



Department of the Treasury
Internal Revenue Service
Independent Office of Appeals

Number: 202134018
Release Date: 8/27/2021

Date: June 3, 2021

Person to contact:
Name:
Employee ID number:
Telephone:
Fax:
Employer ID number:

Uniform issue list (UIL):
0501.03-08

Certified Mail

Dear

This is a final adverse 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 Section 501(c)(3) of the Code.

We have hereby revoked the favorable determination letter to you dated May 22, 2015 and you are no longer exempt under Section 501(a) of the Code effective

We made the adverse determination for the following reasons:

Organizations described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) must be both organized and operated exclusively for exempt purposes.

Your organization is not organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3).

Contributions to your organization are not deductible under Section 170 of the Code

You're required to file federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Section 6110 of the Code after deleting certain identifying information. We provided to you, in a separate mailing, Notice 437, Notice of Intention to Disclose. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses.

United States Tax Court	US Court of Federal Claims	US District Court for the District of Columbia
400 Second Street, NW	717 Madison Place, NW	333 Constitution Avenue, NW
Washington, DC 20217	Washington, DC 20005	Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under Section 7428 of the Code.

You also have the right to contact 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 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

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

Sincerely,

Charles P. Rettig
Commissioner

By



Timothy D. Jarvis
Appeals Team Manager

Enclosure: Publication 892



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

Date:
January 14, 2020
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:
Address:

Manager's contact information:

Name:
ID number:
Telephone:
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,

Christopher M. Holmes Digitally signed by Christopher M. Holmes
Date: 2020.01.14 16:13:02 -08'00'

Maria Hooke

Director, Exempt Organizations Examinations

Enclosures:
Form 886-A
Form 6018

Form 886-A (Rev. January 1994)	PRELIMINARY REPORT	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended

ISSUES

- Issue 1.** Whether (" ") failed to operate exclusively for exempt purposes as required by Internal Revenue Code § 501(c)(3) during the years under examination.
- Issue 2.** Whether operated primarily for private benefit during the years under examination, and the net income of inured to the benefit of its officer during the years under examination.
- Issue 3.** Whether tax exempt status under Internal Revenue Code § 501(c)(3) should be revoked

FACTS

was incorporated as a nonprofit corporation in the state of on . Internal Revenue Service ("IRS") issued a final determination Letter 947 on May 22, 20XX approved as an exempt organization under IRC § 509(a)(1) and § 170(b)(1)(A)(vi).

There is a discrepancy on exempt status between what it is reported on its Form 990 returns and what it was approved on the IRS determination letter. final determination letter approved it as an organization exempted under IRC§ 170(b)(1)(A)(vi), a publicly supported organizations that required to receive a substantial amount of public support derived from gifts, grants and contributions. However, on F990 returns, it is reporting to be an organization exempted under IRC§ 509(a)(2), a publicly supported organizations that required to receive a substantial amount of public support from gross receipts derived from an activity that is related to the organization's exempt function.

stated on its F1023 application about its mission & activities as following:

This organization was created on and was exclusively organized for educational purposes.

We fulfill our mission through the following activities:

- (a) What is the activity?
Lectures, lessons, classes and clinics in safety education for all users, Visitors and Residents (Locals/Military).
- (b) Who conducts the activity?
The

Form 886-A (Rev. January 1994) Name of taxpayer	PRELIMINARY REPORT Tax Identification Number	Schedule number or exhibit Year/Period ended
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(c) When is the activity conducted?
 These activities are conducted

(d) Where is the activity conducted? These activities are conducted on

(e) How does the activity further your exempt purposes?

According to state Health Department statistics from 20XX through 20XX, of the 0 total drownings, 0% of them occurred in the . A disproportionate amount of the drownings was Visitors (0%), most from (0); more than scuba diving, freediving, surfing and swimming combined. They were normally 0 or older (0%), occurred in 3 feet of water or less, and they could have literally stood up. Note that intrinsic factors related to these drownings were circulatory/coronary disease (0%), use of alcohol and illicit drugs, traumatic injuries, and seizures. More Residents (Locals/Military) drowned from the following activities: boating accidents, fishing/shorecasting, picking , and free diving.

(f) What percentage of your total time (i.e., the nonprofit's total time) is allocated to the activity?
 We spend approximately 0% of our time conducting educational programs in lectures, lessons, classes and clinics.

(g) How is the activity funded?
 Funding for the activity is derived from charitable donations, including those from: supporters of our mission, as well as from the general public of Visitors and Residents (Locals/Military). Other private water sports industry organizations provide assistance and expertise through volunteers. They also provide equipment. Additionally, we will conduct fundraising activities, which will help to increase our presence and allow us to serve a much larger constituent.

President, stated during a phone conversation on 11/27/20XX that there were

. It sells variety of water surfing equipment such as surfing boards, Kayak, and accessories. stated that the

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water sport classes and their respective prices offered on its website

There are 0 classes offered on website, the types and prices are as following:

Classes(clinic)	Prices	Classes (clinic)	Prices
	\$0, 0 Hour 0 Person Private lesson Package \$0, 0 Hour 0 Person Private lessons \$0, 0 Hour 0 Person Private lessons \$0, 0 Hour group lessons \$0, 0 Hour group lessons		\$0/day
	\$0/day (9am – 4:30pm) \$0/0hrs \$0/0days \$0/week	Rental	\$0 – 0day \$0 – 0days \$0 – 0 days
	\$0/half day (9am – 1:00pm) \$0/Full day (9am – 4:30pm) \$0/0hrs \$0/0days \$0/week		\$0 / Full Day (9:00-4:30) \$0 / 0 Hour \$0 / 0days \$0 / 0days \$0 / Performance premium (0hour)
	\$0, 0 Hour 0 Hour Private lessons \$0, 0 Hour 0 Person group lessons \$0, 0 Hour 0 Person group lessons \$0, 0 Hour 0 Person group lessons		\$0 / day \$0 / 0 Days \$0 / 0 days

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	\$0, 0 Hour 0 Person Private lessons \$0, 0 Hour 0 Person Private lessons \$0, 0 Person group lessons \$0, 0 Person group lessons		
	\$0, 0 Hour 0 Person Private lesson \$0, 0 Hour 0 Person group lessons \$0, 0 Hour 0 Person group lessons \$0, 0 Hour 0 Person group lessons \$0, 0 Hour 0 Person Private lessons \$0, 0 Hour 0 Person Private lessons \$0, 0 Hour 0 Person Private lessons \$0, 0 Hour 0 Person Private lessons \$0, 0 Hour 0 Person Private lessons		No classes listed.
	\$0 – Full Day SUP rental (9am – 4:30pm) \$0 – 0hour SUP rental \$0 – 0day SUP rental \$0 – 0week SUP rental		\$0, 0 Hour 0 Person Private lesson \$0, 0 Hour 0 Person group lessons \$0, 0 Hour 0 Person group lessons \$0, 0 Hour 0 Person group lessons \$0, 0 Hour 0 Person Private lessons \$0, 0 Hour 0 Person Private lessons

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			\$0, 0 Hour 0 Person Private lessons
			\$0, 0 Hour 0 Person Private lessons
	\$0, 0 Hour 0 Person Private lesson		Free, offered once a month. to educates locals and visitors about
	\$0, 0 Hour 0 Person group lessons		
	\$0, 0 Hour 0 Person group lessons		
	\$0, 0 Hour 0 Person group lessons		
	\$0, 0 Hour 0 Person Private lessons		
	\$0, 0 Hour 0 Person Private lessons		
	\$0, 0 Hour 0 Person Private lessons		
	\$0, 0 Hour 0 Person Private lessons		

Facility

Both and its related for-profit entity are located at , , in a business district. sub leasing 0 Sq. ft spaces, about 0 of the facility from for \$0 a month. The facility has two stories of spaces, about 0 Sq. equipment was stored on the front section of a shelf by the door on 1st floor and one shelf on the 2nd floor. rental equipment, mainly canoes occupied one of six shelves of the 1st floor and one on the 2nd floor. There is a small TV about 0" set up on the right side of the front door that uses to show a safety awaraross video to the water equipment and bike renters. The video informed the renters to be aware of the Rip current, wear safety equipment; keep distance from wild animals; cleaning up own trances; help prevent sand erosion by leaving the sand on the beach. It also informed the renters that 0% of the proceeds will be directly apply to the safety. Total length was less than 0 minutes. There was also a version of this video for renters. This video appeared to be part of the safety classes that Executive Officer, stated in the phone interview stated above.

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Revenue:

reported Program Service Revenue of \$0 on the F-990 of 20XX that is under audit. All revenue was generated from the rental of water sports equipment, canons etc. There was no other revenue reported on the F990 of 20XX

Revenue	Per F990	Per Audit	Difference
All other program & Service Revenue	0	0	0
Expenses			
Salaries and Wages			
Officer's Compensation	0	0	
Other Salaries	0	0	
Accounting fees:			
Accounting	0	0	
Advertising & Promotion	0	0	
Office Expense	0	0	0
Occupancy	0	0	
Travel:	0	0	0
Interest			
Depreciation, depletion	0	0	
Insurance:	0	0	
Auto Expense	0	0	0
Bank Charges	0	0	
Dues	0	0	
Repairs	0	0	0
All Other Expenses	0	0	-0
Total Functional Expenses:	0	0	-0

reported similar program service revenue and expenses on its prior and subsequent year Form 990 returns for the periods ending on December 31, 20XX & December 31, 20XX

Form 886-A (Rev. January 1994)	PRELIMINARY REPORT	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended

Tax Periods	20XX	20XX
Revenue	0	0
Expenses		
Officer Compensation	0	0
Other Salaries and Wages	0	0
Employee Benefit	0	
Legal Fees	0	0
Accounting Fees	0	0
Advertising	0	0
Office Expenses	0	0
Occupancy	0	0
Interest		0
Depreciation	0	0
Insurance	0	0
Other Expenses	0	0
Total Expenses	0	0

LAW

Code §501(c)(3) exempts from Federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Code §7805(h) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

Federal Tax Regulations ("Regulations") §1.501(c)(3)-1(a) provides that in order to be exempt as an organization described in Code §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.

Regulations §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 of

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such exempt purposes specified in Code §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.

Regulations §1.501(c)(3)-1(c)(2) provides that the operational test is not satisfied where any part of the organization's earnings inure to the benefit of private shareholders or individuals, and where the organization serves a private benefit rather than public interests.

Regulations §1.501(c)(3)-1(d)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than private interest. Thus, 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, directly or indirectly, by such private interests.

Regulations §1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in Code §501(c)(3) in its generally accepted legal sense and includes the promotion of education.

Court Cases

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. Better Bus. Bureau v. United States, 326 U.S. 279, 238, 90 L. Ed. 67, 66 S. Ct. 112 (1945); Am. Campaign Acad. V. Commissioner, 92 T.C. 1053, 1065 (1989); see also Old Dominion Box Co., Inc. v. United States, 477 F.2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973) ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose".) When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization does not operate exclusively for exempt purposes. Am. Campaign Acad. V. Commissioner, supra at 1065-1066.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th 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 does 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:

- a. The organization's operations were presumptively commercial;
- b. The organization competed directly with other restaurants and food stores;
- c. The organization used profit-making pricing formulas common in the retail food business;
- d. The organization engaged in a substantial amount of advertising;
- e. The organization's hours of operation were competitive with other commercial enterprises; and
- f. The organization lacked plans to solicit donations.

In Airlie Foundation v. Internal Revenue Service, 283 F. Supp. 2d 58 (D.D.C. 2003), due to the commercial manner in which the organization conducted its activities, the court held that the organization was operated for a nonexempt commercial purpose, rather than for a tax-exempt purpose. The court found that the organization operated its conference center in a manner consistent with that of a commercial business. "Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and

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reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.”

GOVERNMENT’S POSITION

Issue 1 – Is the primary activity of _____ to educate all _____ users, visitors, residents about _____ user safely and to protect them against _____ -related serious injury or death and to protect and conserve the _____, reef, and offshore _____ ?

_____ conducts its educational activities to its water sports equipment renters by requiring them to watch a 0 minutes long safety precautionary video before taking them to the _____ side to participate in the water sports activities. The video informed the renters to be aware

_____ and that 0% of renters’ proceeds will be directly apply to the _____ safety. Total length was less than 0 minutes. The Executive officer, _____ and his staffs will then demonstrate to the renters on how to safely use the _____.

The donations are the fees charged to the renters based on a fixed hourly rate. The renters have no choice but to pay the fees in order to rent the water sports equipment. _____ has reported no expenses directly related to its exempt purposes. The video that the renters are required to watch before heading to the beach side was a safety precautionary video that briefly mentioned about the protection and conservation of the _____, _____. The _____ appeared to mainly promote _____ business than that to teach environment protections.

The Government found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including:

- a. The organization's operations were presumptively commercial;
- b. The organization competed directly with other water sports companies;
- c. The organization used profit-making pricing formulas common in the retail water sports business;
- d. The organization engaged in a substantial amount of advertising on its website;
- e. The organization's hours of operation were competitive with other commercial enterprises; and
- f. The organization lacked plans to solicit donations.

_____ operated its business in a manner consistent with that of a commercial business. The charitable purposes as described by _____ on environmental protection etc. are insubstantial to its overall operations, and not its primary activities. _____ failed to operate exclusively for exempt purposes as required by Internal Revenue Code § 501(c)(3).

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Issue 2 - If the primary activity of [redacted] is the renting its water sports equipment that benefit its owner/Executive Director, should [redacted] continue to be recognized as tax exempt under § 509(a)(1) and § 170(b)(1)(A)(vi) of the Internal Revenue Code ("Code") as an organization described in Code §501(c)(3)?

[redacted] does not qualify for exemption as an organization described in Code §501(c)(3) because it does not meet the operational test under Code §501(c)(3) and Regulations §1.501(c)(3)-1(a)(1) [redacted] fails the operational test because it is not operated exclusively for a Code §501(c)(3) purpose. The organization serves the private interests of its officer rather than public purpose contrary to the requirements of Regulations §1.501(c)(3)-1(d)(1)(ii).

Issue 3 Whether [redacted] tax exempt status under Internal Revenue Code § 501(c)(3) should be revoked.

[redacted] final determination letter approved it as an organization exempted under IRC§ 170(b)(1)(A)(vi), a publicly supported organizations that required to receive a substantial amount of public support derived from gifts, grants and contributions. However, on [redacted] F990 returns, it is reporting to be an organization exempted under IRC§ 509(a)(2), a publicly supported organizations that required to receive a substantial amount of public support from gross receipts derived from an activity that is related to the organization's exempt function.

The government concedes that fact that [redacted] is involved in insubstantial environmental protection activities such as sponsoring free classes for the community once a month. However, the fact remains that the primary activity of the organization is the renting its water sports equipment. As shown in the Better Business Bureau case, a substantial non-exempt purpose will disqualify an organization from exemption despite the number or importance of its other exempt activities. In the case of [redacted], the non-exempt activity is not only substantial but primary. Therefore, it is the Government's position that [redacted] exemption from federal income tax as an organization described in Code §501(c)(3) should be revoked effective January 1, 20XX, because its primary purpose is providing private benefits to its owner.

Taxpayer'S Position (Ref. 2.4.b.Response to F886-A):

IRS agent did not observe any of [redacted] non-profit activities, [redacted] safety lessons and free clinics operation is similar to that of UFC gym and YMCA. IRS based its decision only on the for-profit related organization, [redacted] an [redacted] . ([redacted]).

[redacted] requested additional time to obtain assistance from tax professionals to support its position.

Government rebuttal:

Agent could not observe any of the free clinics because none were available at the time of the visit. However, the observation of the free clinic does not change the decision that the [redacted] business than that to teach environment protections."

As described in the Government's position, both [redacted] ([redacted]) and its related for-profit entity, an [redacted] . ([redacted]) were part of the IRS's analysis in reaching the audit conclusion.

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Agent sent a preliminary report to _____ on 12/5/20XX requesting it to provide a response by 12/20/20XX. On 12/17/20XX, _____ President requested and was granted an extension to provide a response by 12/30/20XX. _____ did not send any responses by the agreed date. On 1/15/20XX, agent sent 30 days package to _____ requested a response by 2/14/20XX. On 2/3/20XX, _____ President requested a conference call with agent's group manager and IRS Counsel. On 2/6/20XX, _____ requested and was granted additional 30 days until 2/15/20XX to obtain legal assistance in providing a response. There has been enough time allowed to _____ In providing a response to the position proposed by the Government. It is in the best interest of _____ and the Government moving the case forward.

CONCLUSION

The government proposes revocation of exemption effective January 1, 20XX. Forms 1120, U.S. Corporate Income Tax Return, should be prepared and filed by the organization for the period of examination forward.