



**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**

Date: JUL 20 2017

Release Number: **201752012**  
Release Date: 12/27/2017  
UIL Code: 501.03-00

Person to Contact:  
Identification Number:  
Telephone Number:  
In Reply Refer to:

LAST DATE FOR FILING A PETITION  
WITH THE TAX COURT: OCT 18 2017

**CERTIFIED MAIL -Return Receipt Requested**

Dear :

This is a Final Adverse Determination Letter that your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) is revoked. Recognition of your exemption under IRC section 501(c)(3) is revoked effective January 1, 20xx.

Our adverse determination was made for the following reason(s):

You have not established that you are operated exclusively for an exempt purpose or that you have been engaged primarily in activities that accomplish one or more exempt purposes within the meaning of IRC section 501(c)(3).

Contributions to your organization are not deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20xx and for all years thereafter.

Processing of income tax returns and assessment 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 in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

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](http://taxpayeradvocate.irs.gov) or call 1-877-777-4778.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

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 Hooke  
Director, Exempt Organizations Examinations

Enclosure:  
Publication 892



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

Date:  
May 10, 2017  
Taxpayer Identification Number:

Form:

Tax year(s) ended:  
December 31, 20xx  
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:  
June 09, 2017

**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,

Maria Hooke  
Director, EO Examinations

Enclosures:  
Report of Examination  
Form 6018  
Publication 892  
Publication 3498

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

**Date of Notice: May 03, 2017**

**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, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on June 16, 20xx, and was granted tax-exempt status as a 501(c)(3) on August 20, 20xx, with an effective date of November 6, 20xx.

was incorporated on November 06, 20xx in 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 25, 20xx. Attachment, Form 4564, Information Document Request, requested information regarding the activities of the organization.

Per the response received from : "Activity: has one program (activity) which is to operate a weekly (once a week) farmers market called the located in "

Per the response received by : The purpose is:

- provide a venue where local farmers, producers, artists, crafts people, food specialists and youth may offer their wares, products and creations for sale to the community;
- engage the local community in supporting and promoting local, sustainable food and food traditions; and
- advocate for good, clean and fair food for all people in the greater area.

A Vendor Membership fee of \$xx per year is charged to each member for participation in the markets. A fee of \$xx/wk. Per stall is charged to participate in a market.

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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 began, 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.

Vendors are selected by a paid contractor (i.e., market manager) who oversees all advertising, outreach, sponsorships, volunteers, vendors and record keeping. She manages the setting up and taking down of each market day.

has promoted the market through the dissemination of newspaper ads, newsletters, roadside signs, and 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.

The budget indicates that the gross receipts consist almost exclusively of fees received from vendors to rent space at the market and dues (xx%). Approximately xx% of your income comes from individual donations and some corporate sponsorship. You also have a small amount of gross income from sales of "market items" (t-shirts, bags, etc. (logo merchandize)). 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

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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.

**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

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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.

**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



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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 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

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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 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 (7<sup>th</sup> 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 fails 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.

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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 expend.

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.

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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 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.

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**Organization's Position**

The organizations position is not completely known at this time. Vice President, discussed the issue of revocation with the revenue agent and admitted that it appears there is no reason to appeal as it appears cut and dry.

**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. 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 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.