



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
TEGE EO Examinations Mail Stop 4920 DAL  
1100 Commerce St.  
Dallas, Texas 75242

Date: March 28, 2019

Number: **201933016**  
Release Date: 8/16/2019

Tax Year Ending:

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

UIL: 501.03-00

CERTIFIED MAIL – RETURN RECEIPT

Dear \_\_\_\_\_ :

This is a final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Code section 501(c)(3) effective January 1, 20XX. Your determination letter dated October 16, 20XX is revoked.

The revocation of your exempt status was made for the following reason(s):

You have not demonstrated that you operated exclusively for the furtherance of national or amateur sports competition under section 501(c)(3). Your substantial purpose was to further the social and recreational interests of your members.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

Organizations that are not exempt under section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information, please visit [www.irs.gov](http://www.irs.gov).

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States

Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

**United States Tax Court**  
400 Second Street, N.W.  
Washington, D.C. 20217

**U.S. Court of Federal Claims**  
717 Madison Place, N.W.  
Washington, D.C. 20439

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

**Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under section 7428 of the Internal Revenue Code.**

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

**If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter.**

**Sincerely,**

**Maria Hooke**  
**Director, EO Examinations**

**Enclosure:**  
**Publication 892**



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

Date:  
August 9, 2018  
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact:

Employee ID:  
Telephone:  
Fax:  
Manager's Contact Information:

Employee ID:  
Telephone:  
Response Due Date:

**CERTIFIED MAIL – Return Receipt Requested**

Dear \_\_\_\_\_ :

**Why you're receiving this letter**

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

**If you agree**

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

After we issue the final adverse determination letter, we'll announce that your organization is no longer eligible to receive tax deductible contributions under IRC Section 170.

**If you disagree**

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to

sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax- Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

**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 adverse determination letter.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

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

**For additional information**

You can get any of the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact the person shown at the top of this letter.

Sincerely,



For Maria Hooke  
Director, Exempt Organizations Examinations

Enclosures: Form 886-A  
Form 6018

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit N/A
EIN:		Tax periods ending: December 31, 20XX

**Issue**

Whether the (Organization) meets the organizational test and operational test of Treasury Regulation Section 1.501(c)(3)-1, and retain its tax-exempt status under Internal Revenue Code (IRC) Section (Sec.) 501(c)(3)?

**Facts**

The Organization was previously exempt under IRC Sec. 501(c)(4). However, the Organization did not file Form 990, *Return of Organization Exempt From Income Tax*, Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*, or Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File a Form 990 or Form 990-EZ*, for three consecutive years and the Organization automatically lost its tax exempt status.

On September 9, 20XX the Organization filed a Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, requesting exempt status under IRC Sec. 501(c)(3).

(President) signed the Form 1023-EZ under penalty of perjury that the application is true, correct and complete.

Articles of Incorporation

The following appears on the Part II of the Organization's Form 1023-EZ:

Section 501(c)(3) requires that your organizing document must limit your purposes to one or more exempt purposes within section 501(c)(3).

**Check this box** to attest that your organizing document contains this limitation.

Section 501(c)(3) requires that your organizing document must not expressly empower you to engage, otherwise than as an insubstantial part of your activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

**Check this box** to attest that your organizing document does not expressly empower you to engage, otherwise than as an insubstantial part of your activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 501(c)(3) requires that your organizing document must provide that upon dissolution, your remaining assets be used exclusively for section 501(c)(3) exempt purposes. Depending on your entity type and the state in which you are formed, this requirement may be satisfied by operation of state law.

**Check this box** to attest that your organizing document contains the dissolution provision required under section 501(c)(3) or that you do not need an express dissolution provision in your organizing document because you rely on the

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operation of state law in the state in which you are formed for your dissolution provision.

The Organization checked all the boxes. The purpose stated in the Organization's Articles of Incorporation is "Any lawful purpose." The Articles of Incorporation do not limit express non-exempt activities. The Articles of Incorporation do not indicate what will happen to the Organization's assets if the Organization should terminate.

#### Activities

Part III, section 2 of the Organization's Form 1023 states:

To qualify for exemption as a section 501(c)(3) organization, you must be organized and operated exclusively to further one or more of the following purposes. By checking the box or boxes below, you attest that you are organized and operated exclusively to further the purposes indicated. **Check all that apply.**

The items listed follow:

1. Charitable
2. Scientific
3. Religious
4. Literary
5. Educational
6. Testing for public safety
7. Prevention of cruelty to children or animals
8. To foster national or international amateur sports.

The Organization only selected item eight.

The Organization has stated it puts on five motor boat races; however, during the period ending December 31, 20XX the Organization held two races, the \_\_\_\_\_ and the \_\_\_\_\_. The Organization donated \$0 to the \_\_\_\_\_ to conduct the \_\_\_\_\_, and \$0 was donated to the \_\_\_\_\_ for the \_\_\_\_\_.

The Organization stated their races are open to the public. They stated no fundraising events were held, and no gaming was conducted. In 20XX, the Organization had 0 members and each member pays an annual \$0 membership fee. The entry fee for the \_\_\_\_\_ was \$0 and for the \_\_\_\_\_ the entry fee was \$0.

During a meeting with the Board members on June 21, 20XX, the Agent asked the following questions:

1. Do the \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ freeze over?

*Response:* All three rivers where the race occurs freeze over in the winter time.

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2. Other than during the summer months how is the sport practiced?

*Response:* There is only practice in the summer.

3. How does the Organization promote and support this practice?

*Response:* The Agent asked if the Organization has specific training / teaching programs for drug / alcohol prevention (the Board said it does not allow drug or alcohol use during the race). They said no. They lead by example.

4. How many are full time ?

*Response:* All have day jobs, no one is only an amateur athlete.

5. How many people under the age of 0 competed in the race?

*Response:* They did not know, they said maybe 1-3.

6. Is the Organization the presiding rule making body over the other races?

*Response:* They are the rule making body over just the ; however, most of the other races follow their rules with some variances, but they are not required. i.e. they are not the governing body of other races.

7. What is basis for people scratching from a race.

*Response:* Mechanical, related to the boat, not the competitor.

8. Are the racers amateurs? First prize in 20XX was \$0.

*Response:* They said they did understand the question. The Agent explained in 20XX first prize was \$0 in winnings. The Board said they had no professional racers.

9. Do you have any affiliations with any other organizations?

*Response:* They said they had no other affiliations or affiliations with any youth groups or schools.

The Organization provided the following information about race prize winnings, the first two tables show the races the Organization held the last two tables show the results of races the Organization made financial contributions to:

Place	Person	Winnings
First Place		0.00
Second Place	(President)	0.00
Third Place		0.00

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Place	Person	Winnings
First Place	(President)	0.00
Second Place		0.00
Third Place		0.00
Fourth Place		0.00
Fifth Place		0.00
Sixth Place		0.00
Seventh Place		0.00
Eighth Place		0.00
Ninth Place		0.00
*Alpha Male		0.00
**First Boat to Scratch		-

\* Plus a \$0 gift certificate (pick up at \_\_\_\_\_ )  
 \*\* Gift Certificate worth \$375 (pick up at \_\_\_\_\_ ) plus \$0 worth of Motor Oil.

Place	Person	Winnings
First Place	(President)	Unknown
Second Place		Unknown
Third Place		Unknown
Fourth Place		Unknown
Fifth Place		Unknown

Memorial		
Place	Person	Winnings
First Place		Unknown
Second Place		Unknown
Third Place		Unknown
Fourth Place		Unknown
Fifth Place		Unknown
Sixth Place		Unknown

The Organization either ran or contributed to the races shown in the tables above. The President either won or came in second in two of the three races, and won a minimum of \$0.



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## Law

### Internal Revenue Code (IRC)

IRC Sec. 501(a) provides, in part, that organizations described in IRC Sec. 501(c) are exempt from federal income tax. IRC Sec. 501(c)(3) describes, in part, an organization that is organized and operated exclusively for charitable 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. ... )

IRC Sec. 501(j) provides that an amateur sports organization which is organized and operated exclusively to foster national or international amateur sports competition may qualify for exemption from federal income taxes if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports.

### Legislative History

122 Congressional Record 25,961 (1976) Senator Culver, who sponsored the amateur sports organizations amendment in 1976 and introduced it on the Senate floor, explained his understanding of how the amendment would function:

I would like to emphasize one point about this provision. It is not intended to make SOCIAL CLUBS OR ORGANIZATIONS OF CASUAL ATHLETES, into tax-exempt charities. Only an organization whose primary purpose is the support and development of amateur athletes for participation in international competition in Olympic and Pan American sports will qualify under this amendment. ORGANIZATIONS WHOSE PRIMARY PURPOSE IS THE RECREATION OF THEIR MEMBERS OR WHOSE FACILITIES ARE USED PRIMARILY BY CASUAL ATHLETES WILL NOT QUALIFY.

### Treasury Regulations (Treas. Reg.)

Treas. Reg. 1.501(c)(3)-1(b)(1)(iii) provides an organization will meet the requirements of the organizational test only if its articles of incorporation limit the purpose of the organization to one or more exempt purposes and is not created for a purpose that is broader than the purposes specified in IRC Sec. 501(c)(3).

Treas. Reg. Sec. 1.501(c)(3)-1(b)(4) provides an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

Treas. Reg. Sec. 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in IRC Sec. 501(c)(3). An organization

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will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Sec. 1.501(c)(3)-1(c)(2) provides 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.

Treas. Reg. Sec. 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized exclusively for any of the purposes specified in IRC Sec. 501(c)(3) unless it serves public rather than private interests. 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 persons controlled director or indirectly, by such private interests.

Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under IRC Sec. 501(c)(3), regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

#### Revenue Ruling (Rev. Rul.)

Rev. Rul. 65-2 it was determined that an organization organized and operated for the purpose of teaching a particular sport to children by holding clinics conducted by qualified instructors in schools, playgrounds, and parks, and by providing free instruction, equipment, and facilities, "is serving a recognized public purpose in combatting juvenile delinquency and thereby lessening the burden of government, each of which is recognized as a charitable activity"

Rev. Rul. 77-365, an otherwise qualifying nonprofit organization that conducts clinics, workshops, lesson, and seminars at municipal parks and recreational areas to instruct and educate individuals in a sport is operated exclusively for educational purposes and qualifies for exemption.

#### **Organization's Position**

The Organization has not provided a position.

#### **Government's Position**

It is the Government's Position that the Organization does not meet the organizational test and operational test of Treasury Regulations Section 1.501(c)(3)-1, and should not retain its tax-exempt status under IRC Sec. 501(c)(3).

#### Organizational Test

Under Treas. Reg. 1.501(c)(3)-1(b)(1)(iii), an organization will meet the requirements of the organizational test only if its articles of incorporation limit the purpose of the organization to one

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or more exempt purposes and is not created for a purpose that is broader than the purposes specified in IRC Sec. 501(c)(3). Your articles of incorporation include language that is broader than the purposes as specified in section 501(c)(3), i.e. "Any lawful purpose". Therefore, you are not organized exclusively for exempt purposes, and do not meet the organizational test.

Further, under Treas. Reg. Sec. 1.501(c)(3)-1(b)(4) an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes. Here the Organization's Articles of Incorporation do not have a clause stating upon termination, its assets will be distributed to another exempt IRC Sec. 501(c)(3) organization, and thus, does not meeting the organizational test.

#### Operational Test

Under Treas. Reg. Sec. 1.501(c)(3)-1(c)(1) an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in IRC Sec. 501(c)(3).

The Organization has stated on its Form 1023-EZ it is exempt under IRC Sec. 501(c)(3), and its exempt purpose is "to foster national or international amateur sports". Generally, amateur sports organizations have educational purpose, charitable purpose, or foster national or international amateur sports. The following is an analysis of the three categories.

#### Educational and Charitable Organizations

In Rev. Rul. 77-365, an otherwise qualifying nonprofit organization that conducts clinics, workshops, lesson, and seminars at municipal parks and recreational areas to instruct and educate individuals in a sport is operated exclusively for educational purposes and qualifies for exemption.

Here the Organization only holds races. During a meeting with the Board of Director's they were asked if the conducted any workshops, seminars or conducted any instructional activities. The Board said no. The Organization's website does not show any meeting, seminars, or workshops scheduled. The Board was asked if they had any affiliations with local schools or youth groups, they said no.

Treas. Reg. Sec. 1.501(c)(3)-1(d)(2)(iv) defines "charitable" in part as "to combat community deterioration and juvenile delinquency", and in Rev. Rul. 65-2 it was determined that an organization organized and operated for the purpose of teaching a particular sport to children by holding clinics conducted by qualified instructors in schools, playgrounds, and parks, and by providing free instruction, equipment, and facilities, "is serving a recognized public purpose in combatting juvenile delinquency and thereby lessening the burden of government, each of which is recognized as a charitable activity". Here the Organization has no affiliations with schools or youth groups. The Organization conducts no workshops, seminars or clinics teaching youths about their sport. On June 21, 2018, when the board was asked how many children under the age of 18 completed in the races, they did not know, they thought maybe 1 to 3. Here the focus of the races is not on children, but primarily adults.

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Based on the above information the Organization does not qualify as and educational or charitable amateur athletic organization.

To foster national or international amateur sports

Under IRC Sec. 501(j) an amateur sports organization which is organized and operated exclusively to foster national or international amateur sports competition may qualify for exemption from federal income taxes if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in such sports.

The following factors (questions) are relevant in determining if an organization fosters national or international amateur sports. In italics after each question is an analysis.

1. Is the sport that the organization supports an event in the Olympic or Pan-American Games?

*The Organization supports outboard motor boat racing. This sport is not held at the Olympic or Pan-American Games.*

*The races occur only during the summer months when the rivers are not frozen. The races are held on weekends and holidays. The Organization is not affiliated with any national or international athletic organization that conducts motor boat races on the national or international level. The Organization is not a governing body for motor boat racing.*

*The Organization's races do not lead to or qualify the competitors for a national or international championship.*

*The Organization's website says about the , "Competitors live in and communities along the rivers".*

2. Are the athletes that the organization supports in the age group from which Olympic-quality athletes are usually chosen?

*No, the Organization does not support any athletes, it only holds races, and pays prize money or gives in-kind prizes to almost every competitor. The racers are various ages, some are in their 0s and 0s.*

3. Are the athletes of a caliber that makes them serious contenders for the Olympic or Pan-American Games?

*No, the Organization does not have any affiliations with a national or international motor boat association. Motor boat racing is not an Olympic or Pan-American Games sport. The river boat design specifications in the Organization's rules are unique to races held by the Organization, and competitors build their own boats.*

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4. Do the athletes have to demonstrate a certain level of talent and achievement in order to receive support from the organization?

*No, competitors receive either money or in-kind prizes. The competitors local from and communities along the rivers.*

*The races are open to anyone who has a boat built to specification, has the entry fee and for the membership in the Organization is required.*

5. Does the organization provide intensive, daily training, as opposed to sponsoring weekend events that are open to and attract a broad range of competitors?

*No, the Organization provides no training, it hires no coaches or instructors, it holds races on the weekends and holidays for anyone who wants to enter. If a competitor wishes to practice it can only be done during the summer months. In the winter months the rivers are frozen.*

*The races are held on weekends or holidays during the summer months. The Board stated all competitors have full time jobs, and prepare for the race when they are not working.*

6. Is the organization devoted to improving the performance of a small group of outstanding athletes or does it emphasize the improvement in health of the general public?

*No, the emphasis is to conduct motor boat races for those who want to enter. The improvement of a small group of outstanding athletes is not emphasized, the Organization gives prizes to almost every competitor. A prize was given first boat that scratched out of the race (A \$0 gift certificate and \$0 in motor oil).*

*The main reason for scratching out of a race is a mechanical problem with the boat, not with the crew who are the athletes.*

7. Is the organization a member of the United States Olympic Committee?

*No, nor do the race or races lead to any national or international completions or championships. The Organization is not a member of any national or international boat racing associations, and the Organization is not a governing body of the local river boat races. Other than the and it race, other local races do not have to follow the Organization rules.*

Based on the seven criteria above the Organization does not qualify as for exempt status under IRC Sec. 501(c)(j) as an organization that foster national or international amateur sports.

#### Inurement & Private Benefit

Treas. Reg. Sec. 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized exclusively for any of the purposes specified in IRC Sec. 501(c)(3) unless it serves public rather than private interests. Here most of the money received by the Organization goes to the winners

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who are members of the Organization, and in some cases officers of the Organization. In the year of the audit the Organization's President received \$0 dollars in winnings from the Organization. Additionally, he won the \_\_\_\_\_ a race the Organization gave \$0. Based on the information provided the money received by the Organization is not public service but goes to its members as winnings.

Treas. Reg. Sec. 1.501(c)(3)-1(c)(2) provides 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. Here, most of the money received by the Organization was paid out to its members, and so, private individuals are receiving money, and this is private benefit.

Additionally, receiving money for participating in a completion is inconsistent with amateur athletics.

Conclusion

It has been determined that the Organization does not meet the organization or operational test and should not be exempt under IRC Sec. 501(c)(3). The effective date for this revocation of exempt status is January 1, 20XX.