



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4920DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **202001018**
Release Date: 1/3/2020

Date: AUG 05 2019

EIN:
Person to Contact:

Identification Number:

Telephone Number:

Fax:

UIL: 501.03-00

CERTIFIED MAIL - Return Receipt Requested
LAST DAY FOR FILING A PETITION WITH THE TAX COURT:

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 November 14, 20XX is revoked.

Our adverse determination as to your exempt status was made for the following reasons:

Organizations described in I.R.C. § 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of I.R.C. 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. You have not established that you have operated exclusively for an exempt purpose. As such, you failed to meet the requirements of I.R.C. § 501(c)(3) and Treasury Regulation §1.501(c)(3)-1(a), in that you have not established that you were organized and operated exclusively for exempt purposes and that no part of your earnings inured to the benefit of private shareholders or individuals.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

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.

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 was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. Please refer to the enclosed Publication 892 for additional information. You may write to the courts at the following addresses:

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

U. S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

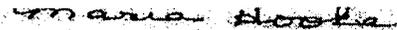
U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

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.

You may be eligible for help from the Taxpayer Advocate Service (TAS). 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 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 yours,



Maria Hooke
Director, EO Examinations

Enclosures:
Publication 892



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

Date:
03/30/2018
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Employee ID number:
Telephone number:
Fax:
Address:

Manager's contact information:

Employee ID number:
Telephone number:
Response due date:

CERTIFIED MAIL – Return Receipt Requested

Dear _____ :

Why you're receiving this letter

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.

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 or call 877-777-4778.

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 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,



Maria Hooke
Director, Exempt Organizations Examinations

Enclosures:
Form 886-A
Form 6018

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 12/31/20XX

ISSUE

Whether the tax-exempt status of _____ as an organization described in section 501(c)(3) should be revoked, effective January 1, 20XX, due to the following:

- a. _____ was engaged in for profit activities that were not properly reported;
- b. More than an insubstantial part of _____ activities were in furtherance of a nonexempt purpose;
- c. _____ was operated for benefit of private interests, rather than public interests; and
- d. The net earnings of _____ inured to the benefit of _____ and other insiders.

FACTS

_____ () was incorporated pursuant to the Non-Profit Corporation Law in the state of _____ in 20XX. According _____ Articles of Incorporation, provided with the Application for Recognition of Exemption-Form 1023, the corporation was formed to establish a charitable organization to operate exclusively for nonprofit purposes, including distributing contributions to other organizations operating as 501(c)(3) organizations. F-1023 Application for Exemption was signed by _____ CPA on 6/17/XX. _____ were the officer/directors at that time. The application stated that 0% of net income was to be donated to 501(c)(3) charitable organizations. In 20XX the _____ State Liquor board had their own requirements in order to obtain a liquor license, 0% of gross receipts from liquor sales had to be donated to a 501(c)(3) org.

Articles of Incorporation, also included with the application, state no part of earnings shall inure to the benefit of any director, trustee, creator or organizer; the corporation is authorized to pay "reasonable" compensation and make payments in furtherance of its charitable purpose; the corporation shall not engage in political or legislative activities; and the corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from federal income taxation as a non-profit.

As part of _____ application for recognition of exemption, the organization submitted a narrative description of their activities in which it was stated that _____ "plans to hold convention type rallies where motorcycle enthusiasts come together to share their common interests." Events "are designed to raise money for different charities that have been approved by the Internal Revenue Service as 501(c) (3) organizations."

The organization was granted exemption under section (c) (3) on letter 1045 dated 11/14/20XX. Their foundation status was granted under section 509(a) (1).

Form 990 Return for Organizations exempt from Income Tax for the year ended December 31, 20XX states that the organization's mission or most significant activities are "a week-long experience catering to individuals whom are active in riding motorcycles activities for these individual including rides, vendors, entertainment, food, drinking and camping" Their program services listed on Part III of the 990 described the organization's mission as "to raise funds through a series of various activities during _____ Bike Week. Other fun rides are schedule for the participation of avid motor cycle enthusiasts. We also help to provide support to other local charities."

Form 990 for the year ended December 31, 20XX and 20XX reiterate the statements reported on the 20XX return.

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Forms 990 Returns of Organization Exempt from Tax for the years ending December 31, 20XX affirm that the organization did not become aware of an excess benefit transaction with a disqualified person from a prior year.

Forms 990 for the year ending December 31, 20XX report that with the exception of _____, vice president, who received \$0 in 20XX from the organization, the organization officer's received no reportable compensation from the organization, from related organizations or any estimated other (non-reportable) compensation from the organization and related organizations. Furthermore, the returns convey that none of the officers received or accrued compensation from any unrelated organization or individual for services rendered to the organization. There are no directors listed on the Form 990.

_____ is the president of _____ for all examined years. _____ has signature authority over the bank accounts as well as the accounts for related for-profit organizations, _____ (), and _____. He has complete control over every aspect of the businesses. In 20XX he received wages from _____.

_____ does not have signature authority over the corporate bank accounts. She is listed as the _____ Vice President in part VII of the F-990 and received \$0 from _____ in 20XX. As of 1/1/20XX, she is a shareholder in _____.

_____ does not have signature authority over the corporate bank accounts. He is listed as the Treasurer in part VII of the F-990 and no compensation is reported. He resides in _____, and he and his son received "consulting fees" from _____ which were described as services provided on Farmland formerly owned by _____, and as of 20XX owned by _____ (0%) and _____ parents (0%). _____ became a shareholder in _____ on 1/1/20XX.

_____ is a for-profit corporation, which files on a fiscal year in relationship to the annual _____ BIKE WEEK event (which occurs in _____). _____ and _____ are owners of this entity. Prior to 20XX, _____ reported the receipts and expenses related to the Bike Week event according to the taxpayer.

The history of _____ is intertwined with that of _____. In November 20XX, _____ established and purchased the rights to _____ BIKE WEEK from _____ owned and operated by _____ and _____, the original filers of the F-1023 for _____ (20XX). The assets, contracts and trade names were purchased under a promissory note signed by _____ for \$0.00. The directors of _____ were _____ (0 shares of _____), _____ (0 shares of _____ under the name _____) & _____ (0 shares of _____). Total outstanding shares of _____ were 0 shares.

In January 20XX, _____ resigned and _____ represented by _____, as president, promised to pay \$0 (principle & interest) for _____ 0 shares of _____ due on May 1, 20XX at 0% interest. _____ also agreed to sell their shares at the same terms for 0% interest¹. The redeemed stock was re-sold as follows:

* * * *

¹ An audit of _____ in 20XX (included in the administrative files and reference below) includes comments by the Revenue Agent: "0 of the original 0 partners want out of the arrangement and are in process of being bought out while 0 others are buying into the venture. As the original 0 partners remain on the note, shares of these 0 individuals are held in Trust, pending payoff. The 0 new partners have contributed capital. There were some

footnote continues next page

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CHART DELETED

The existence of _____ is not disclosed on the F-990, with the exception of a comment as an asset on Part IX (Balance Sheet) of the 20XX F-990 [DUE FROM _____ \$0). Related entities are not disclosed on line 34 part IV of the F-990 which asks the question "was the organization related to any tax exempt or taxable entity?" No compensation to officers from related organizations was reported on Part VII of the F-990.

The 20XX and 20XX F-1120s for _____ were audited in 20XX. The agent made the following statements in her interview notes in regard to the relationship between _____ and _____ :

"Liquor laws in _____ stipulate liquor can't be provided unless a special events liquor license is obtained. Per _____, the company is ineligible to apply for the license, and as is typical, affiliates it(s)elf with a charity which acquires the event license. In turn, _____ contracts with the charity for right to use the license. In exchange, the company gives the charity 0% of the liquor proceeds."

This comment in the _____ audit file was discussed during the audit of _____ and according to the power of attorney, is the charity described in this statement. It was also explained at that time that _____ liquor laws no longer have this requirement (this statement is in dispute now).

continued footnote

questions during the interview concerning structure of the buy-outs. Agent has requested additional documentation and will consider.

_____, too, is interested in selling as the initial investment has created enormous debt. The company has generated minimal profit, if any, since the acquisition. The company pays no salary to the owner (owner living off income from his _____ firm and liquidation of investments). **Company also pays no rent as it is operated out of same facility used by owner's _____ firm.**

Note terms with the original seller were renegotiated in 20XX, reducing the annual payment from \$0 to \$0. states \$0 of the \$0 is to be designated interest for extension of the note. Revisions to the note were not documented in writing. Agent takes issue with the \$0 interest designation as the additional \$0 payment is due irrespective of the outstanding principal. As a result the effective interest rate on the note incrementally increases from 0% to in excess of 0% in later years. As actual interest rates are decreasing with the depressed economy, and because no documentation exists specifying treatment of the \$0, Agent will consider the amount as additional principal."

Evidence of the renegotiation which is "not documented in writing" was not produced during the current audit. However intangibles were addressed in the _____ Audit and therefore, will not be addressed here.

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Explanation of Items		
Name of Taxpayer		Year/Period Ended
		12/31/20XX

According to the current bookkeeper, _____, former CPA _____, suggested that consolidate the operations for BIKE WEEK under _____.

In addition, to _____, _____ is 0% owner of _____ and _____ None of these organizations were disclosed on the _____ F-990.

The audit of _____ conducted in 20XX, also identified _____ as the owner of _____, described as "a design firm". The Revenue Agent states that _____ pays no rent "as it is operating out of the same facility used by (the) owner's design firm". In 20XX (and 20XX-20XX), _____, _____, _____ and _____ are still operating out the same address: _____, _____, _____ However in 20XX, _____ paid \$0 to _____ for the use of _____ and _____, as well as \$0 for "consulting" which is comprised of compensation for _____ and _____ services according to _____ (_____ and _____ wages are paid by _____). _____ which operates a year-round business paid \$0 according to _____.

PRIVATE BENEFIT/INURMENT:

Over the course of the audit, transactions deducted as expenses on the _____ F-990 were examined. _____ possessed a _____ credit card #0 under the name of " _____ / _____ ". _____ made all the payments on the credit card for the year ending 12/31/20XX. The total payments made in 20XX by _____ were \$0. There were no records to support whether any of these charges were attributable to _____ nor that they are "in furtherance of. In addition, there was no evidence that _____ repaid _____ for any of these disbursements. Furthermore, _____ never claimed to have made any repayments to _____. The individual transactions were input into QuickBooks accounting software and coded as business expenses and eventually deducted from income on the _____ F-990 for the year ending December 31, 20XX.

As stated earlier, in 20XX _____ was involved in zero annual events which had previous been reported on the Form 1120 for _____ Bike Week took place in the spring running primarily over 0 days. _____ is a one-day event which takes place in November. In previous years, _____ handled _____ for a _____ dealership in _____.

Despite the periodic activities, the transactions paid for and deducted by _____ occurred consistently over a 0 month period. Among the transactions appearing on the credit card statement were at least one trip for _____, his mother, _____, and his children, _____ and _____; road trip expenses for _____ to a motorcycle event in near his parent's home; and a trip to _____. There are numerous meals and entertainment expenses which are not supported with documentation of a business purpose. There are transactions related to the improvements to a residence owned by _____. There are dental payments and vehicle payments for which there are no supporting documents related to business purpose.

In addition to the credit card payments, direct payments were made from the _____ bank accounts; a small business checking account #0 (-0) and a _____ checking account #0 (-0).

These payments included \$0 to _____. The memos on these checks reference _____ and _____ properties owned by _____ and his family. Check memo statements and QuickBook descriptions indicate the checks were for TV, Internet and telephone services. According to statements and records, _____ was occupied by _____ and _____ was occupied by _____ and _____ corporations.

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Direct payments were also made to _____ (\$0), _____ (0), _____ (\$0), _____ (\$0), _____ (\$0), and the _____ (\$0). None of these payments have been tied to a charitable activity. Check#0 dated 4/30/XX to _____ in the amount of \$0 is referenced as “_____” for _____ and dated 4/30/20XX. An additional check for \$0 was paid by _____ in June for “sprinkler repair”. The location is a residence owned by _____ and _____.

Check #0 dated 1/6/XX to _____ in the amount of \$0 is referenced as “0”. Note the bill was paid in 20XX, but was included as a deduction in 20XX as Repairs & Maintenance. _____ is a cash- based taxpayer according to the form 990.

Check #0 dated 5/8/XX to _____ Services in the amount of \$0 is referenced as “Landscaping @ _____”. Additional payments to _____ are made from _____ personal account and an account under the name of _____.

Check #0 dated 1/5/XX to _____ in the amount of \$0.00 is referenced as “_____”. Note the bill was paid in 20XX, but was included as a deduction in 20XX as “Other Expenses” and then a journal entry was made which included this amount to reduce an income category entitled “commissions”. _____ is a cash- based taxpayer according to the form 990.

Check #0 dated 1/9/XX to _____ in the amount of \$0.00 is referenced as “_____”. Other information reviewed stated that it is for a house remodel interior authorized by _____ . Note the bill was paid in 20XX, but was included as a deduction in 20XX as Repairs & Maintenance. _____ is a cash based taxpayer according to the form 990.

Two checks totaling \$0.00 were paid to _____ . It was explained that _____ acts as a management company for some of _____ properties. Check #0 dated 3/20/XX for \$0.00 is reference as “Repair”. Other information reviewed indicated it was for “paint, shutters- _____ repairs”. A second check #0 dated 12/24/20XX in the amount of \$0.00 referenced “_____ house-labor- _____”. Other information reviewed stated “_____”, _____ is a residential property purchased by _____ Corporation in 20XX. _____ eventually uses this property as his residence. Note, he is paying for pool maintenance in 20XX on a monthly basis.

Two checks totaling \$0.00 were paid to _____ . The first check #0 dated 2/14/20XX for \$0.00 was referenced as “concrete pad install”. Receipt #0 dated 2/14/XX was a bill for \$0.00. Handwritten on the bill was “paid \$0k per _____”. The second check #0 dated 4/18/XX was for 0.00 and referenced “Concrete pad Ck #0 \$0.00”. _____ explained that the concrete pad was needed to park a trailer used for the various events and that it would have removed when the property was sold.

Zero payments were made to the _____ . The website states that payments are for Water & Sewer, Waste & Recycling, and Gas. The checks indicate that they are for “_____”, _____ and they total \$0.00.

Total payments made by _____ for the benefit of _____ or individuals and organizations associated with _____ were calculated to be \$0.00.

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In addition, made \$0.00 in payments to , in 20XX. Some of these payments were identified as "consulting fees" and/or "rent". The taxpayers were requested to provide the methods used to calculate these payments, but none were provided. It was stated, however, that and salaries were paid by , with funds provided by .

made payment of \$0.00 to in 20XX. A payment of \$0.00 in July 20XX was identified as "dividend payback".

NON-EXEMPT PURPOSE:

As explained above, according to the bookkeeper, the festival activities formerly reported by for-profit entity, , were consolidated under the non-profit . had formerly been responsible for collecting donations from designated charitable "rides" and turning the donations over to various other 501(c)(3) organizations. In 20XX, F-990 reported \$0.00 in charitable donations. According to QuickBooks records these donations are as follows:

CHART DELETED

The transactions making up the return item were traced to the bank records, support for three of these transactions (totaling \$0.00 – 0% of the deduction) could not be identified and was not provided by the taxpayer. In addition, Go Motorcycles, to which a donation of \$0.00 was reported, is not a 501(c)(3) organization.

In 20XX, reported gross receipts of \$0.00. The \$0.00 deducted as charitable contributions represents 0% of the funds reported as collected in conjunction with the Bike Week festivities and the two smaller events held during the year by .

reported \$0 in deductible expenses that year, which included the "charitable" donations, as well as personal expenses totaling \$0.00, \$0.00 to and \$0.00 to . The 20XX F-990 for reported an excess of revenues less expenses of \$0.00 in 20XX. Previous and subsequent returns reflect similar circumstances.

Furthermore, the 20XX Form 990 reported beginning "net assets or fund balances" of \$0.00 and ending balances of \$0.00. Previous and subsequent F-990s reflect similar increases. In addition, the balance sheet on the F-990 reported loans to related organizations. The ending balance due from was reported to be \$0.00. The balance due from was reported as \$0.00 and another \$0.00 was due from

three major expenses reported in 20XX were reported as (1) entertainment expenses (0% of total expenses), (2) equipment rental expenses (0%) and (3) occupancy (0%). The entertainment expenses are consistent with information provided on the website "Out and About in , " which reported that the 20XX event included concerts with national known entertainers including & the , and . In addition, the website listed other events such as factory demo rides, vendors and attractions. Attractions in 20XX included , , , , ,

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and a “ ” special appearance. The only charitable activities identified were seven “charity rides”. The organizers also offered campground rental and RV space to attendees for a fee. (EXHIBIT A)

The occupancy expense included rental of the facility, but it also included monthly office rent paid to related corporation, . These were monthly payments totaling \$0.00 for facilities shared with other organizations.

In 20XX, the Bike Week/ website advertised the event with links to events, vendors, camping and rally gear. The only mention of a possible charitable connection was the logo on the homepage. (EXHIBIT B)

LAW

Internal Revenue Code Section 501(c)(3) describes corporations exempt from income tax as, “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. “

Treas. Reg. 1.501(c)(3)-1 explains 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.” The regulations provide both an organization test, as well as an operational test which must be satisfied in order for an organization to maintain its exempt status.

Treas. Reg. 1.501(c)(3)-1(c)(1) is one of four tests that an organization must pass in order to sustain its status under section 501(c)(3). This section states that the organization must engage primarily in activities which accomplish one or more of the exempt purposes specified under the code section. This section provides that an organization will be regarded as “operating exclusively” for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified under IRC Section 501(c)(3).

The term “exclusively” has not been construed to mean “solely” or “absolutely without exception”. An organization that engages in exempt activities qualifies for exempt status so long as those nonexempt activities are only incidental and less than substantial. Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 2789 (1945); Copyright Clearance Center v. Commissioner, 79 T.C. 793, 804 (1982).

In Better Business Bureau of Washington D.C., the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will prevent exemption regardless of the number or importance of truly exempt purposes. The Court held that a trade association had an “underlying commercial motive” that distinguished its educational program from that carried on by a university.

Treas. Reg. 1.501(c)(3)-1(d)(2) defines 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 decision. Such

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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.

Treas. Reg. 1.501(c) (3)-1(c) (2) explains that an exempt organization must not allow its net earnings to inure to the benefit of private shareholder or individuals.

If an organization fails to comply with any of these requirements, it will fail the operation test and lose its IRC Section 501 (c) (3) exemption. *Harding Hospital, Inc. v. U.S., 505 F. 2d 1068, 1072 (6th Cir. 1974).*

I.R.C. § 503 explains that an organization operating under Section 501 (c) shall not be exempt if it has engaged in a prohibited transaction. Such transactions include

- (1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;
- (2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;
- (3) makes any part of its services available on a preferential basis to;
- (4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;
- (5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or
- (6) engages in any other transaction which results in a substantial diversion of its income or corpus to;

the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267(c)(4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

I.R.C. § 511 imposes a tax on unrelated business income of organizations described in Section 501(c).

I.R.C. § 512 describes "unrelated business taxable income" as the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business.

unrelated business income is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's exemption

TAXPAYER'S POSITION

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The taxpayer states that the activities engaged in by the organization are all related to charity.

ARGUMENT/GOVERNMENTS POSITION

The taxpayer’s opinion, as expressed during the audit, is that the activity involving charitable rides is sufficient to render the entire social event to be organized for charitable purposes. They illustrate this position with annual donations to various 501(c)(3) organizations, only a portion of which have been supported with adequate records.

However, the government argues that the events organized in the name of _____ are primarily social in nature and that the funds donated to charitable organizations are merely donations. The principle purpose as stated on the Form 990 is to provide an experience for motorcycle enthusiasts, which includes: *rides, vendors, entertainment, food, drinking and camping*. The program services activity reported as “raising funds” and supporting “local charities” is a minor and insignificant matter when compared with the entire experience.

Furthermore, under IRC § 1.501(c)(3) an organization is not described in this section “if it serves a private interest more than incidentally”. The private interest doctrine is described in IRS General Counsel’s Memorandum issued in 1987, which noted that:

An organization is not described in section 501(c)(3) if it serves a private interest more than incidentally

A private benefit is considered incidental only if it is incidental in both a qualitative and a quantitative sense. In order to be incidental in a qualitative sense, the benefit must be a necessary concomitant of the activity which benefits the public at large, i.e., the activity can be accomplished only by benefitting certain private individuals To be incidental in a quantitative sense, the private benefit must not be substantial after considering the overall public benefit.”

In the case of _____ the private benefit is not incidental. The Bike Week event, as well as the other events, benefit the shareholders of _____, _____ and his related organizations, as well as motorcycle enthusiasts who wish to pay to participate in the activities. The organization does not serve a broad charitable class. In this case, the incidental benefit is provided to the local charities.

CONCLUSION:

As of 1/1/20XX, _____ is determined to be organized and operated for primarily private benefit and activities social in nature rather than exclusively for an exempt purpose as described under IRC 501(c)(3). As a result, the organization exempt status is revoked as of that date.