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

[redacted]

Date:
April 8, 2025
Taxpayer ID number (last 4 digits):
[redacted]
Form:
[redacted]
Tax periods ended:
[redacted]
Person to contact:
Name: [redacted]
ID number: [redacted]
Telephone: [redacted]
Fax: [redacted]
Last day to file petition with United States Tax Court:
July 7, 2025

Release Number: 202527016
Release Date: 7/3/2025
UIL Code: 501.03-00

CERTIFIED MAIL - Return Receipt Requested

Dear [redacted]:

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 [redacted] Your determination letter dated [redacted], is revoked.

Our adverse determination as to your exempt status was made for the following reasons: You do not meet the organizational test nor the operational tests. Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that an organization must be both organized and operated exclusively for one or more of the purposes specified in IRC Section 501(c)(3). If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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 **IRS.gov**.

Because you were a private foundation as of the effective date of the adverse determination, you are considered to be a taxable private foundation until you terminate your private foundation status under IRC Section 507. In addition to your income tax return, you must also continue to file Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation, by the 15th day of the fifth month after the end of your annual accounting period.

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 can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

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

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. You can download a fillable petition or complaint form and get information about filing at each respective court's website listed below or by contacting the Office of the Clerk of the Court at one of the addresses below. Be sure to include a copy of this letter and any attachments and the applicable filing fee with the petition or complaint.

You can eFile your completed U.S. Tax Court petition by following the instructions and user guides available on the Tax Court website at **ustaxcourt.gov/dawson.html**. You will need to register for a DAWSON account to do so. You may also file your petition at the address below:

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

The websites of the U.S. Court of Federal Claims and the U.S. District Court for the District of Columbia contain instructions about how to file your completed complaint electronically. You may also file your complaint at one of the addresses below:

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439
uscfc.uscourts.gov

US District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
dcd.uscourts.gov

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).

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 if 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. Visit **TaxpayerAdvocate.IRS.gov/contact-us** or call 877-777-4778 (TTY/TDD 800-829-4059) to find the location and phone number of your local advocate. Learn more about TAS and your rights under the Taxpayer Bill of Rights at **TaxpayerAdvocate.IRS.gov**. Do not send your Tax Court petition to TAS. Use the Tax Court address provided earlier in the letter. Contacting TAS does not extend the time to file a petition.

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 **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.

You may fax your documents to the fax number shown above, using either a fax machine or online fax service. Protect yourself when sending digital data by understanding the fax service's privacy and security policies.

Keep the original letter for your records.

Sincerely,

[redacted]

Lynn A. Brinkley
Director, Exempt Organizations Examinations

Enclosures:
Publication 1
Publication 594
Publication 892

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

Date:
January 17, 2025
Taxpayer ID number:

Form:

Tax periods ended:

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

Address:

Manager's contact information:
Name:
ID number:
Telephone:
Response due date:

CERTIFIED MAIL – Return Receipt Requested

Dear :

Why you're receiving this letter

If you agree
If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

If you disagree

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

   The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

   Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.
4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final adverse determination letter.

Contacting the Taxpayer Advocate Office is a taxpayer right

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Additional information

You can get any of the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

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

Sincerely,

[redacted]

Denise Gonzalez
Group Manager, Exempt Organization Examinations

Enclosures:
Form 886-A
Form 6018
Form 4621-A
Publication 892
Publication 3498

Form **886-A** (May 2017)	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

Issue:

Whether (hereafter the Foundation) continues to qualify for exemption as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

Facts:

was formed in and is a for-profit owned and operated by ( ). is located at and provides classes to children between the ages of and .

organized the Foundation as an unincorporated association in the state of . On , , the Internal Revenue Service (IRS) determined the Foundation was exempt from federal income tax under IRC Section 501(c)(3), effective , and classified the Foundation as a private foundation within the meaning of IRC Section 509(a).

The Foundation's Articles of Association state its primary purpose is to provide a community service by:

- Fundraising for athletes' expenses (i.e., uniforms, shoes, bows, dance attire, competition fees, tumbling, and monthly tuition expenses, and travel costs).
- Sharing information among all parents of the .
- Assisting new families to the program on how the program works and ways in which they can help as part of the .
- Organizing events such as basket parties, cash bashes, end of year banquet, team bonding activities, and general fundraising information.

The Foundation does not provide any or . Its principal office is in .

Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* (Form 1023-EZ), was submitted on , and signed by , Vice President of the Foundation. In Part , Specific Activities of Form 1023-EZ, the Foundation declared it was organized and operated exclusively to

In , expanded its facility by adding an additional with a competition regulation size spring floor and practice areas for athletes. In , began offering a training[1] option in

Form **886-A** (May 2017)	Department of the Treasury – Internal Revenue Service **Explanations of Items**	Schedule number or exhibit
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addition to its training. That same year, name was changed to . However, the name on its bank account, , remained the same.

In and , the Foundation amended its by-laws. The by-laws state the Foundation " " by assisting its members with " "; providing information to its members; and organizing " ."

The by-laws also state that the Foundation "is in no way to interfere with or impede the day-to-day business operations and/or business decisions associated with ."[2]

Upon dissolution, is authorized to take possession of all account funds and use the funds for the members' children's outstanding expenses (e.g., uniforms, shoes, choreography fees, bows, etc.) at until all funds have been depleted. However, if both the Foundation and are dissolved, all funds will be donated to a "non-profit organization chosen by the executive board and owner, ."

In , held seats on the executive board -- president and owner of . The remaining board seats were occupied by family members:

- Vice President –
- Treasurer –
- Secretary –

As the owner of , was authorized to provide input and vote on any necessary business during board meetings, delegate responsibility to board members and members, and ensure that all responsibilities are being carried out to benefit the program. During board meetings, the board often discussed matters relating to (e.g., past due accounts and coaching assignments).

also had the authority to sign checks and make deposits with only her signature required and accepted payments on behalf of the Foundation and via her personal account. According to statement, she received $ and $ in payments relating to the Foundation and , respectively.

provides all athletes and members with a copy of the Information Packet for - Season (hereafter Information Packet). The Information Packet states the mission is to enrich the lives of the athletes and their families through the sport of .

1 training is (days per for an hour and ; and full-season training is ( ) days a for hours.
2 is also referred to , program, and the program in the by-laws and Information Packet for .

Form **886-A** (May 2017)	Department of the Treasury – Internal Revenue Service **Explanations of Items**	Schedule number or exhibit
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The Information Packet sets forth the guidelines for Foundation membership and fundraisers as well as the tuition and fees charged by .

The cost for the and seasons of competitive classes in for families with multiple athletes was as follows:

Teams	**First Child**	**Second Child**
	$	$
	$	$

Members are required to pay all expenses relating to their children's tuition, registration fees, uniforms, shoes, bows, choreography, and Foundation membership to . The Information Packet states:

[t]he cannot cover your expenses for the entire season. Please plan accordingly and use fundraisers that are available each month … The needs to be able to pay its bills so that it operates efficiently. Your individual account needs to be kept current so that your athletes' expenses can be paid (i.e., uniforms, choreography, accessories, competition fees).

offers several payment options to members such as monthly tuition payments, credit card payments, and income tax return payments where parents pre-pay for the upcoming season in advance. The only discounts provided are for dual participation.

Membership in the Foundation is available to all parents who sign their children up for classes at and pay a $ registration fee ($1 of the registration fee pays for membership in the Foundation). Only members with accounts in good standing at have the right to vote. Membership may be denied by members or the executive board by a majority vote with consent.

The Foundation sponsors general sales and optional sales fundraisers. All athletes and members are required to participate in general sales fundraisers per year which include ticket sales, basket parties, cash bashes, jewelry bashes, etc. These sales help the Foundation pay for the party and banquet along with offsetting unexpected additional costs, license fees, etc. In , the general sales fundraisers raised $ in net income.

Optional sales fundraisers are not mandatory. All profits are shared with members who fundraise and offset their children's expenses at . Optional fundraisers are held each month. The major optional fund fundraisers are:

In , the Foundation hosted optional fundraisers and raised $ in net income. Net income only benefited athletes and members who fundraised. They received a portion of the net income in direct proportion to the amount their family raised. This amount was credited to the athlete's individual account at . Individual account sheets were provided once a month and included the athlete's most recent account balance. **See Exhibit 1.**

In her capacity as the Foundation's president, , has the authority to write checks, signs checks, and make deposits with only one signature required. The Foundation provided accounting records such as excel spreadsheets, bank records, check register and sample of invoice statements. During the examination it was determined fundraiser proceeds were paid to those who participated in each fundraiser.

Any family who raised over $ was issued a Form 1099 for the tax year. encouraged families to itemize costs incurred at on their personal tax returns against their income on the Form 1099.

The Foundation also solicited sponsorships and provided athletes with sponsorship letters for businesses who wanted to donate money to a specific athlete's account at . Expenses not covered by the fundraisers were the responsibility of the members. According to the Information Packet, members experiencing financial hardship were encouraged to contact to discuss alternate payment arrangements.

The Foundation does not have a website, but there is a page for . It shares information regarding upcoming competitions, fundraisers, and details regarding how to enroll in classes at .

Prior Examination

On , the IRS informed the Foundation that its Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation (Form 990-PF) for tax periods ending , and , had been selected for audit.

The IRS issued Letter 3609 as shown in Exhibit 2 to the Foundation stating the organization would remain exempt from taxation under IRC Section 501(c)(3). However, " [who fundraise] by off-setting the individual account [at] is inurement and a prohibited transaction." The IRS instructed the Foundation to amend its by-laws to prohibit this practice and stated that " ." In , the Foundation amended its by-laws.

Current Examination

On , the Foundation filed its Form 990-PF for tax year ending , . The Foundation reported all income on as contributions, gifts, grants, etc., and all expenses on as other expenses.[3]

[3] In an attached schedule, all expenses were categorized as competition expenses.

Form **886-A** (May 2017)	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**

On , the IRS informed the Foundation that its Form 990-PF for tax period ending , , had been selected for audit. During the audit, , verbally and in writing, stated that the Foundation met the requirements of IRC Section 501(c)(3). Moreover, " ... the concern [raised by the revenue agent] was providing ... [Forms 1099] for any families that raised over $ in fundraising money. There was not a concern regarding how the money was used. I do recall ... [the revenue agent] telling me that any mandatory fundraisers had to include all athletes and they would all benefit from the proceeds equally. We have followed this guideline."

The Foundation provided accounting records such as spreadsheets, bank records, check register and sample of invoice statements. During the examination it was determined fundraiser proceeds were paid to those who participated in each fundraiser.

Law:

IRC Section 501(a) states that an organization described in IRC Section 501(c)(3) shall be exempt from taxation unless such exemption is denied under IRC Sections 502 or 503.

IRC Section 501(c)(3) describes organizations 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).

Treas. Reg. Section 1.501(c)(3)-1(a)(1) states that an organization must be both organized and operated exclusively for one or more of the purposes specified in IRC Section 501(c)(3). If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization, however, does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Treas. Reg. Section 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 exempt purposes specified in IRC 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. 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.

Treas. Reg. Section 1.501(a)-1(c) defines a private shareholder or individual as persons having a personal and private interest in the activities of the organization.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as organization described in IRC Section 501(c)(3) if it is operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) states that the term charitable is used in IRC Section 501(c)(3) in its generally accepted legal sense. It also includes the promotion of social welfare by relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination.

In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the United States Supreme Court found that an important, if not the primary, pursuit of the organization was to promote not only an ethical but also a profitable business community. The organization was not operated exclusively for an educational purpose under IRC Section 501(c)(3). The United States Supreme Court provided that "the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes."

In P.L.L Scholarship v. Commissioner, 82 T.C. 196 (1984), an organization operated bingo games at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as others. The court reasoned that, because the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed that it was independent because there was separate accounting, and no payments were going to the bar. The court was not persuaded: A realistic look at the operations of these entities, however, shows that the activities of the taxpayer and the Pastime Lounge were so interrelated as to be functionally inseparable." Separate accountings of receipts and disbursements do not change that fact. The court went on to conclude that because the record indicates that it substantially benefited private interests, exemption was properly denied.

Form **886-A** (May 2017)	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**

In Church by Mail, Inc. v. Commissioner, T.C. Memo. 1984-349, aff'd 765 F. 2d 1387 (9th Cir. 1985), the Tax Court found that a church was operated with a substantial purpose of providing a market for an advertising and mailing company owned by the same people who controlled the church. The church argued that the contracts between the were reasonable, but the Court of Appeals pointed out that "the critical inquiry is not whether particular contractual payments are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantial from the operation of the Church."

In Wendy Parker Rehabilitation Foundation, Inc. v. Commissioner, T.C. Memo 1986-348, an organization was formed to aid coma victims, however 30% of funds went to the benefit of Wendy Parker. Significant contributions were made to the organization by the Parker family, and the Parker family controlled the organization. Wendy's selection as a substantial recipient of funds substantially benefited the Parker family by assisting with the economic burden of caring for her. The benefit didn't flow primarily to the public as required under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). Therefore, the Foundation was not exempt under IRC Section 501(c)(3).

In Capital Gymnastics Booster Club v. Commissioner, T.C. Memo -193, the Court analyzed the fundraising activity of a gymnastic booster club. Members sold items and were awarded points in proportion to the profit that the family generated. Each point was valued at $10 and used to offset the family's assessed costs of competition for their children. Parents who did not fundraise did not receive a benefit from the activity and were responsible for paying the full assessment for their children. The court held that the fundraising structure allowed assets of the organization to inure to members who control the organization and provided a private benefit to its member's children rather than a public benefit.

In Giving Hearts, Inc. v. Commissioner of Internal Revenue, T.C. Memo 2019-94, a non-profit corporation was not operated exclusively for exempt purposes, and thus it was not entitled to federal income tax-exempt status; while the corporation was organized for charitable purposes, focusing on funding local children's charities, it operated a sponsorship program that, by design and effect, permitted for profit businesses to invoke its name as part of a telemarketing pitch intended, first and foremost, to generate sales leads and revenues, as participating businesses would be obliged to make a charitable contribution only when a potential customer agreed to an in-home product demonstration.

Rev. Rul. 69-175, 1969-1 C.B. 149, states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, the organization is enabling the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than a public interest. Accordingly, it was not exempt from federal income tax under IRC Section 501(c)(3).

Rev. Rul. 71-395. 1971-2 C.B. 228, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under IRC Section 501 (c)(3). The IRS concluded that the cooperative gallery served the private purposes of its members, even though the exhibition and sales of paintings were also educational in some respects.

Government's Position:

It is the government's position that the Foundation does not qualify for exemption under IRC Section 501(c)(3) because it fails to meet both the organizational and operational tests, thus the Foundation's exemption should be revoked. The Foundation did not address the issues brought to its attention in the prior examination regarding its individual fundraising practices. The Foundation's primary activity continues to be to raise funds to benefit only members and athletes who fundraise and share net income exclusively with athletes, including on an individual basis, to offset their expenses at . The Foundation's primary activity does not accomplish one or more exempt purposes under IRC Section 501(c)(3). This arrangement results in inurement to its members who fundraised and its organizer and president, .

<u>Organizational Test</u>

All nonprofits are not tax-exempt organizations for purposes of IRC Section 501(c)(3). Nonprofit status refers to incorporation status under state law; tax-exempt status refers to federal income tax exemption under the Internal Revenue Code. An organization is exempt under IRC Section 501(c)(3) if the organization is both "organized and operated" for one or more exempt purposes such as religious, charitable, scientific, literary, or to foster national or international amateur sports competition. IRC Section 501(c)(3); Treas. Reg. Section 1.501(c)(3)-1(a).

An organization is organized exclusively for one or more exempt purposes if its articles of organization: (1) limit its purposes to one or more exempt purposes, (2) do not expressly empower it to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes, and (3) contain an express or implied provision dedicating its assets to an exempt purpose upon dissolution. Treas. Reg. Section 1.501(c)(3)–1(b)(1), (4).

The Foundation fails the organizational test. First, the by-laws do not limit the Foundation's purposes to one or more exempt purposes. Article II states that the Foundation's sole purpose is to support program (i.e.,). Supporting a for-profit business is not a charitable purpose within the meaning of IRC Section 501(c)(3). <u>See Church by Mail, Inc. v. Commissioner</u>, 765 F. 2d 1387 (9th Cir. 1985), aff'd T.C. Memo. 1984-349 (church was not exempt under IRC Section 501(c)(3) because it substantially benefited a for-profit business owned by the same individuals who controlled the church).

Second, the by-laws expressly empower the Foundation to engage in activities which are not in furtherance of an exempt purpose. Article II authorizes the Foundation to use its tax-exempt status to raise funds for members' children's tuition and fees. Such activity serves a private rather than a public interest in violation of IRC Section 501(c)(3). <u>See Wendy L. Parker Rehabilitation Foundation, Inc.</u>, T.C. Memo 1986-348.

Last, upon dissolution, the Foundation's assets will be distributed to and used to pay off any outstanding tuition and fees owed by members. If both the Foundation and are dissolved, all assets will be donated to a "non-profit organization chosen by the executive board and [ ] owner, ." Because not all nonprofits are exempt under IRC Section 501(c)(3), the by-laws fail to expressly or impliedly dedicate the Foundation's assets to an exempt purpose.

Operational Test

To qualify for exemption under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for purposes as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). "Under the operational test, the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a Section 501(c)(3) organization exempt from tax under section 501(a)." Giving Hearts, Inc. v. Commissioner, T.C. Memo. 2019-94 (quoting B.S.W. Grp., Inc. v. Commissioner, 70 T.C. 352, 356-357 (1978)). The Foundation fails the operational test because its activities focus primarily on raising funds to offset the costs of its members' children's expenses at . These fundraising activities violate IRC Section 501(c)(3)'s prohibition against private benefit and inurement to "insiders."

The Foundation's primary activity is fundraising. Each year, it sponsors types of fundraisers – mandatory sales and optional sales. Mandatory sales are held a year. All profits are used to pay for the party, end of the year gala, and fees for the maintenance of the Foundation (e.g., accounting and license fees). All members and athletes are required to participate in the fundraisers.

Optional sales are held each month. Profits are used to offset members' children's expenses at . Members who fundraise are eligible to receive a portion of the profits in direct proportion to the amount each member's family raises. The Foundation does not pay its members in cash but forwards their share of the profits to . then credits the members' children's individual accounts. Members who do not fundraise do not receive any benefits from the fundraisers and are responsible for paying their children's expenses out of their own funds.

A similar fundraising practice was used in Capital Gymnastics Booster Club v. Commissioner, T.C. Memo -193. Athletes and members of a booster club sold items and were awarded points in proportion to the profit that the family generated. Each point was valued at $10 and used to offset the family's assessed costs at Capital Gymnastics National Training Center. Families who did not participate in fundraising did not receive any of the net income and were responsible for paying their athletes' full assessment. The court held that this practice allowed assets of the organization to inure to the members who control the organization in violation of IRC Section 501(c)(3)'s prohibition against private benefit and inurement. Here, the same legal conclusion applies to the Foundation's members.

The inurement proscription applies to persons who because of their relationship with an organization have an opportunity to control or influence its activities (often referred to as "insiders"). , the Foundation's creator and one of its board members, and the members are insiders because of their control over the Foundation's activities through participation in and influence over the board of directors. Although the

Form **886-A** (May 2017)	Department of the Treasury – Internal Revenue Service **Explanations of Items**	Schedule number or exhibit
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Foundation did not share its financial resources with and its members directly, the payments benefited the members by fulfilling, in whole or in part, a financial obligation to the , and by increasing her revenues. Thus, the Foundation's assets inured to its members and in violation IRC Section 501(c)(3)'s prohibition against private inurement. See Church by Mail v. Commissioner, 765 F.2d 1387 (9th Cir. 1985); aff'd T.C. Memo. 1984-349; Capital Gymnastics Booster Club v. Commissioner, T.C. Memo -193. Accordingly, the Foundation fails the operational test.

Taxpayer's Position:

The Foundation does not agree with the proposed revocation. contends that the Foundation meets the requirements of IRC Section 501(c)(3). The only concern raised during a previous audit of the Foundation's Form 990-PF for tax periods ending , and , was regarding her failure to provide Forms 1099 to families who fundraised over $. According to , there were no concerns regarding how the money was used except any mandatory fundraisers had to benefit all athletes equally. Since the audit, states that the Foundation has followed that guideline.

Government Response to Taxpayer Position:

As explained above, the Foundation did not address the issues brought to its attention in the prior examination regarding its individual fundraising practices as described in the attached closing letter. **See Exhibit 2**. The Foundation's primary activity continues to be to raise funds and share net income exclusively with athletes at , including on an individual basis.

Conclusion:

The Foundation fails to meet both the organizational and operational tests of an organization described under IRC Section 501(c)(3), and therefore is not exempt.

Accordingly, the Foundation's exempt status is revoked effective , . As such, the Foundation will be treated as a taxable private foundation as of , , until such time that the Foundation terminates its private foundation status under IRC Section 507. Form 1120, *U.S. Corporation Income Tax* should be filed beginning tax year ending , , and thereafter.

If revocation of tax-exempt status is upheld, the Foundation is required to file Form 990-PF (and related Form 4720) in addition to Form 1120 as it was treated as a for-profit corporation and a taxable private foundation effectively , .

If you agree to this conclusion, please sign the attached Form 6018.

If you disagree, please submit a statement of your position.