

FAX

Department of the Treasury Internal Revenue Service

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*90 day
letter*



Date December 7, 2011

Number of pages including cover sheet 6

TO: Margaret G. Axelrod	
Phone	(212) 315-5575
Fax Phone	(212) 977-5133

FROM:	M. Denise Barragan
	4330 Watt Avenue, SA7888
	Sacramento, CA 95821
Phone	(916) 974-5071
Fax Phone	(916) 974-5911

(90 day suspense letter to follow by mail)

RE: Royal Poinciana Playhouse Foundation, Inc.

REMARKS: Urgent For your review Reply ASAP Please Comment

We are providing the enclosed material under the provisions of a Power of Attorney we have on file for you. For your convenience the name of the taxpayer(s) is listed above.

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

Sincerely,

M. Denise Barragan

M. Denise Barragan

Internal Revenue Service
4330 Watt Avenue, SA 7888
Sacramento, CA 95821-7021

Department of the Treasury

Date: May 3, 2011

Revised

Royal Poinciana Playhouse Foundation, Inc.
221 Ocean Terrace
Palm Beach, FL 33480

Employer Identification Number:
27-2054146

Person to Contact – Group #:
M. Denise Barragan – EO 7888
ID# 0507072

Contact Telephone Numbers:
(916) 974-5071 Phone
(916) 974-5911 Fax

Response Due Date:
May 24, 2011

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosure by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

Signature

Date

To facilitate processing of your application, **please attach a copy of this letter to your response.** This will enable us to quickly and accurately associate the additional documents with your case file.

If we do not hear from you within that time, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

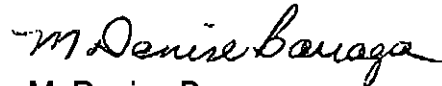
In addition, if you do not respond to the information request by the due date, we will conclude that you have not taken all reasonable steps to complete your application for exemption. Under Code section 7428(b)(2), you must show that you have taken all the reasonable steps to obtain your exemption letter under IRS procedures in a timely manner and exhausted your administrative remedies before you can pursue a declaratory judgment. Accordingly, if you fail to timely provide the information we need to enable us to act on your application; you may lose your rights to a declaratory judgment under Code section 7428.

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

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Royal Poinciana Playhouse Foundation, Inc.
27-2054145

Sincerely yours,



M. Denise Barragan
Exempt Organizations Specialist

Enclosure:
Information Request

PLEASE ATTACH A COPY OF THIS LETTER TO ALL CORRESPONDENCE.

Please mail the information requested in this letter to the following address:

Internal Revenue Service
Attn: M. Barragan; Stop SA 7888
4330 Watt Avenue
Sacramento, CA 95821

Additional Information Requested:

PLEASE IDENTIFY ALL RESPONSES WITH THE NUMBER OF THE INQUIRY

01. Based on your revised financial statements, Part IX, page 9 of form 1023, your organization expect that your annual gross receipts average or will average more than \$10,000 per year for the first four years in existence, therefore the \$400.00 User fee you have already paid is insufficient. You will need to pay a User fee of \$850.00 total. Please submit a cashier's check or money order, payable to the United State's Treasury for the amount of \$450.00 (four hundred and fifty dollars).
02. To be considered for tax-exempt status under section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. Also, its activities must be restricted to those permitted a section 501(c)(3) organization and its assets in operation and upon dissolution must be permanently dedicated to a section 501(c)(3) purpose.

Your organizational document does not meet the organizational test of section 501(c)(3) and, therefore, must be amended. It will be necessary for you to amend your articles of incorporation.

Article III-Purpose needs to say:

This corporation is organized and operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. More specifically it will either in law or in equity, take title to, maintain, and operate the Royal Poinciana Playhouse at the Royal Poinciana Plaza located on Cocoanut Row in the Town of Palm Beach, Palm Beach County, as a theater for the performing and/or visual arts and for lectures, special events or other educational and charitable purposes.

Royal Poinciana Playhouse Foundation, Inc.
27-2054145

02. (Con't)

Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law) or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 (or corresponding provision of any future United States Internal Revenue Law.

Upon the dissolution of this corporation, assets shall be distributed to the Town of Palm Beach, a tax exempt municipal corporation for public purposes.

Amendments made by corporations must be endorsed and/or filed by the appropriate state officer.

Please submit a copy of the endorsed amendment as soon as you receive it from the appropriate state agency.

03. In your Narrative of Activities provided with your revised application on October 14, 2011, you indicate that your organization's activities will be two fold. You stated: "We are requesting the division of the 12 acre Poinciana Plaza property to separate about 2 acres along the waterfront that contain (N to S) a small waterfront parking area next to the planned new \$98 million Flagler Memorial Bridge replacement, the Playhouse and "Celebrity Room" with terrace overlooking Lake Worth, a small Former doctor's office building, a covenant protected Mysore fig tree, and the ground between the Mysore and the theater to use to construct the Palm Beach Ezio Pinza theater. The proposal will be presented in detail to all interested parties who have been or will be contacted."

You go on to indicate in your application "When the Royal Poinciana Playhouse and appurtenances are donated to the foundation, the Palm Beach Ezio Pinza Theater will be built while the Playhouse is being renovated. " "Revenue generated from the operation and rental of the Palm Beach Ezio Pinza Theater."

Clarify for me what exactly will be your activities. With regards to the Royal Poinciana Playhouse, what will the activities be and who will conduct them? When will they be conducted?

Also, tell me about the renovations of the Playhouse.

- a. With regards to the renovation, will your organization entertain bids from construction firms? If yes, how may bids will be submitted?
- b. If you entertain bids, what criteria is followed when you choose a construction firm(s)?

Will the facility be operated, managed by your organization or by another organization?

- a. If the facility will not be managed by you, please answer the following:
 - Explain how you chose, or will choose, a manager.
 - Will you submit requests for bids to any other entities? If you do, please provide a copy of sample request. If you will not, please explain the factors which influenced

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03. (Con't)

your decision to select only examine one manager.

- How many facilities does your manager currently manage?
 - If your facility will be managed by anyone other than yourself, please disclose the names of the principal shareholders, directors, and officers of the manager. Also include a brief resume for each person.
- b. If you are a party to a management contract, please answer the following:
- What is the contract term?
 - If you terminate the contract for any reason, are you required to make payment to the manager? When and under what conditions can you terminate the agreement?
 - How much may the manager spend each year on its own discretion?
 - Who sets the budget, you or the manager?
 - Explain how the manager is compensated? Is the manager compensated by a percentage of the net profits?
 - What percentage of the management fee is fixed?

With regards to the Palm Beach Ezio Pinza theater, please tell me about this activity. You indicate "Revenue generated from the operation and rental of the Palm Beach Ezio Pinza Theater." Your goal is to obtain space to build this theater and to operate and rent it.

First tell me more about this theater. Is it a movie theater? Is it a building or outdoor area in which plays and other dramatic performances are given? Would it be in direct competition with the playhouse? Please explain what type of business it would conduct.

Also, tell me how it differs from the Royal Poinciana Playhouse in its activities and how what you do there is different from what you would do at the Palm Beach Ezio Pinza theater. Who would conduct the activity?

For this activity answer the same questions about whether you would hire a manager to conduct it and also the same questions regarding builders to construct it as listed above. Why was the income from this activity treated as Other Revenue and as Exempt Function Income? This doesn't make sense. Tell me about the rental income. Who would rent the theater?

04. Your application only lists one member of your governing body, Mr. Ficalora.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization which serves private interests rather than public purposes do not qualify for exempt status. To ensure that your organization will serve public interests, you should modify your Board of Directors and officer positions to place control of the organization in the hands of unrelated individuals selected from the community you will serve.

Please submit names and qualifications of the new board members, as well as a statement signed and dated by each that they will take an active part in your operations.

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05. In your response to item #1, Part VII, page 5 of form 1023, you responded "No", yet you included Schedule G in which you responded that yes you were the successor to a for-profit organization. I understand from talking with your representative that the confusion stems from the fact that the Royal Poinciana Playhouse was at one time a for-profit business.

Has the Playhouse currently been operating as a for-profit business? Is your organization purchasing the Playhouse and property from Mr. Sidney Spiegel and if so, please provide a certified appraisal showing the FMV of all assets and liabilities at time of exchange. Provide a copy of the agreements of sale or transfer. Please be sure to include the documentation listing all restrictions placed on the use or sale of the assets.

06. Does your organization have a website? If so, please provide the web site address.
07. In your response to Parts X, pages 10 & 11, you are requesting to be a Private Operating Foundation. Private foundations receive their income from one or two sources whereas a public charity receives its income mainly from the general public, government and other public charities.

A private operating foundation must engage directly in the active conduct of charitable, religious, or educational activities. Directly for the active conduct means those distributions must be used by the foundation itself to carry on the active conduct of the programs for which the foundation is organized and operated. Grants made by a foundation to assist another organization conduct its activities are considered indirect rather than direct even though they may further the exempt purposes of the grantor. Similarly, grants to individuals are also indirect unless they occur in the context of a program in which the foundation itself has significant involvement. A private operating foundation must spend at **least 85% of its adjusted net income or its minimum investment return, whichever is less, directly for the active conduct of its exempt purposes**

In your responses to items 4a-e, Part VIII, page 6 of form 1023, you indicated that your organization will conduct fundraising which will include mail, personal, foundation grant, phone, and government grant solicitations as well as accept donations on your website.

If you will be receiving funds from public sources perhaps your organization is more like a public charity foundation status than a private operating foundation. Please explain why and how your organization qualifies as a private operating foundation.