

Internal Revenue Service
Appeals Office
4050 Alpha Road
Suite 517, MC:8000NWSAT
Dallas, TX 75244

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Refer Reply to:

AP:FE:FTL:GRP

In Re:

EO Revocation

EIN:

Form Required to be Filed:

1120

Tax Period(s) Ended:

Last Day to File a Petition with the

United States Tax Court: JUL 09 2009

Certified Mail

Dear

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under IRC Section 501(c)(3) effective January 1, 2004.

Our adverse determination was made for the following reason(s): Organizations seeking to obtain or maintain their exempt status under Code Section 501(c)(3) must meet two basic tests. These organizations must be both organized and operated for §501(c)(3) purposes. To qualify for income tax exemption, under Code Section 501(a) as a Code Section 501(c)(3) organization, an organization must establish that it operates exclusively for charitable purposes. Due to a lack of exempt activities for the examination year, and subsequent periods, you have failed the operational test. Accordingly, you are not operated exclusively for any exempt purposes described in section 501(c)(3), or the underlying regulations.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. You should file these returns within 30 days from the date of this letter, unless a request for an extension of time is granted. File the returns in accordance with their instructions, and do not send them to this office. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

We will notify the appropriate State officials of this action, as required by Code section 6104(c). You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

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

Sincerely,

CHARLES FISHER
TEAM MANAGER



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
TEGE EO Examination
31 Hopkins Plaza - Room 1400
Baltimore, MD 21201

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate 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. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Letter 3618 (04-2002)
Catalog Number 34809F

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
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LEGEND

ORG = Organization name XX = Date City = city XYZ = State motto = motto
 Show = show President = president Secretary = secretary Treasurer = treasurer

ISSUE

Whether the organization known as ORG has operated exclusively for §501(c)(3) purposes and if not, whether their exempt status should be revoked?

FACTS

The organization, ORG (hereinafter referred to as "ORG") was incorporated in the State of XYZ on October 16th, 19XX.

A letter (Letter 947) dated March 12th, 19XX granted ORG tax-exempt status as an organization exempt under Internal Revenue Code (hereinafter referred to as "IRC" or "Code") section 501(c)(3). ORG was further determined not to be a private foundation within the meaning of section 509(a) of the Code, because it was an organization described in section 509(a)(2).

Contributions to the organization were deductible to the donor as provided under section 170 of the Code.

In the application, Form 1023, for IRC section 501(c)(3) exemption, ORG was requested to provide a detailed narrative description of all their activities in which they responded as follows:

"The ORG has and will continue to promote public awareness for motto through the annual Show, which is held, generally, at the City Fairgrounds, City, XYZ, usually in August of each year. The various members of ORG conduct the show. This show also provides income for ORG, which it uses to contribute to various youth foundations and ministries in the City, XYZ area.

The ORG has and will continue to hold hunting and fishing trips for members, invited guest, various members of the communities, and youth associated with the foundations and ministries which ORG supports."

The organization ceased to hold its annual Show, which was normally held at the City Fairgrounds, in 20XX. During the year under examination (tax period ending December 31, 20XX) the Internal Revenue Agent (hereinafter referred to as "IRA") was unable to find any evidence of the organization holding educational hunting/fishing trips for youths in the community.

The current examination was initiated as a result of a prior examination of tax period ending December 31, 19XX. At the conclusion of the prior examination, the IRA submitted a request for a subsequent year's examination and the organization was issued Letter 1656 with an attachment detailing deficiencies (operational, internal control, etc) noted during the examination. In addition, the President, the Secretary,

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and the Treasurer signed an agreement, dated August 26, 20XX, in which they agreed to correct the deficiencies noted during the examination.

It was noted during review of the 20XX Minutes that the majority of the activities (fishing trips, hunting trips, etc) detailed and discussed were those that are traditionally held by organizations exempt under IRC §501(c)(7). The organization was requested to provide additional information pertaining to these activities and to describe how these activities were related to their exempt purpose. The organization responded as follows:

“The fishing trips that are in the newsletter are attended by some club members but it is not part of any club activity. Several members travel to City and pay for the days fishing on a head boat... No club involvement in any hunting or fishing trips. We only list the possible trips to see if members want to ride together.”

The Internal Revenue Service (hereinafter referred to as “IRS”) issued Form 4564 - Information Document Request (hereinafter referred to as “IDR”) to the organization dated November 28, 20XX, requesting the organization provide a detailed description of activities held by the organization during the year under examination. The organization was specifically requested to provide the following:

- a) Description of the activity;
- b) The date(s) it was held;
- c) The number of individuals who attended – indicating the number of adults/children and indicating the number of club members and their family members who attended these activities;
- d) Duration of each activity – hours or number of days;
- e) Any fees charged the participants at these events – indicating the amount charged to member and non-member participants;
- f) Supporting documentation for the above activities (list of attendees, etc), and
- g) Indicating if this activity is currently being held or the last date of this activity.

In a written response dated December 10, 20XX submitted by the organization they responded to the above request as follows:

“ORG did not hold any shows or fundraisers during 20XX. All of the activities that any club members participated in they paid for themselves. These [activities (fishing trips, hunting trips, etc) noted in the 20XX Minutes] were not club sanctioned activities. We only put them in the newsletter so that the members could contact each other to find out when and where the trips were being held.”

Based on analysis of the books/records, specifically the 20XX Minutes/Newsletter, if the activities the organization contends were either not club sanctioned, or did not actually occur, are excluded, the organization is left with the following activities for tax period ending December 31, 20XX:

- Christmas Party – January 2, 20XX
- Club Picnic - August 28, 20XX*

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**The two receipts for this activity were marked as "Club Expenses – Picnic & Fishing" and the two checks written, attached to the bank statement dated 9/30/XX, were marked as "Club Party Food" and "Club Party Drinks."*

The participants at the Christmas Party and Club Picnic consisted of member's of the organization and their families.

In addition, in the IDR dated November 28, 20XX, the organization was requested to provide a detailed description of any activities they are currently holding that is related to their exempt purpose and to describe any programs they are **currently** planning to sponsor. The organization responded as follows:

"ORG provided a breakfast and lunch for young people who attended a weekend class on the outdoors in July. ORG provided a breakfast and lunch for children on Saturday and Sunday."

After subsequent discussion(s) with the secretary of the organization, RA concluded that the weekend fishing activity appears to have been operated by another unrelated organization and ORG purpose was to assist and provide breakfast and lunch to the participants

The organization did not make available any other documentation which would provide evidence of/or indicate the scope of, any exempt function activities for the year ended December 31, 20XX or 20XX.

A comparative analysis of the Form(s) 990 and financial data for 20XX-20XX showed the organization received income from its annual Show at the City County Fairgrounds only in 20XX. In 20XX and 20XX the organization received all its income from membership dues (\$ a member) and investment income (Business CD). Total income for these tax periods was as follows:

Analysis of total income for the 20XX, 20XX and 20XX tax periods showed a significant decrease in total income from 20XX through 20XX. This decrease occurred after 20XX when the organization ceased to hold its annual Show which was their chief revenue producing activity. Further analysis of the income data for 20XX, 20XX and 20XX was performed which measured the level of income from different sources as a percentage of total income for each specific tax period.

The organization had total expenditures of: \$ for 20XX; \$ for 20XX; and \$ for 20XX. These expenditures consist of the following:

An analysis of expenditures classified as "Other Club Expenses" in 20XX is as follows:

Payment of XYZ Property Tax revealed the existence of property (approximately 5.67 acres) located in XYZ which was purchased by the organization in 20XX. The organization stated that this property is currently not being used for any of its activities. An excerpt from the Minutes dated April 27, 20XX, regarding the future use of this land, is as follows:

"...would like to see the [ORG] sell the property in XYZ owned by ORG. There are several reasons why is should be sold now. First, most all property values close to City, XYZ are up

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in value and second, many people are buying now because of the low interest rates and the fact that they will rise in the near future. ORG gets no benefit from the property because out-of-state licenses are too high in XYZ to make it worth ORG's while to hunt there. "

In addition, the Minutes for April 27, 20XX had the following excerpt related to possible future activities: "...ORG members are in agreement that ORG should either rent/lease hunting rights from a large XYZ landowner or the State, preferably on the Eastern Shore, but also Western XYZ is a possibility; or ORG should purchase a modest piece of XYZ property adjacent to a state park or state game land so that ORG can easily hunt the adjacent property...." The organization responded that ORG has not leased any property to date.

LAW

IRC 501(c)(3) exempts from Federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (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 (i)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

The Dual Test: Organized and Operated

IRC 501(c)(3) requires an organization to be both "organized" and "operated" exclusively for one or more IRC 501(c)(3) purposes. If the organization fails either the organizational test *or* the operational test, it is not exempt. Reg. 1.501(c)(3)-1(a)(1). *Church of Visible Intelligence That Governs The Universe v. U.S.*, 4 Cl.Ct. 55

The organizational test concerns the organization's articles of organization or comparable governing document. The operational test concerns the organization's activities. A deficiency in an organization's governing document cannot be cured by the organization's actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well written charter. Reg. 1.501(c)(3)-1(b)(1)(iv).

Operational Test

1. Section 1.501(c)(3)-1(d)(i) defines appropriate exempt purposes. An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated *exclusively* for one or more of the following purposes:

- religious
- charitable

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- scientific
- testing for public safety
- literary
- educational
- fostering national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)
- prevention of cruelty to children or animals

2. Reg. 1.501(c)(3)-1(c)(1) provide that an organization is *operated exclusively* for charitable purposes only if it engages *primarily* in activities that accomplish those purposes in (1) above. It is not so operated if more than an insubstantial part of its activities do not further those purposes.

Meaning of “Operated Exclusively”

The meaning of the term ‘exclusively’ as used in the statutes is no longer open to debate. In *Better Business Bureau of Wash., D.C. v. United States*, 326 U.S. 279, 66 S.Ct. 112, 90 L.Ed. 67 (1945), the Supreme Court, in giving effect to § 811(b)(8) of the Social Security Act (in terms substantially the same as § 501(c)(3) of Int.Rev.Code), made this pronouncement:

“In this instance, in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.” 326 U.S. at 283, 66 S.Ct. at 114, 90 L.Ed. 67. See also, *Duffy v. Birmingham*, 8 Cir., 190 F.2d 738 (1951); *American Institute for Economic Research v. United States*, Ct.Cl., 302 F.2d 934 (1962), cert. denied, 372 U.S. 976, 83 S.Ct. 1109, 10 L.Ed.2d 141 (1963); *Scripture Press Foundation v. United States*, Ct.Cl., 285 F.2d 800 (1961), cert. denied.

The most liberal of constructions does not mean that statutory words and phrases are to be given unusual or tortured meanings unjustified by legislative intent or that express limitations on exemption are to be ignored. See *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279, 66 S.Ct. 112.

Furthermore, Section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Public v. Private Purposes

Reg. 1.501(c)(3)-1(d)(1)(ii) provide that to meet the operational test, an organization must be engaged in activities furthering “public” purposes rather than private interests. It must not be operated for the

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benefit of designated individuals or the persons who created it. The purposes specified in IRC 501(c)(3), pertaining to this particular organization, which are all "public" purposes, are separately analyzed below.

In order to establish that it meets the first criterion of the operational test for tax-exempt status, i.e., that it is "operated exclusively" for exempt purposes, an organization must prove that it is operated for a public purpose rather than for benefit of private interests, such as those of its creator or his family, shareholders, or designated individuals; presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption. *Church By Mail, Inc. v. C.I.R.*, 765 F.2d 1387 C.A.9, 1985.

Charitable Organizations

Reg. 1.501(c)(3)-1(d)(2) provide that the term "charitable" is used in IRC 501(c)(3) in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; promotion of social welfare.

Educational Purposes

1. An organization that is organized and operated exclusively for educational purposes qualifies for exemption under IRC 501(c)(3).
2. The regulations under Reg. 1.501(c)(3)-1(d)(3)(i) define education as:
 - "the instruction or training of the individual for the purpose of improving or developing his capabilities"
 - "the instruction of the public on subjects useful to the individual and beneficial to the community."

Burden of Proof

The court in *Church of Spiritual Technology v. United States*, 510 U.S. 870, 114 S.Ct. 197 (Mem) U.S., 1993, cited a long line of authority holding that the applicant bears the burden of showing it is entitled to exemption. In *Harding Hospital, Inc. v. United States*, 505 F.2d 1068, 1071 (6th Cir. 1974), the court stated that "[i]ncome tax exemption must be strictly construed, with any doubts to be resolved in favor of the taxing entity. Consequently, determinations of the Commissioner are presumed correct."

Similarly, the court cited *Welch v. Helvering*, 190 U.S. 111, 115 (1933), and modern cases following its stricture that "[P]laintiff thus bears the burden of proving its entitlement to an exemption." See also, *Bubbling Well Church of Universal Love, Inc. v. Commissioner*, 670 F.2d 104, 106 (9th Cir. 1981); *Freedom Church of Revelation v. United States*, 588 F. Supp. 693, 696 (D.D.C. 1984).

The Tax Court has **consistently** stated that a statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power. *Harding Hospital, Inc. v. United States of America*, 505 F.2d. 1068, 34 A.F.T.R.2d 74-6174, 74-2 USTC.

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TAXPAYER'S POSITION

During the examination, the secretary stated that the organization does plan to have exempt activities in the future. These activities would be geared towards the children in their community and would include taking these children out on chartered fishing boats. The secretary further stated that it has been difficult for the organization to find fishing boat captains who will allow children under twelve to participate on these trips. The secretary stated that the organization would like to eventually build cabins on the property in XYZ which they would allow the Boy Scouts to use for their outdoor activities.

SERVICE POSITION

The issues affecting tax exempt status of ORG center on:

1. Operational Test

Exempt status under §501(c)(3) is a privilege as opposed to a right. An organization granted tax-exempt status under §501(c)(3) maintains the responsibility for substantiating continued eligibility for recognition thereunder. Organizations seeking to obtain *or* maintain tax-exempt status under §501(c)(3) must meet two basic tests. Such organizations must be *both* organized *and* operated for §501(c)(3) purposes.

The organizational test is not being questioned at this juncture.

In *St. David's Health Care System v. U.S.*, 349 F.3d 232 C.A.5.Tex.,20XX to pass the "operational test" for tax-exempt status, purported charitable organization must show that: (1) it engages primarily in activities which accomplish its exempt purpose; (2) its net earnings do not inure to benefit of private shareholders or individuals; (3) it does not expend substantial part of its resources attempting to influence legislation or political campaigns; and (4) it serves valid purpose and confers public benefit. Failure to satisfy any one of these requirements will result in denial of tax exemption. *Church of Visible Intelligence That Governs The Universe v. U.S.*, 4 Cl.Ct. 55 Cl.Ct.,1983

In 20XX the organization received a total of \$ in income which consisted of \$ in membership dues and \$ in interest income. Based on review of the financial data submitted by the organization, the Internal Revenue Service concluded that the organization did not devote any income for the year under examination to an activity that would qualify as an exempt function activity. In *Church By Mail, Inc. v. C.I.R.*, 765 F.2d 1387 the Court found that "purpose and objective to which income of an organization is devoted is ultimate test in determining whether it is operated exclusively for an exempt purpose.

Operationally, it would appear that ORG is no longer conducting any exempt function activities since the end of the annual City Show in 20XX. During the examination, there was no evidence of revenues or expenditures being made for activities that would support the conduct of any exempt activities.

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An organization must carry on exempt function activities in order to be entitled to continued recognition of tax-exempt status under §501 (c)(3), i.e., dormant organizations are not entitled to such exempt status as they cannot meet the operational test.

In *Samuel Friedland Foundation v. United States*, 144 F.Supp. 74, the courts found an organization was not exempt due to the following:

- The exempt organization (Freidland) failed to formulate and design a meaningful charitable program, one having a definite functional objective;
- Ergo, the accumulation of profits during this time was deemed unreasonable as no charitable purpose was identified.

In *Erie Endowment v. United States*, 3 Cir., 316 F.2d 151 (1963), the Third Circuit, confronted with the same problem, affirmed the district court's holding in *Friedland* case, supra, 144 F.Supp. at 92, and also made the following general pronouncement:

“Mindful of these principles, we are impelled to conclude that the Tax Court here correctly decided that the accumulations were unreasonable within the meaning of the statute. Several salient facts stand out. Foundation did not have a concrete or definite charitable program requiring the accumulation of a large percentage of its income. Under its corporate charter, Foundation possessed broad charitable powers, but the fact remains that it failed to formulate and design a meaningful charitable program, one having a definite functional objective. ...”

The majority of the activities (fishing trips, hunting trips, hunting land purchases, etc) discussed in the 20XX Minutes are those traditionally found in organizations exempt under IRC §501(c)(7). These activities in no way serve a charitable purpose nor benefit the public. In many cases, these activities, including those discussed by the organization but have not yet been implemented (i.e. purchase of a member hunting property), have the potential to develop into private benefit/inurement issues. While the organization does contend that these activities are not sanctioned or organized by ORG, the concern is that these non-exempt activities were the only ones noted during the year.

An exemption is an exception to the norm of taxation. An organization which seeks to obtain tax exempt status, therefore, bears a heavy burden to prove that it satisfies all the requirements of the exemption statute. The Supreme Court repeatedly has said that exemptions from taxation are not granted by implication. See, e.g., *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 156, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973), and authorities therein cited. The Tax Court has stated consistently that ‘(a) statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power.’ *American Automobile Association v. Commissioner*, 19 T.C. 1146, 1158 (1953); *Associated Industries of Cleveland v. Commissioner*, 7 T.C. 1449, 1464 (1946).

CONCLUSION

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Organizations seeking to obtain *or* maintain tax-exempt status under §501(c)(3) must meet two basic tests. These organizations must be *both* organized *and* operated for §501(c)(3) purposes. Due to the lack of exempt function activities, we have concluded that the organization known as ORG has failed the operational test. It is the Internal Revenue Service's position that exemption under Internal Revenue Code §501(c)(3) should be revoked as of January 1, 20XX