



**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: February 13, 2019

Number: **201925018**  
Release Date: 6/21/2019

Taxpayer's ID Number:  
Person to Contact:  
Identification Number:  
Telephone Number:  
In Reply Refer to:

**UIL: 501.03-00**

LAST DATE FOR FILING A PETITION  
WITH THE TAX COURT:

**CERTIFIED MAIL – Return Receipt Requested**

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). Our favorable determination letter to you dated December 4, 20XX, is hereby revoked and you are no longer exempt under section 501 (a), as an organization described in section 501(c)(3) of the IRC, effective January 1, 20XX.

Our adverse determination was made for the following reasons:

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

Contributions to your organization are no longer deductible under section 170 of the 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 Court of Federal Claims or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the

rules for initiating suits for declaratory judgment. You may write to the courts at the following addresses:

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

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

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

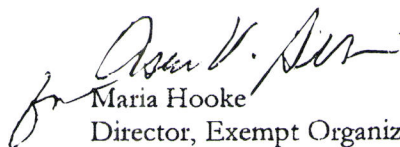
The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit [taxpayeradvocate.irs.gov](http://taxpayeradvocate.irs.gov) or call 1-877-777-4778. If you prefer, you may contact your local Taxpayer Advocate at;

Taxpayer Advocate Service

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,

A handwritten signature in dark ink, appearing to read "Maria Hooke", is written over the printed name.

Maria Hooke  
Director, Exempt Organizations Examinations

Enclosures:  
Publication 892



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

Date:  
December 12, 2017  
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact / ID Number:  
/

Contact numbers:  
Telephone:

Fax number:

Manager's Name / ID Number:  
/

Manager's Contact Number:

Response Due Date:

**Certified Mail – Return Receipt Requested**

Dear ,

**Why you are receiving this letter**

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code. 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

-FAX

**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,



Director, EO Examinations



Enclosures:

Report of Examination 886-A

Form 6018

Form 4621-A

Copy of Form 1023EZ Streamline Application for Tax-Exempt Status

Copy of Determination Letter dated December 4, 2014

Publication 892

Publication 3498

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

**Date of Final Report May 14, 20XX**  
**Governments Rebuttal:**

**Issues:**

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

**Facts:**

applied for tax-exempt status by filing Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code on October 29, 20XX, and was granted tax-exempt status as a 501(c)(3) on December 4, 20XX, with an effective date of October 29, 20XX.

was incorporated on June 6, 20XX in the State of .

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

was sent Letter 3606 with Information Document Request (IDR) attachments on September 26, 20XX. One of the IDRS's requested the organization to provide a complete copy of their original organizing document and any amendments.

Response was received from on October 26, 20XX. The organizing documents were included in the response. The organizing documents were dated May 17, 20XX by the State of . The purpose of said organization is "To establish a in County".

Organization does not have the required dissolution clause required by all 501(c)(3) organizations.

- Dissolution Clause: Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such assets not disposed of shall be disposed of by a court of competent jurisdiction in the county in which the principal office of the organization is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

Currently does not meet the organizational test of a 501(c)(3) organization.

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Response received from \_\_\_\_\_ on October 26, 20XX states they are a producer only market with the mission of providing consumers in \_\_\_\_\_ and surrounding areas with locally-grown foods and farm products. The markets goal is to provide a venue for the social, educational and economic strength that stems from our region's agricultural heritage. The Market and its vendors strive to educate the population and visitors within a 0-mile radius of \_\_\_\_\_ County on the benefits of using fresh locally grown and/or prepared food and value-added products.

\_\_\_\_\_ are uniquely and directly educational because they bring together farmers and eaters. They give an opportunity for consumers and the general public to learn how to identify, compare, and properly handle and prepare local food choices. The consumer also may learn how a product is grown or raised and its dietary information.

The Market's vendors give samples, providing an opportunity to try out new products, which generates interest in locally grown foods and their producers. The Market also features a display and information table run by the Master Gardeners twice a month during the growing season to educate the consumer about their own gardens and gardening issues, such as, tomato blight, soil testing questions, composting, insects, and so much more. Master Preservers also attend the Market at least once during the height of the growing season. They are available for the consumers to get information on the many ways, they can preserve the produce they purchase or grow in their own gardens.

Since \_\_\_\_\_ beginning, they have engaged in a market where farmers and other vendors sell their products to the community at large. Vendors are allowed to sell vegetables, herbs and herb products, fruits, baked goods, cut flowers, meat, eggs and dairy products, live plants, and other items which include jams and jellies, soaps, honey, syrup and other handmade crafts from farm sources on the condition they are selling one of the above other items.

The vendor membership fees per season are \$0 with a \$0 stall fee. The market can hold up to 0 vendors. This revenue helps to pay for the market management, rental fees and insurance for the location and product insurance, that covers all produce and products that are sold at our location.

For the tax year 20XX the \_\_\_\_\_ ran from May 21, 20XX to November 19, 20XX.

Market is on Saturdays from 9:00 a.m. to 1:00 p.m.

\_\_\_\_\_ is managed through their 0 board members. The board spends 0% of their time creating and managing the cooperation. No one on the board receives any monetary



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compensation or reduction of market fees. Board members are elected by the vendors for a 0-year term.

Market Coordinator promotes the market produce and products on Facebook and adds educational material about agriculture and agricultural products that would interest and educate the consumer.

Market Coordinator is an Independent contractor and works an estimated 0 hours estimating time for meetings, market open hours, organize and manage advertising, community outreach, answering emails, phone calls, grant writing, managing vendors and customers, website and social media management.

Vendors are selected by the board of directors after submitting a pre-application form and the board decides whether to accept an application based on the product(s) the person is looking to sell, membership requirements and vacancies.

has promoted the market through the dissemination of newspaper ads in several papers, banners, flyers, Facebook, building and hosting a website, and building a presence in the local farmers market community. The website includes basic information regarding the location and hours that the markets operate.

The budget indicates that the gross receipts consist of a grant for \$0, membership dues of \$0, stall fees \$0 and sponsor income of \$0. Expenses include advertising, awards, contract services, facilities and equipment maintenance, and insurance. Total expenses were identified as \$0.

#### Law:

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

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

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



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

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

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

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

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

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

**Rev. Rul. 67-216, 1967-2 C.B. 180**, established that a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products may qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954. The principal activities and exhibits of the fair are educational. They are planned and managed by persons whose business it is to inform the public in general, and farmers



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in particular about the resources of the region, and the methods by which they may be conserved, utilized, and improved. In addition, the overall activities of the fair are conducted in such a fashion and on such subjects as will enlighten the viewers and participants on the newest and best techniques of farming, and on other matters useful and beneficial to them and to the community.

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

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

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

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

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



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or remedial legal services and, as such, were not specifically designed to confer a charitable benefit on the community. Although the lawyer referral service provided some public benefit, a substantial purpose of the program was promotion of the legal profession.

In **Better Business Bureau of Washington, D.C., Inc. v. United States**, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of truly exempt purposes. Thus, the operational test standard prohibiting a substantial non-exempt purpose is broad enough to include, inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

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

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



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In **American Institute for Economic Research V. United States**, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court noted that education is a broad concept, and assumed that the organization had an educational purpose. The Court concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

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

### Application of Law

is not organized and operated exclusively for charitable, educational, or religious purposes consistent with Section 501(c)(3) of the Code nor Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations and therefore fail to meet the operational test.

The organization helps to facilitate the sale of produce, baked goods and other items for the benefit of the seller. Organization advertises, promote and inform potential buyers about the market, and your primary activities revolve around setting up the vendor spaces as a catalyst for facilitating the sale of goods for local farmers and other organizational members alike.

Organization pays insurance for the location of the farmers market and for the produce and products sold at the farmers market.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. You engaged in substantial non-exempt activity similar to commercial enterprise by operating a market selling various goods to the public. Vendors participating in your market pay a fee to rent their space and then are free to set sale



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prices to maximize sales and profits for their own benefit. You therefore do not operate exclusively for exempt purposes.

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

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

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

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

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

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



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

You are like the organization in Revenue Ruling 80-287 which provided that where regular commercial services, even if offered on a non-profit basis, did not directly accomplish one of the established types of charitable purposes an organization and does not qualify for exemption. Because your activities are directed at promoting and facilitating the sale of products selected by vendors for increasing sales; and you were formed to provide an improved market for products and expand sales opportunities you were not formed to further exclusive section 501(c)(3) purposes. While consumers at the market may receive information about products this is not serving an exclusive educational purpose. Also, since vendor set their own prices, sales of products confer no charitable benefit to the community. Therefore, you are not substantially serving established section 501(c)(3) purposes and do not qualify for exemption.

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

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

You are like the organizations described in the American Institute for Economic Research v. United States and Living Faith, Inc. V. Commissioner. You are operating a market in competition with other commercial markets. Your sale of products such as fruits, vegetables, cookies, wines, breads, and coffee is indicative of a business. Your sources of revenues are mainly from vendor dues and vendor fees and your expenses are mainly for marketing, supplies, insurance, and professional fees. Your market is a significant



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non-exempt commercial activity that is not incidental to the achievement of other educational purposes.

### **Organizations Rebuttal to Proposed Revocation**

Organization replied March 2, 20XX with a rebuttal to proposed revocation Letter 3618 and 886-A dated December 17, 20XX.

The organization believes that the \_\_\_\_\_ in this case does meet the requirements of the regulations issued pursuant to said statutory section, namely Section 1.501(c)(3)-1(d)(2), because the \_\_\_\_\_ serves the purposes of the advancement of education, the lessening of the burdens of government, the promotion of social welfare by an organization designed to accomplish the above purposes, and to combat community deterioration.

Our community, which suffers from the horrible effects of obesity, diabetes and other obesity related illnesses, and the scourge of opioids and other drugs, needs our \_\_\_\_\_. The \_\_\_\_\_ is the source of encouragement of healthy lifestyles through healthy eating and gardening for both good nutrition and exercise. The \_\_\_\_\_ educates children and adults on how affordable fresh vegetables and fruits are, contrary to popular belief, teaches vegetable preparation, and educates people on the variety of fresh locally grown vegetables and fruits. \_\_\_\_\_ is not about profits, with the market not sharing in the sales at all.

The market further is the means of not only encouraging but also making it possible for the farm community in our area to raise healthy, often organic vegetables and fruits, and at this place where the farmers and general community come together, there is an atmosphere created and promoted which improves the social welfare of our community and combats the community deterioration that we are fighting so hard here in \_\_\_\_\_ County, \_\_\_\_\_.

First, concerning the ways in which the \_\_\_\_\_ lessens the burden of the government, I direct your attention to the enclosure entitled "Diabetes Prevention, Managing Risk Factors" provided by our local hospital which points to the out-of-control diabetes problem due to childhood obesity and adult obesity (the adult obesity rate in \_\_\_\_\_ County for 20XX was 0%, see attachment enclosed herein) which is traced back in great part to a poor diet.

As it shows, we live in an area of the United States where between 0% and 0% of the population suffers from diabetes.



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The \_\_\_\_\_ educates the community on good healthy eating habits which include the consumption of vegetables and fruits, a key factor in successfully managing diabetes as indicated in the enclosed document from \_\_\_\_\_ Hospital.

Enclosed are examples of some of the many programs run by through the \_\_\_\_\_ County \_\_\_\_\_ over the recent years.

Far beyond these educational programs the market provides an attractive, enjoyable place to come to learn how to cook the vegetables, where there is always a lively discussion of different recipes and where people come to buy one item but end up leaving with many more healthy eating choices.

The \_\_\_\_\_ further promotes the social welfare of this community which thereby combats community deterioration by providing a place where each Saturday the community gathers and visits in a healthy environment and everyone comes away having learned something, and having gained something from the experience.

The \_\_\_\_\_, by providing the education and means by which the public can learn to cook and consume healthy vegetables and fruits, serves to reduce not only diabetes but also other obesity and poor diet related illnesses suffered in our community which thereby lessens the burden of government. There is no doubt that prevention or control of one case of diabetes in a child or adult saves tens of thousands if not hundreds of thousands of dollars, most often which comes from the government, that is necessary for hospitalization, amputation of limbs and other treatment needed as diabetes progresses.

One aspect of the \_\_\_\_\_ that cannot be overlooked relative to lessening the burden of government, promoting social welfare and combating community deterioration is the role the \_\_\_\_\_ plays in encouraging local farmers and making it possible for local farmers to raise vegetables and fruits to supplement their meager livelihoods and making it thereby possible for them to remain in the profession of farming.

Our community every year loses many farmers because it is so difficult in our area for farmers to make financial ends meet. As a longtime \_\_\_\_\_ leader and attorney in this area, I have seen the number of farming families dwindle all too much because, despite the long hours and hard work, it is too difficult to make ends meet. The ability to supplement the farmer's income with vegetables and fruits raised in the farmer's garden provides an important supplement to their income and allows them to remain on the family farm.

As a result, the burden on government of unemployed families and the deterioration of the community when there is a loss of farm families is combatted by providing a location, time and place where the community can gather with the local farmers and purchase the fresh vegetables and fruits which it would be difficult and usually impossible for the farmers to otherwise market.



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Moreover, the \_\_\_\_\_ allows local farmers to diversify their crops which combats community deterioration by preserving the environment. Specifically, by allowing farmers to diversify their crops this protects the environment by improving soil quality, preventing soil erosion (which protects the farm land and local water sources), allowing crop rotation, allowing contour planting (which promotes soil conservation), and all of this promotes ecological balance thereby preventing environmental deterioration. (e.g. No need to use pesticides if crops are diversified which thereby promotes natural predation).

Finally, the organizational requirement that was identified in your letter concerning dissolution of the organization has now been met, with the required paragraph having been added to the organization's By-Laws by amendment.

Please see the enclosed Unanimous Consent of the Board of Directors of \_\_\_\_\_ County

Please understand that the \_\_\_\_\_ serves many important purposes to our community that certainly meets both the letter and spirit of the 501(c)(3) designation.

During phone call with Power of Attorney \_\_\_\_\_ on April 4, 20XX he stated the amendment to the By-Laws were not added to the Articles of Incorporation and were not sent to the State of \_\_\_\_\_ but he was willing to do so.

### **Government's Position**

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

### **Governments Position to Rebuttal**

Organizations rebuttal identified organization does not meet the organizational test as they did not send amended By-Laws with the dissolution clause to the state for approval.

Corporations must include the amendment of dissolution as part of their Articles of Incorporation and it must be approved through the State of \_\_\_\_\_.

You are not described under Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the organizational or operational tests. If an organization fails either the organizational or operational test, it cannot qualify as an exempt organization under Section 501(c)(3) of the Code.

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Second you do not meet the operational test under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), because you are operating for the private interests of your members.

The facts show that \_\_\_\_\_ engaged in substantial nonexempt activity similar to a commercial enterprise by operating an open market for farmers and other vendors.

While the public may have benefitted from an increase in market selection and the educational programs that the organization provided, the overall purpose of the organization was to serve and benefit the vendors selling at the market and not the general public.

The provision of a marketplace for the sale of goods is not an educational activity nor is it charitable because it is not limited to a charitable class as in Rev. Rul. 68-167, 1968-1 C.B. 255

Rev. Rul. 85-1 holds that lessening the burdens of government occurs only if the governmental unit formally recognizes the activities of the organization to be its burden.

This objective manifestation may be evident in the interrelationship between the organization and the governmental unit. The organization's activities are an integral part of a larger governmental program and the organizations funded governmental expenses.

The fact that a governmental unit expresses approval of an organization's activities doesn't establish that the organization is lessening the burdens of government.

Rev. Rul. 85-2 sets forth two requirements for an organization to qualify for exemption under IRC § 501(c)(3) by lessening the burdens of government. These requirements are:

1. An organization's activities must be activities that a governmental unit considers to be its burdens, and
2. The activities of the organization must actually lessen such governmental burdens

An organization which claims to lessen the burdens of government must demonstrate that any private benefit received by individuals or businesses is both qualitatively and quantitatively incidental to its exempt purposes.

To be qualitatively incidental, the private benefit must be a necessary concomitant of activities which benefits the public at large.



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To be quantitatively incidental, the private benefit must be insubstantial in the context of the overall public.

**Conclusion:**

The organization does not qualify for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Code because you do not meet the organizational or operational test.

Therefore, you are not described in section 501(c)(3).

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

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