



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: **AUG 28 2017**

Number: **201825032**
Release Date: **6/22/2018**

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

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:

UIL: 501.03-00

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).

You have not established that no part of your net earnings inure to the benefit of any private shareholder or individual.

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 91st 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 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

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

Date:
January 17, 2017
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 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,

Mary A. Epps
Acting Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 1
Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

ISSUES:

1. Whether the _____ is operated exclusively for tax exempt purposes under IRC 501(c)(3) and engaged primarily in activities that accomplish an exempt purpose as described in Internal Revenue Code section (IRC) 501 (c)(3) and Treasury Regulation (T. Reg.). 1.501(c)(3)-1(c)(1)?
2. Whether the _____ operated for the purpose of serving a private benefit rather than public interest as described in Internal Revenue Code section 501 (c)(3) and Treasury Regulation 1.501(c)(3)-1(c)(2)?
3. Whether any part of the net earnings of the _____ inured to the benefit of any private shareholder or individual as described in Internal Revenue Code section 501 (c)(3) and Treasury Regulation 1.501(c)(3)-1(c)(2)?

FACTS:

INCORPORATION:

The _____ (Organization) is incorporated in _____ State as a Domestic Not-For-Profit Corporation. The Certificate of Incorporation was filed under provisions of the _____ State Not-for-Profit Corporation Law under the name of _____ as a IRC 501(c)(3) organization. The date filed was June 11, 19xx.

Purposes:

The purposes of the organization, as stated in the Certificate of Incorporation:

- To promote the public interest in drum and bugle corps music
- To organize and maintain drum and bugle corps to engage in contests, parades, pageants, and similar events under sponsorship of civic, veteran, industrial, and private organization
- To encourage the study of and participation in the playing of drums, bugles, and band instruments among students of elementary and secondary schools in the community in which this organization shall operate

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 2
Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

- To hold competitions and exhibitions
- To promote the study and improvement of the activities of drum and bugle corps
- To promote friendship, sociability, and culture among its members.

EXEMPTION:

The Organization is recognized as exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

BYLAWS:

In Article V – Corporate Board, section 2, Officers of the Corporate Board states that the President of the corporate board will be appointed by the board of directors and may succeed himself.

In Article V – section 3 states that his corporation is not organized for profit and no part of its net earnings shall inure the benefit of any member, director, or individual.

In Article VI – Administration, section 1, the corporate board acts as a safeguard over all members corps to protect from misuse of funds, theft of funds or equipment, immoral actions of the director, instructors or staff members or malfeasance of office or staff or directors.

In Article, X – Treasurer, each member Drum & Bugle Corps shall have a financial officer appointed by the director of the member corps with concurrence of corporate board. The duties of financial officer (treasurer) shall be to transact all financial matters of the corps. The treasurer's accounts will be audited annually and at such time as the corporate board deems necessary.

FORM 990:

The Form 990 for the year ended December 31, 20xx was signed by CEO on November 12, 20xx. The return was filed with the Internal Revenue on November 13, 20xx.

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 3
Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

Form 990 filed with the Internal Revenue Service for the year ended December 31, 20xx lists the following individuals as members of the Board of Directors:

-
-
-
-
-
-

Form 990 filed with the Internal Revenue Service for the year ended December 31, 20xx lists the following individuals as officers:

- , CEO
- , CFO

On Form 990, page 2, Part II – Statement of Program Service Accomplishments - the organization listed three programs:

- Summer Color Guard
- Winterguard,
- Junior Color Guard

Winterguard is a program for teens and young adults ages xx to xx that perform in local and regional competition from January through April, culminating in the _____ in April. Provides members with education, helps with team building, creates lifelong friendships, and provides necessary life skills for independent living.

Junior Color Guard is a dance ensemble focusing on elementary to high school aged children with competition throughout _____.

Summer Color Guard is an instructional program, focusing on dance ensembles, and performance programs in cooperation with the area drum and bugle corps, area schools, and independent pageantry organizations. This program helps maintain skills in the off season from the Junior Color Guard and Winter Guard.

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 4
Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

The organization listed \$xx of revenue attributable to the color guard program. The detail of this revenue from the general ledger is:

Deposit Date	Deposit Bank Account	Description	Amount
4/23/20xx	General	Checks for shirts	\$ xxx.xx
4/25/20xx	General	-Truck Rental 20xx	xxx.xx
		Total	\$ xxx.xx

There were no specific measurements of the program service accomplishments given such as the number of individuals served, the number of competitive events attended etc.

On Form 990, page 6 the organization checked "yes" to question number 2 which states, "Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?" On Schedule O, the organization's answer is, "The CFO of the organization has a family relationship with the CEO. Board members and also have a family relationship."

On Form 990, page 6 the organization checked "yes" to questions number 8a and 8b which states, "Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following: governing body and each committee with authority to act on behalf of the governing body?"

On Form 990, page 6 the organization checked "yes" to question number 15a which states, "Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?" On Schedule O the organization answered the question, "Compensation is based on comparative data from other organizations as well as a comprehensive assessment of what the organization is able to provide."

FORM 1023 – APPLICATION FOR RECOGNITION OF EXEMPTION:

The Form 1023 application was dated December 30, 19xx.

Part II – Activities and Operational Information – the organization's fundraising program states that the corporation currently raises funds by conducting bingo games, inviting the general public, selling raffle tickets to the general public and operating concessions. It was also stated that the organization has a lease agreement with the to rent a hall bingo games.

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 5
Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

The organization stated that they are a membership organization. There are no membership requirements. However, there are fees related to travel expenses for tours. The travel fees cover meals, transportation, uniforms, and lodging. Members also receive the benefit and thrill of competition and the excitement of travel to different cities. Members receive an enriched cultural experience and are taught discipline and teamwork.

The organization stated that they are not part of a school and does not provide or administer any scholarship benefits.

In the financial data submitted with this application for the years 19xx through 19xx, the average revenue from the fundraising operations was \$ _____ and the average disbursements to or the benefit of members was \$ _____. The disbursements paid represent xx% of the funds generated from fundraising.

The Chief Financial Officer of the _____ signed a statement which was attached to the Form 1023 application certifying that the Certificate of Incorporation, Amended Certificate of Incorporation, and By-Laws submitted in support of the Form 1023 application are complete and accurate copies of the original documents and that the by-laws were duly adopted by the Board of Directors. This statement was signed on December 30, 19xx by _____.

INITIAL INTERVIEW:

The initial interview was conducted on June 2, 20xx with the officers of the organization, _____, CEO and _____, CFO. Under penalties of perjury, _____, CEO and _____, CFO signed the interview on June 11, 20xx, declaring that the statements, to the best of their knowledge and belief, to be true, complete, and correct. The following paragraphs are taken directly from this signed interview.

History:

The organization was originally started as a drum and bugle corps as a locally oriented youth group in _____ State by _____. The goal of the group was to not be competitive with other drum corps. _____ ran the entire operation. He is no longer with the organization.

_____ started with the organization in 19xx. He was the manager of the corps on the road through 19xx. The corps traveled approximately one time a week and a x to xx day tour.

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 6
Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

In 19xx the corps got bigger and was going on the road more – they were traveling for about x-x weeks at a time. The corps was getting more expensive to run. There were between xx-xxx people in the corps. In the late 19xx's the corps won in their class. The organization owned their own busses to transport the participants to events.

The Bingo operation started in 19xx and got bigger as high stakes bingo began in the 19xx's. In the early to mid-19xx's the smoking laws changed in State and the organization moved from another smaller location in the same plaza as their current location to accommodate both smokers and non-smokers. The new location had more space with separate rooms for smokers and non-smokers. With the change to the new location, the Bingo operation could make more money to support the corps.

In July 20xx, the smoking laws changed again and smoking was banned. During the summer of 20xx, the attendance at Bingo dropped xx%. The change in Bingo attendance and the resulting decline in Bingo revenue resulted in cash issues. was in charge of the organization at this point.

In the fall 20xx the organization filed Chapter 11 bankruptcy – reorganization. The organization parked the busses and stopped touring as a drum corps. The organization continued to run Bingo. The management of the organization was turned over from to his daughter . This was done years earlier when died.

In August 20xx, with one year into the reorganization, was asked to help with the reorganization of the organization. The bankruptcy court was ready to close down the organization. The organization did not want to close down the "cash cow". found mismanagement by the prior management. The prior management lacked business experience and management experience. The organization owned x busses, extra property, a tractor trailer, x trucks and a house at August 20xx.

With the change in management in August 20xx, the family was gone and the bankruptcy judge extended the reorganization time frame for another year.

needed additional help with the organization and started in September 20xx.

To get out of bankruptcy the organization did the following:

- Cut expenses to a minimum
- Sold assets at short sales to generate cash
- Got rid of everything not necessary for fundraising or the operation of the group
- Started the Winterguard program – they picked up a lot of members from defunct school programs
- Started performing again

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- Pay creditors over a x year period at xx cents on the dollar for amounts owed

The reorganization plan allowed the organization to pay all creditors within x years and get out of bankruptcy.

In 20xx, local area churches and the local fraternal organizations were running bingo in their hall. The organization was receiving rent income from these organizations for use of the bingo hall. These organizations eventually quit renting the bingo space from the organization. This source of rent income was lost.

In the summer of 20xx the organization became more financially viable. Attendance at bingo increased, the facility was cleaned up, the bingo hall was revamped and maintenance and improvements were made to the hall.

In approximately 20xx-20xx, the organization installed new lights in the bingo hall with a grant from the local electric company. The local electric company paid x/x of the cost of the replacement lights.

These minor changes helped to bring back people to bingo. There was also a change in bingo personnel attitudes to be friendlier to bingo patrons. In the last x years bingo attendance has been with more recreational players vs. steady players. The organization has a policy that rude customers are banned from the bingo hall and that patrons are respectful towards the workers.

With the combination of cost cutting and improvements to the bingo hall and operation, the bingo operation has allowed the organization to put more money into the performing units.

The number of guards varied between two and three guard units. The organization switched from a drum corps to a color guard because drum corps are basically nonexistent.

The last year for the drum corps was 20xx. The organization always had a color guard and continued with that when the drum corps stopped. The organization tried to revive the drum corps but there was a lack of interest. The Winterguard is doing well and it is significantly less expensive to run than a drum corps. This is due to the equipment costing less.

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 8
Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

Activities:

The activities of the organization include:

- Gaming activities: lottery, bingo, event bingo, pull tabs, seal cards, raffles
- Concession operation at the bingo hall
- Winterguard and Jr. Guard color corps
- Sub-lease of bingo hall to other organizations to hold their own bingo games

Gaming activities have changed over time. Games and prizes have been enhanced or tweaked whenever needed. Changes have been driven by what the bingo customers have wanted, new features like the “ ” become available, or as new games become available. Gaming activities include:

Lottery:

The organization started the lottery operation about 19xx. The organization operates the only bingo hall in the area that has a full service lottery operation. All lottery games are sold – instant, . Lottery sales occur only during bingo sessions and are sold by workers and machines. Winning tickets can be redeemed for up to \$xxx in winnings at the lottery counter located inside the bingo hall.

Bingo:

Bingo was started in 19xx. Bingo games are advertised in a local bingo magazine. The organization also maintains a website, for the bingo games. The organization currently conducts seven bingo sessions during the week. A morning session is held on Wednesday, Thursday, and Friday, and one evening session is held on Wednesday and Thursday and two evening sessions on Friday. The organization has xxx chairs set up for bingo but can add additional chairs if needed. The organization sells gift certificates which can be redeemed for anything including bingo, concessions, lottery or pull tabs.

Bingo games include regular, traditional bingo, progressive bingo, bingo, split pot bingo, event bingo, and warm up games. Patrons can play either paper bingo game cards, on a computer or a combination of both. The organization rents bingo computer terminals. The computer bingo has the advantage of allowing a player to tap and mark all playing boards at once for a ball that was called. The player can leave the terminal for a break and come back and tap the terminal to mark all balls called during their absence. The computer terminal is tied into the bingo calling station’s computers and the server that controls the entire system. The organization has xxx terminals in place for patrons use.

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Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

Pull Tabs:

Pull tabs were started when they first became legal in _____ State which was about the late 19xx's or early 19xx's. Up to xx pull tab deals are in play at any given time. Pull tabs are sold as individual tickets from the deals and as a pre-packaged set of tickets that are put together by the organization. Games are pulled from play when they are completely sold out. The maximum payout on a deal is \$xxx. Pull tabs are sold during bingo sessions by volunteers and through pull tab machines. Winning tickets can be redeemed by the volunteers for amounts under \$xx. Winnings of \$xx and greater are paid out at the pull tab counter located inside the bingo hall.

The organization also sells seal cards. Seal cards are similar to pull tabs and are sold until gone at the bingo event. Seal cards and event bingo are reported with pull tabs and is regulated by _____ State Gaming.

Raffles:

Raffles started about 20xx. Raffles are held during bingo sessions. Raffle prizes include, gift cards and small prizes. Examples of raffle prizes include: Easter baskets, housewares, candy, gift certificates – usually \$xx, food items, bingo bucks (good for xx days – can be used to purchase bingo boards). The cost of a ticket for the raffle is xx cents. The prize payout is approximately xx% of the raffle ticket sales.

Concession Stand:

The organization operates a concession stand during all bingo sessions played at the bingo hall, including bingo sessions conducted by two other non-profits. The concession stand is open Wednesday, Thursday, and Friday morning, and Tuesday through Saturday evening and Sunday afternoon. The concession stand is staffed by employees and sometimes volunteers.

Other Sources of Revenue:

The organization sub-leases the bingo hall to two other non-profits to conduct bingo games and sell pull tabs under their own licenses. These organizations conduct bingo on Tuesday, Saturday, and Sunday. One bingo session is held on Tuesday, one on Saturday, and two on Sunday. The organization operates the concession stand and lottery ticket sales during the games held by these other two organizations.

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Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

The organization also receives revenue from rebates, bottle deposits, ice cream and vending commissions and grease removal. There is an ATM machine located inside the bingo hall. The organization does not receive any commission from the machine. During the examination year, the ATM machine was owned by a former employee of the organization. The ATM machine was serviced in 20xx by the organization's phone line. In 20xx, the ATM was owned by the husband of the owner of the gaming supplier and is serviced by the organization's Internet connection.

There are two pay phones located in the bingo hall. The organization receives a commission check about once a year for about \$x. The phones are used infrequently. The organization is unsure as to who owns the phones.

Winterguard and Junior Color Guard Corps:

The organization does not participate in drum and bugle events anymore. They were having trouble recruiting individuals and moved the organization in the direct where they could get membership and compete at a competitive level. The organization also switched to color guard events because the cost to run a drum corps is very high, there was a lack of interest in drum corps, there was a general lack of interest in the activity due to other activities and priorities of students, and the lack of instructors for drum corps.

Participants are recruited through the organization's website, two local area schools, and participants seek the organization out because they want to do the activity and they may have previously participated in a color guard. The organization also goes to schools to promote awareness for the color guard. There is also awareness for the organization at championship events.

The organization's website, has a link to send an email to the organization to request to join the color guard. Participants must fill out a form which includes medical information. Parents must sign a waiver and provide health insurance information.

Summer Color Guard: The organization does not have this program any more since there was not enough interest.

Winterguard: Program for youth from sophomores in high school to college age. The maximum participant age is xx. Approximately x/x of the participants are students who attend college. This group performs from January through April and practices from September through April. This program had xx participants in the year 20xx. No fees are charged to the participants. To participate, volunteers are expected to work bingo three times a month. Practices are held from x pm to xx pm Friday and x am to x pm

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Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

Sunday for three weekends per month from September to April. Practices and are held at a local school. Participants are not affiliated with any school.

Junior Color Guard: This program is for elementary and middle school students. This is a feeder program to develop students to become a part of the Winterguard. The organization has formed an informal joint venture with another IRC 501 (c) (3) exempt organization to run this color guard program. The

organization shares expenses with this exempt organization. During the examination year, 20xx, there were no shared board members between the two organizations. This program had xx participants in the 20xx year. This program was run until the year 20xx-20xx. No fees are charged to the participants. To participate, volunteers are expected to work bingo three times a month. Practices are held x:xx pm to x:xx pm Tuesday and Thursday, three times a month from October to April and are held at a local school. Participants are not affiliated with any school.

Membership:

This organization has members. Performing members are classified as children under the age of xx. Anyone can become a member with the exception of an individual who can participate in a color guard at their own school. If the individual who wants to participate attends a school with a color guard, the organization requires the individual to obtain permission from the school to join.

Members also include the participants who are over age xx, community members, instructors, and parents of the participants. Members can also include anyone who assists with fundraising, assists the organization in its other activities and is over the age of xx.

The bingo license has a list of members who participate on the bingo operation. The list is updated every year with the renewal of the bingo license.

The requirements for members to join the organization include:

- The person joining must not have a financial obligation to another organization.
- Color guard participants must come to practice.
- Parents must work bingo three times a month to support the color guard.
- Members are required to assist in fundraising.

There is only one class of members. Only members who are xx and over can vote. All members have equal voting rights. There are no fees to join the organization or participate in the guard events.

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Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

Membership benefits include possible group dinners, bus trips to competitions, hotels rooms at the competition, pictures of the guard, T-shirts, parents will get their entry fee into the competition, and scholarships for the kids.

As a benefit, guard participants need to spend only a minimal amount of their own money for out of pocket expenses usually for costume accessories. Bingo creates the necessary funding to support the guard activity in full.

Scholarship:

For every year that the child is in the guard they will get a \$xxx scholarship. In 20xx, the amount changed to \$xxx per year in the guard. The student can accumulate the scholarship dollars throughout high school and into college until they wish to have it paid out. If the student leaves the organization, the scholarship is paid out. Under the \$xxx per year scholarship plan, the student can potentially receive a maximum of \$x,xxx which would be \$xxx for each year of high school and college.

The scholarship check is paid out to the student and the college. Some smaller scholarship checks may be made payable to just the student.

There is no formal document outlining the scholarship policies and rules. When a student requests the scholarship, , CEO will determine how many years the student has been involved with the guard to calculate the number of years of scholarship to pay. There are no records maintained to quantify the scholarship dollars due and the scholarship dollars due are not recorded in the general ledger. For the scholarship to be paid out, the student must stay with the guard until they graduate from high school.

Organization's Facility:

The organization does not own any facility and conducts their exempt activities at rented facilities and at competitive event locations.

The organization's physical location is . The organization has been at this location since September 19xx. The name on the outside of the building is . The organization also used the name for their website. These are not legal entities, just the operating names for the bingo hall and the website. The organization leases approximately xx,xxx square feet of space at this location from an unrelated third party. Rent includes use of the space and parking lots. The landlord is responsible for roof repairs and the organization is responsible for all other repairs for the leased space. There are no common area maintenance charges. The organization pays for water, gas, electric, phone, and Internet utilities. Per the initial interview, activities conducted at this location include:

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 13
Name of taxpayer	Taxpayer Identification Number	Year/Period ended December 31, 20xx

gaming, guard practices, meetings, and administrative duties. The organization sub-leases the bingo hall to two other exempt organizations under a verbal agreement. The rental payment is a flat amount per week. The sub-lease has never been addressed by the bingo inspector. The bingo inspector never asked about the sub-leases.

Per the initial interview, when questioned about other leases the officers stated that the organization has no other leases. When questioned about the guard activities, the officers stated that guards practice at various local areas schools.

Expenses:

There are no credit cards in the organization's name. Only personal credit cards are used at restaurants while traveling. The credit card holder is reimbursed for the charge. The organization pays for hotels ahead of time by check. The organization has a debit card for the games of chance account to buy raffle prizes. The organization may also use the debit card for the restaurant purchase while traveling.

Travel:

The organization uses an outside vendor for all bus rentals for trips. Busses are used for all guard events with the exception of _____ and _____. The organization will sometimes share the cost of the bus with another exempt organization since both groups will attend the same event. The cost is shared on a per person basis. Each organization will issue a separate check to the bus operator for their share of the bus cost.

If the bus has extra seats, parents can come along on the trip. The floor crew and other helpers also go on the trips. Anyone that goes on the trips is helping the performance in some capacity. Spouses and employees can travel to events. The organization bears x% of the cost of travel.

Volunteers:

Volunteers include: former parents, current parents, alumni of the guard, community members, grandparents, girlfriends, and wives. Volunteers work the following activities: bingo, pull tabs, bingo callers, payouts of prizes, assist with the guards, and occasionally the concession stand.

Volunteers do not work in the lottery, concession stand on a regular basis, as bingo hall cleaners, officers of the organization or hall managers. The volunteers are required to submit a time card for insurance purposes to determine who is in the building at any time. The organization does not maintain a summary of the volunteer hours from this time card.

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit Page Number 14
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Employment:

The organization employs individuals to perform various job duties. The organization has an employee handbook. Board members are not compensated. The officers are compensated through payroll, the CEO and CFO. There are no expense accounts, pension plans, or deferred compensation plans. Individuals are reimbursed for expenses incurred on behalf of the organization by check with receipts to support the expense.

The determination of compensation for the officers is not run through the board. Compensation arrangements are not voted on by the board. Officers are paid on an hourly basis. They make less than officers in comparable organizations. The CEO and CFO determine wage amounts based on payroll data from other organizations and for individuals working similar job titles. The officers do not punch a time clock and work more hours than what they are paid for.

Fringe benefits provided to some employees include health care and cell phones. Cell phones are provided to _____, CEO and _____, CFO. The organization has paid half of the cell phone charges, or a set amount. In 20xx, the organization is no longer providing health care for _____ and _____. In place of the health care, the organization switched to paying _____ x% of the cell phones. The officers stated that the cell phones are necessary due to the poor phone service at the organization's facilities and the need to be in contact with each other when the color guard is in season. The cell phones are considered the primary phones for the organization. The cost to replace the phone system at the facility was quoted at \$xx,xxx. The current system is a very old system running on DOS software.

The organization's websites, _____ and _____ are maintained by an independent contractor. The organization pays the independent contractors health insurance in lieu of paying him for maintaining the websites.

Website Links:

At the bottom of each page of the website, _____ and _____ are links the following websites: _____, Web Designer _____, and Photographer _____. At the bottom of page of the website, _____ are links the following website: Web Designer/Photographer _____. The organization does not get any revenue from these links. The links are placed on the site by the independent contractor, _____, for informational purposes.

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Financial Statements:

The financial statements of the organization have never been reviewed or audited by an outside accountant. The organization has never seen any reason for an audit. This issue has never been addressed by the board. Financial statements are not presented at board meetings. The organization expenses fixed assets and does not maintain a fixed asset listing or depreciation schedule. The organization does not have a detail listing for the assets currently on the books.

The organization creates a budget for the color guard activity only. This budget is prepared by _____, CEO and is reviewed by _____, CFO. This budget is approved by the Board of Directors.

Board Minutes:

Board meetings are held less than eight times a year. The officers did not know exactly how many meetings were held during the examination year, 20xx. Meetings are held in the bingo hall on either a Sunday or Monday night at x pm.

Meeting minutes are maintained by the board secretary. Not much is discussed at the meetings. The group comes to a consensus regarding issues rather than by voting. There really are no issues. _____, CEO does not know who the secretary is. Agent asked for prior and subsequent year meeting minutes.

INTERVIEW WITH _____, CEO ON JUNE 23, 20xx:

On June 23, 20xx, agent questioned _____, CEO regarding the _____ trip. The questions and answers are as follows. Agent also obtained a copy of the 20xx schedule and the list of individuals who went on the trip.

Question: How is this trip related to your exempt purpose?

Answer: It is not related to the exempt purpose. This trip is all learning and is educational. The trip exposes the individuals to history and culture.

Question: Did any instructors go on this trip?

Answer: No

Question: Is there a curriculum for this trip?

Answer: _____ provided an itinerary for the trip. _____ makes up the itinerary himself for the trip.

Question: Is the curriculum offered in the _____ ?

Answer: No

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Question: On the list of individuals who took the trip. What is their relationship to the organization?

Answer: The first section of names are the children who are guard members. Guard members who belong to the other IRC 501 (c)(3) organization have a " " next to their name. Guard members who belong to the guard have a " " next to their name. Guard members are under xx and cannot work Bingo. Adults who volunteer at Bingo are allowed to go on the trip. Adults on the trip have "family member" next to their name. The adults who are parents or grandparents of guard members can be matched to their children by last name. Some of the family members are part of the other IRC 501 (c)(3) organization. who is listed as a family member is the girlfriend of who is listed as a family member is the girlfriend of and are listed as "in charge/tour guide". first name is misspelled on the list.

Question: Did any of the individuals pay anything towards their trip?

Answer: No one pays anything for their trip.

Question: Does the organization pay for food on the trip?

Answer: Individuals have to pay for food on their own except for one restaurant in

TOUR OF FACILITY:

Agent toured the organization's facility located at on June 2, 20xx with , CEO.

On June 12, 20xx, agent observed the following items at the organization's facility:

- Bongo drum equipment and construction equipment stored in the hallway area in the section of the building where the administrative and bingo office is located.
- Drum sets (stationery and non-marching band type) stored in a storage room located off the hallway area in the section of the building where the administrative and bingo office are located.

The leased space consists of:

- Storage rooms
- Bathrooms
- Hallways
- Administrative offices
- Bingo offices

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- Two bingo halls
- Kitchen and concession stand
- Lottery and pull tab counters
- Computer bingo sales counter
- Lottery machines, pull tab machines, vending machines, ATM machine

Agent observed the following during the tour:

- Conduct of gaming: bingo, pull tabs, seal cards, raffles, State Lottery, event bingo
- Concession stand to service the bingo operation. Concession stand workers delivering food orders to bingo patrons.
- Sub-lease of bingo hall to two other exempt organizations to conduct their bingo games. Agent observed a Tuesday bingo session.
- Storage of guard equipment for another exempt organization
- Administrative offices
- Storage of drum equipment, construction tools, personal files, and household goods that do not appear to belong to the organization

Agent did not observe the conduct of any guard practices. The tour was conducted in June and according to the initial interview, practices occur from September through April. During the tour, , CEO, noted the space that is used for storage of guard equipment and for guard practices when bingo is not in session. The space consists of a long hallway from the entrance to bingo hall number one.

The organization's facility can be accessed from two doors to the outside. There are parking spaces for patrons outside each door.

The organization's facility is serviced by the public bus system. Bus service is available on weekdays, Saturday, Sunday, and holidays. The organization runs bingo on Wednesday and Thursday xx:xx am and x:xx pm sessions, and Friday xx:xx pm and x:xx pm sessions. The bus schedule can accommodate patrons for all bingo session starting and ending times.

BOARD MINUTES:

Agent received copies of the Board meeting minutes for the year 20xx from , CEO on June 3, 20xx. Per discussion with , CEO on June 10, 20xx the Board cannot find the minutes for the years 20xx and 20xx. The President of the Board is and his wife, is the Secretary for 20xx.

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The board minutes did not contain:

- whether the meeting was a special meeting or a regular meeting
- the names of the Board of Directors in attendance
- names of guests in attendance, if any
- whether a quorum was established
- any Board actions including approvals, delegations of authority, directives, voting
- details as to the business conducted by the Board
- no contemporaneous minutes for any sub-committees of the Board

The copies of the Board minutes list the following topics presented at the meetings during the year 20xx:

- Guard regional competition
- Guard staff and volunteer issues
- Logistic issues with guard practice sites
- Finances and insurance cost
- Bingo hall gaming issues
- deposits are up – keeping better track of instant ticket books
- Quarter raffles doing better
- Painting of bathrooms
- By-laws for IRC 501(c)(3) – the Board needs to know them – copy of By-laws given to Board members
- Get Board up to speed with the business side of the organization
- Adjustment to head instructor's salary or bonus
- Report on 20xx/20xx season
- Organization is financially OK now. Came out of last season in good shape for money.
- xx girls in guard for the 20xx season
- Guard trips:
- Regional trip:
- trip for the
- Secured gym in school for practice on Saturdays during competition season. This gym will relieve the head instructor of pressure of asking another school to use their gym all the time.
- Lengthy discussion regarding guard members, guard rules and issues with certain individuals
- September or October meeting to update member bingo obligations and other issues
- School in for Friday, November 2 and Friday, November 13 practice from x-xx pm

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- Voted for two new Board members; and

BINGO FLYERS:

On June 11, 20xx, agent obtained copies of the bingo flyers that are handed out to patrons for their use during the bingo games. These flyers contain the logo “ ” and contain bingo game information, address and phone number (xxx) xxx-xxxx. These bingo flyers are customized for the games and prizes for the different bingo sessions as follows:

Day	Time	“Entity” Running the Bingo Session	Bingo License Number
Wednesday	xx:xx am		XX XX-XXX-XXX-XXXXX
Wednesday	x:xx pm		XX XX-XXX-XXX-XXXXX
Thursday	xx:xx pm		XX XX-XXX-XXX-XXXXX
Thursday	x:xx pm		XX XX-XXX-XXX-XXXXX
Friday	xx:xx pm		XX XX-XXX-XXX-XXXXX
Friday	x:xx pm		XX XX-XXX-XXX-XXXXX

GAMING ADVERTISEMENTS:

One June 3, 20xx, agent obtained a copy of the June 20xx bingo magazine from , CEO. The organization advertises bingo games for this organization and the two other organizations that conduct bingo games at the bingo hall. The magazine also has a website,

The two full-page advertisements contain the following information:

- Phone number for the bingo hall (xxx) xxx-xxxx is listed three times
- Dates and times for all bingo games and special games noted
- Statement: “ ”
- Statement: “ ”
- Statement “ ”

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- ”
- Statement “ ”
 - Statement “ ”
 - Statement “ ”

On October 30, 20xx, the agent accessed the advertising website,

This site contains the following information for this organization:

-
-

EMPLOYEE HANDBOOK:

Agent obtained a copy of the employee handbook from _____, CEO on June 3, 20xx. This handbook contains the following statements:

- This operation has gone to great lengths to bring in new customers as well as retain those that come to our hall regularly. Our employees help further these goals by being courteous to customers and making sure that the operation runs smoothly and efficiently.
- All employees and volunteers are expected to wear appropriate attire that is clean and free from stains and wear.
- Only company management personnel are allowed to have cell phones available during work hours. The building phone number should be given to anyone who needs to reach you in an emergency. This number is (xxx) xxx-xxxx.
- Schedules for all employees and volunteers are posted far in advance, next to the cash office door. This schedule includes shift times for employees, as well as the task they are to perform during that shift. Volunteers are expected to arrive when game sales start and stay until the game is over. The hall manager on duty may allow workers to leave earlier.
- Volunteers are required to clock in and out for administrative and insurance purposes.
- Workers should always be doing something beneficial to the operation of the hall. Primarily, this means selling something.
- You must write in the job code for the task you are performing in the margin next to each week period. List of job codes:
 - V = volunteer to work bingo
 - J = cleaning and maintenance

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- C1 = cashier
- C2 = concession 2
- R = runner
- M = hall manager
- L = operation
- A = administrative
- S = security
- G = grill
- P = prep

WINTERGUARD HANDBOOK – 20xx-20xx:

Agent received a copy of the Winterguard Handbook – 20xx-20xx on June 3, 20xx from , CEO. This handbook contains the following statements:

- The benefits of participating the in Winterguard program include:
 - Members are exposed to different places throughout our country.
 - It is an honor to perform with the Winterguard in performances and events across the and the nation.
- If you misplace or lose your equipment, uniform, or any of your accessories, you will be required to replace it and will be held financially responsible for the lost items.
- is an instructor for the Winterguard. If members have any issues they are to contact him on his cell phone or by email.
- We do not have a specific gym that we use throughout the season, therefore, we utilize many different spaces.

- STAFF GUIDELINES:

Agent received a copy of the –Staff Guidelines on June 3, 20xx from , CEO. This document contains the following statements:

- Teachers should not socialize with the students except at obvious guard functions.
- While traveling with the group, all teachers are to take an active role in chaperoning and supervision of the students.
- In a normal week, we have at least one practice and a Saturday practice before the show.

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MEMO TO THE STAFF:

Agent received a copy of this memo on June 3, 20xx from _____, CEO. This document contains the following statements:

- A reminder, as well, that we will be doing some "sightseeing" this weekend. This is a longstanding tradition with both the other exempt organization and _____.
- We have never had "chaperones" as other groups do. I never want to give any power to parents for supervision of the kids. This means that we, as the staff, have to take on that responsibility.

RESPONSIBILITIES OF THE CEO (_____):

Agent received a copy of the job duties of the CEO on June 3, 20xx from _____, CEO. The organization classified the duties under two headings, Bingo Hall and Organizational. There are xx tasks under the Bingo Hall category and x tasks under the Organizational category. The duties of the CEO are summarized according to the headings in this document as follows:

Bingo Hall	Organizational
<i>(Note: Many of these responsibilities are delegated to Bingo Hall Managers on a day to day basis)</i>	
Execute and sign leases and other agreements	Make sure all member families are fulfilling their obligations
Hire, fire, and supervise all bingo hall staff	Notify families who are not current, and with them on fulfillment
Ensure that all employees are properly trained	Attend all board meetings, keep the board current on: Operation of bingo hall and fundraising
Oversee employee job performance	Oversee preparation of tax returns and any legal issues
Review employee compensation and adjust as necessary	Create a yearly budget for the competitive unit(s)
Make sure that all bingo worker spots are filled/covered.	Oversee the financial manager/CFO
Schedule all concession workers, cleaners and cooks weekly. Print and post the current schedule.	
Deal with problems involving players.	
Maintain a public presence at some point at the bulk of bingo occasions.	

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Bingo Hall	Organizational
Make decisions and arrangements regarding weather/emergency closings.	
Be available at all times in case of an emergency at the bingo hall.	

RESPONSIBILITIES OF THE CFO:

The organization did not provide a job description for the CFO.

RESPONSIBILITIES OF THE DIRECTOR OF PERFORMING UNITS:

Agent received a copy of the job duties of the Director of Performing Units on June 3, 20xx from _____, CEO. The Director of Performing Units is _____, CEO. The duties of this position are summarized according to the headings in this document as follows:

Logistics	Membership Direction	Show Direction
Book and schedule all busses	Disseminate information to members and parents	Approve music and show design
Book hotels for regionals and championship; arrange rooming lists, request payment	Be at each practice (whenever possible) at some point; Speak to performing members as a group or individually, as needed Assess progress and direction of show	Approve classifications for performing units
Submit requests for practice times for regionals and championships; request payment	Be on the bus to supervise members and be responsible for them. Or delegate to a responsible chaperone.	
Submit membership; request payment	Supervise members at all shows and trips as necessary. Or delegate to a responsible chaperone.	
Handle all financial arrangements with regional competition sponsors	Enforce behavior rules	

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Logistics	Membership Direction	Show Direction
Approve all expenditures and pass on to Treasurer	Deal with interpersonal conflicts (among or between members and staff)	
Receive and review all report cards; keep records for and award scholarships	Make sure that member families are current with their bingo commitments.	
Hire instructional staff	Attend Christmas parties and other social events.	
Make arrangements for trophies and awards for guard banquet	Hand out, collect and be responsible for medical forms.	
Keep membership lists current for bingo licenses	Provide information to new members and member families.	
Schedule practices	Oversee recruiting	
Book practice facilities and arrange payment	Be available to members or member families at any time	

RESPONSIBILITIES OF THE HEAD DESIGNER:

Agent received a copy of the job duties of the Head Designer on June 3, 20xx from _____, CEO. The Head Designer is _____, an employee of the organization. The duties of this position are related to the guard activity:

- Select music for the performance
- Design the show concept
- Design the drill based on the show concept
- Teach the drill to members
- Plan or delegate the equipment work to be performed
- Teach equipment work to all members
- Choose the floor covering for the show (subject to Director approval and within yearly budget)
- Select costumes, equipment and props (subject to Director approval and within yearly budget)
- Make adjustments to the show (subject to Director approval)
- Assist in recruiting new members

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RESPONSIBILITIES OF THE INSTRUCTORS:

Agent received a copy of the job duties of the Instructors on June 3, 20xx from _____, CEO. The Head Designer is presumably the lead instructor. The duties of this position are related to the guard activity:

- Aid in planning of equipment work and drill
- Aid in instruction of the equipment work and drill
- Maintain the costumes, equipment, props and floor coverings
- Aid in the transport of equipment, props and floor coverings
- Assist members, the designer, and the director whenever necessary as it pertains to the show or the safety of the members and member families
- Assist in recruiting new members

WEBSITE – _____ :

Agent accessed the organization's website, _____ on November 3, 20xx. Agent accessed an archived copy of the website on November 3, 20xx (archive date October 15, 20xx). There is no difference between the 20xx site and the 20xx site for this organization. This site contains the following statements:

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-

WEBSITE – _____ :

Agent accessed the organization’s website, _____ on November 5, 20xx. This site contains the following information:

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-
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-
-

WINTERGUARD MEMBERSHIP LIST – 20xx:

Agent received a handwritten sticky note with the membership list from CEO on June 2, 20xx. There were xx members for the year 20xx.

JUNIOR GUARD MEMBERSHIP LIST – 20xx:

Agent received a handwritten sticky note with the membership list from CEO on June 2, 20xx. There were xx members for the year 20xx. The list has the notation “ ”. This means that these members of the junior color guard are jointly supported by the “ ” or the other IRC 501 (c)(3) organization and the

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GUARD SCHEDULE – 20xx:

Agent received this schedule from _____, CEO on June 2, 20xx. This schedule contains the following information:

- Local and out of state competitions:
_____ and _____ Color Guard Competition. The _____ competition is missing from the schedule.
- The competition schedule began January 7, 20xx and ended April 15, 20xx.

PRACTICE SCHEDULE – 20xx:

Agent received this schedule from _____, CEO on June 23, 20xx. This schedule contains the dates and times for practices and also contains the competition dates and places. The practice schedule is for the time period January 20xx to mid-April 20xx. Agent did not receive a practice schedule for the period September 20xx to December 20xx.

Practices are generally Friday from x pm to xx pm

ESTIMATED _____ BUDGET – 20xx-20xx:

Agent received a copy of this budget from _____, CEO on June 3, 20xx. There is no comparison of the budgeted amounts to actual amounts. This document contains budgeted amounts for the years 20xx, 20xx and 20xx. This budget contains estimated expenses for the year 20xx-20xx as follows:

Expense Category	Estimated Expense
Instruction and management	\$ xx,xxx
Busses	xx,xxx
Hotel rooms	xx,xxx
Equipment and costumes	x,xxx
Gas for truck	xxx
_____, circuit, regional costs	x,xxx
Practice space (local and _____)	x,xxx
World Finals	x,xxx
	x,xxx
Warmups, hoodies	xxx
Food – _____, regional	xxx
Banquet (including awards)	x,xxx

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Expense Category	Estimated Expense
Scholarships	x,xxx
Total	\$ xx,xxx
Projected budget based on number of performers (\$X,XXX x XX)	\$ xx,xxx
Overage	\$ xx,xxx

Agent discussed this budget with _____, CEO on June 3, 20xx. _____ explained that "_____ " is defined as _____ T-shirts, pictures, and competition programs that the organization purchases at the event. _____ explained that the \$x,xxx per person estimated cost of running the program is based on a historical number. This budget is an estimate of the program cost not knowing how many kids they are going to have in the program. Based on the "projected budget based on the number of performers" amount and the historical cost per person of \$x,xxx, the agent calculated the estimated number of performers as follows:

Year	20xx-20xx	20xx-20xx	20xx-20xx
Projected Budget based on the Number of Performers	\$ xx,xxx	\$ xx,xxx	\$ xx,xxx
\$x,xxx per person historical cost	\$ x,xxx	\$ x,xxx	\$ x,xxx
Estimated number of kids participating	xx	xx	xx

INCOME:

The _____ revenue was analyzed as part of the determination as to whether the organization is operating exclusively for a tax-exempt purpose.

The primary source of revenue is from the operation of gaming activities, rental of the bingo hall and the concession stand. Total revenue for the examination year 20xx was \$x,xxx,xxx of which \$x,xxx,xxx was generated from these sources. This represents xx.x% of the revenues generated. The remaining revenue is from investment income and miscellaneous income. There is no revenue generated from the provision of exempt services. Reimbursements of \$xxx were received during the year for shirts and from bus services.

EXPENSES:

The _____ expenses were analyzed as part of the determination as to whether the organization is operating exclusively for a tax-exempt

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purpose. The following expenses were reviewed and were not made in furtherance of the organization's exempt purposes.

Cell Phones:

On June 23, 20xx, the agent obtained copies of the _____ cell phone bills for _____ and the _____ cell phone bills for _____. Both cell phone bills are not billed in the organization's name or sent to the organization's address. The _____ cell phone is billed to _____ at _____ and the _____ cell phone is billed to _____ at _____.

The monthly charge for the _____ cell phone is \$xx.xx per month or \$xxx.xx for the year. In some instances, the organization paid x% of the monthly bill and in other months the organization paid x% of the bill. The total paid by the organization for the year was \$xxx.xx or xx% of the yearly total. Payments made in subsequent years were \$xxx.xx (xx% of the total bills) and \$x,xxx.xx (xx months of bills) for the years 20xx and 20xx, respectively. Payments were made from the Pull Tab gaming cash account for the years 20xx through 20xx.

The monthly charges for the _____ cell phone vary depending on usage and services. The standard monthly charge for voice only service is \$xx.xx without taxes. The organization paid varying amounts of the monthly bills. A sample of bills paid shows that the organization paid \$xxx.xx or xx% of the May bill, \$xxx.xx or xx% of the June bill, and \$xxx.xx or xx% of the July/August charges. The organization paid a total of \$xxx.xx, \$xxx.xx, and \$x,xxx.xx for the years 20xx, 20xx, and 20xx, respectively. Payments were made from the Pull Tab gaming cash account for the years 20xx through 20xx.

Charges on the _____ cell phone related to business conducted with _____, personal business, and International phone service. The international service that was added to _____ cell phone relates to the time period that _____ was in the _____ and _____ on the _____ trip.

The June _____ bill included charges for the _____, _____, and _____ plans. Roaming calls, data, and text charges were incurred in the _____ to retrieve voice mail messages from the _____ phone. This store is owned by _____, CEO and managed by _____. CFO and sells percussion drum equipment. Charges were also incurred for phone calls to a musician/drummer with a local band, and to an international mobile phone in _____. This musician/drummer does not have a business relationship with this organization. Data charges were incurred in _____ and the International phone charges were incurred in the July bill for a call to an _____.

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adventure company. None of these international phone charges relate to business with the exempt organization.

In the initial interview conducted on June 2, 20xx, [redacted], CEO, stated that the organization provides cell phones to himself and [redacted], CFO. They were paying one-half or a set amount in 20xx. In 20xx, since the organization is no longer providing health care for [redacted] and [redacted], the organization switched to paying x% of the cell phones. [redacted] stated that the cell phones are necessary due to the poor phone service at the organization's facility and the need to be in contact with each other when the color guard is in season. The color guard competition season is from January to April, weekends only. The guard is not out of town for every week for competitive events and the guard did not participate in any guard activities in [redacted]. [redacted] also stated that the cell phones are considered the primary phones for the organization. The cost to replace the landline phone system at the facility was quoted at \$xx,xxx.

On March 7, 20xx, with check number xxxx and xxxx, the organization paid [redacted] for repairs to enhance the landline phone system. They installed an uninterruptible power supply (UPS) to have the phone lines available during a power outage. A voicemail system and a phone jack were also installed.

Compensation for the officers or the payment or reimbursement of cell phones is not approved by the Board. There is no evidence of any approval or discussion regarding cell phones in the Board minutes.

The organization's landline phone is (xxx)-xxx-xxxx. This phone number is listed in the bingo flyers, bingo advertising, on Form 990, the employee handbook, and on the organization's website. This phone number is listed on Form 990 in the heading, item E. The instructions to the Form 990, heading item E states, "Enter a telephone number of the organization that members of the public and government personnel can use during normal business hours to obtain information about the organization's finances and activities. The landline phone provides weekly updates for bingo prizes, winning bingo ball numbers and is used to reserve computer for bingo sessions. The employee handbook specifically states, "Only company management personnel are allowed to have cellphones available during work hours. The building phone number should be given to anyone who needs to reach you in an emergency. That number is (xxx) xxx-xxxx."

[redacted] cellphone is not given to the general public and is not cited in any printed or electronic publications. [redacted] cellphone number is provided only for certain activities as they relate to the guard. In the [redacted] Winterguard Handbook, the participants are to call [redacted] on his cellphone if there are any issue with the guard, not [redacted] or [redacted] cellphones.

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Travel:

The organization paid the following expenses for the _____ trip.

Payment Made To	Date(s) Paid	Description	Amount
	April and May 20xx	Air travel, land expense, trip cancellation, rail expense-	\$ xx,xxx.xx
	August 1, 20xx	Metro tickets	xxx.xx
	August 1, 20xx	& Metro tickets-reimbursement for tickets in	xxx.xx
	August 1, 20xx	Trip expenses	xxx.xx
	May and June 20xx	bus to and from Airport	xxx.xx
Cash payments from Thursday Bingo Account	June, July, and August 20xx	Debit- and International bank fees, ATM withdrawals and ATM fee, _____ card for trip expenses	x,xxx.xx
Total	Trip Expenses		\$ xx,xxx.xx

A list of individuals who went on the _____ trip was provided by _____ CEO on June 23, 20xx. Individuals who are affiliated with the other IRC 501 (c)(3) organization also went on this trip and are shown on the list with individuals affiliated with this organization. Guard members who went on the trip have a designation of "P" next to their name. _____ stated that parents who volunteer at bingo are allowed to go on the trip. Adults on the trip have "family member" next to their name. The adults who are parents or grandparents of guard members can be matched to their children by last name. _____ who is listed as a family member is the girlfriend of _____ CEO. _____ who is listed as a family member is the girlfriend of _____ CFO. _____ and _____ became engaged during this trip. Individuals pay for their own food on the trip except for one meal in _____.

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The following are individuals who went on the trip.

Name	Guard Member or Family Member Designation on List	Comment
Daughter of	Guard Member	This individual not a member of the Winterguard or Junior Color Guard
	Family Member	Parent; Bingo Worker
Daughter of	Guard Member	This individual is not a member of the Winterguard or Junior Color Guard; Concession Worker
	Family Member	Parent; Bingo Worker
	Family Member	Parent, Bingo Worker
Daughter of	Guard Member	This individual is not a member of the Winterguard or Junior Color Guard; Concession Worker
	Family Member	Parent; Security Worker
	Family Member	Board Member in 20xx; Bingo Worker
	In Charge/Tour Guide	CEO of the organization-Officer; Bingo Worker
	In Charge/Tour Guide	CFO of the organization –Officer; Bingo Worker
	Family Member	Girlfriend of ; Bingo Worker
	Family Member	Girlfriend of ; Bingo Worker
	Family Member	Bingo Worker
	Family Member	Bingo Worker
	Family Member	Bingo Worker
	Family Member	Bingo Worker
	Family Member	Bingo Worker
	Family Member	Bingo Worker; employee in prior year
	Family Member	
	Family Member	
	Family Member	
	Family Member	

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LAW:

Internal Revenue Code section 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 to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), 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 (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in section 501(c)(3), 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.

Treasury Regulation section 1.501(c)(3)-1(b)(1) states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treasury Regulation section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as operating 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.

Treasury Regulation section 1.501(c)(3)-1(c)(2) states, in part, that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treasury Regulation section 1.501(c)(3)-1(d)1(i) provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

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- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Treasury Regulation section 1.501(c)(3)-1(d)1(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or personal controlled, directly or indirectly by such private interests.

Treasury Regulation section 1.501(c)(3)-1(d)2 defines the word charitable. The term charitable is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term 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.

Treasury Regulation section 1.501(c)(3)-1(d)3(i) further defines the term educational. In general, the term educational, as used in section 501(c)(3) relates to:

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

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

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Treasury Regulation section 1.501(c)(3)-1(d)3(ii) provides examples of educational organizations. The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example 1. An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example 2. An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example 3. An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example 4. Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

Treasury Regulation section 1.501(c)(3)-1(e) provides that organizations carrying on trade or business--(1) In general. An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

Treasury Regulation section 1.501(a)-1 refers to "private shareholders or individuals" in prohibiting inurement of an exempt organization's net earnings. The word "shareholder," as used here, does not have the same meaning as it does in a for-profit corporation.

Treasury Regulation 1.501(c)(3)-1(d)(1)(ii) gives examples of the word "shareholder": Individuals considered as having private interests include, but are not limited to, an organization's. This group of individuals is generally referred to as insiders.

- Officers (ex. President, Treasurer, CEO, CFO, etc.)
- Directors (ex. President of the Board of Directors)
- Trustees
- Members
- Founders
- Contributors
- Key Employees

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Treasury Regulation section 1.501(a)-1(c) defines a private shareholder or individual for purposes of section 501 as persons having a personal and private interest in the activities of the organization.

In *Better Business Bureau v. United States*, 326 U.S. 279 (1945), the United States Supreme Court held that for an organization to qualify for tax exempt status, the organization must be exclusively devoted to an exempt purpose and the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In *Make a Joyful Noise, Inc. v Commissioner of Internal Revenue*, T.C. 1989-4, *Make a Joyful Noise, Inc.* (MJN), an organization exempt under section 501(c)(3) of the Internal Revenue Code, leased certain premises which it then sub-leased to other organizations for the purpose of operating bingo games. MJN's tax-exemption had been revoked because the Internal Revenue Service found that it had not operated exclusively for exempt purposes, because its level of exempt activities was not commensurate with its resources, and because its primary activity, management and operation of bingo games for other exempt organizations, was a trade or business not qualifying as an exempt activity under section 501(c)(3) of the Code. In deciding in favor of the Internal Revenue Service, Judge Tannenwald wrote that "the word 'exclusively' does not mean 'solely' or 'without exception'. An organization which engages in non-exempt activities can obtain and maintain exempt status so long as such activities are only incidental and insubstantial".

In *South Community Association v. Commissioner of Internal Revenue*, T.C. Memo 2005-285, December 14, 2005, the Association conducted bingo, sold pull-tabs, and operated concessions and a kitchen in a bingo hall. The Association made distributions of \$1,423,729 from 1992 through 1995 to various charities' educational programs. The IRS had revoked the Association's tax-exempt status on the grounds that the Association had as its primary activity the operation of a trade or business, i.e. its gaming operation, which was not in furtherance of its exempt purpose, that that the Association operated as a "feeder organization" within the meaning of section 502, and that the Association's operation served the private interests of its founder. The main inquiry in this case was whether the Association's gaming activities were staffed by substantially all volunteer labor. The Association argued that this was so, and that it then followed that these activities should not have been deemed unrelated to its exempt purpose by virtue of section 513(a)(1) of the Code. Although the proceeds paid out to charities came almost exclusively from its gaming operation, the Association did not argue, nor did the court find, that the gaming operation was in furtherance of its exempt purpose. In deciding in favor of the IRS, the court found, among other things, that the Associations' carrying on of a gaming operation as its primary activity disqualified it from tax-exemption.

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STATE NON-PROFIT LAW SECTION 713: OFFICERS:

The _____ (Organization) is incorporated in _____ State as a Domestic Not-For-Profit Corporation.

State Non-Profit Law section _____ states, the board may elect or appoint a president, one or more vice-presidents, a secretary and a treasurer, and such other officers as it may determine, or as may be provided in the by-laws. These officers may be designated by such alternate titles as may be provided in the certificate of incorporation or the by-laws. All officers as between themselves and the corporation shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws or, to the extent not so provided, by the board.

TAXPAYER'S POSITION:

No taxpayer's position at this time.

GOVERNMENT'S POSITION:

Issue 1:

All organizations described in IRC 501(c)(3) must establish that they operate exclusively for charitable purposes. The activities of the organization are one factor which determines if the organization is operating exclusively for charitable purposes. The organization must also establish that their net earning does not inure to the benefit of any private individual and that they are operated for public purposes rather than private interests. A IRC 501 (c)(3) organization can fail to operate exclusively for charitable purposes by failing any or all of the three factors: activities, private benefit, and inurement.

In order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

The _____ (organization) has failed all three factors: activities, private benefit, and inurement, therefore, they are not operating exclusively for charitable purposes and no longer qualify as a IRC 501 (c)(3) organization. The activities of the organization are discussed in this section. Although private benefit and inurement are also factors with regards to "operating exclusively" provision, these factors are separately discussed in the following sections.

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The _____ does maintain activities which supports their exempt purpose as a IRC 501 (c)(3) organization. The Winterguard and Jr. Color Guard activities accomplish their exempt purposes. Although the organization does maintain these exempt programs, they are so small and incidental in relation to the non-exempt activities, that these activities are not considered the primary activities of the organization.

The gaming, rental of gaming hall, and operation of a concession stand activities does not support the organization's exempt purpose other than to provide funds. The scope of these activities is substantial and overshadows the exempt activities and is not commensurate in relation to their exempt activity. The organization has dedicated a substantial amount of time and resources to the operation of these "unrelated" activities. Based on all of the evidence gathered, these "unrelated" activities are the primary activities of the organization as compared to the exempt activity.

Based on Treasury Regulation section 1.501(c)(3)-1(c)(1), the organization is not engaged primarily in activities which accomplish exempt purposes because more than an insubstantial part of its activities are not in furtherance of an exempt purpose. The unrelated activities of gaming, operation of a concession stand, and rental of the bingo hall are substantial and are the primary activities of the organization. The operation of a gaming activities, a concession stand, and rental activities are not exempt activities for an organization exempt under IRC 501 (c)(3).

The organization also has failed the provisions of Treasury Regulation section 1.501(c)(3)-1(c)(2) since net earnings of the organization have inured to the benefit of private individuals. Private benefit which is not incidental to the accomplishment of the organization's exempt purpose is discussed in Issue 2 below. Inurement with respect to insiders of the organization is discussed in Issue 3 below.

The organization's failure to adhere to the above two Treasury Regulations have caused the organization to not operate exclusively for one or more exempt purposes. The organization is therefore, not exempt under IRC 501 (c)(3) and their tax exempt status should be revoked.

The purposes for which the organization received their exemption are stated in the certificate of incorporation and relate to promoting drum and bugle corps music, to organize and maintain drum and bugle corps, to encourage the study and participation in playing instruments and to hold competitions and exhibitions. In the initial interview, the organization stated that the organization originally started as a drum and bugle corps. Due to financial considerations and interest in drum corps, the organization is no longer doing this activity which was the basis for their exemption. The organization has switched to operating a color guard program exclusively.

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Color guard uses various equipment, such as flags, rifles, and sabres, along with dance, to express dynamic passages in the music accompanying the marching band show. Color guard has since evolved into a separate activity known as winter guard, which is an indoor sport where the guard performs unaccompanied by the band, to a piece of pre-recorded music, usually during the winter and spring. It is important to note the limited time frame that the guards compete. The guards compete independently in such circuits as . The organization is a member of the

Color guards are the non-musical component of a drum and bugle corps or marching band unit, and thus, a drum and bugle corps and color guard are related activities. Although operating a color guard program is a change in activities for this organization, the operation of the color guard program is an acceptable charitable purpose for this organization and the participants in the program are the charitable class.

Defining the members of the charitable class is important with regards to determining if any of the net earnings of the organization have benefited private individuals and whether that benefit is incidental to the accomplishment of the exempt purposes or does not support the exempt purposes. Private benefit is discussed in detail in Issue 2 below.

The Form 1023 application is dated December 30, 19xx and the organization received their exemption on April 30, 19xx. On the organization's Form 1023 – Application for Recognition of Exemption, the organization stated that it currently raises funds by conducting bingo games, selling raffle tickets and operating concessions. The activities of the organization are referred to as "See Exhibit A". Attached to the Form 1023 are the bylaws of the organization which details the drum and bugle corps activity and purposes of the organization.

The exempt activities for the organization have decreased over time in terms of the size and scope of the activity and in the type of exempt activities performed. The non-exempt activities of the organization: gaming, operation of a concession stand, and sub-lease of their facility has increased over time. This shift in the emphasis and direction of the organization further widens the gap between the exempt and non-exempt activities and shows how the organization is straying from their exempt purpose and emphasizes the primary activity of gaming.

In the fall 20xx, the organization filed Chapter 11 bankruptcy and stopped touring as a drum corps. The last year for the drum corps was 20xx. As part of the reorganization plan, the organization started a Winterguard program and started performing again. The Winterguard program is less expensive to run than a drum corps.

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On the Form 990 page x for 20xx, the organization overstated a higher level of participation in the guard programs than what actually took place during the examination year. The organization did not provide any specific measurements of the program service accomplishments such as the number of individuals served, the number of competitive events or any other outcomes of the programs.

On the Form 990 page x for 20xx, the organization provided descriptions for the three different guard programs. The Summer Color Guard is no longer run by the organization and did not operate during the examination year. This is an obvious overstatement of the exempt programs. The organization had the Winterguard program which had xx participants and performed weekends from January through April and practiced from September through April. The only remaining exempt activity for the organization is the Winterguard program with approximately xx participants.

During the examination year, the organization also ran the Junior Color Guard program. This program had xx participants and practiced from October to April. The organization ran the Junior Color Guard program with another exempt organization and shared expenses. The organization did not disclose the shared arrangement. This shared arrangement results in a reduced amount of resources that are needed to run the program and impacts the size of the exempt programs. In reality, this program although serving xx individuals in total, it effectively provided resources for only individuals. The organization ran the Junior Color Guard program until the year 20xx-20xx.

Back in 19xx, the organization had between xx-xxx participants in the drum corps and color guard programs. During the examination year, the organization had xx participants in the color guard program. This is a substantial decrease in the number of participants the organization is serving in the activity which is the basis of their exemption. The organization had between xx and xx fewer participants which equates to a xx% to xx% reduction in exempt services provided. Subsequent to the examination year, the organization reduced the size of their exempt activities even further by eliminating their participation in the Junior Color Guard program. This reduction of xx participants results in a xx% reduction of exempt services from the examination year alone.

Also in 19xx, the drum corps traveled three to four times a week. During the examination year, the color guard traveled once a week for a total of xx weekends for the time period of January through mid-April. The time devoted to the performance of exempt activities with regards to participating in competitive events has reduced significantly, a xx% to xx% reduction.

The exempt activity occurs on weekends from September through April. Practices start in September and competitions start in January. Two days per week on average are devoted to the exempt activity and over the eight month practice and competition time frame, the total days devoted to the exempt activity is approximately xx days. In

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contrast, the gaming activity is held on three days a week for xx weeks a year which is xxx days per year. More than twice as many days per year are devoted to the gaming activity.

The size and scope of the fundraising activities as disclosed in the organization's Form 1023 application in comparison with the size and scope during the examination year reveals that the organization has significantly increased. The following narrative highlights the changes made throughout the years and illustrates the increased gaming activities.

The organization started bingo in 19xx. Pull tabs were started in the early 19xx's and a pull tab counter was added in the bingo hall. The organization sells the entire pull tab deal to maximize profits from the deal. In the 19xx's, the bingo operation got bigger as high stakes bingo games could be played. The organization moved to a larger facility to accommodate smoking patrons, and make more money to support the corps. The organization added a full service State Lottery operation in 19xx and added a lottery counter in the bingo hall. The lottery operation is open during all bingo sessions held in the hall. This includes bingo sessions held by this organization and the bingo sessions held by the two other organizations.

In 20xx, smoking in bingo halls was banned, attendance dropped, and the organization filed Chapter 11 bankruptcy. The organization continued to run bingo. In 20xx, the bankruptcy court was ready to close down the organization, but the organization did not want to close down the "cash cow". A reorganization plan was implemented and the court allowed the organization to continue to operate. The organization began to sublease their facility to other organizations to conduct bingo and eventually these organizations quit renting the bingo hall. Raffles started in 20xx. In 20xx, improvements were made to the bingo hall and there was an increase in bingo attendance.

The emphasis placed by the organization on the gaming activities is evident in the way the organization conducts the bingo activity. When the organization was in their bankruptcy situation, they stopped performing their exempt activities, yet they continued to operating the gaming activities because they saw the value in operating the gaming activities. The term "cash cow" was used to describe the gaming activities which illustrates the awareness the organization has for the lucrative nature of the gaming activities.

The organization has gone to great effort with regard to the promotion, operation, customer relations, and financial aspects of the gaming operation, similar to any other business enterprise. The size and scope of the gaming activities is evidenced by the number of bingo sessions held, the use of fictitious names to conduct additional bingo sessions, the size of the facility, and the addition of other games of chance. The organization operates the concession stand and lottery during bingo sessions operated

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by two other tax exempt organizations. The organization has built up this aspect of their operations while at the same time have significantly decreased the exempt activities. The organization is conducting these non-exempt activities beyond what is needed to sustain the small exempt activity.

The organization conducts bingo three days and nights per week under three different license numbers issued by the State Division of Charitable Gaming. Bingo games are conducted under the names:

and . The names: and are fictitious names that were created by the organization to increase the number of bingo sessions they would be able to conduct under . The name:

is the legal name for the organization and all bingo games are reported under this entity.

The organization conducts special bingo games with higher jackpot prizes to draw patrons and meet the desires of bingo patrons. In addition to traditional bingo games, the special games include progressive, , and split pot bingo games. Bingo is run on a computerized system with xxx computer terminals in place for patrons in addition to paper bingo cards. A computer club was established which allows patrons to phone in computer reservations in advance for a small deposit fee. Additional gaming opportunities were added including a full service State Lottery, raffles, event bingo, seal cards, and pull tabs.

The organization uses various media to promote their gaming operation and keep patrons updated. The organization uses print advertising, two websites, Facebook, Twitter, on-line advertising, and the facility's phone system to reach bingo patrons, promote the bingo operation, and update bingo jackpots.

The concession stand serves patrons for all bingo games held at the hall including games held by this organization and games held by two other exempt organizations. During the field examination, the agent observed concession stand workers delivering food orders as an added service to bingo patrons. Vending machines have been installed to provide additional refreshments.

On the Form 1023, the organization stated that they rent a bingo hall from the to conduct their bingo games. The switch from renting another organization's hall to renting a space and developing their own bingo hall has afforded the organization the ability to have greater control over the operation. By having their own hall, they are able to sub-lease the hall to other organizations, improve the bingo hall facilities, have their own concession stand, and expand gaming opportunities for the organization.

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The organization rents approximate xx,xxx square feet of space in the , located at the corner of (x/x mile from) in the Town of (a suburb of). Approximately xx,xxx of that space represent the bingo hall area with xxx or more seats for bingo patrons. The remaining square footage is used for the following: lottery lounge and counter, bathrooms, hallways, offices, kitchen, concession stand, pull tab counter, lottery vending machines, snack vending machines, pull tab vending machines, bingo hall manager office, bingo and pull tab office, raffle and pull tab storage room, cash room, administrative offices, and storage.

There are a total of xxx parking spaces for use by all tenants in the plaza. The organization's space can be accessed from two doors to the outside with sufficient spaces available for all patrons. The plaza is not fully rented, so there are sufficient parking spaces available for all tenant customers. The city bus services the plaza with a bus stop close to one of the organization's entrances. The bus schedule can accommodate patrons for all bingo session starting and ending times.

The proximity to an Interstate highway, amount of space rented, utilization of the space rented, number of parking spaces, and access to public transportation are all factors which contribute to viability and success of the bingo hall operation.

The organization has invested in repairs and improvements to the bingo hall space including: painting, lighting, cleaning, hall furnishings, TV monitors, phone system, and computer systems for the gaming operation. During the tour, the agent noted that the organization purchased new flat screen TV's for the bingo hall. The TV's are used to project the bingo ball called so patrons can see the ball called in addition to hearing the ball called. The organization has made repairs and installed an uninterruptible power supply for the phone system.

The organization has dedicated substantial resources in the bingo hall and gaming operation. The primary activity conducted at the facility is gaming. Administrative office space occupies a very small part of the rented space.

There is no evidence that any exempt activity is conducted at this facility. In the Winterguard Handbook, the organization stated that practices are held on Sunday, that they have no specific gym for practices, they use many different spaces, and they use a local area school. Sunday practices cannot be held at the organization's facility due to bingo sessions starting at and x pm. Additional time during the day would need to be devoted to the setup and cleanup of the hall before and after each bingo session. The bingo operation on Sunday severely limits the possibility of any guard practices occurring at the bingo hall. There is insufficient open space in the facility to hold a

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practice without taking down tables and chairs and then setting them back up for the next bingo session.

The employee handbook emphasizes the importance of the gaming operation and the role that the employees play. There is a definite emphasis on selling and doing something that is beneficial to the operation of the bingo hall. There is no mention in the handbook about the guard activity. The time commitment from paid employees, volunteers, and independent contractors overshadows the time devoted to exempt activities.

For the year 20xx, organization paid \$xxx,xxx in wages for employees who perform tasks for hall cleaning, concession workers, pull tab report preparation, bingo hall managers, lottery workers, and security. These wages represent xx% of the total wages paid of \$xxx,xxx. Although wages for management personnel, , CEO and , CFO, were not included in the above wage amount, these individuals also perform services for the gaming activity, bingo hall, and concession stand activities, which are an additional resource devoted and will raise the percentage of wages devoted to gaming even higher.

Parents and other individuals work the gaming and concession stand activities without a direct payment for their services in the form of a wage. The organization has classified these workers as volunteers. Parents must work at least three bingo sessions per month. Many parents work more than the required number of bingo sessions. Independent contractors provide services to the gaming, bingo hall, and concession stand activities such as bingo reporting, floor cleaning, repairs, and pest control.

An analysis of the Form 990 and the financial records for 20xx reveals the extent of the gaming operation and the resources devoted to management and general, exempt activities, and other non-exempt activities. This analysis provides further evidence that gaming is a primary activity, that the exempt activity is not a primary activity, and that the organization engaged in non-incidental private benefit and inurement.

It important to note that the organization disclosed in their Form 1023 application, dated December 30, 19xx, average revenue of \$xxx,xxx and the average disbursements to or the benefit of members of \$xxx,xxx. The disbursements paid represent xx% of the funds generated from fundraising. From this time period to the examination year, a span of xx years, revenues from fundraising increased approximately \$x,xxx,xxx or xxx% to \$x,xxx,xxx. This illustrates the tremendous growth in the fundraising activities.

Revenue from gaming, rental of gaming hall, and concession stand activities amounted to \$x,xxx,xxx in the year 20xx and represents xx.x% of all revenues generated by the organization. Gross revenue from the gaming operation is xx.x% of all revenues. The organization received no fees from the guard program participants; although on their

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Form 1023 application they stated that participants pay a fee. Expenses incurred in the gaming, rental of gaming hall, and concession stand activities totaled \$x,xxx,xxx for the year 20xx and represents xx% of total expenses. The net income from gaming, rental of gaming hall, and concession stand activities was \$xxx,xxx for 20xx.

As disclosed in the organization's Form 1023 application, the average disbursements to or the benefit of members of was \$xxx,xxx. The disbursements paid represent xx% of the funds generated from fundraising. From this time period to the examination year, expenses paid for exempt purposes decreased approximately \$xxx,xxx or xx% to \$xx,xxx. Another way to look at this decrease is in terms of the amount of exempt purpose expenses incurred and a per person basis for members of the charitable class and the percentage of fundraising revenue used to pay for exempt purpose expenses.

In 19xx, the organization had between xx and xxx participants which equates to an average of xxx participants. Two years later in 19xx, the organization filed Form 1023. Assuming that the number of individuals who participated was not significantly different, an average of xxx individuals will be used for the following analysis. On the Form 1023, an average of \$xxx,xxx was spent on program services which equates to approximately \$x,xxx per person. In the examination year, the organization spent \$xx,xxx to serve xx program participants or \$x,xxx per person. The amount spent during the examination year represents an approximate reduction of \$x,xxx per person or a xx%. This reduction further emphasizes the decreases in both the amount spent per person and in the overall spending for the exempt activities while at the same time fundraising revenues increased at a pace which far exceeds the exempt activity spending.

It is also important to note at in the Form 1023 application, the organization disclosed that it spent approximately xx% of fundraising revenue on exempt purpose expenses. In contrast, during the examination year the organization generated \$x,xxx,xxx in fundraising revenue and spent \$xx,xxx on exempt purpose expenses or x.x% of fundraising revenue.

The net income generated from the gaming, rental of gaming hall, and concession stand activities was used to pay \$xx,xxx of exempt purpose expenses or xx% of net income. In contrast, the organization spent \$xx,xxx for management and general expenses, xx% of net income, or nearly double the amount spent on their exempt activity. The organization spent \$xx,xxx for other activity expenses, xx% of net income. This category is significant in the fact that the expenses paid for other activities represents inurement and private benefit which does not support the exempt purpose of the organization and is strictly prohibited under IRC 501(c)(3). The gross expenses analysis below illustrates the sharp contrast with the expenses incurred for the exempt activity in relation all other expenses and the low percentage of expenses devoted to exempt activities.

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CONTRAST BETWEEN GAMING ACTIVITIES AND GUARD ACTIVITIES:

Per the organization's Form 990 filing for the tax year 20xx, the revenue derived from sources within the Bingo Hall (the organization's bingo game itself and all other activities within the bingo hall) and that from all other sources was as follows:

	Revenue per Form 990	Percent of Total
Gaming and Bingo Hall		
Gross rents from bingo hall	\$ xx,xxx	x.x%
Gaming	xxx,xxx	xx.x%
Sales of inventory (concession)	xxx,xxx	xx.x%
Sub-total	xxx,xxx	xx.x%
All Other Sources		
Investment Income	x	x%
Miscellaneous Income	xxx	.xx%
Sub-total	xxx	.xx%
Total Revenue	\$ xxx,xxx	xxx.x%

The Form 990 did not report all gaming revenue on a gross basis. The agent used the bingo quarterly reports, the pull tab quarterly reports and the daily Excel spreadsheets prepared by the organization for the bingo activity to determine the true gross revenue from gaming activities.

The organization substantially under reported gross gaming revenue by \$x,xxx,xxx or xx% of total gross revenue for the tax year 20xx.

The under-reported revenue consists of:

Game	Description of Under-Reporting	Amount Under Reported
Bingo	Prizes netted against revenue	\$ xxx,xxx
Bingo	Unreported split, progressive and revenue	xxx,xxx
Pull Tabs	Prizes netted against revenue	xxx,xxx
Total Under Reported		\$ x,xxx,xxx

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The correct gross revenue is:

	Gross Revenue	Percent of Total
Gaming and Bingo Hall		
Gross rents from bingo hall	\$ xx,xxx	x.x%
Gaming	x,xxx,xxx	xx.x%
Sales of inventory (concession)	xxx,xxx	x.x%
Sub-total	x,xxx,xxx	xx.x%
All Other Sources		
Investment Income	x	x%
Miscellaneous Income	xxx	.xx%
Sub-total	xxx	.xx%
Total Revenue	\$ x,xxx,xxx	xxx.x%

Expenses are also under-reported by the same amount, \$x,xxx,xxx for a net income effect of .

The expenses per the organization's Form 990 filing for the tax year 20xx, in conducting its gaming activities and operating the bingo hall, expenses for the concession stand, amounts paid for other activities, and incurred in their exempt purpose activity are as follows.

	Expenses per Form 990	Percent of Total
Gaming and Bingo Hall		
Gaming and bingo hall	\$ xxx,xxx	xx.x%
Concession stand	xxx,xxx	xx.x%
Sub-total	xxx,xxx	xx.x%
All Other Expenses		
Management & General	xx,xxx	x.x%
Exempt Purpose Activity	xx,xxx	x.x%
Other Activities	xx,xxx	x.x%
Sub-total	xxx,xxx	xx.x%
Total Expenses	\$ xxx,xxx	xxx.x%

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The correct gross expenses are:

	Gross Expenses	Percent of Total
Gaming and Bingo Hall		
Gaming and bingo hall	\$ x,xxx,xxx	xx.x%
Concession stand	xxx,xxx	x.x%
Sub-total	x,xxx,xxx	xx.x%
All Other Expenses		
Management & General	xx,xxx	x.x%
Exempt Purpose Activity	xx,xxx	x.x%
Other Activities	xx,xxx	x.x%
Sub-total	xxx,xxx	x.x%
Total Expenses	\$ x,xxx,xxx	xxx.x%

Gaming and bingo hall expenses relate to all gaming activities and the rental of the bingo hall. The concession stand is located in the bingo hall and is open only during bingo games and serves bingo patrons exclusively. Guard activities are not conducted at the gaming hall and the concession stand is not provided for the convenience of guard members for any practice or competitive event.

The major duties of the CEO involve the bingo hall and other fundraising. out of xx tasks involve the bingo hall and other fundraising. The job duties of the CEO are classified into two categories: bingo hall and organizational. Under the organizational heading, xx% of the tasks are related to the operation of the bingo hall and fundraising. Many of the responsibilities of the CEO are delegated to the bingo hall managers on a day-to-day basis.

The exempt purpose activity is the Winterguard and the Junior Colorguard activity. This category includes expenses related to this exempt activity. The individuals who actively participate in the color guard are considered members of a charitable class. Expenses incurred in this category which confer private benefit to the individuals who participate in the activity are incidental to the accomplishment of the exempt purpose.

The other activities category represents payments by the organization which do not support to their exempt purpose. These amounts have been determined to be either inurement or private benefit which is non-incidental to the conduct of the organization's exempt purpose activity. This expense category includes amounts paid for the trip, hotel rooms at competitions for parents and individuals who are not

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guard participants or instructors, cellphones for the CEO and CFO, health insurance premiums for an individual who is not classified as employee, and scholarships.

Issue 2:

As previously established in Issue 1, the organization is operating a color guard program which is an acceptable charitable purpose. The participants in this program are the charitable class of individuals who are benefiting from this program. Private benefit obtained by members of a charitable class which is incidental to the accomplishment of the exempt purposes of the organization is acceptable. An example of this type of incidental private benefit is the competition fees paid for the group to perform.

Private benefit which is not derived from accomplishing the exempt purposes of the organization, even if benefiting the charitable class of individuals, is in violation of the "operating exclusively" provision for a IRC 501 (c)(3) organization. An example of this would be the "scholarships" paid to guard members during the examination year.

Therefore, it is important to distinguish between incidental and non-incidental private benefit. With regards to the guard participants, both incidental and non-incidental private benefit occurred during the examination year.

The participant's parents, grandparents, siblings, friends, or any other individuals related or unrelated to the participant are not part of the charitable class. Any private benefit obtained by these individuals would violate the "operating exclusively" provision since this private benefit is not incidental to the accomplishment of the exempt purposes of the organization. Private benefit non-incidental to the accomplishment of the organization's exempt purpose has occurred during the examination year.

With regard to membership in the organization, travel fees, and scholarship benefits, the organization has strayed from what was disclosed in their Form 1023 application.

On the organization's Form 1023 – Application for Recognition of Exemption, the organization stated that they are a membership organization and that there are no membership requirements. However, there are fees related to travel expenses for tours. The travel fees cover meals, transportation, uniforms, and lodging. The organization also stated that they are not part of a school and does not provide or administer any scholarship benefits.

During the examination year there were two classes of members: performing members and non-performing members. Performing members are those individuals to participate in the guard programs. Non-performing members include community members, instructors, and parents of participants. Non-performing members can include anyone

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who assists in fundraising. The membership list for this class is essentially the list of individuals on the bingo license.

In the initial interview, the officers stated that two of the requirements for members to join are that parents must work bingo three times a month to support the color guard and members are required to assist in fundraising. This membership requirement is contrary to what was disclosed in the Form 1023 application. The organization required individuals to participate in fundraising events as a condition of benefiting from the organization's activities. Membership benefits were stated to include possible group dinners, bus trips to competitions, hotels rooms at the competition, pictures of the guard, T-shirts, parents will get their entry fee into the competition, and scholarships for the kids. As a benefit, guard participants need to spend only a minimal amount of their own money for out of pocket expenses usually for costume accessories. Bingo creates the necessary funding to support the guard activity in full.

This fundraising requirement brings into question the true nature of the relationship between the organization and the parents and other individuals. The parents and other individuals who to work bingo and other fundraising are doing so to receive benefits in return from the organization for either themselves or for their children who participate in the color guard. The organization has used the term "volunteer" to describe the parents and other individuals who work bingo and fundraising. True volunteers perform work without the expectation of payment or compensation of any kind. Compensation may be in any form including but not limited to: cash, checks, gift certificates, goods, or services. In this case, the compensation was in the form of travel expenses for guard trips, the trip, and scholarships for their children.

The private benefit that is conferred to parents and other individuals as a result of the fundraising requirement is intentional and not incidental to the accomplishment of the organization's exempt purposes. It is clear that the organization's "work and benefit" method of funding their activities results in the parents and other individuals expecting to receive direct benefits from the organization. The substantial private benefit to the parents and other individuals negates the charitable intent and exemption under IRC 501(c)(3).

On the Form 990 for 20xx, revenue attributed to the exempt activities programs was listed as \$xxx which consisted of the reimbursement of expenses from the year 20xx and for shirts. There is no income generated directly from the guard members to participate in the program. This lack of revenue is contrary to statements made on the Form 1023 which stated that there are fees related to travel expenses for tours to cover meals, transportation, uniforms, and lodging. There is also no revenue generated from other individuals to reimburse the organization for travel expenses or any other benefits derived from the organization.

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There is no evidence that members pay any expenses for their children to participate in the color guard. There is also no evidence that the parents or any other individuals paid for any travel expenses for any trips. There are no fees to join the organization or participate in guard events. This fact was restated again in the description of the Winterguard and Junior Color Guard programs.

The fundraising requirement results in private inurement to those who get credit for their participation. All funds raised by organizations must be disbursed without giving consideration to whether or how involved the beneficiaries or their family members were in the fundraising activities that generated the funds. Requiring participants to work fundraising events in order to participate is not consistent with qualifying for tax exemption under IRC 501(c)(3).

When the organization pays x% of the cost of travel for individuals who are not part of the charitable class or who directly service the charitable class, private benefit which is not incidental to the accomplishment of the exempt purpose has occurred. In this organization, the only individuals for which the organization may be able use funds to pay for expenses for traveling to guard events include the guard members and instructors. Expenses for all other individuals, including employees, all other staff, and anyone else traveling to guard events or for the trip do not support the exempt purposes of the organization.

Scholarships:

The exempt purposes listed in the organization's Certificate of Incorporation do not include the provision of scholarships. On the Form 1023 application, the organization stated that they are not part of a school and they do not provide or administer any scholarship benefits. Again the organization has strayed from what was disclosed on their Form 1023 application.

As a IRC 501 (c)(3) public charity, an organization's scholarship program must serve charitable and educational purposes rather than private interests. A scholarship program which serves private interests equates to private benefit. The "scholarship" payments made by this organization are not incidental to the accomplishment of the organization's exempt purposes.

In the examination year, the organization provided payments to some color guard members that were termed, "scholarships". During the examination year all payments were made payable to just the student. No payments were made in the college's name.

In the initial interview, the organization stated that one of the benefits provided to members is scholarships for the kids. For every year that the child is in the guard they will get a \$xxx scholarship. In 20xx, the amount was raised to \$xxx per year. If the

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student leaves the organization, the scholarship is paid out. The scholarship is paid out to the student and the college. Smaller amounts are made payable to just the student. There is no formal document outlining the scholarship policies and rules.

, CEO will determine how many years the student has been involved with the guard to calculate the number of years of scholarship to pay. For the scholarship to be paid out, the student must stay with the guard until they graduate from high school. In essence, this "scholarship" is on a "pay to play" basis and equates to compensation to the individual and private benefit not incidental to the exempt purposes.

This is not a community based scholarship program. Eligibility for the scholarship is based on the individual's status as a guard member, the years of participation in the guard, and the requirement to stay with the organization until they graduate from high school. , Director of Performing Units and CEO, receives and reviews report cards and keeps records for and determines the scholarships that are awarded to guard participants. There are no formal documents submitted for a guard recipient to receive a scholarship.

This scholarship is non-competitive, is not based on merit or financial need, and is open only to guard participants. Since the scholarship is not open to the general public, it benefits members of a group that is too small to be a charitable class with regards to the scholarship. Beyond the private benefit, these payments are in effect a "pay to play" situation which brings into question the true exempt status of the guard activity.

The primary reason for the scholarship is to encourage guard members to stay in the program and is in effect compensation for their participation. The fact that scholarships are paid directly to the individual and relates to their performance is evidence that these payments are in reality compensation, are not a valid scholarship, represents private benefit and does not support the exempt purpose of the organization.

Website Links:

The web designer, , updates the websites, and for the organization. The organization does not get any revenue from the placement of website links. In the initial interview, the organization stated that these links are for informational purposes. The true purpose of these website links is to provide another venue to promote the businesses of the photographer and the webmaster. There is an inherent benefit to the posting of website links to a webpage. Since these businesses did not pay a fee for the link to be placed on the webpage, this benefit afforded to the for-profit entities of Photographer and Web Designer represents private benefit.

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Travel:

In the initial interview, the organization stated, that the organization uses an outside bus service for traveling to competitions. If the bus has extra seats, parents can come along on the trip. The floor crew and other helpers also go on the trips. Anyone that goes on the trips is helping the performance in some capacity. Spouses and employees can travel to events. The organization bears x% of the cost of travel.

The organization has paid the travel expenses for the parents of program participants and other individuals. These travel expenses included hotel rooms for out of town guard competitions. In addition, the organization paid for expenses which related to the trip including bus transportation to and from the airport, airfare, hotels, and sightseeing venue fees. This trip does not relate to the exempt purposes of the organization. Therefore, all expenses paid on behalf of the parents and other individuals who are not insiders with respect to the organization, results in private benefit which is prohibited for a IRC 501 (c)(3) organization.

In a memo to the staff, the organization states, "We have never had chaperones as other groups do." "I never want to give any power to parents for supervision of the kids. This means that we as the staff have to take on that responsibility." This statement reinforces the role of parents and teachers when the group is traveling. Teachers (instructors) are the primary chaperones. Others who may travel with the group do not have this responsibility (wives, girlfriends, parents, etc.).

There is a valid business purpose for the teachers (instructors) to travel with the group to competitions. Their role is to instruct during the practices and competition and to supervise the guard participants during the trip. Travel expenses incurred for the teachers (instructors) is considered incidental private benefit since these expenses are a necessary component to accomplishing the organization's exempt purpose.

In contrast, others who travel with the group to competitions do not have a valid business purpose to attend. All travel expenses paid on behalf of parents and others constitutes private benefit which prohibited for a IRC 501 (c)(3) organization. Parents and others attending the competitions are doing so for their own pleasure. Parents are required to work three bingo sessions per month as part of the membership and guard participation requirements. Although parents may assist with certain tasks during the trip, this assistance does not rise to the level necessary to be a valid business purpose. Any assistance they provide is nothing more than to support their children in the activity.

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Issue 3:

The net earnings of the organization have inured to the benefit of private individuals. Private benefit involves benefits paid to anyone other than the intended charitable class and inurement is a form of private benefit that involves insiders of the organization. Inurement is strictly prohibited for organization's exempt under IRC 501 (c)(3).

Inurement is concerned with the direct transfer of income or the provision of services to an insider where the payment or provision of services is unrelated to the organization's exempt purposes. Inurement must be quantified as value transferring to that insider in other words, the taking from the exempt organization's profits in some manner that benefits the insider. Provision of goods and services to an insider can result in inurement.

During the examination year, there were numerous instances of the net earnings of the _____ inuring to the benefit of individuals. _____, CEO and _____, CFO are considered are considered to be "private shareholders" or "individuals" in accordance with T. Reg. 1.501(a)-1(c).

_____ and _____ are classified an officer, director, and a "private shareholder or individual" because _____ and _____ are considered to be "a person having a personal and private interest in the activities of the organization" as defined in T. Reg. section 1.501(a)1-(c) cited above. _____ is the CEO and _____ is the CFO of the _____.

In addition to _____ having the title and responsibilities as the CEO of the organization, he also has the title and Director of Performing Units. As the CEO and Director, in addition to other duties, he is responsible for:

- Oversight the financial manager/CFO
- Book hotels for regional competitions, arrange rooming lists and request payment
- Approve all expenditures for the performing units and pass on to treasurer

The financial manager/CFO/treasurer position is held by _____. The relationship between _____ and _____ creates a lack of independence with regards to the supervision of and oversight of the financial manager/CFO/treasurer position. _____ arranges, approves, and requests payment for all travel incurred and paid by the organization. During the examination year there were trips to local, regional and out of state competitions. The organization also paid for a trip to _____, specifically _____ and _____.

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Although _____ and _____ have the titles of CEO and CFO, respectively, and the certificate of incorporation and bylaws do not specify these titles as officers of the corporation, they are considered officers in accordance with State Not-For-Profit Corporation Law Section xxx:

Travel:

In the Form 1023, Application for Recognition of Exemption, the organization stated that members were to pay fees related to travel expenses for tours. The travel fees were to cover meals, transportation, uniforms, and lodging. The organization also stated they are not part of a school.

In the initial interview, the organization stated the sources of revenue received by the organization, which did not include any amounts received for travel fees. The Form 990 for 20xx does not contain any revenue related to the payment of fees or reimbursement for any travel expenses.

The organization received their exemption as a IRC 501 (c)(3) public charity under section 509(a)(2), not as an educational organization under T. Reg. section 1.501(c)(3)-1(d)3(ii) or as a school under IRC 170(b)(1)(A)(ii). The fact that this organization does not meet the definition of an educational entity as defined in the Codes and Regulations severely impedes the educational aspect of the _____ trip.

Although this organization does not meet the criteria as an educational entity, this _____ trip was analyzed further to determine if this trip related to their exempt purposes and other facts surrounding the trip.

If this organization were an educational entity, the organization would need to establish a substantial relationship between the travel tour and the organization's exempt purposes. As a IRC 501 (c)(3) organization that is not an educational entity, it must still establish the substantial relationship between the activity and the organization's exempt purposes. The criteria to establish a substantial relationship to the organization's exempt purposes must first be met before analyzing the facts and circumstances as to the primary purpose of the trip.

In the interview conducted with _____, CEO on June 23, 20xx, when asked how this trip related to the organization's exempt purpose, _____ stated, "It is not related to the exempt purpose". _____ statements that the trip is "all learning and is educational, and exposes the individuals to history and culture" has no relevance in determining the relationship between the trip and the organization's exempt purpose. The assertion that a _____ trip provides a learning experience, is educational, and

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provides exposure to history and culture is not disputed. This statement does not change the fact that this trip is not related to their exempt purpose.

Also in this interview, stated that no instructors went on the trip. This statement reinforces the fact that the trip was not related to a guard activity such as attending an international guard competition or exhibition. There were no practices, exhibitions, or competitions scheduled for the guard at any venue in . All guard members did not go on this trip.

In response to the question regarding a curriculum for the trip, stated that he makes up and provides the itinerary for the trip. Curriculum for a course of study involves a planned learning experience with objectives, lesson plans, and assessments which is beyond the scope of and does not equate to an itinerary. The lack of existence of a legitimate educational methodology tied to this trip is evidence that the primary purpose of this trip is social and not educational.

The organization received exemption for the purposes related to the operation of a drum and bugle corps and have since changed their exempt activity to a color guard. This exempt activity should be the major focus or primary purpose for the organization. The Certificate of Incorporation states the additional purposes of promoting the study and improvement of the activities of drum and bugle corps and promoting friendship, sociability, and culture among its members.

These purposes are an ancillary result or outcome that is derived from the guard members participating in the color guard. The educational purposes under IRC 501 (c)(3) are broader than presenting formal classroom instruction. There is some inherent education of the guard members taking place when they participate in guard events. This education does not rise to the level of formal instruction. These ancillary purposes do not permit the organization to extend their activities beyond the organization's exempt purpose to include a trip to with the intent to expose these individual to history and culture and to provide an educational experience.

In the interview, , CEO also stated, "no one pays anything for their trip". This statement along with the fact that payments were issued for trip expenses out of the organization's bank accounts and no reimbursements from individuals were received, establishes the fact that the organization paid for this trip.

Since this trip is not related to the organization's exempt purposes, was paid by the organization, and board members and officers are considered "insiders" with respect to the organization, expenses incurred on behalf of board members and officers represents inurement.

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The following individuals who went on the trip are considered disqualified persons with regards to the organization.

- [redacted] – Board Member
- [redacted], CEO – Officer
- [redacted], CFO - Officer

The board minutes obtained during the field examination did not contain any Board actions including approvals or voting with regard to travel. There is no evidence that the board approved the trip or that this trip relates to the exempt purpose activities of the guard.

Trips listed in the board minutes include guard trips to [redacted] and a regional trip to [redacted]. The [redacted] Winterguard Handbook references performances by this group to events across the [redacted] and the nation. The guard schedule for the year 20xx lists local and out of state competition venues in the states of [redacted] and [redacted].

As the Director of the Performing Units, [redacted] has the task of booking hotels for regional competitions and the Winterguard International championship competition. As the Director he also approves all expenditures for payment. All aspects of this trip were controlled by [redacted] including, but not limited to, planning, approvals, and seeking payment from the organization.

Website Links:

The [redacted] maintains the website, [redacted]. At the bottom of each page of this website is a link to the music store, [redacted]. In the initial interview, the organization stated that the website links are placed on the website by the independent contractor, [redacted], for informational purposes. The organization did not receive any payment in connection with the hyperlink to this business website. This lack of payment is a critical distinguishing factor in this case.

[redacted] is owned by [redacted] who is also the CEO of the [redacted]. The organization purchased certain equipment from the officer's retail business, [redacted], at what is termed by the organization during the initial interview as, "at or below market rates". There is no issue with regards to these purchases. The organization purchased the following items from [redacted]:

- In 20xx - microphones and cable for \$xxx

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- In 20xx – tape, poles and caps for \$xxx
- In 20xx – flags for \$xxx

Information obtained from the website of

business is
also states, “

states that this business sells
. The website states that the
. The website
”

The organization’s exempt activity is the operation of a color guard. Since the color guard activity is the exempt purpose activity of the organization, including hyperlinks to this for-profit business does not serve the exempt purposes of the organization. The exempt purposes of the organization could be accomplished as well with the hyperlinks omitted.

The statement made on the website of regarding an Internet presence indicates that having a website has value to the business. Therefore, it logically follows that the placement of a hyperlink on the website of the organization provides economic value to

The officers are using the organization’s website to draw business to their retail business. The true purpose of the website link is to provide another venue to promote
. The website links do not provide any benefit to the
. organization or to the color guard participants.

The organization has not received any payment in return for the placement of the hyperlink. This lack of payment and the fact that the hyperlinks do not further the organization’s exempt purpose results in private benefit.

The prohibition on private benefit goes to the operational test under IRC 501 (c)(3). T. Reg. 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for an exempt purpose unless the organization serves a public rather than a private interest. This private benefit cannot be excused on the basis of it being incidental. For private benefit to be incidental in a qualitative sense, the private benefit must flow naturally from the organization’s conduct of activities that further the organization’s exempt purpose.

In this case, the individual involved is , the owner of who is also the CEO of the . By virtue of relationship with the entities, the private benefit derived from the placement of hyperlinks on the organization’s website rises to the level of inurement. Inurement is strictly prohibited for a IRC 501 (c)(3) organization.

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Cellphones:

and used the assets for personal purposes through the payment of personal cell phones. There is no evidence that the Board of Directors questioned or approved the payments made for the cell phones.

All cell phone payments made by the organization for the cell phone number (xxx) xxx-xxxx billed to and used by , CEO and the cell phone number (xxx) xxx-xxxx billed to and used by , CFO represent inurement. These cell phones are personal cell phones and are not the primary phones for the organization. These cell phones are billed directly to the individuals, contain charges related to the business owned by , charges for personal calls made on an international calling plan, were not authorized by the Board, and, therefore, are not a valid business expense for this organization. These cell phones payments are not the reimbursement of a personal expense for the benefit of the organization. They are the payment of personal expenses with organization funds which equates to private inurement due to the relationship of the individuals to the organization.

Since these cell phones are billed from separate phone providers and directly to and , they are not considered employer-provided cell phones. The fact that they are not billed directly in the organization's name and sent to the organization's address strongly suggests that these cell phones bills are personal. The use of separate phone providers also suggests that these cell phones were established as personal phones.

Based on the statements made by the officers during the initial interview, the CEO and CFO provide conflicting statements regarding the payment of cell phone bills and the business purpose of the payments.

In one instance, the cell phones are a fringe benefit to these employees, just like the provision of health insurance. They also make the comment that cell phone payments made by the organization have increased due to the organization no longer providing health insurance. In the second instance, the cell phones are the primary phones of the organization due to issues with the landline. This statement conflicts with the fringe benefit statement and the evidence does not support the assertion that the cell phones are the primary phones. The cell phones do not meet the requirement that cell phone payments are for primarily non-compensatory business reasons. There are no substantial business reasons for providing cell phones.

Contributions by an employer to an accident or health plan are excluded from gross income under Internal Revenue Code section 106. There is no statutory provision to exclude cell phones from gross income. The organization cannot substitute cell phone

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payments for health insurance and retain the same tax treatment. The tax treatment of each fringe benefit is determined based on the tax law, fact, and circumstances related to that particular fringe benefit.

There is no evidence in the board minutes that these cell phones were authorized by the Board. There is no written, contemporaneous documentation to substantiate that the payment for cellphones was intended to be compensation.

As stated above, the bingo activity is a primary activity for the organization. Since the guard competes only four months of the year, the payment of cell phone bills throughout the year does not serve the business interests of the exempt organization. The landline phone number is used repeatedly in both print and online sources as the phone number for the organization. The organization is relying heavily on the landline phone system for the bingo operation, contact the general public, and for employees and volunteers to use for emergencies. The statement that the phone service is "poor" contradicts the organization's heavy reliance on phone system for their primary activity, the repairs made, and for employee's use during an emergency. The organization appears to have sufficient funds to devote to a new landline system and has made repairs to the existing system.

CONCLUSION:

The IRC 501(c)(3) tax exempt status of the should be revoked retroactively to January 1, 20xx because it has not operated exclusively for tax exempt purposes. Form 1120, U.S. Corporate Income Tax Return should be filed for tax years ending December 31, 20xx through December 31, 20xx.

The organization has failed all three factors with regards to the operating exclusively provision: activities, private benefit, and inurement. The organization has engaged in numerous instances of private benefit which is not incidental to the accomplishment of their exempt purposes. The organization has engaged in numerous instances of private benefit inuring to insiders. The organization has operated in a manner different from what was originally presented to the Internal Revenue Service on its application for exemption. An organization described in IRC section 501(c)(3) must establish that no more than an insubstantial part of its activities is not in furtherance of an exempt purpose. T. Regs. Section 1.501(c)(3)-1(c)(1).

The organization's remaining exempt activity, the Winterguard color guard group is insubstantial in relation to the non-exempt activities of gaming, concession stand, and rental activities. These non-exempt activities represent the substantial activities of the organization.

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Directors of nonprofit corporations are charged with the important responsibilities of conducting and overseeing the management of the corporation's affairs. While the day-to-day operations of a nonprofit can be and often are delegated to staff, the directors maintain the ultimate authority over all corporate activities. State law and judicial decisions impose upon directors the fiduciary duties of care and loyalty regarding the corporations they serve. A nonprofit director who observes the duties of care and loyalty is generally insulated from personal liability. However, the board's actions must be taken in good faith with that diligence, care and skill which an ordinary prudent person would exercise under similar circumstances.

Based on the facts in this case with regards to competition travel expenses, the trip, cell phones for the two officers, "scholarship" payments, and website links, there is a lack of oversight by the Board with regards to the business affairs of the organization. The Board did not act upon the transactions which resulted in private benefit and inurement. There is no evidence in the minutes that the Board exercised diligence and care in their fiduciary responsibilities. Therefore, the Board is ineffective and does not possess the necessary skill and good faith to insure that the organization can adhere to the private benefit and inurement provisions for a IRC 501 (c)(3) organization. There is no sufficient basis for continuing to recognize this organization as exempt under IRC 501 (c)(3).

If you agree with this conclusion, please sign the attached forms.
If you disagree, please submit a statement of your position.