



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**

December 27, 2016

Number: **201717044**
Release Date: 4/28/2017

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

UIL: 501.03-00

CERTIFIED MAIL

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 30, 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 engaged primarily in activities which accomplish charitable, educational, or any other exempt purposes as required by Treas. Reg. section 1.501(c)(3)-1(c)(1). Your activities more than insubstantially furthered non-exempt purposes and your income inured to the benefit of private shareholders and individuals. In addition, you operated for the benefit of private, rather than public interests, as required for continued recognition of exemption pursuant to Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii).

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

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ended December 31, 20XX. and for all tax years thereafter in accordance with the instructions of the return.

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 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 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,

Mary Epps
Acting Director, EO Examinations

Enclosure:
Publication 892

**Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division**

Date:
September 7, 2016
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Manager's name / ID number:

Manager's contact number:

Response due date:

Certified Mail - Return Receipt Requested

Dear _____ :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action - Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

Letter 3618 (Rev. 6-2012)
Catalog Number 34809F

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.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, 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. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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

For additional information

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:
Report of Examination and Form 4621-A
Form 6018
Publication 892
Publication 3498

Form 886-A {REV JANUARY 1994}	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT
NAME OF TAXPAYER	TAX IDENTIFICATION NUMBER	YEAR/PERIOD ENDED December 31, 20XX

Issue:

Whether _____ tax exempt status under Internal Revenue Code (IRC) section 501(c)(3) should be revoked for not operating exclusively for charitable purposes?

Facts:

_____ was incorporated as a not-for-profit corporation in the State of _____ on August 20, 20XX. The organization's purposes, as stated in the articles of incorporation, are exclusively charitable. The specific purpose, as stated in the articles, is to operate an adult men's baseball league.

_____ filed Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3)*, with the Internal Revenue Service (Service) on February 18, 20XX. Organization activities have the following objectives:

- a) Provide strong league play
- b) Operate a quality run organization that gives back to players and provides the best experience possible (to including tracking stats, providing prizes for season leaders, playoff series, championship series and All-star game)
- c) Promote a healthy lifestyle
- d) Provide revenue support to area public high schools in the form of field rental fees

The information submitted with the exemption application, Form 1023, states the organization would operate an _____ supporting X to XX teams (X-X teams each in age divisions XX & over and XX & over) with a maximum of XX players on each team. A website at _____ will provide organization and league information. The league plays under the sanctions of the _____. The source of financial support will be from team membership fees. Anticipated annual revenues for your first three years of operation are \$X, \$XX,XXX and \$XX,XXX respectively.

The Service issued Letter 947 on June 30, 20XX with an effective date of exemption under IRC section 501(c)(3) of August 20, 20XX. This ruling also determined foundation status as a public charity under IRC section 509(a)(2).

_____ filed Form 1120, *U.S. Corporation Income Tax Return*, for the tax year ended December 31, 20XX. There is no record of any returns filed for subsequent years.

_____ was selected for an audit for the tax year ended December 31, 20XX. The information requested for review during this audit was:

- a. A detailed description of the activities conducted during the year under audit
- b. A statement of revenue, expenses, assets and liabilities for the year under audit

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- c. Copies of board of director meeting minutes
- d. Corporate bylaws
- e. Confirmation of return filing for the year under audit
- f. Staffing information

Information was provided via fax on December 4, 20XX, January 5, 20XX and August 10, 20XX. Activity during 20XX consisted of:

- weekly baseball games (through) by X teams
- games and game ()
- Annual board of director meeting in
- Management and supervision of league and games

Administrative duties and league operations are largely handled by sole Board member and corporate President/CEO, . Games are run by the team managers and umpires assigned to the games with oversight by the President/CEO.

advertised prior to the 20XX season to solicit players and teams. Subsequently, word of mouth has been used.

During the tax year ended December 31, 20XX, received gross revenues of \$XX,XXX from team membership fees . Expenses of \$XX,XXX were incurred consisting of: field rental (\$X,XXX), game announcement (\$X,XXX), printing, reproduction and advertising (\$X,XXX), game balls (\$X,XXX), game umpires (\$X,XXX) and miscellaneous (\$X,XXX).

Law:

IRC section 501(c)(3) provides an exemption from federal income tax for organizations organized and operated exclusively for charitable, educational, and other purposes, including to foster national or international amateur sports competition (but only if no part of the organization's activities involves providing athletic facilities or equipment), if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

IRC section 501(j) removes the prohibition on providing athletic facilities or equipment for a "qualified amateur sports organization." Section 501(j)(2) defines this organization as one "organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports."

Treasury Regulation section 1.501(c)(3)-1(a) provides that to qualify for exemption under IRC section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes

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specified in that section. If an organization fails either the organizational or the operational test, it is not exempt.

Treasury Regulation section 1.501(c)(3)-1(b)(1)(i) provides an organization is organized exclusively for exempt purposes under IRC section 501(c)(3) only if its articles of organization (a) limit its purposes to exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that do not further one or more exempt purposes.

Treasury Regulation section 1.501(c)(3)-1(b)(iv) provides that an organization is not organized exclusively for one or more exempt purposes, if by the terms of its articles, its purposes are broader than the purposes specified in IRC section 501(c)(3).

Treasury Regulation section 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for exempt purposes under IRC section 501(c)(3) unless it serves a public rather than a private interest.

Treasury Regulation section 1.501(c)(3)-1(d)(3)(i) states the term "educational" in IRC section 501(c)(3) refers to (a) the instruction or training of the individual to improve or develop his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 69-175, the Service ruled that a mutual benefit organization did not qualify for exemption under IRC section 501(c)(3) where it served the private interests of its members. The organization provided bus transportation to and from school for members' children. The ruling reasoned that when a group of individuals associate to provide a cooperative service, the organization serves the private interest of its members.

In Rev. Rul. 77-365, 1977-1 C.B. 192, an organization instructed persons of all ages and skill levels in a particular sport, conducting clinics, workshops, lessons, and seminars. Its program was open to anyone in the community. The Service held the organization was organized and operated for charitable purposes under IRC section 501(c)(3).

Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court discussed the meaning of the word "exclusively," as used in an exemption statute similar to IRC section 501(c)(3). The Court held that an organization is not organized and operated exclusively for exempt purposes if it has a single substantial nonexempt purpose.

In *Hutchinson Baseball Enterprises*, 73 T.C. 144 (1979), aff'd, 696 F.2d 757 (10th Cir. 1982), non-acq, 1980-2 C.B. 2, the Tax Court held that an organization that promoted recreational and amateur sports was exempt as a "charitable" organization under IRC section 501(c)(3). The organization undertook

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numerous activities to promote the sport of baseball; and the court found that the purpose of promoting sports predominated over subsidiary purposes, such as members' recreational or social benefit.

In *North American Sequential Sweepstakes*, 77 T.C. 1087 (1981), an organization was formed to promote a particular form of sky diving. The court examined all the facts and circumstances of the case in finding that the purpose of promoting the sport was subsidiary to promoting the recreational and private interests of its members. Accordingly, the organization did not qualify for exemption under IRC section 501(c)(3).

In *The Media Sports League, Inc.*, T.C. Memo 1986-568, the Tax Court ruled that an organization that sponsored sports competitions for adults in the community was not exempt under IRC section 501(c)(3). The court found that the organization had the substantial nonexempt purpose of promoting the social and recreational interests of its members.

In *Syrang Aero Club*, 73 T.C. 717 (1980), the Tax Court ruled that an organization that rented an airplane to members, providing no instruction, was not exempt under IRC section 501(c)(3). The court found that any educational purpose was incidental to substantial recreational purposes the organization served; and that it furthered the private interests of the members.

Government's Position:

tax exempt status under IRC section 501(c)(3) should be revoked as of January 1, 20XX.

is neither organized nor operated for exempt purposes within the meaning of IRC section 501(c)(3).

has not engaged in activities that are exclusively educational, charitable or fostering national or international amateur sports competition within the meaning of IRC section 501(c)(3).

The organization's only activity is the operation of a men's adult baseball league. Such activity is not educational because no program of instruction or training is provided, as was provided by the organizations in Rev. Rul. 77-365 and the Hutchinson Baseball Enterprises case. Nor is information provided to the public under section 1.501(c)(3)-1(d)(3) (i)(b) of the regulations.

Instead, like the organizations in the, *North American Sequential Sweepstakes*, *Media Sports League*, and *Syrang Aero Club* cases considered above, the organization furthers the nonexempt purpose of promoting the recreational and social interests of your members. This nonexempt purpose is, by itself, sufficient to disqualify you from exemption under the rationale of the Better Business Bureau decision.

The organization's recreational activity also does not foster national or international amateur sports competition because you provide facilities or equipment to participant/members. Section 501(j) of the Code does not excuse you from meeting this limitation; is not a "qualified amateur sports

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organization” under section 501(j)(2) since the organization’s purposes and activities are not “exclusively” or “primarily” to promote international or national sports competition.

recreational activities also further the substantial nonexempt purpose of furthering the private interests its members, under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Like the organizations in Rev. Rul. 69-175, the *Syrang Aero Club*, *North American Sequential Sweepstakes*, and *Media Sports League* cases, provides cooperative services for your members, which benefits the organization’s members and promotes private interest not public interests.

fails the organizational test. The Articles of Incorporation state the specific purpose is to operate a men’s adult baseball league which is not a purpose listed under section 501(c)(3) of the Code and does not constitute exempt activity under IRC section 501(c)(3). Therefore, the articles do not satisfy requirements that (1) purposes be limited to one or more exempt purposes, Treasury Regulations section 1.501(c)(3)-1(b)(1)(i)(a); (2) articles not expressly empower the organization to engage in non-exempt activities, Treasury Regulations section 1.501(c)(3)-1(b)(1)(ii)(b); and (3) purposes not be broader than section 501(c)(3) purposes, Treasury Regulations section 1.501(c)(3)-1(b) (iv).

Taxpayer Position:

President/CEO has indicated agreement with the proposed revocation.

Conclusion:

does not meet the requirements to be exempt under IRC section 501(c)(3) because the organization is not organized and operated exclusively for charitable or educational purposes. Moreover, organization funds inure to the benefit of private individuals and do not further public purposes. Consequently, tax exempt status under IRC section 501(c)(3) should be revoked effective January 1, 20XX.