



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**

Number: **201749014**
Release Date: 12/8/2017

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Telephone Number:

CERTIFIED MAIL – Return Receipt Requested

UIL: 501.03-00

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated October 20, 19xx is hereby revoked and you are no longer exempt under section 501(a) of the Code effective August 1, 20xx.

The revocation of your exempt status was made for the following reasons:

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

You failed to keep adequate books and records and failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. sections 6001 and 6033(a)(1), Treas. Reg. 1.6033-2(i)(2) and Rev. Rul. 59-95, 1959-1 C.B. 627.

Contributions to your organization are no longer deductible under section 170 after August 1, 20xx.

You are required to file Form 1120 U.S. Corporation Income Tax Return. These returns should be filed with the appropriate Service Center for tax years ended July 31, 20xx, July 31, 20xx July 31, 20xx, July 31, 20xx and July 31, 20xx and for all 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. You may write to the courts at the following addresses:

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

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

United States 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 you 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 yours,

Maria D. Hooke
Director, EO Examinations

Enclosure:
Publication 892



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

Date:
11/09/2015
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:
Phone Number:
Fax Number:
Manager's name / ID number:

Manager's contact number:
Phone 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

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
Form 6018
Publication 892
Publication 3498

Form 886-A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit -0002
Name of Taxpayer		Year/Period Ended 20xx07, 20xx07, 20xx07, 20xx07, and 20xx07

Issue:

Whether the exempt status of _____ under Internal Revenue Code (“IRC”) Section (“Sec.”) 501(c)(3) should be revoked on the grounds that it served the private benefit of its members, and disqualified persons including its President, and

Facts:

(“Organization”) was incorporated in the State of _____ in April 19xx. On December 3, 20xx, the Internal Revenue Service (“Service”) issued a favorable determination letter to Organization recognizing it as tax-exempt under IRC. Sec. 501(c)(3). The Service determined that Organization was not a private foundation because it was classified as a publicly supported organization as described in IRC Sec. 170(b)(1)(A)(vi). For the years under examination, Organization reported it was not a private foundation because it was an organization described in IRC Sec. 170(b)(1)(A)(vi). The Organization’s Articles of Incorporation provide its purpose is “

.” Similarly, Organization summarizes its mission on its Forms 990, stating its purpose is “ _____ .”

Organization was founded by _____ who served as Organization’s first President. During her tenure as President, _____ was a co-owner of _____, which is a for-profit entity that

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operates gymnastics and cheerleading facilities in _____ and _____. Since Organization's inception, _____, her business partner, _____ (_____) (who was also one of the Organization's directors), and _____ worked closely with Organization. _____ trained amateur athletes from ages x through xx in gymnastics and placed them on teams (according to age, ability, et cetera). Organization then helped the athletes trained by _____ to raise funds to pay the expenses related to sanctioned amateur gymnastics competitions. Organization also assisted participants in cheerleading competitions to raise funds; however, Organization never disclosed to the Service that it intended to support cheerleading activities.

Around 20xx, _____ left her position as President of Organization and sold her interest in _____ to _____. When asked, _____ explained that _____ left her position and sold her share in _____ because she was no longer interested in being involved with gymnastics. After _____ left, Organization selected its second President, who served until approximately 20xx. In 20xx, _____ replaced this individual and became the Organization's third President. To hold a position as an officer of the Board of Directors, Organization mandated that an individual be a parent/guardian of an athlete training within _____, however, this requirement was waived for _____. Since becoming Organization's President, _____ has been responsible for recording receipts in Organization's QuickBooks records, depositing funds, reconciling accounts, approving expenditures, writing and signing checks, making book entries, making day-to-day decisions for the Organization, and

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making decisions for the Organization's long-term direction. is currently
 Organization's President and owns with her husband.

The Organization was asked to provide extensive records for all tax years under examination, multiple times. Initially, the examination was focused on the year ending July 31, 20xx ("primary year"). Thus, records obtained were for the primary year. However, after expanding the examination to prior and subsequent tax years, the Service made repeated requests for records and provided Organization several extensions for additional information for the primary, as well as, new information for all other years. Throughout the request and extensions, the Organization provided minimal and incomplete responses.

According to the records provided, Organization generated its income from membership fees, fundraisers, and sponsorships.

Organization's policy (identified in Exhibit A, item number 7) stated that members were required to pay directly and/or to participate in fundraisers. In addition to Organization's annual membership fee, members were required to pay a "team assessment" ("assessment"), which consisted of each member's share of cumulative estimated expenses for the year; including, training, coaching fees, athletic membership fee, meets, banners, equipment, competitive gear and other competition related expenses. According to Organization's competitive budget for 20xx-20xx (Exhibit B), the assessment ranged from \$xxx.xx to \$x,xxx.xx, depending on the athlete's level and whether travel was involved. Organization tracked each member's assessment balance separately to verify that each member met his or her share of the expenses. Organization communicated about member's account balance when inquired by that individual. Members

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were required to sign a commitment form that acknowledged their commitment to and acknowledged that members would be removed from the team should their attendance fall below xx% (Exhibit C). On the commitment form, members also signed to acknowledge that they understood that the money provided to the Organization would, under no circumstances, be “refunded, transferred or directed”. Members who were not current with their assessment were not allowed to participate in Organization’s activities.

As an alternative to paying the assessment, Organization offered members the option to reduce their assessment obligation by participating in a number of fundraisers. Organization’s fundraisers included, “Scrip”, (gift wrapping) and other fundraisers. Scrip, as used by Organization, involved interested merchants offering support by allowing the purchase of discounted gift certificates (“gift cards”). Members would buy gift cards from Organization at full face value. Members purchased Scrip using a “ Gift Card Order Form” (“order form”). Organization generated a Scrip profit equal to the discount offered by the merchant. The value of the Scrip was also attributed to the members who purchased the gift cards, which was also identified on the order form. Organization’s fundraiser was a program offered by for exempt organizations only. Members participating in this fundraiser would travel to the facility, located in the area to wrap gifts. Each gift wrapped earned \$.xx for the Organization. would then provide Organization statements showing the members who participated in the gift wrapping program and the total amount generated by each individual member. Organization would then use records to determine the amount to credit each individual member towards their

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assessment. According to _____, members could also raise funds by volunteering to work for _____. When asked, _____ explained that she would pay minimum wage to members who volunteered to work for _____. _____ then explained that instead of paying the wages directly, members would earn their wages in the form of a donation, which was paid to the Organization under the individual member's name and applied to their assessment.

During the interview, _____ explained that Organization's members have consistently carried out Organization's fundraisers in the same manner during Organization's existence. The limited historical records provided by Organization have shown the same. Although Organization failed to provide extensive records relating to its fundraising activities for the other years under examination, _____ explanation indicates that the policies and procedures for Organization's fundraising activities were consistent during all tax years under examination.

Organization's phone list identified that Organization had approximately xx members during "20xx". Organization failed to provide more extensive records concerning the number of members it had for each year. However, when asked, _____ confirmed that, while membership may have increased around 20xx, Organization's membership for all years under examination was equal, on average to the numbers shown on the 20xx phone list..

Records, such as handwritten notes, typed notes, order forms, Scrip deposits and statements from _____, identified a number of members who participated in Organization's fundraisers. Based on these records, about xx% of members were identified as having elected to satisfy at least part of their assessment through fundraising. The records identifying members

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who participated in Organization's fundraisers also showed a portion of the amounts attributed to each individual member. Members who participated in fundraising earned the value of the fundraising profits, which was then applied to their assessment. Overall, a member's participation in a fundraiser (whether Scrip, or any other program), reduced their assessment based on the amount of funds raised. Members who did not participate in a fundraiser did not receive a reduction of their assessment.

The Organization's "sponsorship" income was primarily generated from businesses advertising in Organization's yearbook. Organization's yearbook also contained a significant amount of content related to . content within yearbook included:

- An image of facility on the cover
- On page one, the top right corner contained a three by two inch image of logo
- The entire third page was dedicated to , which included a narrative identifying as the owner of , and discussing background, including the history of
- In the coaches section, approximately x of x coaches were not coaches of the Organization but instead were employees of

Despite the substantial amount of related content in Organization's yearbook, Organization did not receive any payments from as a sponsor or advertiser. According to , the content was included in yearbook because Organization and had a

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very close relationship. In explaining the close relationship, stated the following concerning both entities:

- All athletes of the Organization were referred to as members of “ ”, which was title for its athletes.
- The Organization’s policies required all members of the Organization to also be members of and receive training from
- All of Organization’s trainers were also employees of ; therefore, Organization depended on for training. In addition to using trainers, Organization paid for each trainer’s certifications. No records were presented showing that reimbursed Organization for these expenses.
- Members of Organization attended competitions, which were created and hosted by to generate business income.
- Whenever Organization’s athletes won competitions, received promotion and validation for its training programs.

The expenses incurred by the Organization throughout the years under examination, among other things, included: coaching fees, gymnastics and cheerleading entry fees, gymnastics and cheerleading uniforms and travel. Although Organization provided limited to no training, Organization purchased uniforms for coaches and athletes which were used during training sessions performed by . Organization also purchased uniforms for athletes which specifically included company logo.

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Law:

IRC Sec. 501(c)(3) 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 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, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Treasury Regulations (Treas. Reg.) Sec. 1.503(c)(3)-1(c) Operational Test—

(1) Primary activities. —An organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(2) Distribution of earnings. —An organization is not operated exclusively for one or more exempt purposes of its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words “private shareholder or individual”, see paragraph (c) of Sec. 1.501(a)-1.

Tax Court Case—

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Capital Gymnastics Booster Club, Inc. v. Commissioner, T.C. Memo. 2013-193

Government's Position:

The Organization's exempt status under IRC Sec. 501(c)(3) should be revoked on the grounds that it served the private benefit of its members, and disqualified persons including its President and .

Members

Organization's assessment policy ("assessment policy"), provided during the field examination, showed that Organization mandated funds be paid by the members through "direct payment and/or through fundraising activities sponsored by the Booster Club." Refer to Exhibit A, item number 7 for additional information. Organization's assessment policy shares similarities with the policies at issue in *Capital Gymnastics Booster Club, Inc. v. Commissioner*. As with the organization in *Capital Gymnastics Booster Club*, Organization gave its members the option to pay their assessment in cash or members could raise funds to offset their assessment. According to handwritten and typed notes, and other records, showing a reduction in only certain member's accounts, the members who did not participate in fundraising did not receive any benefit from the fundraising activities of the other members. Instead, those members paid for their full assessment amounts. Moreover, there was no evidence among the records provided that showed funds, raised through Scrip or other fundraising activities, were used to

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support scholarships for other members; or, to defray the expenses of participation of members who may have been unable to afford the costs.

Rather than operating exclusively for the public, Organization served the private interest of its members by allowing members to raise funds for their own accounts. Thus, Organization failed to meet requirements under IRC Sec. 501(c)(3), "no part of the net earnings of [the Organization may] inure ... to the benefit of any private shareholder or individual." As a result, Organization should be revoked of its exempt status.

President and

Given relationship with Organization, ownership of , and her position as Organization's President, both and are disqualified persons with respect to Organization. The policies that required Organization's members to also be members of clearly provided financial benefits to and for the years under examination. Whether identified as Organization's President or owner, and also clearly benefitted from the following:

- The use of the Organization's members to work as volunteers for donations
- advertising on Organization's publications without compensating Organization
- advertising on uniforms and other items paid for by Organization
- use of training uniforms and other related items for both gymnastics and cheerleading, which were purchased by Organization

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- Use of trainers and training curriculum, which increased Organization's dependency on

Operating Organization for the benefit of and served the private interest of and . As a result, Organization failed to meet requirements under IRC Sec. 501(c)(3), that "no part of the net earnings of [the Organization may] inure ... to the benefit of any private shareholder or individual." Consequently, Organization's exempt status should be revoked at this time.

Taxpayer's Position:

The Service is awaiting Organization's response.

Conclusion:

Organization's net earnings, in a substantial part, have inured to the benefit of its members, its President, and . This violates both IRC Sec. 501(c)(3) and Treas. Reg. Sec. 1.501(c)(3)-1(c), and warrants revocation of Organization's 501(c)(3) status effective August 1, 20xx.

The Service has requested completed Forms 1120 for the years ending July 31, 20xx through July 31, 20xx. Organization is required to file Form 1120, *U.S. Corporation Income Tax Return*, for the year ending July 31, 20xx, any tax year thereafter.