



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

Number: 202238011
Release Date: 9/23/2022

Date: June 10, 2021

Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:

ID number:

Telephone:

Fax:

UIL: 501.03-00

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear :

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: 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).

As such, you failed to meet the requirements of IRC Section 501(c)(3) and Treasury Regulations Section 1.501(c)(3)-1(c), in that you have not established that you were operated exclusively for exempt purposes.

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

Letter 6337 (12-2020)
Catalog Number 74808E

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:

Internal Revenue Service
Taxpayer Advocate Office

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: **November 5, 2020**

Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Address:

Manager's contact information:

Name:

ID number:

Telephone:

Response due date:

CERTIFIED MAIL – Return Receipt Requested

Dear :

Why you're receiving this letter

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,

Trina Fields

AGM 7956 for

Sean E. O'Reilly

Director, Exempt Organizations
Examinations

Enclosures:

Form 886-A

Form 6018

Form 4621-A

Pub 892

Pub 3498

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

The audit report dated _____ is corrected by this audit report. The attachments referenced to in the audit report dated _____ are unchanged (and so are still valid as a part of this report) but are not included with this report.

Issues:

- (1) Does the _____ ("_____") qualify for exempt status under Internal Revenue Code (IRC) § 501(c)(3)?
- (2) If the _____ doesn't qualify for exempt status, when is the effective date of revocation?
- (3) If the _____ doesn't qualify for exempt status, what is the tax effect of the revocation?

Facts:

_____ (_____) is a _____ located in _____ recognized on _____ as exempt under IRC § 501(c)(3) as further described under IRC §§ 170(b)(1)(A)(vi) and 509(a)(1) or 509(a)(2).

On _____ another determination letter was issued wherein the _____ was further described under IRC §§ 170(b)(1)(A)(vi) and 509(a)(1) as an organization that receives support from the general public.

The Form _____, *Application for Recognition of Exemption*, was received by the IRS on _____. The Form _____ was analyzed. The current directors and officers were:

In Part II, Activities and Operational Information, several parts referred to an attached statement. The attached statement states:

The _____ ("the _____") will assemble, collect and display significant _____, primarily _____ and _____. It is anticipated that the _____ will be acquired by the _____ primarily through gifts in kind to the _____. It is also anticipated that the _____ will receive cash donations, which will be used by the _____ to acquire _____.

The _____ will be housed and displayed at the _____. The _____ has over _____ members and is heavily trafficked by the public. It is estimated that each _____ several _____ of individuals will see, enjoy and be educated by the _____.

The _____ will conduct _____ shows or _____ on an almost _____ basis displaying _____. Such shows and exhibits will be educational and noncommercial. Sales of exhibited works will be prohibited. It is anticipated that such

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shows and exhibits will sometimes demonstrate the history or method of a particular form. In addition, from time to time parts of the will be loaned to other public charities, such as, for example, the and the

The Form , Part II, Items 2 and 3 of the attached summaries stated:

The sources of support will be contributions of , contributions of cash, and a small amount of interest and dividend income from the investment of the cash contributions pending acquisition of additional

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The Form , Part II, Item 5 asks "Does the organization control or is it controlled by another organization?" and "Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors?" The marked " " to questions and referenced an attached statement. In the attached statement, the states:

The is controlled by the , a not-for-profit corporation qualified under IRC § 501(c)(7), by virtue of the fact that directors of the are appointed, and subject to removal, by the Board of Governors of the , and the director, who is a nonvoting ex officio director, is the from-time-to-time President of the

The Articles of Incorporation attached to the Form was analyzed:

- The was incorporated on
- In article #5 the corporation is organized and operated exclusively for charitable and educational purposes within the meaning of IRC § 501(c)(3) for the purpose of assembling, collecting and displaying significant
- In Article #6, the member of the corporation is the , a not-for-profit corporation. The affairs of the corporation shall be managed by the Board of Directors, and the directors and their successors shall be elected by the Board of Governors of the

The last filed a , Short Form Return of Organization Exempt From Income Tax, for the fiscal year ended . For the year ended , the filed a , Electronic Notice (e-postcard) for Tax-Exempt Organizations Not Required to File Form or Form , on

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The _____ will conduct _____ shows or _____ on an almost _____ basis displaying loaned _____. Such shows and exhibits will be educational and noncommercial. Sales of exhibited works will be prohibited. It is anticipated that such _____

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Or (CFO) and (Prior CFO) were asked questions that pertained to the The summary of those questions is given below:

- The accounting department takes care of the books and records of the and all subsidiary organizations.
- As with all subsidiary organizations, the Board of Directors appoints the board members. Not all of the board members are members. The directors are appointed based on knowledge and ability so that the can properly operate under the directors with an expertise in the arena.
- The owns about pieces of Once is donated to the , the retains ownership.
- The used to give tours, but that hasn't been done for or years.
- isn't sure if the public knows the exists, but the public can ask for a tour and the public would then be given a tour.
- Neither the prior or the current CFO knew of any substantiation of activities.

On , the IRS examiner asked for the following in an information document request:

- Minutes of meetings – for the fiscal years ended and
- The Chart of Accounts for the fiscal years ended
- The audit report prepared by and includes a Consolidating Statement of Financial Position that categories for and but does not include a category for the () or for the . Because there is no category for the the statement of financial position for the cannot be derived. Please provide a statement of financial position for the for the fiscal year ended
- A copy that I can retain of the account summaries and accounting worksheet used that connects the books and records to the Statements of Financial Position (for #3 above).
- If there are any estimated costs (such as overhead allocations), please provide an explanation of the basis used to allocate expenses to the
- I have reviewed the Form , Application for Recognition of Exemption. According to the Form , the stated that each several of individuals see, enjoy and are educated by the and almost basis displaying of loaned . Please provide substantiation that non-members attended events in the building for the year ended that includes--but is not limited to--what those events were, how many attended, the purposes of the events, and if these individuals were guests of a member or members.
- In order to be exempt under IRC § 501(c)(3), the organization must provide more benefit to the general public than to members and guests. Please provide copies of the substantiation that demonstrates that the is carrying out charitable activities described in IRC §501(c)(3).

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On _____ the _____ asked for an extension of time to _____ On _____
 the _____ asked for an extension of time to _____ On _____
 the IRS examiner asked for information in another Information Document Request and included
 a draft Form 886-A, *Explanation of Items*. The _____ did not provide any response to the
 information document requests.

Or _____ the L3618 (Rev. 9-2017) was sent as the 30-day letter. This is the
 wrong 30-day letter. The correct letter should be L3618 (Rev. 8-2019). The
 responded to the L3618 (Rev. 9-2017) with additional information and an incomplete appeal
 request (see Attachment 2).

The cover letter for attachment 2 provides a good summary of the _____ position and
 legal arguments. Attachment 2 provides the following asserted activities:

- The _____ was formed to assemble, collect, and display significant
 primarily _____ and _____
- _____ is _____ of the foundations of civilized society; its presence helps to attract people who
 are interested in _____
- The _____ instituted _____ displays in the lobby of the
 (the " _____ ") in which the _____ displays _____ from local _____ who, absent the
 activities of the _____, may not have a forum to present their work
- There is an _____ at our location in _____ (_____) which hosts
 _____ displays
- The _____ displays in the lobbies of the _____ is accessible to the public
- The _____ (recognized as a 501(c)(3) organization) has
 represented that the building located at _____ (in
 which the majority of the _____ is displayed) is a component of the _____
 _____ This tour makes the _____
 available to the general public, and allows _____ without a forum to present their
- The _____ had a presentation on the _____ entitled " _____"
 ' and " _____ "
- It is estimated that each _____ several _____ of individuals will see, enjoy and be
 educated by the _____
- A substantial number of nonmembers of the _____ (as well as events held by civic
 organizations) have access to and / or visited the clubhouse and therefore have access
 to the _____
- The _____ attracts gifts of _____ that would otherwise leave the _____ area
 because their value is less than the _____ would
 accept
- The _____ was in need of repair and the _____ engaged in restoration
 efforts
- The _____ is agreeable to instituting public educational tours of its _____ going
 forward, in addition to the _____
- The _____ disagrees with the IRS position that the _____ building's access is limited
 to members of the _____ Although members of the _____ may have easy access to the
 building, the preceding information provides substantial evidence of public access to the
 _____ held by the _____

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- The presence of building security does not mean that members of the public do not have access to and opportunity to view the ; it reflects the reality of security restrictions in all buildings today

Attachment 2 included
below:

Minutes. The date and summary of these minutes is given

- There is still to be restored-
- Discussion on this restoration centered on whether to make the investment based on the current value v the after-restoration value
- were moved to the and
- The will take place
- will run the
- The will subsidize the
- During Month, giving will be within the chits and promotional material and events that occur in
- description tags will start to appear alongside the
- will be replaced that will soon be restored from the pool at
- Discussion about developing new and shifting our focus from displays to displays and how we go about it
- President spoke to the to promote the for the
- Governor spoke about a catalog to document the , and putting placards on all to identify it
- General Manager suggested a subcommittee be established to oversee the movement and proper placement of the
- It is the goal of the General Manager. , to continue to move the assets of the classified as over to the
- President spoke about standards for accepting donations
- Discussion about having involved in by having an event surrounding and involving children

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Attachment 2 includes a balance sheet for the year ended _____ with the following information:

Assets	Year	Year
--------	------	------

Cash
Accounts Receivable
Objects

Liabilities

Accounts Payable

Equity

Retained Earnings
Profit (Loss)

Total Equity

This attachment includes a summary of the _____ donated to the _____. The summary gives the type of _____ donated, a description of the _____, the _____ and the value when donated / transferred to the _____. The _____ also purchased a _____. Below is a summary of the value of these activities.

Donated
Transferred
Purchased

Total

This attachment also includes an allocation of costs from the _____ to the _____. The _____ has _____ employee—the director of the _____. The time the director spent attending to _____ meetings, events and activities accounted for _____ % of the director's time, and so _____ % of the director's salary, payroll taxes and medical insurance costs were allocated to the _____.

Included in attachment 2 was a listing of the events and meetings of various organizations at the _____ facilities that the _____ attended. In total, there were _____ meetings with _____ guests.

No documentation was provided from the _____ that gives the policies and procedures pertaining to the _____ activities. The listing of registered individuals for _____ associated activities were not provided by the _____. No substantiation of public participation in _____ activities or public use of assets was provided.

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Law:

Tax exemption is a matter of legislative grace, and the organization seeking exemption must show that it comes squarely within the terms of the law conferring the benefit sought (*Florida Hospital Trust Fund v Commissioner*, 103 T.C. 140, 153, 1994, aff'd 71 F. 3d 808 (11th Circuit 1996)).

Organizations organized substantially for pleasure, recreation, and other non-profitable purposes, or to support such purposes, are exempt under IRC §501(c)(7). The exemption of social clubs is based on the logic of allowing members to pool their funds for recreational purposes, rather than for a compelling public benefit. Congress granted exemption so that these membership pools would not be taxed twice (at the member level and at the organizational level) (see *Portland Golf Club v C.I.R.* 497 U.S. 154, 110 S. Ct. 2780 (1990)).

Exempt function income means the gross income paid by members of the organization (that includes the members, their dependents and their guests) goods, facilities or services in furtherance of the purposes constituting the basis for exemption of the organization (IRC §512(a)(3)(B)). The term "unrelated business taxable income" refers to gross income derived from any trade or business unrelated to the purposes for which the organization is exempt (IRC § 512(a)(1)). With regards to unrelated business taxable income, there are special rules applicable to organizations described in IRC §501(c)(7) (IRC § 512(a)(3)(A)).

Rev. Proc. 71-17, 1971-1 C.B. 683, sets forth guidelines for determining the effect gross receipts derived from use of a social club's facilities by the general public have on the club's exemption from federal income tax under IRC § 501(c)(7). The procedure defines the term "general public," as persons other than members of a club or their dependents or guests.

Exemption is provided for organizations that are organized and operated exclusively for charitable, religious and educational purposes with no part of the net earnings inuring to the benefit of any private shareholder or individual (IRC § 501(c)(3)). An organization is operated exclusively for one or more exempt purposes only if engages primarily in activities which accomplish one or more such exempt purposes specified in IRC § 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 (Tax Reg. § 1.501(c)(3)-1(c)(1)).

An organization may be exempt as an organization described in IRC § 501(c)(3) if it is organized and 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 (Tax Reg. § 1.501(c)(3)-1(d)(1)(i)). The term "charitable" as used in IRC § 501(c)(3) is used in its generally accepted legal sense (Tax Reg. §1.501(c)(3)-1(d)(2)).

An organization is not organized and operated exclusively for one or more of these purposes unless it serves a public rather than a private interest (Tax Reg. § 1.501(c)(3)-1(d)(1)(ii)). An organization is not dedicated to one or more exempt purposes if its assets are not dedicated to an exempt purpose (Tax Reg. § 1.501(c)(3)-1(b)(4)).

The purposes toward which an organization directs its activities, and not the nature of the activities themselves, determine whether the organization meets the operational test (*B.S.W.*

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- In order to be exempt under IRC § 501(c)(3), the organization must provide more benefit to the general public than to members and guests. Please provide copies of the substantiation that demonstrates that the is carrying out charitable activities described in IRC §501(c)(3).

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On _____ the _____ asked for an extension of time to _____ On _____ the _____ asked for an extension of time to _____ On _____ the IRS examiner asked for information in another Information Document Request and included a draft Form 886-A, *Explanation of Items*. The _____ did not provide any response to the information document requests.

Or _____ the L3618 (Rev. 9-2017) was sent as the 30-day letter. This is the wrong 30-day letter. The correct letter should be L3618 (Rev. 8-2019). The _____ responded to the L3618 (Rev. 9-2017) with additional information and an incomplete appeal request (see Attachment 2).

The cover letter for attachment 2 provides a good summary of the _____ position and legal arguments. Attachment 2 provides the following asserted activities:

- The _____ was formed to assemble, collect, and display significant _____ primarily _____ and _____
- _____ is _____ of the foundations of civilized society; its presence helps to attract people who are interested in _____
- The _____ instituted _____ displays in the lobby of the _____ (the " _____ ") in which the _____ displays _____ from local _____ who, absent the activities of the _____, may not have a forum to present their work
- There is an _____ at our location in _____ (_____) which hosts _____ displays
- The _____ displays in the lobbies of the _____ is accessible to the public
- The _____ (recognized as a 501(c)(3) organization) has represented that the building located at _____ (in _____ which the majority of the _____ is displayed) is a component of the _____ . This tour makes the _____ available to the general public, and allows _____ without a forum to present their _____
- The _____ had a presentation on the _____ entitled " _____ " and " _____ "
- It is estimated that each year several _____ of individuals will see, enjoy and be educated by the _____
- A substantial number of nonmembers of the _____ (as well as events held by civic organizations) have access to and / or visited the clubhouse and therefore have access to the _____
- The _____ attracts gifts of _____ that would otherwise leave the _____ area _____ because their value is less than the _____ would accept
- The _____ was in need of repair and the _____ engaged in restoration efforts
- The _____ is agreeable to instituting public educational tours of its _____ going forward, in addition to the _____
- The _____ disagrees with the IRS position that the _____ building's access is limited to members of the _____ . Although members of the _____ may have easy access to the building, the preceding information provides substantial evidence of public access to the _____ held by the _____

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- The presence of building security does not mean that members of the public do not have access to and opportunity to view the ; it reflects the reality of security restrictions in all buildings today

Attachment 2 included
below:

Minutes. The date and summary of these minutes is given

- There is still to be restored-
- Discussion on this restoration centered on whether to make the investment based on the current value v the after-restoration value
- were moved to the and
- The will take place
- will run the
- The will subsidize the
- During Month, giving will be within the chits and promotional material and events that occur in
- description tags will start to appear alongside the
- will be replaced that will soon be restored from the pool at
- Discussion about developing new and shifting our focus from displays to displays and how we go about it
- President spoke to the to promote the for the
- Governor spoke about a catalog to document the , and putting placards on all to identify it
- General Manager suggested a subcommittee be established to oversee the movement and proper placement of the
- It is the goal of the General Manager. to continue to move the assets of the classified as over to the
- President spoke about standards for accepting donations
- Discussion about having nvolved in by having an event surrounding and involving children

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Attachment 2 includes a balance sheet for the year ended _____ with the following information:

Assets	Year	Year
--------	------	------

Cash
Accounts Receivable
Objects

Liabilities

Accounts Payable

Equity

Retained Earnings
Profit (Loss)

Total Equity

This attachment includes a summary of the _____ donated to the _____. The summary gives the type of _____ donated, a description of the _____, the _____, and the value when donated / transferred to the _____. The _____ also purchased a _____. Below is a summary of the value of these activities:

Donated
Transferred
Purchased

Total

This attachment also includes an allocation of costs from the _____ to the _____. The _____ has _____ employee—the director of the _____. The time the director spent attending to _____ meetings, events and activities accounted for _____ % of the director's time, and so _____ % of the director's salary, payroll taxes and medical insurance costs were allocated to the _____.

Included in attachment 2 was a listing of the events and meetings of various organizations at the _____ facilities that the _____ attended. In total, there were _____ meetings with _____ guests.

No documentation was provided from the _____ that gives the policies and procedures pertaining to the _____ activities. The listing of registered individuals for _____ associated activities were not provided by the _____. No substantiation of public participation in _____ activities or public use of assets was provided.

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- In order to be exempt under IRC § 501(c)(3), the organization must provide more benefit to the general public than to members and guests. Please provide copies of the substantiation that demonstrates that the is carrying out charitable activities described in IRC §501(c)(3).

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The audit report dated _____ is corrected by this audit report. The attachments referenced to in the audit report dated _____ are unchanged (and so are still valid as a part of this report) but are not included with this report.

Issues:

- (1) Does the _____ ("_____") qualify for exempt status under Internal Revenue Code (IRC) § 501(c)(3)?
- (2) If the _____ doesn't qualify for exempt status, when is the effective date of revocation?
- (3) If the _____ doesn't qualify for exempt status, what is the tax effect of the revocation?

Facts:

_____ (_____) is a _____ located in _____ recognized on _____ as exempt under IRC § 501(c)(3) as further described under IRC §§ 170(b)(1)(A)(vi) and 509(a)(1) or 509(a)(2).

On _____ another determination letter was issued wherein the _____ was further described under IRC §§ 170(b)(1)(A)(vi) and 509(a)(1) as an organization that receives support from the general public.

The Form _____, *Application for Recognition of Exemption*, was received by the IRS on _____. The Form _____ was analyzed. The current directors and officers were:

In Part II, Activities and Operational Information, several parts referred to an attached statement. The attached statement states:

The _____ ("the _____") will assemble, collect and display significant _____ primarily _____ and _____. It is anticipated that the _____ will be acquired by the _____ primarily through gifts in kind to the _____. It is also anticipated that the _____ will receive cash donations, which will be used by the _____ to acquire _____.

The _____ will be housed and displayed at the _____. The _____ has over _____ members and is heavily trafficked by the public. It is estimated that each _____ several _____ of individuals will see, enjoy and be educated by the _____.

The _____ will conduct _____ shows or _____ on an almost _____ basis displaying loaned _____. Such shows and exhibits will be educational and noncommercial. Sales of exhibited works will be prohibited. It is anticipated that such _____

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shows and exhibits will sometimes demonstrate the history or method of a particular form. In addition, from time to time parts of the will be loaned to other public charities, such as, for example, the and the

The Form , Part II, Items 2 and 3 of the attached summaries stated:

The sources of support will be contributions of , contributions of cash, and a small amount of interest and dividend income from the investment of the cash contributions pending acquisition of additional

The will solicit contributions primarily from the members of the , which—as indicated—has over members.

The Form Part II, Item 5 asks "Does the organization control or is it controlled by another organization?" and "Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors?" The marked " " to questions and referenced an attached statement. In the attached statement, the states:

The is controlled by the , a not-for-profit corporation qualified under IRC § 501(c)(7), by virtue of the fact that directors of the are appointed, and subject to removal, by the Board of Governors of the and the director, who is a nonvoting ex officio director, is the from-time-to-time President of the

The Articles of Incorporation attached to the Form was analyzed:

- The was incorporated on
- In article #5 the corporation is organized and operated exclusively for charitable and educational purposes within the meaning of IRC § 501(c)(3) for the purpose of assembling, collecting and displaying significant
- In Article #6, the member of the corporation is the , a not-for-profit corporation. The affairs of the corporation shall be managed by the Board of Directors, and the directors and their successors shall be elected by the Board of Governors of the

The last filed a , Short Form Return of Organization Exempt From Income Tax, for the fiscal year ended For the year ended the filed a , Electronic Notice (e-postcard) for Tax-Exempt Organizations Not Required to File Form or Form , on

The has valued at approximately \$ (see Attachment One). According to instructions for Form Return of Organization Exempt From Income Tax, the Form must be filed if the organization has either gross receipts equal to or greater than \$ or total assets greater than \$ at the end of the year.

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Law:

Tax exemption is a matter of legislative grace, and the organization seeking exemption must show that it comes squarely within the terms of the law conferring the benefit sought (*Florida Hospital Trust Fund v Commissioner*, 103 T.C. 140, 153, 1994, aff'd 71 F. 3d 808 (11th Circuit 1996)).

Organizations organized substantially for pleasure, recreation, and other non-profitable purposes, or to support such purposes, are exempt under IRC §501(c)(7). The exemption of social clubs is based on the logic of allowing members to pool their funds for recreational purposes, rather than for a compelling public benefit. Congress granted exemption so that these membership pools would not be taxed twice (at the member level and at the organizational level) (see *Portland Golf Club v C.I.R.* 497 U.S. 154, 110 S. Ct. 2780 (1990)).

Exempt function income means the gross income paid by members of the organization (that includes the members, their dependents and their guests) goods, facilities or services in furtherance of the purposes constituting the basis for exemption of the organization (IRC §512(a)(3)(B)). The term "unrelated business taxable income" refers to gross income derived from any trade or business unrelated to the purposes for which the organization is exempt (IRC § 512(a)(1)). With regards to unrelated business taxable income, there are special rules applicable to organizations described in IRC §501(c)(7) (IRC § 512(a)(3)(A)).

Rev. Proc. 71-17, 1971-1 C.B. 683, sets forth guidelines for determining the effect gross receipts derived from use of a social club's facilities by the general public have on the club's exemption from federal income tax under IRC § 501(c)(7). The procedure defines the term "general public," as persons other than members of a club or their dependents or guests.

Exemption is provided for organizations that are organized and operated exclusively for charitable, religious and educational purposes with no part of the net earnings inuring to the benefit of any private shareholder or individual (IRC § 501(c)(3)). An organization is operated exclusively for one or more exempt purposes only if engages primarily in activities which accomplish one or more such exempt purposes specified in IRC § 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 (Tax Reg. § 1.501(c)(3)-1(c)(1)).

An organization may be exempt as an organization described in IRC § 501(c)(3) if it is organized and 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 (Tax Reg. § 1.501(c)(3)-1(d)(1)(i). The term "charitable" as used in IRC § 501(c)(3) is used in its generally accepted legal sense (Tax Reg. §1.501(c)(3)-1(d)(2)).

An organization is not organized and operated exclusively for one or more of these purposes unless it serves a public rather than a private interest (Tax Reg. § 1.501(c)(3)-1(d)(1)(ii). An organization is not dedicated to one or more exempt purposes if its assets are not dedicated to an exempt purpose (Tax Reg. § 1.501(c)(3)-1(b)(4)).

The purposes toward which an organization directs its activities, and not the nature of the activities themselves, determine whether the organization meets the operational test (B.S.W.

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Group Inc v Commissioner, 70 T.C. 352, 356-357 (1978)). An organization is required to keep records, substantiate its activities and file returns as required by the Secretary (IRC §§ 6001 and 6033; Tax Regulation §1.6033-2(i)(2)).

Impermissible benefit to private interests encompasses not only benefits to insiders but also benefits that an organization may confer on unrelated or even disinterested persons (i.e., outsiders) (American Campaign Academy v Commissioner, 92 T.C. 1053, 1068-1069; see also Capital Gymnastics Booster Club Inc. v Commissioner T.C. Memo 2013-193, 2013). In American Campaign Academy, the private interests were republican entities and candidates.

The organization was operated for a substantial non-exempt purpose because its net earnings inured to the benefit of its members. Net earnings include more than net profits and may inure to the benefit of private persons other than in the distribution of dividends (Unitary Mission Church v Commissioner, 74 T.C. 507, 512-513 (1980); Canada v Commissioner (82 T.C. No. 73, 82 T.C. 973).

An organization which is exempt from taxation under § 501(a) and is not required to file annually an information return shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created (Tax Regulation §1.6033-2(i)(1)).

A non-exempt entity that substantially benefits from the activities of the exempt organization and exerts considerable control over the exempt organization and how the exempt organization carries out its activities means the exempt organization is being used as an instrument to further the private benefit of the non-exempt and does not qualify as tax exempt (Est. of Hawaii v Commissioner 71 T.C. 1067 (1979)). A tax-exempt organization and non-exempt entity were controlled by the same persons, and their activities were so interrelated as to be functionally inseparable, then the benefit to the non-exempt was not incidental (P.L.L. Scholarship v Commissioner, 82 T.C. 196 (1984)).

Separately incorporated entities must qualify for exemption on their own merits. The exception is where an organization's activity is an integral part of an exempt affiliates' activities. In this case, the organization may derive its exemption from that of its affiliate (Geisinger Health Plan v C.I.R., 30 F. 3d 494, 498 (1994)).

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 (Better Business Bureau of Washington D.C. Inc. v United States, 326 U.S. 279, 283 (1945)).

With regards to taxability, Internal Revenue Code § 61 states, unless otherwise provided, all income is taxable. IRC § 102 states that as a general rule gross taxable income does not include the value of property acquired by gift, bequest, devise or inheritance (see Synanon Church v Commissioner, T.C. Memo 1989-270).

Government Position:

The _____ and its _____ is housed in the same building as the _____. The _____ controls access to, and use of, the building. By appointing the _____ board members, the _____

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controls the organization. Because exemption is a matter of legislative grace, the needed to substantiate that it is operating to carry out charitable activities (Florida Hospital Trust Fund v Commissioner (IBID), IRC §§ 501(c)(3), 6001, 6033; Tax Reg. §§ 1.501(c)(3)-1(c)(1), 1.501(c)(3)-1(d)(1)(i) and 1.501(c)(3)-1(d)(2)).

Exemption is provided for organizations that are organized and operated exclusively for charitable, religious and educational purposes with no part of the net earnings inuring to the benefit of any private shareholder or individual (IRC § 501(c)(3)). Being organized to carry out a charitable purpose is just the first requirement. The second requirement is that the organization operate exclusively for a charitable purpose. Substantiation that the organization is carrying out charitable purposes is required (IRC §§ 6001 and 6033).

The represented in its Form , that it annually had members and that of people from the general public came through to view the housed in the building.

The has made assertions about what its activities are without providing any substantiation that those activities actually operate as claimed. The is to keep books and records that substantiated its assertion that it is exempt under IRC §501(c)(3) and properly file required returns (IRC §§ 6001 and 6033). The has not provided substantiation of its claimed operational activities. Assertions, no matter how often repeated, is not substantiation.

Substantiation such as policies and procedures, documentation that the policies and procedures are in operation, documents that substantiate where the activity (or activities) occurred, who was in attendance (via attendance logs) and relationship these attending individuals have with the would have assisted in establishing the operations.

The facts already show that in order to attend related activities, the person had to register to attend. The has not provided these attendance documents. That members of the general public could have attended these activities is not the same thing as substantiation that members of the public actually did attend the activity. This is not the only barrier the would have to address.

A tour of the building demonstrates that access to the building is limited to members of the their dependents and their guests. Because the did not substantiate that members of the general public were allowed access to—or actually made use of or toured—the building, then the only conclusion that can be reached based on the substantiation in the possession of the IRS examiner is that there is no public use of the building and no public viewing or use of the or activities.

The other conclusion is that the viewing and use of the is limited to the members, and their dependents and guests. The members, their dependents and guests are not members of the general public (Rev. Proc. 71-17 (IBID)).

Because of the lack of substantiation, operationally, the could not be distinguished from the operations of the . While the has provided legal

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arguments based on the asserted operational activities, no legal analysis could be performed until after the operational activities were substantiated as actually occurring.

The financial and operational activities are so inter-related to the financial and operational activities that they are functionally inseparable from the . For this reason, the benefit to the is not incidental (P.L.L. Scholarship v Commissioner (IBID)). Because of they are so inter-related, the activities the carries out are deemed to be in support of—and part of—the activities. As such, the is considered to be an instrument of the that provides private benefit to the and the members thereof (see Est of Hawaii v Commissioner (IBID)).

The is organized and operated for the pleasure, recreation and other non-profitable purposes of its members, and their dependents and guests (IRC § 501(c)(7), Portland Golf Club (IBID)). The exempt function income of the is by definition the gross income paid by members of the their dependents and guests for goods, facilities or services in furtherance of the purposes for which it was granted exempt status (IRC § 512(a)(3)(B)).

Organizations like the were granted exempt status so that the member's pooled recreational funds wouldn't be taxed twice (Portland Golf Club (IBID)). The principle activities of organizations like the are focused on the recreation of the members, their dependents and guests. The mere fact that the is exempt from business income tax doesn't mean that the principle activities and operations are charitable activities described in IRC §501(c)(3).

Because the is carrying out activities that support the , the operational activities and purposes of the are not charitable activities with a charitable purpose (Tax Reg. §§ 1.501(c)(3)-1(d)(1)(i), 1.501(c)(3)-1(d)(2) and 1.501(c)(3)-1(d)(1)(ii); B.S.W. Group Inc. v Commissioner (IBID)).

These operational activities serve the private interests of the as well as the members, dependents and guests thereof far more than the interests of the general public. For this reason, the is not operating exclusively for one or more charitable purposes (Tax Regulation § 1.501(c)(3)-1(d)(1)(ii)).

By supporting the private interests of the members, dependents and guests, the operations provide private benefit and inurement to the members, dependents and guests (American Campaign Academy v Commissioner (IBID), Capital Gymnastics Booster Club v Commissioner (IBID), Unitary Mission Church v Commissioner (IBID), Canada v Commissioner (IBID)).

For the reasons already given above, the assets of the are dedicated to the and the members, dependents and guests thereof and are not dedicated to charitable purposes. For this reason, the doesn't qualify for exempt status under IRC §501(c)(3) (Tax Reg. § 1.501(c)(3)-1(b)(4)).

Because the assets of, and the activities of, the are for the benefit of the and the members and guests thereof, the does not qualify for exempt status under IRC § 501(c)(3) (Tax Reg. §§ 1.501(c)(3)-1(d)(1), 1.501(c)(3)-1(b)(4); see also B.S.W. Group Inc. v

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Commissioner (IBID), Est of Hawaii v Commissioner (IBID), American Campaign Academy v Commissioner (IBID), Better Business Bureau of Washington D.C. v United States (IBID)).

Taxpayer Position:

See Attachment 2. As summarized in the facts section, the has made several assertions about the activities of the and the public use of assets. The also makes an extensive legal argument about why its claimed operational activities are charitable activities.

Conclusion:

For the reasons already given in the Government Position, because the legal argument is based on unsubstantiated assertions of activities, no extensive analysis of the legal argument needs to be made. Simply put, because there are no substantiated operational activities the legal arguments do not apply to the facts of this case.

For the reasons already given, the primary position is that the exempt status of the should be revoked effective the first day of the year under examination:

Because the gross income is derived from gifts and bequests, the does not have any, taxable gross revenue that would require the to file a Form , U.S. Corporation Income Tax Return (see IRC §§ 61 and 102; and Synanon Church v Commissioner (IBID)). For that reason, no Form is being solicited by the IRS due to this proposed revocation and no taxes associated therewith will be imposed.

Because charitable assets are dedicated to charitable purposes, the net assets of the organization will need to be transferred to another organization described under IRC § 501(c)(3) (Tax Reg. § 1.501(c)(3)-1(b)(4)), and in subsequent time periods the organization will need to file Form 1120.