



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: FEB 08 2017

Taxpayer Identification Number:

Number: **201731012**
Release Date: 8/4/2017

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

(Phone)

(Fax)

UIL: 501.03-00

CERTIFIED MAIL – Return Receipt Requested

Dear _____ :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the Code is hereby revoked effective January 1, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in section 501(c)(3) of the Code and exempt under section 501(a) of the Code must be both organized and operated exclusively for exempt purposes and must serve public rather than private interests. Our examination of your activities and finances revealed that you more than insubstantially served private interests. Such actions are inconsistent with the requirements to operate exclusively for purposes set forth in section 501(c)(3) of the Code and to maintain exempt status.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. If you have not already filed these returns and the agent has not provided you instructions for converting your previously filed Form 990 to Form 1120, you should file these income tax returns with the appropriate Service Center for the tax year ending 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, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States

District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

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

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We 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 our assistance, which is always free, we 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 yours,

Mary A. Epps
Acting Director, EO Examinations

Enclosures:
Publication 892



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations Examinations
324 25th St Rm 6025 Mail Stop 1112
Ogden, UT 84401

Date:
November 02, 2016
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact/ ID number:

Contact numbers:
Toll Free
Long Distance
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

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 may also 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.

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

Phone Number:

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, Exempt Organizations Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended December 31, 20XX

Date of Notice: November 02, 2016

Issues:

Whether _____ continues to qualify for exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code.

Facts:

_____ applied for tax-exempt status by filing Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on October 27, 20XX, and was granted tax-exempt status as a 501(c)(3) on November 07, 20XX, with an effective date of January 01, 20XX.

_____ was incorporated on January 01, 20XX the state of _____.

_____ was selected for audit to ensure that the activities and operations align with their approved exempt status.

_____ was sent letter 3606 with attachments on March 22, 20XX. One of the attachments, Form 4564, Information Document Request, item 14, requested the organization provide complete copy of your original organizing document and any amendments.

As part of the response received by _____ by the Internal Revenue Service on April 25, 20XX, the organizing documents stated "(See Attachment)" for the purpose, the attachment was not provided. Tax Compliance Officer (TCO) contact the organization and _____ provided the Articles of Incorporation-Nonprofit filed with the State of _____ on March 19, 20XX, were it states the purpose of the organization is "to improve the marketing of local farm products in the farm markets of _____,"

Due to the purpose of _____ filed with the state of _____ on March 19, 20XX, not meeting the organization test of a 501(c)(3) organization, Tax Compliance Officer (TCO) recommended _____ amended the organizing documents, in order to meet the organization test of a 501(c)(3) organization.

_____ on 9/13/20XX amended the organization documents to add the following to the Articles of Incorporation with the state of _____ has follows:

- _____ clause:

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• Clause:

• Clause:

Per the response received by _____ by the Internal Revenue Service on April 25, 20XX, _____ provides the surrounding community with _____ market place locations from May through December, as well as a winter market in one location where farmers, businesses, and artisans sell their goods directly to the public. The markets are conducted daily in _____, Thursdays 4-7pm; _____, Monday 3:30 -6:30 pm; _____, Saturdays 10am – 1 pm; _____, Wednesdays 3:30 – 6:30 PM; _____, Wednesdays 3:30-6:30pm; and _____, Tuesdays, 3:30-6:30 pm, _____ also provide:

- Special events where local vendor can sell their products;
- Cooking demonstrations and other educational programs for adults and educational events for children. _____ may hold one to two of these types of events a month.
- Space at the marked for local non-profits to promote their activities.

A due of \$XXX per year is charged to each member for participation in the markets. A fee of \$XX-\$XX per spot is charged to participate in a market and is determined by the size of the spot a member uses.

_____ is managed through their board of directors. The board meets on a monthly basis to discuss the weekly markets and how to improve them, the various community and children's projects, and marketing strategies.

Since _____ beginning, they have engaged in a market where farmers and other vendors sell their products to the community at large. The "other vendors" are allowed to sell prepared food products such as cookies, bread, coffee, etc. at minimal overhead and marketing expenses. At least two of _____ officers sell products as vendors at the market.

Vendors are selected by the board of directors after submitting a pre-application form and the board will then decide whether or not to accept an application based on the product(s) the person is looking to sell, membership requirements and vacancies. Food vendors are charged small fees depending on the market location they chose to

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participate in.

has promoted the market through the dissemination of newspaper ads in several papers, bill board ads, banner, radio, brochure, Facebook, building and hosting a website, and building a presence in the local farmers' market community. The website includes basic information regarding the location and hours that the markets operate. In addition, a list of all vendors along with their products is provided.

also provide a month by month consumer's guide to fresh product grown or produced in , farmer's markets local growers times and locations, Special events planned for 20XX, and XXth annual program.

The budget indicate that the gross receipts consist almost exclusively of fees received from vendors to rent space at the market and dues. You also have a small amount of gross income from chili cook off and Fall dinner. Your expenses include salaries/wages, program, advertising, professional fees, insurance, meeting, bonding, dues, donations, and miscellaneous operating expenses.

Law:

Internal Revenue Code (IRC) §501(c)(3) of the Code exempts from federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

IRC §511 of the Internal Revenue Code imposes a tax at corporate rates under section 11 on the unrelated business taxable income of certain tax-exempt organizations.

Treasury Regulations (Regulation) §1.501(c)(3)-1(a)(1) of the regulations provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Regulation §1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

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Regulation §1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Regulations §1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Regulations §1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the code, relates to:

- (a) The Instruction or training of the individual for the purposes of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 61-170, 1961-2 C.B. 112, held that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to organization's members.

Rev. Rul. 67-216, 1967-2 C.B. 180, established that a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products may qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954. The principal activities and exhibits of the fair are educational. They are planned and managed by persons whose business it is to inform the public in general, and farmers in particular, about the resources of the region, and the methods by which they may be conserved, utilized, and improved. In addition, the overall activities of the fair are conducted in such a fashion and on such subjects as will enlighten the viewers and participants on the newest and best techniques of farming, and on other matters useful and beneficial to them and to the community.

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Rev. Rul. 68-167, 1968-1 C.B. 255, held that a nonprofit organization created to market the cooking and needlework of needy women may be exempt from tax under section 501(c)(3) of the Code. The organization operated a market where it sold the cooking and needlework of these women who were not otherwise able to support themselves and their families. The organization provided a necessary service for needy women by giving them a market for their products and sources of income.

Rev. Rul. 71-395, 1971-2 C.B. 228, a cooperative art gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under section 501(c)(3) of the Code. It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

Rev. Rul. 73-127, 1973-1 C.B. 221, the Service held that an organization that operated a cut-price retail grocery outlet and allocated a small portion of its earnings to provide on-the-job training to the hard-core unemployed did not qualify for exemption. The organization's purpose of providing training for the hardcore unemployed was charitable and educational within the meaning of the common law concept of charity; however the organization's purpose of operating a retail grocery store was not. The ruling concluded that the operation of the store and the operation of the training program were to distinct purposes. Since the former purpose was not recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

Rev. Rul. 78-86 held denial of an organization formed by various merchants to provide customer parking. A parking arrangement whereby merchants join together to provide parking for their customers at a reduced rate serves the merchants' private interests by encouraging the public to patronize their stores. Thus it cannot be said to be operated exclusively for charitable purposes under section 501(c)(3) of the Code.

Rev. Rul. 80-287, 1980-2 C.B. 185, involved a nonprofit lawyer referral service that arranged, at the request of any member of the public, an initial half-hour appointment for a nominal charge with a lawyer whose name was on an approved list maintained by the organization. As a general rule, providing services of an ordinary commercial nature in a community, even though the undertaking is conducted on a nonprofit basis, is not regarded as conferring a charitable benefit on the community unless the service directly accomplishes one of the established categories of charitable purposes. The organization's activities were directed toward assisting individuals in obtaining preventive or remedial legal services and, as such, were not specifically designed to confer a charitable benefit on the community. Although the lawyer referral service provided some public benefit, a substantial purpose of the program was promotion of the legal profession.

In **Better Business Bureau of Washington, D.C., Inc. v. United States**, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if

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substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of truly exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include, inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

In **B.S.W. Group, Inc. v. Commissioner**, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In **Easter House v. U.S.**, 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). **Easter House**, 12 Cl. Ct. at 485-486.

In **American Institute for Economic Research V. United States**, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court noted that education is a broad concept, and assumed that the organization

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had an educational purpose. The Court concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In Living Faith, Inc. V. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision, T.C. memo. 1990-484, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify under section 501(c)(3) of the Code. The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose; including that the operations were presumptively commercial. The organization competed with restaurants and food stores, used profit-making pricing formulas consistent with the food industry, and incurred significant advertising costs.

Application of Law

is not organized and operated exclusively for charitable, educational, or religious purposes consistent with Section 501(c)(3) of the Code nor Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations and therefore fail to meet the operational test. You help facilitate the sale of produce, baked goods and other items for the benefit of the seller, advertise, promote and inform potential buyers about your market, and your primary activities revolve around setting up the vendor spaces as a catalyst for facilitating the sale of goods for local farmers and other organizational members alike.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. You engaged in a substantial non-exempt activity similar to commercial enterprise by operating a market selling various goods to the public. Vendors participating in your market pay a fee to rent their space and then are free to set sales prices to maximize sales and profits for their own benefit. You therefore do not operate exclusively for exempt purposes.

Contrary to section 1.501(c)(3)-1(d)(1)(ii) of the regulations, you are operated for the substantial purpose of providing private benefit to vendors of the products at your market. Although the market includes educational events, more than an insubstantial part of your activities are in furtherance of the non-exempt purpose of being a profitable outlet for your vendors. You not only provided the outlet for them to sell their products, you provided marketing and cover overhead expenses that the vendors would otherwise have to

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expend. Because your governing body members are also vendors, this private benefit constitutes inurement.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides, in part, that the term 'educational' as used in section 501(c)(3) of the Code relates to the instruction of the public on subjects useful to the individual and beneficial to the community. As described above, your facilitation of produce sales is not educational nor is advertising your farmer's market. Within your organization, only a limited amount of time and resources are devoted to educational and charitable activities and purposes with the meaning of section 501(c)(3) of the Code. Any consumer education you provide is incidental to the sale of the vendors' products.

You are similar to the organization described in Rev. Rul. 61-170. In your case, your primary purpose is to provide a commercial market for vendors. While the public may benefit from an increase in market selection and the educational programs that you provide, the overall purpose of your organization is to serve and benefit the vendors selling at the market and not the general public.

You are unlike the organization in Revenue Ruling 67-216 because your principle purpose is to facilitate vendor sales and connect buyers with sellers. You devote a majority of your time and resources to this purpose. You utilize resources to assist local and regional farmers as well as other producers to gain visibility to potential buyers through the vehicle of your farmer's market. Your website includes a vendor list that includes his/her product sold at the market. You encourage the public so support the vendors at your market. Each vendor would otherwise bear the expense of providing the same services on an individual basis. Therefore, you do not qualify for exemption.

Unlike the organization described in Rev. Rul. 68-167 you do not serve needy individuals who are not otherwise able to support themselves and their families.

Your activities are, in effect, identical to those of the cooperative art gallery described in Rev. Rul. 71-395. You operate for the purpose of providing space to local farmers and vendors to exhibit and sell their products. Exhibiting and promoting the sales of products for the benefit of private individuals does not qualify for exemption under section 501(c)(3) of the Code.

You are similar to the organization described in Rev. Rul. 73-127 because the operation of the farmers' market and your provision for educational programs are two distinct purposes. Because the operation of a market is not recognized charitable or educational purpose, you are not operated exclusively 501(c)(3) purposes.

You are similar to the organization in Revenue Ruling 80-287 which provided that where regular commercial services, even if offered on a non-profit basis, did not directly

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accomplish one of the established types of charitable purposes an organization does not qualify for exemption. Because your activities are directed at promoting and facilitating the sale of products selected by vendors for the purpose of increasing sales; and you were formed to provide an improved market for products and expand sales opportunities you were not formed to further exclusive section 501(c)(3) purposes. While consumers at the market may receive information about products this is not serving an exclusive educational purpose. Also, since vendor set their own prices, sales of products confer no charitable benefit to the community. Therefore, you are not substantially serving established section 501(c)(3) purposes and do not qualify for exemption.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under Section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature (Better Business Bureau of Washington, D.C. v. United States). You devote a substantial amount of your time, resources and activities to creating an event for vendor sales. Your expenses are directed towards attracting potential buyers and facilitating produce sales. You maintain a vendor list and are actively involved in the sales process. As these are not serving exclusively 501(c)(3) purposes and are not insubstantial in nature you are similar to the organization in the above ruling.

A substantial part of your activities consist of providing a marketplace for private individuals to sell their produce and other goods to members of the public at prices established by the vendor. Vendors are selected based upon consumer demand for their products and not for any charitable or educational purposes. Vendors select and set product prices for sale to maximize profits and sales. As seen in B.S.W. Group and Easter House, a lack of public support is further evidence that an organization is operating for commercial purposes and not for charitable purposes. Essentially all of your income is derived from vendor fees and dues. Because you conduct activities similar to a commercial business you do not meet the requirements for exemption under section 501(c)(3) of the Code.

You are similar to the organizations described in the American Institute for Economic Research v. United States and Living Faith, Inc. V. Commissioner. You are operating a market in competition with other commercial markets. Your sale of products such as fruits, vegetables, cookies, wines, breads, and coffee is indicative of a business. Your sources of revenues are mainly from vendor dues and vendor fees and your expenses are mainly for marketing, supplies, insurance, and professional fees. Your market is a significant non-exempt commercial activity that is not incidental to the achievement of other educational purposes.

Organization's Position

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You state that your markets are our way to reach the public and allow a forum to bring the farm to them. It allows to provide nutrition education, community fellowship, as well as a support for other nonprofit organizations. helps to build community by serving as a gathering point for community outreach.

You also state provides support for other Nonprofits – allows other nonprofits a way to conserve resources and reach the community through use of the market set up.

- The markets provide an avenue for recipients of the WIC Farmers' Market Nutrition Program (FMNP) and Senior market Nutrition Program (SNAP) to redeem their checks for locally grown fruits and vegetables as they are required to by the program. The markets provide opportunities and resources on the usage of the checks for their purchases.
- Distribution location for Senior Farmers' Market Nutrition Program (SNAP). The markets provide a location for the recipients of the program to receive their checks if they participate in the program. It gives the recipients an area to receive their checks in a platform where they can also be used. Increasing the amounts of seniors that can benefit from the program.
- Provide weekly food donations to area food pantry's, such as the Food Pantry.
- Provide all fruits and vegetables for Banquet.
- Library System provides as an outreach of their services.

Public Education

- Provide displays at various events within the community on eating local and the benefit of eating farm fresh to educate the community on the value of farm produced products.
 - These events are at the Senior Day at the Mall, the Home & Garden Show.
- Display information on Fruits and Vegetables at the annual event.
- Provide multiple cooking demonstrations.

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- Teaches children how to plant their own garden to show them an emphasis on healthy eating.
- Holds a chili cook-off as a fundraiser of which the proceeds are donated to an area of need in the community.
- Provides training on food safety and preservation.

Encourage economic opportunities for small family farmers and local business

- Provides a venue for members to sell their products as well as test new products with low overhead.
- Allows the market to improve the economic activity of the community through emphasis on buying local.

Facilitate food safety in the community

- Require food certifications of all sellers in the markets, current license and inspection of facility.
- Provide consumers with access to fresh, local nutritious food.

Government's Position

By providing a profitable outlet for local farmers and vendors, you are primarily serving the private interests of the businesses and individuals who come to your market to sell their products. The facts show the gathering of local residents for educational purposes is secondary to the commercial activities that occur at your market.

Conclusion:

You do not qualify for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Code because you do not meet the operational test. Your activities are indistinguishable from the similar activities of an ordinary commercial enterprise, and these activities provide substantial private benefits to your vendors. Since members of your governing body are vendors, this private benefit also constitutes inurement. Therefore, we conclude that you do not meet the operational test for exemption under section 501(c)(3) of the Code.

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal

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Revenue Code. The provision of a marketplace for the sale of goods is not an educational activity nor is it charitable because it is not limited to a charitable class. You do not serve a public rather than a private interest. Therefore, you are not described in section 501(c)(3).

You help facilitate the sale of produce for the benefit of the seller. We have concluded that you are not an organization described in section 501(c)(3) of the Code because you are not operated exclusively for one or more exempt purposes set forth in section 501(c)(3) of the code.

Based on the foregoing reasons, the organization does not qualify for exemption under section 501(c)(3) and its tax exempt status should be revoked.

Form 1120 returns should be filed for the tax periods after January 1, 20XX.