



**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

**TE/GE: EO Examinations**

**1100 Commerce Street, MC 4920 DAL**

**Dallas, TX 75242**

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

March 23, 2016

Taxpayer Identification Number:

Number: **201626025**

Person to Contact:

Release Date: 6/24/2016

Identification Number:

UIL: 501.03-00

Contact Telephone Number:

**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 to you dated June 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 reason(s):

You are not operating exclusively for any charitable purpose, educational purpose, or any other exempt purpose. Our examination reveals that you are not engaged primarily in activities which accomplish charitable, educational or other exempt purposes as required by Treas. Reg. 1.501(c)(3)-1(c)(1). Your activities, including your financial transactions, more than insubstantially furthered non-exempt purposes. Moreover, you failed to establish that you were not operated for the benefit of private interest of your members, officers and trustees as required for continued recognition of exemption pursuant to Treas. Reg. 1.501(c)(3)-1(d)(1)(ii). Your income inured to the benefit of private shareholders and individuals.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file Form 1120 U. S. Corporation Income Tax Return. These returns should be filed with the appropriate Service Center for all years beginning January 1, 20XX. We have secured Form 1120 for years ended December 31, 20XX and December 31, 20XX.

Processing of income tax returns and assessments 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 under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

United States Tax Court  
400 Second Street, NW  
Washington, D.C. 20217

United States Court of Federal Claims  
717 Madison Place, NW  
Washington, D.C. 20005

United States District Court for the District of Columbia  
333 Constitution Avenue, NW  
Washington, D.C. 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [taxpayeradvocate.irs.gov](http://taxpayeradvocate.irs.gov) or call 1-877-777-4778.

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

Sincerely,

Paul A. Marmolejo  
Acting Director, EO Examinations

Enclosure:  
Publication 892



**DEPARTMENT OF THE TREASURY**

INTERNAL REVENUE SERVICE  
Exempt Organizations: Examinations  
1100 Commerce Street MS 4900 DAL  
Dallas, TX 75242-1100

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

January 4, 2016

TIN:  
Form:  
Tax Year Ended:

Person to Contact:

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, unless you have already provided us a signed Form 6018. 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 organizations 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 and Publication 892 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 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 and an annual revenue procedure. 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:

Internal Revenue Service  
Office of the Taxpayer Advocate

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,

Margaret Von Lienen  
Director, EO Examinations

Enclosures:  
Form 4621-A  
Form 886-A  
Agreement Form 6018  
Publications 3498, 5, and 892

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service	Report date December 4, 2015
<b>Explanation of Items</b>		
Name of Taxpayer		Year/Period Ended December 31, 20XX

ISSUE

Whether an organization that provides substantial private benefit to members and affiliated individuals is an organization operating within the meaning of IRC 501(c)(3).

FACTS

Organizing Documents

was organized as a non-profit corporation in the State of in June of 19XX. The Articles of Incorporation state its exempt purpose is to encourage safe recreational motorcycling; to raise funds for charities that help youth; and to sponsor social and sporting events related to Articles include the following clause: "No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, trustees, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes [stated above.]"

Application for Exemption

The filed Form 1024 with the Internal Revenue Service in 19XX requesting tax exemption under IRC 501(c)(7), but the application was incomplete, so no recognition resulted. The Club filed Form 1023 in July 20XX requesting recognition under IRC 501(c)(3.)

Attached to the Form 1023 were flyers describing the held during the last weekend in July for . This is the main revenue source, a portion of which the organization uses to make charitable donations that benefit local organizations that serve children, veterans, firemen, etc. activities include , etc.

In a letter dated June 7, 20XX, the IRS documents a telephone conversation with the representative confirmed the organization's primary activity is that raises money for charitable causes. The letter states the Service's understanding that the social and recreational activities of the organization are incidental to the charitable purposes of the organization and requested confirmation of this. The letter states, as discussed in the conversation, that while the organization may assist those in distress, the pre-selection of an individual or family as a recipient of aid does not qualify as an exempt activity under IRC Section 501(c)(3) and could jeopardize a determination of exemption.

In a letter dated June 24, 20XX, the CEO, confirmed they were made aware of the pre-selection of fundraising does not qualify as an exempt

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activity. Regarding charitable donations, he states that the organization's total net profits (excluding charitable donations) over the past five years were \$ . Of this total, the organization donated \$ , or % , to charitable causes. confirmed that any social and recreational activities of the organization were incidental to the charitable purpose of the organization.

Bylaws

The Club's bylaws, updated as of June 20XX, contain the following language:

Membership:

"Persons wanting to join the are only allowed to join between and . Probationaries must be sponsored by one are allowed to sponsor one per year. New members will then be all summer, totaling months. will then be voted on at the , as to whether they are in or out of the or will have a one year extension as a . Also, are not allowed to vote on anything during their probationary period."

Property:

"Visitors are allowed to come out to the property only if they are with a member. Anyone caught out there without a member will be arrested for trespassing. Members need to have their when they are at the property, or be with someone who does. are only allowed to bring immediate family out to the property."

Guests:

"Members may invite guests to a function, ( ), but to attend a meeting, they must be interested in joining . Please no extra people at meetings if they are not interested in joining."

Property

The owns acres in , in County. The property comprises club building, pond, farm fields, parking lot, children's area, and camper area. Part of the property is leased to a local farmer for feed crops such as clover or hay, with the EO receiving percent of net profits.

Club dues are \$ /year, with an additional \$ fee if members wish to park a camper on site year round. One camper spot is allowed per member, but fee is required if member wishes to use the space.

The also owns non-contiguous additional acres, of which acres are leased to another local farmer at \$ per acre.

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At the initial interview, the taxpayer confirmed that other than the " " (fundraiser) held for each summer, use of the facility and grounds are available to club members, families and guests only. The also hosts a Fourth of July fireworks event open to the public.

According to Form 990, property related expenses (occupancy, depreciation, repair/maintenance, insurance, and equipment) were \$

Activities for members

Holiday parties, outings, suppers, etc. are available only to members/families/guests. Children's activities funded by the are for children of members. According to the accounting records, expenses for club activities in 20XX were \$

Loans to members

In 20XX, the Club's books and records report the following transactions related to loans to members:

Loans to Members	Amount
Beginning Balance	\$
New loan to trustee	\$
Payments received on new and existing loans	\$
Ending balance	\$

The \$ loan made in 20XX to a trustee was interest-free, according to the terms of a written agreement.

"Personal hardship" payments to members

In 20XX, the Club's books and records report the following transactions related to "personal hardship payments" to members:

Date	Check #	Payee	Amount	Purpose
			\$	Assistance with travel expenses related to serious illness
			\$	See above
			\$	Information not available

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Taxpayer describes the purpose of such payments as providing assistance to individuals in difficult situations which have arisen through "no fault of the their own", such as illness, disasters, etc. Taxpayer states that personal hardship assistance was technically available to non-members as well as members, but availability of assistance was not publicized .

Payment of funeral expenses for certain members

In the year under examination, the reported \$ in burial expenses (\$ paid to veterans' organizations and \$ to a fundraiser for an individual.) In other years, the has helped to pay burial expenses of individual members. Documentation voluntarily provided to the examiner shows burial expenses of \$ in 20XX for one member and \$ in 20XX for another member.

Charitable/community activities

The Club donates a percentage of its assets each year to support charities in the local community. In 20XX, the organization gave \$ to community organizations . Per Form 990, gross revenue from the annual party was \$ , with \$ in related expenses. Assets at January 1, 20XX were \$ . Donations therefore represent % of the \$ net income from the annual fundraiser, or % of assets at the beginning of the year. Charitable donations include revenue generated from an annual " " to raise money to purchase holiday toys for children in need.

The also participates in Department of Transportation's "Adopt a Highway" program (volunteer highway cleanup.)

Law

Internal Revenue Code 501(c)(3) provides exemption from federal income tax for organizations that are "organized and operated exclusively" for religious, educational, or charitable purposes. The exemption is further conditioned on the organization being one where "no part of the net income inures to the benefit of any private shareholder or individual."

Treasury Regulation 1.501(c)(3)-1(c)(2) explains the prohibition against private inurement as follows: Distribution of earnings. 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 individuals. For the definition of the words "private shareholder or individual," see paragraph (c) of section 1.501(a)-1.

Treas. Reg. 1.501(c)(3)-1(c)(1): (c) Operational test. (1) Primary Activities. 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

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specified in section 501(c)(3). 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. Reg. 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. The regulation places the burden of proof on the organization to demonstrate 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.

In *Spokane Motorcycle Club v. U.S.*, 222 F. Supp. 151 (E.D. Wash. 1963), net profits were found to inure to private individuals where refreshments, goods and services amounting to \$825 (representing some 8% of gross revenues) were furnished to members.

In *Hoffer v. U.S.*, 64 Cl. Ct. 672 (1928), where the property and income of a religious community was held for the common use and benefit of its members to be used for their support and maintenance (and the support and maintenance of the heirs of deceased members), the Court of Claims found that there was inurement of net earnings to the benefit of private shareholders or individuals.

In *Beth-El Ministries, Inc. V. U.S.*, 79-2 USTC 9412 (D.C. D.C. 1979), exemption was denied because the organization failed to meet its burden to show that no part of its net earnings inured to the benefit of any of its members, who were entitled to receive benefits in the form of food, clothing, shelter, medical care, recreational facilities, and educational services in exchange for a commitment by donating all possessions and salaries to the organization.

In *Better Business Bureau v. U.S.*, 326 U.S. 279 (1945), the Court held that an organization which engaged in some educational activity but pursued nonprofit goals outside the scope of the statute was not exempt under IRC 501(c)(3). The Court stated that an organization is not operated exclusively for charitable purposes if it has a single noncharitable purpose that is substantial in nature.

In *North American Sequential Sweepstakes v. Commissioner*, 77 T.C. 1087 (1981), the Tax Court found that the organization's primary purpose was to hold a recreational event for the benefit of a few skydivers, particularly the organization's founders.

In *The Callaway Family Association, Inc. v. Commissioner*, 71 T.C. 340 (1978), the Tax Court noted that the Service had, in effect, conceded that the organization did have some educational purposes. However, exemption had been denied not because the organization had no educational purposes, but because its activities taken as a whole were not exclusively in furtherance of exempt purposes. The primary benefit of the Association's activities flowed directly to family members. Any benefit to the general public was clearly a secondary and incidental result of the Association's activities.

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In *United Cancer Council v. Commissioner*, 165 F.3d 1173, 1176 (7th Cir. 1999), the Court stated "A charity is not to siphon its earnings to its founder, or the members of its board, or their families, or anyone else fairly to be described as an insider, that is, as the equivalent of an owner or manager."

In *Capital Gymnastics Booster Club, Inc.*, T.C. Memo 2013-193, it was held that Organization's fundraising activities conferred a more than insubstantial benefit on the families who participated in the fundraising. In this case, the Court stated "The issue here is not whether [CG] had any charitable purpose but whether (as the statute requires) it was operated exclusively for exempt purposes. We hold it was not."

In General Counsel Memorandum 38459, Chief Counsel had observed that "an organization which serves a private interest other than incidentally is not entitled to exemption as an organization described in section 501(c)(3). Thus, although an organization's operations serve a public interest, exemption will be denied if private interests are also served." In G.C.M. 38459 Chief Counsel reaffirmed the standards previously set forth in G.C.M. 37789 (December 18, 1978) for determining whether private benefit is more than incidental. The discussion in G.C.M. 37789 on this point is set forth below.

...[I]f an organization serves a public interest and also serves a private interest other than incidentally, it is not entitled to exemption under section 501(c)(3)... This proposition is simply an expression of the basic principle underlying the enforcement of charitable trusts and their exemption from federal income taxation under section 501(c)(3): Their property is devoted to purposes which are considered beneficial to the community in general, rather than particular individuals. See, e.g., IV A. Scott on Trusts, section 348 (3d ed. 1967). Thus, although an organization's operations may be deemed to be beneficial to the public,...if it also serves private interests other than incidentally, it is not entitled to exemption.

#### Taxpayer Position

believes it is operating for exempt purposes by hosting an annual fundraiser and contributing a portion of the net proceeds to charitable causes, in addition to supporting programs that provide toys for children in need.

#### Government Position

Examination shows that the social, recreational, and other private benefit to members, including officers and trustees, is significant. Examples of private benefit to members includes the following:

- The property, including building and acre grounds, is available year round to members only for activities such as meetings, parties,

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camping, and special events. The property is open to the public only a year for the and on the Fourth of July for a fireworks display. The bylaws state that visitors on the grounds who are not accompanied by a member are trespassing.

- Membership is restricted by the policies. Potential members must be sponsored by an existing member, pass a one year probationary period, and must be accepted by a membership vote.
- Holiday parties, outings, suppers, etc. are available only to embers/families/guests. Children's events and parties funded by the are only for children of members.
- The made interest-free loans to members, including officers. (In 20XX, at least one loan was written for "random amounts" under a "one year renewable" agreement, similar to a revolving line of credit.)
- The made personal hardship payments to members.
- The has helped to pay burial expenses for members.
- The has approximately members. Dues are \$ per year. There is a camper fee of \$ per year, which covers year round space on the grounds for one personal camper, that is recorded as dues.

Sources of funds per Form 990:

Net annual party income	\$
Net farm income & USDA payments	\$
Membership dues and camper fees	\$
Investment income	\$
Other income	\$
Total	\$

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Uses of funds per Form 990 and books:

Grants and other assistance (charitable donations)	\$
Administrative exp.	\$
Expenses related to property used year round by members	\$
Hardship payments to members	\$
Bereavement and sickness	\$
Other	\$
Total	\$

Examination shows that the operational test for an IRC 501(c)(3) organization is not met, because the Club's activities more than insubstantially – in fact, primarily –serve a non – exempt purpose of social and recreational benefit of members.

Note: Although the Club's operates somewhat like an IRC 501(c)(7) social club, its current activities result in significant non-member income that would preclude it from exemption under that subsection.

### Conclusion

, DBA , provides more than insignificant private benefit to members and affiliated individuals. It is therefore not an organization recognized as exempt from Federal income tax under IRC Section 501(a) described in Section 501(c)(3). The organization's exempt status is revoked effective January 1, 20XX. The organization is required to file Form 1120, U.S. Corporation Income Tax Return, for the period ended December 31, 20XX, and all subsequent periods.