/1/20xx.

Letter Ruling concluded that the Parent was not primarily engaged in promoting the common good and general welfare of the people of the community within the meaning of section 1.501(c)(4)-1(a)(2). We have concluded that the affiliates were engaged in substantially the same activities as those of the parent, and therefore conclude that the affiliates were not primarily engaged in promoting the common good and general welfare of the people of the community within the meaning of section 1.501(c)(4)-1(a)(2) of the regulations. Furthermore, the operations benefit almost exclusively its enrollees and its activities are not distinguishable from the same activities carried on by a business operated for profit.

In Vision Service Plan v. United States, which was also upheld by the appellate court, the District Court appropriately concluded that Parent is not primarily engaged in the promotion of social welfare. The logical inference is that the ruling with respect to Parent applies to its integrated subsidiaries, like ORG, Inc., with equal force. Their services are most beneficial to the paying members, subscriber, and enrollees; in addition, its primary activity is "carrying on a business with the general public in a manner similar to organizations which are operated for profit" business with the public.

#### **Conclusion:**

Revocation of the ORG, Inc. tax-exempt status is warranted effective the same date as the parent, 12/31/20xx. The F4549 reflects adjustments to tax for the years open by statute of limitations; FYE December 31, 20xx to December 31, 20xx.