



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street MC 4920 DAL
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: FEB 06 2018

Number: 201829022
Release Date: 7/20/2018

Person to Contact:
Identification Number:
Telephone Number:
In Reply Refer to:

UIL: 501.03-00

**LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:**

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a Final Adverse Determination Letter that your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) is revoked. Recognition of your exemption under IRC section 501(c)(3) is revoked effective July 1, 20 .

Our adverse determination was made for the following reason(s):

You have not established that you are operated exclusively for an exempt purpose or that you have been engaged primarily in activities that accomplish one or more exempt purposes within the meaning of IRC section 501(c)(3).

You have not established that no part of your net earnings inure to the benefit of any private shareholder or individual.

Contributions to your organization are not deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending June 30, 20 and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this

determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We 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 our assistance, which is always free, we will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

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

Sincerely yours,

A handwritten signature in black ink that reads "Maria Hooke". The signature is written in a cursive, flowing style.

Maria Hooke
Director, Exempt Organizations Examinations

Enclosure:

Publication 892

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations

Department of the Treasury

Date:

September 18, 2017

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Manager's name:

Manager's contact number:

Response due date:

Certified Mail – Return Receipt Requested

Dear _____ :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code. Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

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 revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

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,

Denise Gonzalez for

Maria Hooke
Director, EO Examinations

Enclosures:
Report of Examination –RAR 886-A
Form 4621-A
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended June 30, 20XX

Issue:

Whether or not _____ qualifies for exemption under Section 501(c)(3) of the Internal Revenue Code?

Facts:

_____ ("Organization"), is located in _____, submitted Form 1023; *Application for Recognition of Exemption*, dated June 29, 19XX. Organization received a determination letter granting it tax exempt status as an organization described in Internal Revenue Code section 501(c)(3) on October 26, 19XX. Organization's Form 990, Return of Organization Exempt from Tax under Section 501(c)(3), for the tax year ending June 30, 20XX, is currently under examination.

Attached to the organization's application was a copy of the Articles of Corporation filed with the State of _____. Article Three states:

Said Corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code."

Article Four lists the initial trustees of the corporation as _____ and _____. During the examination it was confirmed that that _____ is still the President of the organization and _____ is listed as the Secretary/Treasurer of the organization. These two individuals are officers, and/or Directors of the organization, as set forth under 'Article III (1)' of the organization's bylaws.

_____ holds bingo events every Friday during the year. The bingo games themselves are conducted by volunteers. President, _____, stated that the organization has no other activities. The organization issued only three charitable contributions during the year under examination for a total of \$0.

1. _____ - \$0
2. _____ - \$0
3. _____ - \$0

Charities are picked by all members of board and donations are based on need. It does not appear that the organization has any formal application or grant process.

According to the organization's Form 990-EZ tax returns' the organization's only employee is Treasurer _____, who provides bookkeeping services. A comparison shows that an

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended June 30, 20XX

average 0% of the net gaming income over the course of 0 calendar years is paid to , and less than 0% of the organization's net gaming income actually goes to charitable organizations in furtherance of Organization's stated exempt purpose.

From Form 990-EZ, Part 1

Line #	Line Item	Year End June 30, 20XX		Year End June 30, 20XX		Year End June 30, 20XX	
		Amounts	% of Net Income	Amounts	% of Net Income	Amounts	% of Net Income
6a	Gross Income from Gaming	\$0		\$0		\$0	
6c	Direct Expenses from Gaming	\$0		\$0		\$0	
6d	Net Income from Gaming	\$0		\$0		\$0	
10	Grants	\$0	0%	\$0	0%	\$0	0%
12	Salaries to	\$0	0%	\$0	0%	\$0	0%

When asked about the salary provided to , Organization President provided copy of his divorce decree, filed January 19, 20XX, between himself and . The divorce decree stipulates the following in paragraph number 3:

- The parties have jointly operated a 501(c)(3) non-profit corporation for charitable fundraising purposes entitled
- has worked for and run the business and has worked for the business as its sole bookkeeper. will continue to work for as bookkeeper and will continue to work for and run the business.
- will receive her full pay in a timely fashion of \$0 (gross) weekly until and through August 31, 20XX.
- As of September 1, 20XX will then receive \$0 (gross) weekly pay in a timely fashion as long as she maintains bookkeeping of the company up to date and in good order at any time after the divorce either party for any reason decides to give up working for , or if the business decides to file for bankruptcy, then the other party, upon Notice from the party seeking to leave the business or upon Notice of a decision to file for bankruptcy, shall have the right of first refusal to take over and continue the non-profit business, prior to dissolution or filing for bankruptcy.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended June 30, 20XX

Law:

Treasury Regulations section 1.501(a)-1(c) - Private shareholder or individual defined. The words private shareholder or individual in Code section 501 refer to persons having a personal and private interest in the activities of the organization.

Regulation section 1.501(c)(3)-1(a)(1) provides 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.

Treasury Regulation section 1.501(c)(3)-1(c)(1) provides: (c) Operational test. (1) Primary activities.

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 Code 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.

Regulation section 1.501(c)(3)-1 (d) Exempt purposes—(1) In general

(i) 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:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Regulation section 1.501(c)(3)-1(c)(2) Distribution of earnings. 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. For the definition of the words private shareholder or individual, see paragraph (c) of section 1.501(a)-1.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended June 30, 20XX

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in Regulation section 1.501(c)(3)-1(d)(1)(i) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

Where an individual or small group has exclusive control over the management of the organization's funds and is the principle recipient of the distributions of the organization, prohibited inurement is strongly suggested (See *Church of Eternal Life & Liberty v. Commissioner*, 86 T.C. 916, 927 (1986)).

In Rev. Rul. 67-5, 1967-1 C.B. 123, the Service found a foundation controlled by its creator's family, was operated to enable the creator and his family to engage in financial activities which were beneficial to them, but detrimental to the foundation. This resulted in the foundation's owning non-income-producing assets, which prevented it from carrying on a charitable program commensurate in scope with its financial resources. The Service concluded the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. Therefore, the foundation was not entitled to exemption from federal income tax under section 501(c)(3).

In *Help the Children, Inc. v. Commissioner*, 28 T.C. 1128 (1957), an organization operated bingo games. Its charitable function consisted of contributions to charitable institutions of amounts, which were insubstantial when compared to gross receipts from the bingo games. The court held the organization did not qualify for exemption under IRC section 501(c)(3) because it did not operate any charitable institutions and its principal activity was the profitable operation of bingo games on a business or commercial basis.

In *Make a Joyful Noise, Inc. v. Commissioner*, T.C. Memo 56-1003 (1989), the court held that operating regularly scheduled bingo games on behalf of other exempt organizations was a trade or business unrelated to the organization's exempt purposes. In that case, the court concluded that the petitioner failed to carry its burden of proving that its participation in bingo games was an insubstantial part of its activities.

In *P.L.L. Scholarship Fund, v. Commissioner*, 82 TC 196 (1984) the Tax Court held that petitioner was not operated exclusively for exempt purposes under the provisions of section 501(c)(3). Petitioner was incorporated as a nonprofit corporation for the purpose of raising money to be used for providing college scholarships. The money was raised from the operation of bingo games on the premises of a commercial establishment owned by insiders of the petitioner. The court stated that: "Since the record in this case does not show that the petitioner was operated

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended June 30, 20XX

exclusively for exempt purposes, but rather indicates that it benefited private interests, exemption was properly denied."

Revenue Ruling 64-182, 1964-1 C.B. 186, concluded that an organization qualified for exemption under section 501(c)(3) of the Code where it used the proceeds from a business activity to conduct a charitable, program, "commensurate in scope" with its financial resources, of making grants to other charitable organizations. Thus, an organization whose principal activity is operating games of chance may nevertheless qualify for exemption, provided it uses the proceeds of that business activity in a real and substantial charitable program (such as charitable grant making) commensurate in scope with its financial resources, and otherwise meets the requirements of exemption.

Government's Position:

Organization is not operated exclusively for exempt purposes, because more than insubstantial part of its activities is not in furtherance of an exempt purpose. Organization's only activity is to conduct bingo games to raise funds for other organizations. Conducting bingo is a trade or business which in and of itself does not constitute an exempt function. See Help the Children, PLL Scholarship Fund, et. al. Rev. Ru. 64-182, indicates that an organization may still qualify for exemption in such circumstances if it uses the proceeds of a business activity in a real and substantial charitable program commensurate in scope with its financial resources, and otherwise meets the requirements of exemption.

Organization has not demonstrated that it operates a real and substantial charitable program commensurate with its financial resources. There is no formal grant program, and a very insubstantial amount of the net gaming proceeds are actually paid to charity (0%, 0%, and 0%, respectively in 20XX, 20XX, and 20XX).

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended June 30, 20XX

Organization does not appear to otherwise meet the requirements of exemption because it is operated for the substantial nonexempt purpose of supporting the private interests of and , the President and Treasurer of Organization, respectively. The divorce decree appears to have treated Organization and its earnings as essentially a business asset that could be divided in the proceedings, and in which both parties had a continuing business interest (including a right of first refusal in the event of exit of one officer or bankruptcy).

Organization has not demonstrated why providing employment and gross weekly salary of \$0, in satisfaction of a court order binding on private individuals, furthers the organization's exempt purpose. The vast majority of the net gaming income (0%, 0%, and 0%, in 20XX, 20XX, and 20XX, respectively, is used to provide with a guaranteed income. It requires Organization to continue employment at a certain salary and does not take any consideration of whether or not the compensation is reasonable and appropriate to the work performed. Further, the implication is that , may have avoided having to divide other assets with his ex-spouse in the divorce proceedings, given that she was awarded the guaranteed employment. This directly goes against Treasury Regulation section 1.501(c)(3)-1(d)(ii) which states that the organization must not be operated or organized for the benefit of designated individuals.

The organization also appears to be violation of State gaming laws.

Organization has no other activities than the act of putting together bingo games and the organization is 0% funded by these games of chance. Therefore, the Internal Revenue Service believes that

Taxpayers Position:

Conclusion:

The government believes that revocation of the organization's exempt status should be sought. The organization does not qualify for exemption due to the organization's operations and the above stated law. Organization conducts no real charitable program. Further, does not appear to operate exclusively for exempt purposes and instead is organized and operated in a manner such that its net earnings benefits private shareholders. It is not an organization exempt under section 501(c)(3).

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended June 30, 20XX

Based on the foregoing reasons, the organization does not qualify for exemption under section 501(c)(3) and its tax exempt status should be revoked. Accordingly, the organization's exempt status should be revoked effective July 1, 20XX.