



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: July 8, 2016

Number: 201640021
Release Date: 9/30/2016

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

UIL: 501.04-00

CERTIFIED MAIL – RETURN RECEIPT

Dear _____ :

This is a final adverse determination regarding your exempt status under section 501(c)(4) of the Internal Revenue Code. Our favorable determination letter to you dated July 10, 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective for the tax years ending June 30, 20XX and June 30, 20XX. This letter is not a determination of your exempt status under section 501 for any other period.

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

Organizations described in IRC 501(c)(4) and exempt under section 501(a) must be operated exclusively for the promotion of social welfare. Your activities consist of holding and maintaining a _____ for the _____ and of making _____ to the public along with providing _____ and _____. Neither of these activities is an IRC 501(c)(4) exempt activity. The primary activities must promote the common good and general welfare of the people in the community. Social welfare activities do not include social or business activities. _____ to the public and operating _____ and _____ during the _____ and providing and maintaining _____ for the membership of a local IRC 501(c)(8) do not constitute exempt activities for an IRC 501(c)(4) organization.

You have filed income tax returns on Form 1120 for the tax years ending June 30, 20XX and June 30, 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 91st 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 the United States Tax Court at the following address:

**United States Tax Court
400 Second Street, NW
Washington, DC 20217**

You also have the right to contact the Office of the Taxpayer Advocate. 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 or call 1-877-777-4778. 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 contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

**Margaret Von Lienen
Director, EO Examinations**

**Enclosures:
Publication 892**



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
1100 Commerce Street MC 4980 DAL
Dallas, Texas 75242

Date:
January 20, 2016
Taxpayer identification number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Telephone:

Fax:

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.** 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,

Paul A. Marmolejo
Acting Director, EO Examinations

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

**Department of the Treasury
Internal Revenue Service
TE/GE: EO:**

Date: March 23, 2016

Certified Mail- Return Receipt Requested

Dear _____,

Taxpayer Identification Number:

Form Number:

Tax Period(s) Ended:

Person to Contact:

Employee Identification Number:

Contact Telephone Number:

Contact Fax Number:

Response due date:

On December 18, 2015, Congress enacted the Protecting Americans from Tax Hikes Act of 2015 (PATH Act of 2015), P.L. 114-113. Section 406 of the PATH Act expands declaratory judgment rights under section 7428 of the Internal Revenue Code from 501(c)(3) organizations to all 501(c) organizations. These rights apply to adverse determinations of tax-exempt status, including revocations and disqualifications of tax-exempt status issued on or after September 18, 2015.

In addition to your right to declaratory judgment, the law subjects all exempt organizations to the requirement to exhaust their administrative remedies if we propose a revocation of tax-exempt status. Failing to respond to a proposal to revoke your exempt status will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

We issued you a 30-day letter proposing revocation during this time period. The basis for the revocation and the instructions regarding your right to appeal have not changed. This letter provides the information you need, but may not have considered in reply to our original 30-day letter. We are providing you with the new waiver form, Form 6018, *Consent to Proposed Adverse Action- Section 7428*, replacing the Form 6018-A we originally provided you.

If after receiving this new information you agree with our proposed revocation, please sign the attached Form 6018 and send it to us within 15 days from the date of this letter. We'll then issue you a final revocation letter determining that you aren't an exempt organization described under section 501(c)(4) of the Internal Revenue Code. Signing Form 6018 will not waive your right to seek declaratory judgment.

If after receiving this information you disagree, follow the instructions in the original 30-day letter. We are in receipt of your protest to the Office of Appeals dated February 18, 20XX. If you do not agree with the report and do not want to change your protest letter, there is no need to provide another protest to appeals.

We will forward the protest to appeals that you previously provided. For Appeals to have enough time to consider your case, the statute of limitations generally must have at least 365 days remaining when Appeals receives it. If additional time is needed, we will request your consent to extend the period the law provides to assess additional tax. If you don't consent to extend the statute, we'll close your case based on the proposed changes and send you a final revocation letter.

If you have any questions, you can call me 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,

Internal Revenue Agent

Enclosure:
Form 6018 Consent to Proposed Adverse Action- Section 7428

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 6/30/20XX and 6/30/20XX

Issue

Whether _____, a 501(c)(4) organization, should be revoked of its exempt status effective July 1, 20XX, where the organization does not have an exempt purpose and has substantial non-exempt activity.

Facts

The _____ was incorporated under the General Not for Profit Corporation Act of _____ on April 17, 19XX. _____ operates in _____. The organization was granted exempt status under IRC §501(c)(4) by the Internal Revenue Service on July 10, 19XX.

The organization's exempt purpose was for the purchase, acquiring, and maintaining of _____ and for the promotion of _____.

The _____ was to be used for the cultural benefit of the membership and the community.

The _____ was created by the _____ to own and maintain the _____ that is used by _____. The _____ is located in _____. _____ is the owner of the property and the property has a mortgage. Taxpayer indicated that the _____ was set up as a separate organization so that in the event that the _____ lost their _____, the organization would still maintain _____.

_____ has a separate EIN and has separate filing requirements from _____. _____ has its own exemption under IRC §501(c)(4). The _____ is exempt under IRC § 501(c)(8) as a _____.

All members of the _____ are automatically members of _____. This is per the Bylaws of _____.

The _____ holds their general meetings at the facility. The general meetings occur twice a month. The _____ also holds an annual fundraiser in the _____.

_____ provides _____ to the public. During the _____ the organization provides _____, has a _____ available, and the organization also _____ and _____ during the _____. The organization _____ from a vendor for specific events and charges the _____ about _____ than the organization pays for the _____. The _____ are advertised on _____.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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the website () and there is a sign on the door of the facility providing the name of the contact () to make a of the

The facility is available for including and other . The facility can handle large crowds up to XXX people with a , and . The organization also has a private room for groups of XXX or less. The organization includes the on the website and advertises the

The are as follows:

- : \$X,XXX.XX
- : \$XXX.XX
- : \$XXX.XX
- : \$XXX.XX

The organization also the following:

- : \$X.XX each
- : \$X.XX each
- : \$XX.XX each
- : \$X.XX each

public. The makes the available to the are made to individuals, businesses, and exempt organizations and community organizations. Exempt organizations and community organizations pay the same rate as individuals or businesses. They do not receive a lower rate or a discount.

Taxpayer indicated that makes approximately X to X to charities and exempt organizations per year. The rest of the to individuals or businesses for private events.

income for tax years ending June 30, 20XX and June 30, 20XX is as follows:

Sources of Income	
Tax Year Ending June 30, 20XX	
Account	Amount
	\$XX,XXX.XX
	\$XX,XXX.XX
	\$XX,XXX.XX
	\$XX.XX
	\$XX.XX
Total Income for tax year ending June 30, 20XX	\$XXX,XXX.XX

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 6/30/20XX and 6/30/20XX

Sources of Income	
Tax Year Ending June 30, 20XX	
Account	Amount
	\$XX,XXX.XX
	\$XX,XXX.XX
	\$XX,XXX.XX
	\$XX.XX
Total Income for tax year ending June 30, 20XX	\$XXX,XXX.XX

_____ has a compensated _____ and _____ who are responsible for the _____ and _____ . The _____ is responsible for showing the facility to _____ and getting a _____ . The _____ has the authority to execute _____ on the organization's behalf. The _____ is the point of contact for _____ and is responsible for _____ , _____ , and _____ . The _____ is responsible for organizing the _____ . The _____ is responsible for the _____ , _____ , and _____ . This includes ensuring that the _____ is clean and in good working order and is responsible for ensuring the _____ has supplies.

Law

IRC §501(c)(4)(A) provides for the exemption of Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

501(c)(4)(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Federal Tax Regulation §1.501(c)(4)-1(a)(1) defines civic leagues and local associations of employees. -

(a) *Civic organizations*

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 6/30/20XX and 6/30/20XX

(1) *In general.* —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. A “social welfare” organization will qualify for exemption as a charitable organization if it falls within the definition of “charitable” set forth in paragraph (d)(2) of §1.501(c)(3)-1 and is not an “action” organization as set forth in paragraph (c)(3) of §1.501(c)(3)-1.

(ii) *Political or social activities.* —The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. See, however, section 501(c)(6) and §1.501(c)(6)-1, relating to business leagues and similar organizations. A social welfare organization that is not, at any time after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3) may qualify under section 501(c)(4) even though it is an “action” organization described in § 1.501(c)(3)-1(c)(3)(ii) or (iv), if it otherwise qualifies under this section. For rules relating to an organization that is, after October 4, 1976, exempt from taxation as an organization described in section 501(c)(3), see section 504 and §1.504-1.

Federal Tax Regulation §1.501(c)(4)-1(b) *Local associations of employees.* —Local associations of employees described in section 501(c)(4) are expressly entitled to exemption under section 501(a). As conditions to exemption, it is required (1) that the membership of such an association be limited to the employees of a designated person or persons in a particular municipality, and (2) that the net earnings of the association be devoted exclusively to charitable, educational, or recreational purposes. The word “local” is defined in paragraph (b) of §1.501(c)(12)-1. See paragraph (d)(2) and (3) of §1.501(c)(3)-1 with reference to the meaning of “charitable” and “educational” as used in this section. [Reg. §1.501(c)(4)-1.]

Federal Tax Regulation §1.501(c)(3)-1 defines charitable organization as organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Santa Cruz Building Association v. United States of America (411 F. Supp. 871)

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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In *Santa Cruz Building Association v. United States of America*, a building association created by the Knights of Columbus #1215 which was used substantially to make rentals to the public, was held not to qualify for exempt status.

The Santa Cruz Building Association was incorporated by the Knights of Columbus Santa Cruz Council to promote better relations among its members; to provide grounds, buildings and equipment for educational and physical activities for the members, to produce, secure and provide funds and facilities to Santa Cruz Council of Knights of Columbus to assist, provide and promote the welfare of charitable organizations. The Building Association was a separate corporation which is not subject to the rules of the National Knights of Columbus. The Building Association charged both members and non-members rent for use of its hall. The Council used the hall 30% of the time while the public used the hall 70% of the time. The Building Association advertised its rentals in the yellow pages and in the Knights of Columbus golf magazine. The Building Association derived its income from bar sales, building rentals, and parking lot rentals.

Plaintiff Building Association requested a finding of exemption under any of four subsections of *section 501(c) of the Internal Revenue Code (IRC)*. Any organization that is listed under *§ 501(c)* is exempt from tax under *§ 501(a)*. Specifically, plaintiff contended that it is exempt as a title holding corporation under *§ 501(c)(2)*, or as a corporation organized and operated exclusively for religious or charitable purposes under *§ 501(c)(3)*, or as a civic organization under *§ 501(c)(4)*, or as a club organized and operated exclusively for pleasure, recreation and other non-profitable purposes under *§ 501(c)(7)*. Each code section was analyzed separately.

Section 501(c)(2) in conjunction with *§ 501(a)* exempts:

Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

501(c)(2) was held not to be applicable to the Building Association for three reasons: the Association has accumulated income over the years rather than turning it over to an exempt organization, the Association was not organized exclusively to hold title to property, and the Association engages in business activities other than holding title and collecting income.

Section 501(c)(4) in conjunction with *§ 501(a)* exempts:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 6/30/20XX and 6/30/20XX

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

The Building Association was held not to be exempt under this provision because the Association was operated primarily for the benefit of its members, not the community as a whole, and because it carried on a business for profit with the general public. Under the Regulations neither of these elements may be present if an exemption is sought. The Building Associations primary source of income was derived from rentals (of building space and parking lot) and bar receipts.

Organizations primarily engaged in profit making and nonsocial welfare activities cannot take an exemption under section 501(c)(4).

Section 501(c)(7) in conjunction with *§ 501(2)* provides an exemption for:

Clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

The Building Association was held not to qualify for exemption under IRC §501(c)(7). The facts showed that the plaintiff was engaged in a business. The Association's dealings with the general public involved neither "one-shot affairs," nor insubstantial amounts of money, nor activities distinguishable from those of profit-making organizations. Plaintiff stipulated that the building facilities were rented on a recurring basis and that its primary source of income came from rentals and bar receipts. When rented, the hall was used for activities such as meetings and weddings, which were events totally unconnected with the Building Association's membership purpose.

Furthermore, to be exempt as a social club, there must exist a meaningful "commingling of members" which plays a material part in the life of the organization. *Rev. Rul. 58-589, 1958-2 Cum. Bull. 266*. While the Building Association was organized with such a purpose, it was not operated to carry out that purpose. In the stipulated facts, it stated that its purpose was to act "as a housekeeping organization for the Santa Cruz Council of the Knights of Columbus". There is no evidence that the Building Association, as a separate entity, engaged in any social or recreational activities. That it may have done so through the Knights of Columbus is irrelevant. *Polish Army Veterans v. Commissioner, 236 F.2d 509 (3rd Cir. 1956)* (An association formed with members of the veterans Post whose primary function was to provide a building or clubrooms to the Post was not functioning as a social club).

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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Section 501(c)(3) in conjunction with *§ 501(a)* exempts:

Corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific . . . purposes . . . no part of the net earnings of which inures to the benefit of any private shareholder or individual .

Under the Regulations, two requirements must be met for an organization to qualify under this subsection. The organization must be both organized and operated exclusively for the purposes listed.

It was found that the Building Association was not organized exclusively for charitable purposes.

Plaintiff's purposes are set forth in Article II of its Articles of Association. Prior to 1967, when the article was amended, the object of the organization was "of a social nature . . . to promote better relations amongst its members, to provide grounds, buildings and equipment for educational, recreational and physical activities for the members". In 1967 the Articles were amended to delete the first phrase and to add: "to produce, secure and provide funds and facilities to SANTA CRUZ COUNCIL OF KNIGHTS OF COLUMBUS to assist, provide and promote the welfare of charitable organizations."

The language of neither amendment limits the corporate purposes to one or more exempt purposes. Moreover, there is no limitation requiring that activities not in furtherance of exempt purposes be but an insubstantial part of its activities. Providing a building for the recreational use of its members does not embody any charitable purpose as that term is construed in the Regulations.

Santa Cruz Building Association, Plaintiff v. United States of America, Defendant case found that the Building Association is an organization which is devoted to an unspecified extent to activities benefiting its own members, and did not qualify for exemption under IRC 501(c)(2), IRC 501(c)(4), IRC 501(c)(7), or IRC 501(c)(3).

Knights of Columbus Building Association of Stamford, Connecticut, Inc., Plaintiff v. United States of America, Defendants (1988 U.S. Dist.; A.F.T.R.2d (RIA) 1212)

The Building Association corporation was formed as a convenient means for a nonprofit fraternal benefit society to hold title to real estate. The society was a *§ 501(c)(8)* organization that could not hold title to property because it was an unincorporated association. The corporation did not qualify for exemption under *§ 501(c)(2)* as merely a title holding entity primarily because of the presence of a bar and buffet business on the premises. When the corporation sold its building it

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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made an application for tax exemption under § 501(c)(8). The IRS denied the application, and the corporation paid the assessed income tax. The corporation sought a refund, arguing that an exemption was attributed to the corporation under the adjunct theory because it operated as a necessary and indispensable adjunct of the society. The court denied the corporation's request for a refund, holding that the adjunct doctrine did not have general applicability. The court found that § 501(c)(2) unequivocally precluded a title holding entity from doing anything other than holding title and refused to countenance an end run around § 501(c)(2) by way of the adjunct doctrine.

The Association applied for a full refund of the tax it paid for 1979, arguing that it was entitled to a refund under *Sections 501(c)(2), (3), (4), (7), (8) and (10)*, and because it operated as a "necessary and indispensable adjunct of the Council which is itself exempt under *Section 501(c)(8)* and therefore, such exemption should be attributed to the Association under the adjunct theory." The Commissioner denied the refund claim. The Association instituted this action to recover the income tax it paid for 1979. For the reasons set forth below, the Association's claim for a refund was denied.

In addressing the Association's adjunct argument, the government simply distinguishes factually the cases on which the taxpayer relies. It argues further that because the Association is neither organized as a fraternal beneficiary society, *Section 501(c)(8)*, nor operated as merely a title holding entity, *Section 501(c)(2)*, it is not organized for the same purposes of the Council and cannot be exempt as an adjunct.

I.R.C. § 7805(b)(8) provides that "[t]he Secretary [of the Treasury] may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect." Pursuant to this authority the Secretary has given the IRS discretion to retroactively revoke exemption rulings or determination letters where "the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph." 26 C.F.R. sec. 601.201(n)(6)(i), Statement of Procedural Rules. See also Revenue Procedure 2013-9.

Taxpayer's Position

Taxpayer's position is not known at this time.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 6/30/20XX and 6/30/20XX

Government's Position

, a 501(c)(4) organization should be revoked of its exempt status effective July 1, 20XX because the organization does not have an exempt purpose and has substantial non-exempt activity.

The organization's activities consist of holding and maintaining for the and of making . Neither of these activities is an exempt activity as defined in IRC 501(c)(4). A 501(c)(4) must be organized as a not-for-profit organization and operated exclusively for social welfare purposes. Its primary activities must promote the common good and general welfare of the people in the community. Social welfare activities do not include social or business activities. Providing and and during the is not a social welfare purpose.

IRC §501(c)(4) provides for the exemption of Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

activities of holding and maintaining a for a local and making do not promote social welfare. The organization's income is derived by making to the public and providing and services. The , , and constitute the organization's primary activity. While the uses the facility twice a month for general meetings and for an annual fundraiser, this activity does not further the promotion of social welfare as defined in IRC 501(c)(4). In addition, to the public constitute a substantial non-exempt activity. Federal Tax Regulation §1.501(c)(4)-1(a) provides that a 501(c)(4) organization may not be organized or operated for profit.

For these reasons, exempt status should be revoked effective July 1, 20XX.

is responsible for filing Form 1120 U.S. Corporation Income Tax Return.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 6/30/20XX and 6/30/20XX

Conclusion

exempt status should be revoked effective July 1, 20XX where the organization does not have an exempt purpose and has substantial non-exempt activity.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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ALTERNATIVE ISSUE

An Alternative Resolution has been prepared should the IRS not uphold the Revocation Position

Alternative Position

Whether _____ is liable for filing Form 990-T and for unrelated business income from _____, _____, and _____ income from _____ made to the public.

Facts

The _____ was incorporated under the General Not for Profit Corporation Act of _____ on April 17, 19XX. _____ operates in _____. The organization was granted exempt status under IRC §501(c)(4) by the Internal Revenue Service on July 10, 19XX.

The organization's exempt purpose was for the purchase, acquiring, and maintaining of _____ and for the promotion of _____. The _____ was to be used for the cultural benefit of the membership and the community.

The _____ was created by the _____ to own and maintain the _____ that is used by _____. The _____ is located in _____. _____ is the owner of the _____ property and the property has a mortgage. Taxpayer indicated that the _____ was set up as a separate organization so that in the event that the _____ lost their _____, the organization would still maintain _____.

_____ has a separate EIN and has separate filing requirements from _____. _____ has its own exemption under IRC §501(c)(4). The _____ is exempt under IRC § 501(c)(8) as a _____.

All members of the _____ are automatically members of _____. This is per the Bylaws of _____.

The _____ holds their general meetings at the facility. The general meetings occur twice a month. The _____ also holds an annual fundraiser in the _____.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 6/30/20XX and 6/30/20XX

ALTERNATIVE ISSUE

During the _____ provides _____ to the public. available, and the organization also _____ the organization provides _____, has a during the _____. The organization _____ and from a vendor for specific events and charges the _____ about than the organization pays for the _____. The _____ are advertised on the website (_____) and there is a sign on the door of the facility providing the name of the contact (_____) to make a _____ of the _____.

The facility is available for _____ including and other _____. The facility can handle large crowds up to XXX people with a _____, and _____. The organization also has a private room for groups of XXX or less. The organization includes the on the website and advertises the _____.

The _____ are as follows:
 : \$X,XXX.XX
 : \$XXX.XX
 : \$XXX.XX
 : \$XXX.XX

The organization also _____ the following:
 : \$X.XX each
 : \$X.XX each
 : \$XX.XX each
 : \$X.XX each

_____ makes the _____ available to the public. The _____ are made to individuals, businesses, and exempt organizations and community organizations. Exempt organizations and community organizations pay the same rate as individuals or businesses. They do not receive a lower rate or a discount.

Taxpayer indicated that _____ makes approximately X to X _____ to charities and exempt organizations per year. The rest of the _____ to individuals or businesses for private events.

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income for tax years ending June 30, 20XX and June 30, 20XX is as follows:

Sources of Income	
Tax Year Ending June 30, 20XX	
Account	Amount
	\$XX,XXX.XX
	\$XX,XXX.XX
	\$XX,XXX.XX
	\$XX.XX
	\$XX.XX
Total Income for tax year ending June 30, 20XX	\$XXX,XXX.XX

Sources of Income	
Tax Year Ending June 30, 20XX	
Account	Amount
	\$XX,XXX.XX
	\$XX,XXX.XX
	\$XX,XXX.XX
	\$XX.XX
Total Income for tax year ending June 30, 20XX	\$XXX,XXX.XX

_____ has a compensated _____ and _____ who are responsible for the _____ and _____ . The _____ is responsible for showing the facility to _____ and getting a _____ . The _____ has the authority to execute _____ on the organization's behalf. The _____ is the point of contact for _____ and is responsible for _____ , and _____ . The _____ is responsible for organizing the _____ . The _____ is responsible for the _____ , _____ , and _____ . This includes ensuring that the _____ is clean and in good working order and is responsible for ensuring the _____ has supplies.

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Law

IRC §511(a)(1) provide for the imposition of unrelated business income tax —There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a tax computed as provided in section 11. In making such computation for purposes of this section, the term “taxable income” as used in section 11 shall be read as “unrelated business taxable income”.

IRC §512(a)(1) defines unrelated business income as follows —Except as otherwise provided in this subsection, the term “unrelated business taxable income” means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

IRC §513(a) GENERAL RULE. —The term “unrelated trade or business” means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business —

513(a)(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

513(a)(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

513(a)(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

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Federal Tax Regulation §1.512(a)-1(a) defines unrelated business taxable income-
Definition. —(a) *In general.* —Except as otherwise provided in §1.512(a)-3, §1.512(a)-4, or paragraph (f) of this section, section 512(a)(1) defines “unrelated business taxable income” as the gross income derived from any unrelated trade or business regularly carried on, less those deductions allowed by chapter 1 of the Code which are directly connected with the carrying on of such trade or business, subject to certain modifications referred to in §1.512(b)-1. To be deductible in computing unrelated business taxable income, therefore, expenses, depreciation, and similar items not only must qualify as deductions allowed by chapter 1 of the Code, but also must be directly connected with the carrying on of unrelated trade or business. Except as provided in paragraph (d)(2) of this section, to be “directly connected with” the conduct of unrelated business for purposes of section 512, an item of deduction must have proximate and primary relationship to the carrying on of that business. In the case of an organization which derives gross income from the regular conduct of two or more unrelated business activities, unrelated business taxable income is the aggregate of gross income from all such unrelated business activities less the aggregate of the deductions allowed with respect to all such unrelated business activities. For the treatment of amounts of income or loss of common trust funds, see §1.584-2(c)(3).

Federal Tax Regulation §1.512(a)-1(b) *Expenses attributable solely to unrelated business activities.* —Expenses, depreciation and similar items attributable solely to the conduct of unrelated business activities are proximately and primarily related to that business activity, and therefore qualify for deduction to the extent that they meet the requirements of section 162, section 167 or other relevant provisions of the Code. Thus, for example, salaries of personnel employed full-time in carrying on unrelated business activities are directly connected with the conduct of that activity and are deductible in computing unrelated business taxable income if they otherwise qualify for deduction under the requirements of section 162. Similarly, depreciation of a building used entirely in the conduct of unrelated business activities would be an allowable deduction to the extent otherwise permitted by section 167.

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Federal Tax Regulation §1.512(a)-1(c) *Dual use of facilities or personnel*. —Where facilities are used both to carry on exempt activities and to conduct unrelated trade or business activities, expenses, depreciation and similar items attributable to such facilities (as, for example, items of overhead) shall be allocated between the two uses on a reasonable basis. Similarly, where personnel are used both to carry on exempt activities and to conduct unrelated trade or business activities, expenses and similar items attributable to such personnel (as, for example, items of salary) shall be allocated between the two uses on a reasonable basis. The portion of any such item so allocated to the unrelated trade or business activity is proximately and primarily related to that business activity, and shall be allowable as a deduction in computing unrelated business taxable income in the manner and to the extent permitted by section 162, section 167 or other relevant provisions of the Code. Thus, for example, assume that X, an exempt organization subject to the provisions of section 511, pays its president a salary of \$20,000 a year. X derives gross income from the conduct of unrelated trade or business activities. The president devotes approximately 10 percent of his time during the year to the unrelated business activity. For purposes of computing X's unrelated business taxable income, a deduction of \$2,000 (10 percent of \$20,000) would be allowable for the salary paid to its president.

Federal Tax Regulation §1.513-1(a) provides the definition of unrelated trade or business. — *In general*. —As used in section 512 the term “unrelated business taxable income” means the gross income derived by an organization from any unrelated trade or business regularly carried on by it, less the deductions and subject to the modifications provided in section 512. Section 513 specifies with certain exceptions that the phrase “unrelated trade or business” means, in the case of an organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)). (For certain exceptions from this definition, see paragraph (e) of this section. For a special definition of “unrelated trade or business” applicable to certain trusts, see section 513(b).) Therefore, unless one of the specific exceptions of section 512 or 513 is applicable, gross income of an exempt organization subject to the tax imposed by section 511 is includible in the computation of unrelated business taxable income if (1) it is income from trade or business, (2) such trade or business is regularly carried on by the organization, and (3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions.

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Federal Tax Regulation 1.513-1(b) *Trade or business*. —The primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete. On the other hand, where an activity does not possess the characteristics of a trade or business within the meaning of section 162, such as when an organization sends out low cost articles incidental to the solicitation of charitable contribution, the unrelated business income tax does not apply since the organization is not in competition with taxable organizations. However, in general, any activity of a section 511 organization which is carried on for the production of income and which otherwise possesses the characteristics required to constitute “trade or business” within the meaning of section 162 —and which, in addition, is not substantially related to the performance of exempt functions —presents sufficient likelihood of unfair competition to be within the policy of the tax.

Accordingly, for purposes of section 513 the term “trade or business” has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. Thus, the term “trade or business” in section 513 is not limited to integrated aggregates of assets, activities and good will which comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. Activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or business merely because they are carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Thus, for example, the regular sale of pharmaceutical supplies to the general public by a hospital pharmacy does not lose identity as trade or business merely because the pharmacy also furnishes supplies to the hospital and patients of the hospital in accordance with its exempt purposes or in compliance with the terms of section 513(a)(2). Similarly, activities of soliciting, selling, and publishing commercial advertising do not lose identity as a trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization. However, where an activity carried on for the production of income constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

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Federal Tax Regulation §1.513-1(c) defines Regularly carried on

(1) *General principles.* —In determining whether trade or business from which a particular amount of gross income derives is “regularly carried on,” within the meaning of section 512, regard must be had to the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued. This requirement must be applied in light of the purpose of the unrelated business income tax to place exempt organization business activities upon the same tax basis as the nonexempt business endeavors with which they compete. Hence, for example, specific business activities of an exempt organization will ordinarily be deemed to be “regularly carried on” if they manifest a frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities of nonexempt organizations.

Federal Tax Regulation §1.513-1(d) defines Substantially related

(1) *In general.* —Gross income derives from “unrelated trade or business,” within the meaning of section 513(a), if the conduct of the trade or business which produces the income is not substantially related (other than through the production of funds) to the purposes for which exemption is granted. The presence of this requirement necessitates an examination of the relationship between the business activities which generate the particular income in question — the activities, that is, of producing or distributing the goods or performing the services involved —and the accomplishment of the organizations exempt purposes.

(2) *Type of relationship required.* —Trade or business is “related” to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of exempt purposes (other than through the production of income); and it is “substantially related,” for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Where the production or distribution of the goods or the performance of the services does not contribute importantly to the accomplishment of the exempt purposes of an organization, the income from the sale of the goods or the performance of the services does not derive from the conduct of related trade or business. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

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(3) *Size and extent of activities.* —In determining whether activities contribute importantly to the accomplishment of an exempt purpose, the size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function which they purport to serve. Thus, where income is realized by an exempt organization from activities which are in part related to the performance of its exempt functions, but which are conducted on a larger scale than is reasonably necessary for performance of such functions, the gross income attributable to that portion of the activities in excess of the needs of exempt functions constitutes gross income from the conduct of unrelated trade or business. Such income is not derived from the production or distribution of goods or the performance of services which contribute importantly to the accomplishment of any exempt purpose of the organization.

Federal tax Regulation §1.513-1(e) provide for Exceptions from unrelated business income — Section 513(a) specifically states that the term “unrelated trade or business” does not include —

(1) Any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) Any trade or business carried on by an organization described in section 501(c)(3) or by a governmental college or university described in section 511(a)(2)(B), primarily for the convenience of its members, students, patients, officers, or employees; or, any trade or business carried on by a local association of employees described in section 501(c)(4) organized before May 27, 1969, which consists of the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) Any trade or business which consists of selling merchandise, substantially all of which has been received by the organization as gifts or contributions.

Taxpayer's Position

Taxpayer believes that the _____ is excluded from unrelated business income under the volunteer exclusion. Taxpayer stated that the majority of the _____, _____, and _____ activities is conducted by volunteers. The volunteers are members of the _____ and _____ . Taxpayer indicated that the volunteers help set up the _____ and _____ after the _____ . Taxpayer indicates that they believe that they meet the volunteer exclusion.

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Government's Position

is subject to unrelated business income from , and . The unrelated business income is generated by the organization when they make the available to the public. In addition to providing the , the organization also provides , and they also , and . The are advertised on the organization's website and on the facility's entrance. The are made in a similar manner to a for-profit organization. The are available to individuals, businesses, and exempt organizations. The exempt organizations must pay the same fee as individuals and businesses. They do not receive a lower rate, actual cost rate, or a discount. Providing the use of the facility to school organizations, exempt organizations, or community groups without charge or for actual cost would be a social welfare activity. Charging and providing does not further social welfare.

The are not substantially related to the organization's exempt purpose and they are regularly carried on. does not meet the volunteer exclusion because substantially all of the activity, activity, and activity is conducted by compensated individuals and . The is the point of contact for the . The is responsible for showing the facility to potential , and is responsible for securing the , for and the facility, for , and . The is responsible for the , and . This includes ensuring the and in good working order. While the organization does have volunteer labor who help and after events, the majority of the unrelated business activity including the , and is conducted by compensated individuals who are compensated to carry out those activities. For these reasons, the organization does not meet the volunteer exclusion.

is liable for unrelated business income from , and .

(See Enclosed Form 4549-A for Unrelated Business Income Adjustment Amounts)

Conclusion

is liable for unrelated business income from , and . is responsible for filing Form 990-T to report unrelated business income.