



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

Date:
January 20, 2022
Taxpayer ID number:

Form:

Tax periods ended:

Release Number: 202305012
Release Date: 2/3/2023
UIL Code: 501.03-00

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Why we are sending you this letter

This is a final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3), effective . Your determination letter dated , is revoked.

Our adverse determination as to your exempt status was made for the following reasons: Organizations described in IRC Section 501(c)(3) and exempt under IRC Section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are organized exclusively for charitable, educational, or other exempt purposes within the meaning of IRC Section 501(c)(3). You have also failed to demonstrate that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of IRC Section 501(c)(3).

Organizations that are not exempt under IRC 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.

Contributions to your organization are no longer deductible under IRC Section 170.

What you must do if you disagree with this determination

If you want to contest our final determination, you have 90 days from the date this determination letter was mailed to you to file a petition or complaint in one of the three federal courts listed below.

How to file your action for declaratory judgment

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of IRC Section 7428 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.

Please contact the clerk of the appropriate court for rules and the appropriate forms for filing an action for declaratory judgment by referring to the enclosed Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status. 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 20439

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 IRC Section 7428.

We'll notify the appropriate state officials (as permitted by law) of our determination that you aren't an organization described in IRC Section 501(c)(3).

Information about the IRS Taxpayer Advocate Service

The IRS office whose phone number appears at the top of the notice can best address and access your tax information and help get you answers. However, you may be eligible for free help from the Taxpayer Advocate Service (TAS) if you can't resolve your tax problem with the IRS, or you believe an IRS procedure just isn't working as it should. TAS is an independent organization within the IRS that helps taxpayers and protects taxpayer rights. Contact your local Taxpayer Advocate Office at:

Or call TAS at 877-777-4778. For more information about TAS and your rights under the Taxpayer Bill of Rights, go to taxpayeradvocate.irs.gov. Do not send your federal court pleading to the TAS address listed above. Use the applicable federal court address provided earlier in the letter. Contacting TAS does not extend the time to file an action for declaratory judgment.

Where you can find more information

Enclosed are Publication 1, Your Rights as a Taxpayer, and Publication 594, The IRS Collection Process, for more comprehensive information.

Find tax forms or publications by visiting www.irs.gov/forms or calling 800-TAX-FORM (800-829-3676).

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

If you prefer to write, use the address shown at the top of this letter. Include your telephone number, the best time to call, and a copy of this letter.

Keep the original letter for your records.

Sincerely,

Sean E. O'Reilly
Director, Exempt Organizations Examinations

Enclosures:

Publication 1
Publication 594
Publication 892



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

Date:
October 13, 2021
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:

Manager's contact information:

Name:
ID number:
Telephone:

Response due date:
November 12, 2021

CERTIFIED MAIL – Return Receipt Requested

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 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 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 Sean E. O'Reilly
Director, Exempt Organizations Examinations

Enclosures:
Form 886-A
Form 6018

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended

ISSUES

Whether (the Organization) qualifies for exemption from federal income tax under Internal Revenue Code (IRC) Section (Sec.) 501(c)(3).

FACTS

Formation

The Organization was incorporated as a not-for-profit corporation on using the generic electronic Articles of Incorporation (provided by the state. Article III of the stated the Organization's purpose as: "To provide education and business counseling support to not for profit organizations and other lawful activities." The generic didn't include the requisite purpose and dissolution clauses or the requisite language restricting private inurement or political activity.

Application for Recognition of Exemption

On a Form , Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, was submitted for the Organization.

The Form listed as the President/Director, as the Secretary/Director, and as the Treasurer/Director. The Form listed as the signer with the box checked stating, "I declare under penalty of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, and to the best of my knowledge, it is true, correct, and complete."

Other pertinent information listed on the Form is as follows:

- The box to attest that the Organization had completed the Form Eligibility Worksheet in the current instructions, was eligible to apply for exemption using Form , and had read and understood the requirements to be exempt under section 501(c)(3) was checked in the affirmative.
- Part II, *Organizational Structure*, listed the following:
 1. The date of incorporation was listed as
 2. The state of incorporation was listed as
 3. All boxes were checked in the affirmative, attesting that the Organization's organizing documents met the following requirements:
 - were sufficient as necessary for a corporation;
 - limited its purpose to one or more exempt purposes within section 501(c)(3);
 - didn't expressly empower it to engage, otherwise than an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes; and
 - contained the dissolution provision under section 501(c)(3) or relied on the operation of state law in the state in which it was formed for its dissolution provision.
- Part III, *Your Specific Activities*, listed the following:
 1. The box for "Education" was checked, attesting that the Organization was organized and operated exclusively for that purpose.
 2. The box under item No. 3 was checked, attesting to, among other things, that the Organization had not conducted and would not conduct activities that

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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- furthered non-exempt purposes more than insubstantially; and
 - were organized and operated for the primary purpose of conducting a trade or business that is not related to its exempt purpose.
3. Boxes 4 through 11 were all checked "No," indicating, among other things, that the Organization wouldn't pay compensation to any of its offices, directors, or trustees, and that it wouldn't have unrelated business gross income of more than \$ _____ in a tax year.
- Under Part IV, *Foundation Classification*, the box was checked to attest that the Organization normally receives more than one-third of its support from a combination of gifts, grants, contributions, membership fees, and gross receipts (from permitted sources) from activities related to its exempt functions and normally receives not more than one-third of its support from investment income and unrelated business taxable income.

Exemption

On _____ the Organization received recognition of exemption under IRC Sec. 501(c)(3) as a public charity, effective _____

Financials Per Form (Confirmed During Examination)

For the Short Year Ended (months)

Revenue:

Program Service Revenue ("Auction Income")	\$
Investment Income	\$
Total Revenue	<u>\$</u>

Expenses:

Grants and Other Assistance	\$
Compensation of Current Officers, Directors, etc.	\$
Other Salaries and Wages	\$
Payroll Taxes	\$
Legal	\$
Accounting	\$
Other Fees for Service	\$
Office Expenses	\$
Information Technology	\$
Occupancy	\$
Travel	\$
Depreciation, Depletion, and Amortization	\$
Insurance	\$
Cost of _____ Items	\$
Outside Services	\$
Postage and Delivery	\$
Telephone	\$
All Other Expenses	\$
Total Expenses	<u>\$</u>

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (<i>last 4 digits</i>)	Year/Period ended

Assets:	<u>BOY</u>	<u>EOY</u>
Cash – non-interest-bearing	\$	\$
Land, Buildings, Equip. (less Accumulated Depreciation)	\$ _____	\$ _____
Total Assets	<u>\$ _____</u>	<u>\$ _____</u>

Liabilities:		
Accounts Payable and Accrued Expenses	\$	\$
Other Liabilities ("Donor Travel Deposits")	\$ _____	\$ _____
Total Liabilities	<u>\$ _____</u>	<u>\$ _____</u>

For the Year Ended

Revenue:		
Program Service Revenue ("Income")		\$
Investment Income		\$ _____
Total Revenue		<u>\$ _____</u>

Expenses:		
Grants and Other Assistance		\$
Compensation of Current Officers, Directors, etc.		\$
Other Salaries and Wages		\$
Other Employee Benefits		\$
Payroll Taxes		\$
Legal		\$
Accounting		\$
Other Fees for Service		\$
Office Expenses		\$
Information Technology		\$
Occupancy		\$
Travel		\$
Depreciation, Depletion, and Amortization		\$
Insurance		\$
Cost of Items		\$
Proceeds Shared		\$
Contract Labor		\$
Postage and Delivery		\$
All Other Expenses		\$ _____
Total Expenses		<u>\$ _____</u>

Assets:	<u>BOY</u>	<u>EOY</u>
Cash – non-interest-bearing	\$	\$
Savings and Temporary Cash Investments	\$	\$
Land, Buildings, Equip. (less Accumulated Depreciation)	\$ _____	\$ _____
Total Assets	<u>\$ _____</u>	<u>\$ _____</u>

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended

Liabilities:

Accounts Payable and Accrued Expenses	\$	\$
Other Liabilities (“ ”)	\$	\$
Total Liabilities	\$	\$

Examination

On , the Revenue Agent (Examiner) issued an initial contact letter, Information Document Request (IDR), and Publication 1 to inform the Organization of the examination and request an Initial Interview via conference call on

In response to the initial contact letter, the Organization’s Chief Operations Officer, (the COO), called to explain that the Organization’s co-founders, and , had just returned home from the hospital after suffering from COVID-19 and requested a delay of the Initial Interview.

The Initial Interview was rescheduled and was finally held on via conference call with the , the COO (the Organization’s main point of contact), the Organization’s CPA/POA, (the POA), and the Organization’s lawyer, , who is not currently a POA for the Organization.

Initial Interview and Exit Interview

The following information was provided during the Initial Interview and a follow-up call with the COO and the POA, which served as the Exit Interview:

History

For over years, the had careers in as and . During that time, due to their , they were often asked to emcee at fundraising events for various nonprofit organization. In doing so, they began to realize the need for education in many of these organizations regarding their general business operations, and, more specifically, with their fundraising events. As they began to use their experience as educators and in media to educate nonprofit organizations on how to improve their fundraising events and how to use the media to help their cause, they began to realize this was something they wanted to do on a more permanent basis.

Timeline

In , gave up job in to work with nonprofits full time, purportedly as an unpaid volunteer, while kept job in to support them. At some point prior to that time, was asked to step in on an emergency basis as an at a fundraising event. Since acting as an in the state of requires a license, obtained license in

In , incorporated (). The stated that they incorporated as a for-profit entity because they didn’t know how to become a nonprofit at the time. They contend that always operated as a nonprofit in the same manner that the Organization does. (Based on a review of Forms information and the Organization’s Forms , the Examiner noted that the entities appeared to be operated in the same manner in that entities

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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received the majority of their income from “ Income,” which is income derived from the “sale” of packages prepared by s, and now by the Organization, for other tax-exempt entities to use as items at their fundraising events.)

In left job and joined full time. They also incorporated the Organization as a nonprofit corporation that year (as previously noted and discussed above). They stated they were both able to work as unpaid volunteers using funds they’d saved up from previous employment until those funds ran out in late

In late /early stated that responded to an internet advertisement from a “ CPA” in order to apply for tax-exempt status. According to never spoke to , but to a who answered call and requested some information. Apparently, paid the required fee, because shortly thereafter, on , they received the final determination letter from the IRS granting the Organization tax exemption under IRC 501(c)(3) as a public charity with an effective date of (as previously noted and discussed above).

Application for Recognition of Exemption

Upon hearing explanation regarding how the Organization obtained its tax exemption, the Examiner asked if the , the COO, the POA, or the Organization’s lawyer were aware that office had applied for tax exemption on behalf of the Organization using a Form application. They were not. As such, the Examiner explained that based on review of and the Organization’s historical revenue and assets it appears the Organization wasn’t eligible to apply for tax exemption using Form also explained that the Form application listed the Organization’s date of incorporation as and its state of incorporation as

The and the COO were genuinely surprised when they received this information. They had all stressed their displeasure with how the application transaction was conducted and the difficulty in obtaining any follow up information from “ CPA” even before receiving this information from the Examiner. The COO explained that she had tried on numerous occasions to get a copy of the application form and any supporting documentation, but the CPA’s office, which is still in business and advertising in the same manner, told that they don’t keep that information on file. As such, the and the COO weren’t aware that the Organization had applied for tax exemption using a Form . (Subsequent to the interview, the COO faxed over the information from the CPA’s website, for “ CPA ”, with comments and highlighted areas provided by .)

Activities

The Organization provides education and training for other tax-exempt organizations, most of which are 501(c)(3) tax-exempt organizations, and assists in handling silent and live for those organizations. As the Organization grew and evolved it adjusted its training program and now has a training facility located within its new office building. It also created curriculum to help other tax-exempt organizations become more sustaining. Due to COVID-19 and the restrictions it’s presented, however, the Organization has been conducting virtual and “hybrid” events and has also created a blog to help with the training sessions and . The Organization began hiring employees in or and hired independent contractors prior to that time.

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In order to obtain a better understanding of the Organization's activities, during the follow-up call/Exit interview with the COO and POA the Examiner asked what percentage of time the Organization devoted to education. The COO responded that it was around %.

The POA explained, though, that income and expenses aren't bifurcated between education/training activities and other activities including . Since the Organization doesn't charge for any of the training and education it provides, it doesn't maintain a mechanism to accurately represent these services in its income and expenses. Instead, the Organization considers the revenue it receives from preparing and providing as items for fundraising events conducted by other tax-exempt organizations as Program Service Revenue related to the Organization's tax-exempt purpose in that the revenue is used to carry on its operations. The Organization's fee for providing these as items is \$ regardless of the cost or size of the trip. The COO noted, however, that this fee is only received by the Organization for that are actually sold at

Further explanation regarding the sale of the sold at revealed that the Organization is responsible for completing the entire financial transaction with the individual who purchases the . In other words, the individual with the winning bid for of the being offered at pays the full amount of that winning bid directly to the Organization. Then the Organization performs the necessary accounting to determine the hosting organization's portion of the proceeds and subsequently remits that amount to that organization. (The Examiner noted that this was demonstrated by the copies of the "Closeout Report" letter packages provided in response to the initial IDR. Each "Closeout Report" letter package contained an "Reconciliation Report" that showed the basic accounting performed by the Organization – the "Minimum" amount for each sold, the "Price" for that , and the resultant "Gross Return" for that . As explained, the "Minimum" amount included the expected cost of the and the \$ fee charged by the Organization. This amount was subtracted from the " the sold for and the remaining "Gross Return" amount represented the portion of the proceeds being remitted to the hosting organization.)

The POA offered the following example to further demonstrate how revenue is received and booked by the Organization: Suppose the winning bid for a is \$ and the expected cost for the is \$. Included in the "Minimum" for each trip as Cost of Goods Sold (COGS) is the \$ fee charged by the Organization. So for the example presented, \$ is booked to Cash, \$ to the " liability account (basically a reserve account used to pay for the when the person winning the decides to), the \$ designated as COGS is booked to revenue, and the remaining \$ is booked to an account, which appears to be called " Client Payment," that eventually goes back to the hosting organization that held the fundraising event as their portion of the proceeds from the sale.

With regard to the packages created for , the COO further explained that the Organization had standard it provided for prior to . stated that in the Organization added a few more , which, presumably, brought the total to at least ten standard . The COO further explained that all of the are standard pre-planned and don't change, but that the price for each trip changes from year to year. Since the aren't paid for until taken, the Organization set up the " reserve account in its Other Liabilities to hold the cash for the expected cost of the trip until needed. When the is taken, it's paid for out of the " account and any increase or decrease in price hits the Organization's Current Year General Ledger

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Articles of Incorporation ()/Bylaws

Since the Organization applied for tax exemption using Form , no or Bylaws were required or provided. Further, since the Form application stated the Organization was incorporated in , the Examiner wasn't able to obtain the or Bylaws on the website since it isn't a jurisdiction that provides this service.

As noted above, the Examiner had previously obtained the generic electronic dated from the Department of State's website, but these provided little information. As such, the Examiner requested the Organization's and Bylaws in the initial IDR.

In response, the Organization provided the "Amended and Restated Articles of Incorporation," signed and dated , which included the appropriate language, including purpose and dissolution clauses, for a 501(c)(3) entity. Also attached were the generic electronic filed with the Secretary of State on . When asked whether the were the only the Organization had, or has, the COO responded that the only prior to the request from the Examiner were the generic electronic

The response also included Bylaws which are in order but weren't signed and dated. The certification date included in the Bylaws is listed as , but since the copy submitted wasn't signed and dated it's unclear if these Bylaws were in effect prior to submission to the Examiner.

()
As previously stated, was incorporated in . The entity is still listed as being active on the Department of State's website and lists and as co-founders and as the COO. When asked about the relationship between the entities during the Initial Interview, the explained this was how they conducted business prior to the Organization receiving its tax-exempt status. They, along with the COO, reiterated their belief that operated as a nonprofit in exactly the same manner that the Organization now operates.

When asked about tax returns filed for , stated that the last tax return was filed for the tax year and that it wasn't marked final, which was confirmed by the Organization's lawyer, explained that he began having major health issues around that time, which continue to the present date, and, as such, never got around to dissolving . During a previous discussion with the COO, she stated that the reason was still in existence is that it holds certain licenses and couldn't be dissolved for that reason, but this wasn't mentioned in the Initial Interview discussion.

In a letter from the POA to the COO, dated , he stated that didn't have any operations in and didn't file a tax return for that period. The basically contend that became the new tax-exempt Organization. In fact, all in attendance at the Initial Interview seemed to agree that became, or was rolled into, the Organization and that ceased operations beginning in with all previous operations being assumed by the Organization. This is further demonstrated by the fact that all of the Organization's employment tax filings, including Forms W-2 and 1099-MISC, were filed using name and EIN, which appears to be how it was done in the years prior to incorporating the Organization.

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A review of Form for the tax year ended revealed ordinary business income for the year of \$ on sales of \$. It listed the entity's business activity as "Conduct " and its product or service as "Fundraising " was listed as the % shareholder on his Schedule , which listed the \$ as his "Ordinary business income (loss)" on Line 1.

Also, in response to the initial IDR request for bank statements, the COO sent bank statements for separate accounts, in the Organization's name and in ' name. In response to a question regarding the bank accounts during the Initial Interview, she stated that all accounts were being used by the Organization, which the and the POA confirmed. (The Examiner noted during the examination of the Organization's bank statements that all bank accounts were comingled with transfers to and from the separate accounts and that the amounts from all bank accounts were used to determine cash assets for the Organization's Form for the short tax year ended .)

In response to the request for the Organization's bank statements, which was included in the initial IDR for the tax year ended , the Organization provided bank statements; the bank statements for the bank accounts corresponding to the bank accounts provided in the request for the Organization's bank accounts and accounts in the name of . A review and analysis of the bank accounts revealed that all accounts were comingled with transfers to and from the separate accounts and that the amounts from all bank accounts were used to determine cash assets for the Organization's Form for the tax year ended . The Examiner reviewed the Department of State website and discovered that was formed by as a not-for-profit corporation on and is still active, listing the same address as that of the Organization and currently listing as President and Secretary, as Co-President, and as Vice President and Chief Operations Officer. Further review provided no indication that applied for or received tax-exempt status from the IRS or that it had any activity prior to .

The Examiner discussed the relationship between the Organization and Inc. with the COO and issued IDR 3 requesting a detailed description and/or explanation of the entity to include a discussion of the relationship between the Organization and the entity. The IDR also requested the same information, if any, for any entities other than the Organization, , and that might have been formed prior to or during the tax year ended that are related in any way to the Organization.

The response to the IDR indicated that there were no entities other than the listed that are related to the Organization and provided the following explanation:

The relationship of the () and the , a -not-for-profit corporation is as follows.

is a not-for-profit foundation which donates all funds it receives over its operating costs to other, service-providing not-for-profit organizations. The vast majority of the organizations

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receiving those donated funds are recognized by the IRS as 501c3 charitable organizations.

obtains the funds it donates to those service-providing 501c3 nonprofits by supplying for those 501c3 nonprofits to sell at their typical annual fundraising dinners, black-tie galas, etc. supplies those through provides and manages and for awards only. It does not sell or otherwise provide any or for anything other than nonprofit organizations. It does not deal in the for-profit travel business in any way.

Statutes Title , Chapter requires that those be supplied by a state licensed travel agency. That requirement can be confirmed at the State of Legislature website:

In order to provide the in accordance with the law, established and incorporated and has remained in good standing ever since. That can be confirmed by accessing the official State of Department of State, Division of Corporations website at:

The validity required licensure under license number can be verified at the website: by entering the name "

is also licensed by and registered with the . A copy of the website's confirmation of licensure is reproduced below.

(Note that the image of the " website's confirmation of licensure" isn't included here, but the Examiner noted that license number was issued on , expiring , to as a " " registered as a " .")

After reviewing the response, the Examiner asked the COO how the Organization met the requirement to be licensed as a prior to provided the following response:

, I would like to follow up with a further explanation for the establishment of which was licensed in the State of in

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Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended

You received a written explanation from _____, our founder as to the licensing requirements for offering _____; however, _____ did not expound on the necessity and background for obtaining it. First and foremost, we ONLY book _____ of the _____ that are won at _____ of our nonprofit partners events.

For a number of years, an individual worked with the _____ as the "_____ arm. _____ is shown on all our payroll documents as a _____ contracted employee. (You can see this on the information previously provided to you.) _____ owned _____ own small _____ and held the necessary licenses and permits to book trips. The agreement was that she would book our _____ at a "net" rate, allowing _____ to obtain the lowest price possible for the _____ thereby giving us the ability to provide a higher level of funding support to our nonprofit organizations. The "net" price means _____ was not entitled to accept commissions (which in _____ lingo is considered "gross" price.)

By about mid-year _____, we began to be suspicious of _____ (_____) receiving unauthorized commissions on our trips, entering into a scheme to defraud our organization with another employee on our payroll (_____) by diverting funds, purchasing gift cards with our company _____, and creating ghost email accounts to cover _____ tracks. _____ began to secure the necessary licenses and permits so that we could bring our bookings completely "in-house" and set up _____ as a result.

_____ and _____ were terminated _____ . It took us nearly a year (_____) to "unwind" all the crafty things the _____ of them had done. We did bring the _____ in-house. We also filed a civil suit against both of them for the \$ _____ + theft as well as their taking our intellectual property. (Training Materials).

I also wanted to let you know, in case it was not clear previously, we do not book the _____ in advance. The _____ as you now know, fund our ability to educate and train the nonprofits we choose to support. They also fund the causes of those organizations, too. But because the winner of any of our _____ have full years to decide when they want to _____, (and each _____ includes _____ and other experiences) the funds must be held until the booking occurs. We payout funds to the organizations we support within _____ days of their event, so they have the necessary money they need for their cause. The additional funds are held by us to cover the cost for the _____. We have over _____ that have to be fulfilled (booked) and that number increases each week. As we indicated those funds are not _____ funds - they are the funds necessary to fulfill the obligation of the promised trip. The fluctuations in _____ alone can cause us to lose money over that period of years.

During Covid we felt it was the right thing to do to allow another year extension for anyone unable to _____ or fulfill their _____ during the time allotted. We have no way of predicting rising costs in _____ but are beginning to see increases across the board in both _____ as a result of additional testing, cleaning protocols, etc., etc. Whereas the amount of our cash may seem extreme to someone from the outside looking in - we still sweat knowing that we will have enough to cover our basic costs and the promised _____.

Please let me know if you have any questions about this.

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Tax-Exempt Purpose

During a conference call on [redacted] the COO and the POA explained they were struggling with how to provide the necessary documentation to demonstrate the Organization was meeting its tax-exempt purpose of education. As they explained, since the documentation was so voluminous they weren't sure how best to provide the information. The Examiner discussed the options for obtaining the necessary documentation and prepared IDR 4 to request the agreed upon information.

The following information was requested in the IDR as some of the items the Organization might provide to demonstrate its tax-exempt purpose of education:

1. A document for each year under examination, possibly in calendar format, listing all of the conferences, seminars and other training sessions the organization provided for the year.
2. A brief explanation and/or list of the day-to-day operations of the organization and its employees as it relates to training and educational activities.
3. A small sample, possibly [redacted] or [redacted] from each year, of the "Thank You" notes you mentioned that the organization received from attendees of training and educational conferences or seminars, preferably from different types of training conferences or seminars and on different dates.
4. Any other document, or documents, you have or can prepare to help demonstrate that the overwhelming majority of the organization's activities are related to training and education verses the amount of time spent in assisting with and/or performing auction activities.

As noted in the IDR, this list of items was based on our discussion regarding the most efficient and reasonable manner for the COO to provide documentation to demonstrate the Organization's tax-exempt purpose and was not intended to be all inclusive. The COO was encouraged to provide any other documentation she thought could be helpful in demonstrating the Organization's tax-exempt purpose of education.

In response to the IDR, the COO provided a description of the process the Organization undertook to evaluate tax-exempt organizations seeking training for and assistance with their fundraising events, which included a discussion of the "Qualifying Calls" conducted with each organization, a list of the training modules that were used during the [redacted] and [redacted] tax years, and a sample of some of the "Thanks You" notes the Organization had received from past attendees of its training and educational events. [redacted] also provided summarized calendars for each year that listed the entities the Organization had provided training for and assisted with their fundraising events. As [redacted] explained, the calendars had to be summarized to meet the restrictions of faxing over the information and, as such, didn't list each training module separately. Instead, the training modules were notated as "Education Module" with a corresponding date, but actually represented several training modules that had been tailored for and delivered to each organization's key personnel as necessary based on the information ascertained in the "Qualifying Call."

As noted in the response, the Qualifying Calls, which are led by one of the " [redacted] Development Directors or officers," are a required part of the process and are used as a diagnostic process to determine if the organization seeking assistance qualifies to receive "sponsorship support" from the Organization. If the organization seeking assistance is deemed qualified, it's moved "forward for review by a member of the [redacted] Board of Directors for consideration as a sponsored organization." The response further stated "[T]he diagnostic process of the qualifying call is essential and provides significant information to the [redacted] Development Director and ultimately helps determine whether they will be

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selected for support and the investment of _____ in all the educational support materials needed to actualize a successful event.” As indicated, not all organizations seeking assistance qualify for “sponsorship support” from the Organization, but, based on the response, all the organizations seeking assistance were provided “educational advice and often educational tools” by the _____ Development Director on the Qualifying Call. The response further provided:

If an organization is approved for educational and event support a simple supply agreement is signed between both parties to secure the event date on the _____ calendar. Once signed, a call is set up to discuss training needs and a schedule for training and who on behalf of their organization will be participating in the training. Some training sessions must be truncated if an event is occurring within _____ days of _____ involvement. Other organizations are able to take advantage of some of the longer training programs that extend beyond the immediate needs of their fundraising goals.

The Examiner reviewed the list of training modules and noted by the names provided, as well as the training module samples subsequently provided, that most of the training appeared to be related to how to improve an organization’s fundraising events.

Upon review of the summarized training calendars, the Examiner noted that each item listed indicated multiple dates for training/education for each separate organization leading up to that particular organization’s fundraising event, but that no organization was listed as receiving training/education that didn’t subsequently hold a fundraising event for which it received assistance from the Organization. Further, the Examiner noted that several organizations listed on the Organization’s summarized training calendar were also listed on the Organization’s summarized _____ training calendar.

LAW

Internal Revenue Code (IRC)

IRC Sec. 501(c)(3) exempts from federal income tax entities 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.

IRC Sec. 513(c) provides that the term “trade or business” includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

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Treasury Regulations (Treas. Reg.)

Treas. Reg. Sec. 1.501(c)(3)-1(a)(1) states 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.

Treas. Reg. Sec. 1.501(c)(3)-1(c)(1) states 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 such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Sec. 1.501(c)(3)-1(d)(3)(i) provides that the term educational, as used in section 501(c)(3), relates to:

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

Treas. Reg. Sec. 1.501(c)(3)-1(e)(1) states that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

Treas. Reg. Sec. 1.513-1(b) states that the primary objective of adoption of the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete. On the other hand, where an activity does not possess the characteristics of a trade or business within the meaning of section 162, such as when an organization sends out low-cost articles incidental to the solicitation of charitable contributions, the unrelated business income tax does not apply since the organization is not in competition with taxable organizations. However, in general, any activity of a section 511 organization which is carried on for the production of income and which otherwise possesses the characteristics required to constitute trade or business within the meaning of section 162 – and which, in addition, is not substantially related to the performance of exempt functions – presents sufficient likelihood of unfair competition to be within the policy of the tax. Accordingly, for purposes of section 513 the term trade or business has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. Thus, the term trade or business in section 513 is not limited to integrated aggregates of assets, activities and good will which comprise businesses for the purposes of certain other provisions of the Internal Revenue Code. Activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as trade or business merely because they are carried on within a larger

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aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. Thus, for example, the regular sale of pharmaceutical supplies to the general public by a hospital pharmacy does not lose identity as trade or business merely because the pharmacy also furnishes supplies to the hospital and patients of the hospital in accordance with its exempt purposes or in compliance with the terms of section 513(a)(2). Similarly, activities of soliciting, selling, and publishing commercial advertising do not lose identity as a trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization. However, where an activity carried on for the production of income constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

Treas. Reg. Sec. 1.513-7(a) provides that travel tour activities that constitute a trade or business, as defined in section 1.513-1(b), and that are not substantially related to the purposes for which exemption has been granted to the organization constitute an unrelated trade or business with respect to that organization. Whether travel tour activities conducted by an organization are substantially related to the organization's exempt purpose is determined by looking at all relevant facts and circumstances, including, but not limited to, how a travel tour is developed, promoted and operated. Section 513(c) and section 1.513-1(b) also apply to travel tour activity. Application of the rules of section 513(c) and section 1.513-1(b) may result in different treatment for individual tours within an organization's travel tour program.

Treas. Reg. Sec. 1.513-7(b) states that the provisions of this section are illustrated by the following examples. In all of these examples, the travel tours are priced to produce a profit for the exempt organization. The examples are as follows:

Example 1.

O, a university alumni association, is exempt from federal income tax under section 501(a) as an educational organization described in section 501(c)(3). As part of its activities, O operates a travel tour program. The program is open to all current members of O and their guests. O works with travel agencies to schedule approximately 10 tours annually to various destinations around the world. Members of O pay \$x to the organizing travel agency to participate in a tour. The travel agency pays O a per person fee for each participant. Although the literature advertising the tours encourages O's members to continue their lifelong learning by joining the tours, and a faculty member of O's related university frequently joins the tour as a guest of the alumni association, none of the tours includes any scheduled instruction or curriculum related to the destinations being visited. The travel tours made available to O's members do not contribute importantly to the accomplishment of O's educational purpose. Rather, O's program is designed to generate revenues for O by regularly offering its members travel services. Accordingly, O's tour program is an unrelated trade or business within the meaning of section 513(a).

Example 2.

N is an organization formed for the purpose of educating individuals about the geography and culture of the United States. It is exempt from federal income tax under section 501(a) as an educational and cultural organization described in section 501(c)(3). N engages in a number of activities to accomplish its purposes, including offering courses and publishing periodicals and books. As one of its activities, N conducts study tours to national parks and other locations within the United States. The study tours are conducted by teachers and other personnel certified by the Board of Education of the State of P. The

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tours are directed toward students enrolled in degree programs at educational institutions in P, as reflected in the promotional materials, but are open to all who agree to participate in the required study program. Each tour's study program consists of instruction on subjects related to the location being visited on the tour. During the tour, five or six hours per day are devoted to organized study, preparation of reports, lectures, instruction and recitation by the students. Each tour group brings along a library of material related to the subject being studied on the tour. Examinations are given at the end of each tour and the P State Board of Education awards academic credit for tour participation. Because the tours offered by N include a substantial amount of required study, lectures, report preparation, examinations and qualify for academic credit, the tours are substantially related to N's educational purpose. Accordingly, N's tour program is not an unrelated trade or business within the meaning of section 513(a).

Example 3.

R is a section 501(c)(4) social welfare organization devoted to advocacy on a particular issue. On a regular basis throughout the year, R organizes travel tours for its members to Washington, DC. While in Washington, the members follow a schedule according to which they spend substantially all of their time during normal business hours over several days attending meetings with legislators and government officials and receiving briefings on policy developments related to the issue that is R's focus. Members do have some time on their own in the evenings to engage in recreational or social activities of their own choosing. Bringing members to Washington to participate in advocacy on behalf of the organization and learn about developments relating to the organization's principal focus is substantially related to R's social welfare purpose. Therefore, R's operation of the travel tours does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 4.

S is a membership organization formed to foster cultural unity and to educate X Americans about X, their country of origin. It is exempt from federal income tax under section 501(a) and is described in section 501(c)(3) as an educational and cultural organization. Membership in S is open to all Americans interested in the X heritage. As part of its activities, S sponsors a program of travel tours to X. The tours are divided into two categories. Category A tours are trips to X that are designed to immerse participants in the X history, culture and language. Substantially all of the daily itinerary includes scheduled instruction on the X language, history and cultural heritage, and visits to destinations selected because of their historical or cultural significance or because of instructional resources they offer. Category B tours are also trips to X, but rather than offering scheduled instruction, participants are given the option of taking guided tours of various X locations included in their itinerary. Other than the optional guided tours, Category B tours offer no instruction or curriculum. Destinations of principally recreational interest, rather than historical or cultural interest, are regularly included on Category B tour itineraries. Based on the facts and circumstances, sponsoring Category A tours is an activity substantially related to S's exempt purposes, and does not constitute an unrelated trade or business within the meaning of section 513(a). However, sponsoring Category B tours does not contribute importantly to S's accomplishment of its exempt purposes and, thus, constitutes an unrelated trade or business within the meaning of section 513(a).

Example 5.

T is a scientific organization engaged in environmental research. T is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). T is engaged in a long term

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study of how agricultural pesticide and fertilizer use affects the populations of various bird species. T collects data at several bases located in an important agricultural region of country U. The minutes of a meeting of T's Board of Directors state that, after study, the Board has determined that non-scientists can reliably perform needed data collection in the field, under supervision of T's biologists. The Board minutes reflect that the Board approved offering one-week trips to T's bases in U, where participants will assist T's biologists in collecting data for the study. Tour participants collect data during the same hours as T's biologists. Normally, data collection occurs during the early morning and evening hours, although the work schedule varies by season. Each base has rustic accommodations and few amenities, but country U is renowned for its beautiful scenery and abundant wildlife. T promotes the trips in its newsletter and on its Internet site and through various conservation organizations. The promotional materials describe the work schedule and emphasize the valuable contribution made by trip participants to T's research activities. Based on the facts and circumstances, sponsoring trips to T's bases in country U is an activity substantially related to T's exempt purpose, and, thus, does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 6.

V is an educational organization devoted to the study of ancient history and cultures and is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). In connection with its educational activities, V conducts archaeological expeditions around the world, including in the Y region of country Z. In cooperation with the National Museum of Z, V recently presented an exhibit on ancient civilizations of the Y region of Z, including artifacts from the collection of the Z National Museum. V instituted a program of travel tours to V's archaeological sites located in the Y region. The tours were initially proposed by V staff members as a means of educating the public about ongoing field research conducted by V. V engaged a travel agency to handle logistics such as accommodations and transportation arrangements. In preparation for the tours, V developed educational materials relating to each archaeological site to be visited on the tour, describing in detail the layout of the site, the methods used by V's researchers in exploring the site, the discoveries made at the site, and their historical significance. V also arranged special guided tours of its exhibit on the Y region for individuals registered for the travel tours. Two archaeologists from V (both of whom had participated in prior archaeological expeditions in the Y region) accompanied the tours. These experts led guided tours of each site and explained the significance of the sites to tour participants. At several of the sites, tour participants also met with a working team of archaeologists from V and the National Museum of Z, who shared their experiences. V prepared promotional materials describing the educational nature of the tours, including the daily trips to V's archaeological sites and the educational background of the tour leaders, and providing a recommended reading list. The promotional materials do not refer to any particular recreational or sightseeing activities. Based on the facts and circumstances, sponsoring trips to the Y region is an activity substantially related to V's exempt purposes. The scheduled activities, which include tours of archaeological sites led by experts, are part of a coordinated educational program designed to educate tour participants about the ancient history of the Y region of Z and V's ongoing field research. Therefore, V's tour program does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 7.

W is an educational organization devoted to the study of the performing arts and is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). In connection with its educational activities, W presents public performances of musical and theatrical works. Individuals

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become members of W by making an annual contribution to W of \$q. Each year, W offers members an opportunity to travel as a group to one or more major cities in the United States or abroad. In each city, tour participants are provided tickets to attend a public performance of a play, concert or dance program each evening. W also arranges a sightseeing tour of each city and provides evening receptions for tour participants. W views its tour program as an important means to develop and strengthen bonds between W and its members, and to increase their financial and volunteer support of W. W engaged a travel agency to handle logistics such as accommodations and transportation arrangements. No educational materials are prepared by W or provided to tour participants in connection with the tours. Apart from attendance at the evening cultural events, the tours offer no scheduled instruction, organized study or group discussion. Although several members of W's administrative staff accompany each tour group, their role is to facilitate member interaction. The staff members have no special expertise in the performing arts and play no educational role in the tours. W prepared promotional materials describing the sightseeing opportunities on the tours and emphasizing the opportunity for members to socialize informally and interact with one another and with W staff members, while pursuing shared interests. Although W's tour program may foster goodwill among W members, it does not contribute importantly to W's educational purposes. W's tour program is primarily social and recreational in nature. The scheduled activities, which include sightseeing and attendance at various cultural events, are not part of a coordinated educational program. Therefore, W's tour program is an unrelated trade or business within the meaning of section 513(a).

Revenue Rulings (Rev. Rul.)

Rev. Rul. 77-366 held that an organization formed to conduct winter-time ocean cruises that included activities to further religious and educational purposes in addition to substantial social and recreational activities didn't qualify for exemption under section 501(c)(3). The Rev. Rul. further states that "the extensive amount of time, energy, and other resources which are regularly devoted to the conduct of social and recreational activities, together with the manner in which such activities are scheduled in relation to other cruise programs... demonstrate that the organization's conduct of such social and recreational activities serve substantial independent purposes of a noncharitable nature."

Rev. Rul. 67-327 held that a nonprofit organization formed for the purpose of arranging group tours for students and faculty of a university to allow them to travel abroad and which has no other activities is not entitled to exemption from federal income tax under section 501(c)(3). As further stated in the Rev. Rul., "[T]he arranging of group tours is not in itself the instruction or training of the individual for the purpose of improving or developing his capabilities. In view of the organization's stated purpose and activities, it does not qualify for tax exemption under section 501(c)(3) of the Code."

Court Cases

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Greater United Navajo Development Enterprises v. Commissioner, 74 T.C. 69 (1980), the court held that the developer's most substantial activity and primary source of revenue was the leasing of oil well drilling

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equipment for profit; therefore, it wasn't operated exclusively for exempt purposes within the meaning of section 501(c). In short, the destination of the business income to a charitable purpose couldn't transform a non-exempt business into an exempt activity.

In Make a Joyful Noise, Inc. v. Commissioner, T.C. Memo 1989-4, the court held that an organization formed to operate bingo games for other exempt organizations didn't qualify for exemption under section 501(c)(3) because the services were characteristic of a commercial business.

GOVERNMENT'S POSITION

It is the Government's position that the Organization does not qualify for exemption under IRC Sec. 501(c)(3).

Under IRC Sec. 501(c)(3), an entity organized and operated exclusively for educational purposes may be exempted from federal income tax if no part of its net earnings inures to the benefit of any private shareholder or individual, if no substantial part of its activities are in carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and if it doesn't 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.

Under Treas. Reg. Sec. 1.501(c)(3)-1(a), 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.

Under Treas. Reg. Sec. 1.501(c)(3)-1(c), 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 such exempt purposes specified in IRC Sec. 501(c)(3). An organization will not be so regarded if more than a substantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Sec. 1.501(c)(3)-1(d)(3)(i) defines the term educational, as used in section 501(c)(3), as either the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community.

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

IRC Sec. 513(c) defines the term "trade or business" as any activity which is carried on for the production of income from the sale of goods or the performance of services and further stipulates that an activity doesn't lose its identity as a trade or business merely because it's carried on within a larger aggregate of similar

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activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization. The Code section further states that where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it doesn't result in profit.

Treas. Reg. Sec. 1.513-1(b) provides that the primary objective in adopting the unrelated business income tax was to eliminate a source of unfair competition by placing the unrelated business activities of certain exempt organizations upon the same tax basis as the nonexempt business endeavors with which they compete.

Under Treas. Reg. Sec. 1.513-7(a), travel tour activities that constitute a trade or business, as defined in section 1.513-1(b), and that are not substantially related to the purposes for which exemption has been granted to the organization constitute an unrelated trade or business with respect to that organization. This Treas. Reg. further stipulates that whether travel tour activities conducted by an organization are substantially related to the organization's exempt purpose is determined by looking at all relevant facts and circumstances, including, but not limited to, how a travel tour is developed, promoted and operated.

Treas. Reg. Sec. 1.513-7(b) lists seven examples, all of which are for travel tours priced to produce a profit for the exempt organization. Of the examples listed, those that are most pertinent to the current case are Examples 1, 4, and 7.

Example 1 describes a university alumni association exempt from federal income tax under section 501(a) as an educational organization described in section 501(c)(3) that operates a travel tour program open to all current members and their guests as part of its activities. The organization works with various travel agencies to schedule the tours and the members make payment directly to the travel agency, which, in turn, pays the organization a per person fee for each participant. However, none of the tours include any scheduled instruction or curriculum related to the destinations being visited, nor do they contribute importantly to the accomplishment of the organization's educational purpose. Instead, the travel tour program is designed to generate revenues for the organization. As such, the travel tour program is an unrelated trade or business within the meaning of section 513(a).

Example 4 describes a membership organization formed to foster cultural unity and to educate a certain ethnic group of Americans about their country of origin. The organization is exempt from federal income tax under section 501(a) and is described in section 501(c)(3) as an educational and cultural organization. As part of its activities, the organization sponsors a program of travel tours to the members' country of origin. Category A tours are trips to the country of origin that are designed to immerse participants in the country's history, culture and language. Substantially all of the daily itinerary includes scheduled instruction on the country's language, history and cultural heritage, and visits to destinations selected because of their historical or cultural significance or because of instructional resources they offer. Category B tours are also trips to the country, but rather than offering scheduled instruction, participants are given the option of taking guided tours of various locations included in their itinerary. Other than the optional guided tours, Category B tours offer no instruction or curriculum. Destinations of principally recreational interest, rather than historical or cultural interest, are regularly included on Category B tour itineraries. Based on the facts and circumstances, sponsoring Category A tours is an activity substantially related to the organization's exempt purposes and does not constitute an unrelated trade or business within the meaning of section 513(a). However, sponsoring Category B

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tours does not contribute importantly to the organization's accomplishment of its exempt purposes and, thus, constitutes an unrelated trade or business within the meaning of section 513(a).

Example 7 describes an educational organization devoted to the study of the performing arts that is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). In connection with its educational activities, the organization presents public performances of musical and theatrical works. Individuals become members by making an annual contribution to the organization. Each year, the organization offers members an opportunity to travel as a group to one or more major cities in the United States or abroad. In each city, tour participants are provided tickets to attend a public performance of a play, concert or dance program each evening. The organization also arranges a sightseeing tour of each city and provides evening receptions for tour participants and views its tour program as an important means to develop and strengthen bonds between the organization and its members, as well as a way to increase its financial and volunteer support of the organization. The organization engaged a travel agency to handle logistics such as accommodations and transportation arrangements. The organization doesn't prepare or provide educational materials to tour participants in connection with the tours, and, apart from attendance at the evening cultural events, the tours offer no scheduled instruction, organized study, or group discussion. Although several members of the organization's administrative staff accompany each tour group, their role is to facilitate member interaction. The staff members have no special expertise in the performing arts and play no educational role in the tours. The organization prepared promotional materials describing the sightseeing opportunities on the tours and emphasizing the opportunity for members to socialize informally and interact with one another and with its staff members, while pursuing shared interests. Although the organization's tour program may foster goodwill among its members, it doesn't contribute importantly to the organization's educational purposes. The tour program is primarily social and recreational in nature. The scheduled activities, which include sightseeing and attendance at various cultural events, are not part of a coordinated educational program. Therefore, the organization's tour program is an unrelated trade or business within the meaning of section 513(a).

In Rev. Rul. 77-366 an organization formed to conduct winter-time ocean cruises that included activities to further religious and educational purposes in addition to substantial social and recreational activities didn't qualify for exemption under section 501(c)(3). The Rev. Rul. further states that "the extensive amount of time, energy, and other resources which are regularly devoted to the conduct of social and recreational activities, together with the manner in which such activities are scheduled in relation to other cruise programs... demonstrate that the organization's conduct of such social and recreational activities serve substantial independent purposes of a noncharitable nature."

In Rev. Rul. 67-327 a nonprofit organization formed for the purpose of arranging group tours for students and faculty of a university to allow them to travel abroad and which has no other activities is not entitled to exemption from federal income tax under section 501(c)(3). As further stated in the Rev. Rul., "[T]he arranging of group tours is not in itself the instruction or training of the individual for the purpose of improving or developing capabilities. In view of the organization's stated purpose and activities, it does not qualify for tax exemption under section 501(c)(3) of the Code."

Based on the Supreme Court's decision in Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), even the presence of a single

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non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Under the ruling of Greater United Navajo Development Enterprises v. Commissioner, 74 T.C. 69 (1980), the court decided the developer's most substantial activity and primary source of revenue was the leasing of oil well drilling equipment for profit, and, therefore, it wasn't operated exclusively for exempt purposes within the meaning of section 501(c). Basically, the destination of the business income to a charitable purpose couldn't transform a non-exempt business into an exempt activity.

The court decided in Make a Joyful Noise, Inc. v. Commissioner, T.C. Memo 1989-4 that an organization formed to operate bingo games for other exempt organizations didn't qualify for exemption under section 501(c)(3) because the services were characteristic of a commercial business.

The examination of the Organization's activities, its books and records, and the facts and circumstances surrounding the case revealed that the Organization's activities related to the fundraising held for other tax-exempt entities, along with the revenue generated from the sale of the packages it provided for these events, neither accomplish nor support its tax-exempt purpose of education. Further, these activities represent more than an insubstantial part of the Organization's activities.

As stated by the Organization's co-founders, _____ and _____, the Organization is carrying on the same activities that its predecessor, _____ (_____), a for-profit entity, carried on. As stated in the "Facts" section above, _____ listed its business activity as "Conduct _____" and its product or service as "Fundraising _____" on its last filed Form _____ for the tax year ended _____.

Although, the _____ contend that _____ always operated as a nonprofit in the same manner that the Organization does, the facts and circumstances don't support that argument. While it is true, as previously explained, that the _____ organizations appear to be operated in the same manner, _____ was operated for the purpose of earning revenue as a for-profit entity and not as a nonprofit organization. Since, as the examination concluded, the Organization is, in fact, operating in the same manner as _____, it's apparent that the Organization is performing an activity that doesn't further its tax-exempt purpose and is substantial in nature.

Also, while the Examiner agrees that the Organization provides training and education to other tax-exempt organizations, and that IRC Sec. 501(c)(3) and the Regulations thereunder do not preclude an organization that receives tax exemption for the purpose of education under this Code section from being able to specify the type and purpose of the education it provides, the examination clearly determined that the training and education the Organization provides is merely a means to the end of providing for-profit fundraising for other tax-exempt entities. Although there isn't necessarily anything wrong with providing these products and services to other tax-exempt organizations and doing so provides a great service to increase the fundraising efforts of these other tax-exempt organizations, the manner in which the Organization provides these products and services, along with the way the Organization handles all of the related financial transactions, is indicative of a commercial enterprise and not a tax-exempt purpose.

The Organization's activities related to preparing for and assisting with the fundraising events of other entities, for which the Organization provides luxury _____ packages as _____ items and charges a fee of _____.

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\$ for each package sold at , demonstrate characteristics of a commercial business that doesn't further the Organization's tax-exempt purpose of education.

IRC Sec. 513(c) and Treas. Reg. Sections 1.513-1(b), 1.513-7(a), and 1.513-7(b), specifically Examples 1, 4 and 7, discuss what constitutes unrelated business income and how the unrelated business income relative to the Organization impacts the case. Generally, organizations exempt from federal income tax are allowed to engage in an insubstantial amount of unrelated business income transactions and maintain their tax-exempt status by paying the associated unrelated business income tax. In the instant case, however, as determined during the examination, the Organization derives all of its income from unrelated business income transactions, specifically the fee of it charges for each of the packages sold at .

Further, Rev. Rulings 77-366 and 67-327 provide similar fact patterns with the Organization whereby the organizations described therein failed to qualify for exemption under section 501(c)(3). In Rev. Rul. 77-366 the failure was due to the substantial amount of social and recreational activities enjoyed by the tour group, while Rev. Rul. 67-327 clearly states that "[T]he arranging of group tours is not in itself the instruction or training of the individual for the purpose of improving or developing capabilities" when referring to university student and faculty participants.

Therefore, based on the pertinent law and the court cases cited, the facts and circumstances of the case demonstrate that the Organization does not qualify for exemption under IRC Sec. 501(c)(3).

TAXPAYER'S POSITION

The Examiner discussed findings with the COO and explained that the Government will be recommending revocation of the Organization's exemption under Sec. 501(c)(3).

As previously stated, the Organization's co-founders and COO contend that the Organization meets the requirements of a 501(c)(3) tax-exempt organization, so it's unclear if the Organization will accept the recommended revocation or choose to appeal. The Organization is being solicited for its position at this time.

CONCLUSION

The Organization does not qualify for exemption from federal income tax as it failed to substantiate that it is operated exclusively for one or more exempt purposes, resulting in its failure to comply with the requirements of IRC Sec. 501(c)(3) and Treas. Reg. Sec. 1.501(c)(3)-1(c).

It is the Government's position that the Organization failed to operate exclusively to accomplish one or more of such exempt purposes specified in IRC Sec. 501(c)(3). Because the Organization was not operated exclusively for the exempt purpose under IRC Sec. 501(c)(3), its federal tax-exempt status under such section should be revoked effective . The Organization is liable for filing Form , U.S. Corporation Income Tax Return, for the short tax year ended and all years thereafter.