



**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

1100 Commerce Street

Dallas, TX 75242

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

Date: August 2, 2006

Release Number: **200707161**

Release Date: 2/16/07

UIL: 501.03-01

Person To Contact:

Identification Number:

Contact Telephone Number:

Form: 990-PF

In Reply Refer to: TE/GE Review Staff

EIN:

LAST DATE FOR FILING A PETITION  
WITH THE TAX COURT: 10/31/06

Dear

This is a Final Adverse Determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Because you have not established that you are observing the conditions required to continue exempt status, recognition of your exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3) as well as your status as a private foundation under IRC section 501(a) is retroactively revoked to November 23, 2002.

Our determination was made for the reason that you have failed to establish that you are operated exclusively for exempt purposes within the meaning of I.R.C. section 501(c)(3) of the Internal Revenue Code. You operate for the benefit of private interests and your net earnings inure to the benefit of private shareholders or individuals.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code. Furthermore, you are required to file Federal income tax returns on Form 1120 for all open years.

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

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date this determination was mailed to you. Contact the clerk of the appropriate court of the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling (       ) , or writing to:

Internal Revenue Service  
Taxpayer Advocates Office

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

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

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

Sincerely yours,

Lois Lerner  
Director, Exempt Organizations



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
Internal Revenue Service

ORGANIZATION

Taxpayer Identification Number:

Form:

990-PF

Tax Year(s) Ended:

2002, 2003, 2004

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear \_\_\_\_\_ :

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

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

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

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

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

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

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

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

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

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

**Primary Issue:**

1. Whether a Private Non-Operating Foundation exempt under IRC Section 501(c) (3), should retain their exempt status?

**Facts:**

The [redacted] was recognized as a Private Non-Operating Foundation, exempt under IRC Section 501(c) (3), on [redacted]. The effective date of their exemption was [redacted]. Per their 1023 application their activities were to consist of making grants to other 501(c) (3) organizations classified as public charities for religious, charitable, educational, literary, cultural, scientific, humanitarian and family purposes. Per the 1023 application the funding of the organization was to be primarily derived from its founders ([redacted] from Founders; 10% from Investment Income). The trustees of the organization are [redacted], Executive Trustee, and [redacted], Secretary Trustee.

The 990-PF Return for the year ending [redacted], [redacted] was selected for examination based on information obtained from a Promoter in regards to abusive trusts. The 990-PF Returns for the years ending [redacted] and [redacted] were subsequently pulled for examination. The income reported on the returns was primarily derived from the Executive Trustee, [redacted] as follows:

<u>Year</u>	<u>AAA</u>	<u>Others</u>	<u>Total</u>	<u>Percentage</u>
	\$	\$	\$	
	\$	\$	\$	
	\$	\$	\$	

Other donations to the Private Foundation were derived from individuals and other Private Foundations.

There were no reported expenditures for the year ending [redacted]. Expenditures for the year ending [redacted] per the general ledger were as follows:

<u>Expense</u>	<u>Amount</u>	<u>Re:</u>
		Training for Executive Trustee involving the operation of Private Foundations.
1023 Application Fee	\$	
Determination Letter	\$	
Checks	\$	

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Endorsement Stamp	\$
Journals	\$
Postage	\$
Tax Preparation	\$

Expenditures for the year ending , were as follows:

<u>Expense</u>	<u>Amount</u>	<u>Re:</u>
Money Order	\$	Training for Executive Trustee involving the operation of Private Foundations.
Tax Preparation	\$	
Tax Preparation	\$	
Late Penalty 990-PF	\$	
<b>Website Hosting</b>	\$	<b>No detail provided</b>
<b>Foreign Language Channels</b>	\$ ,	<b>Allowed individuals to watch foreign language channel in order to meet charitable purpose.</b>

More detail was requested in regards to the Website Hosting and Foreign Language Channels Expenditures. No further detail was provided in regards to the nature of the Website Hosting expenditures (The address of the website, content of the website, et cetera...Check was made payable to or the , Expenditures (Checks were made payable as an expense reimbursement to Detail was provided in regards to the foreign language channel expenditures. These expenditures represented payments made to the Dish Network. The breakdown of the expenditures is as follows:

<u>Invoice</u>	<u>Amount</u>	<u>Amount</u>	<u>Comment</u>
August 12, 2004 Invoice (Aug 12 - Oct 11)	America's Top 60	\$	
	Addl Receiver Access		
August 12, 2004 Invoice (Aug 12 - Oct 11)	Fee	\$	
August 12, 2004 Invoice (Aug 12 - Oct 11)	Radio France/Intl	\$	
August 12, 2004 Invoice (Aug 12 - Oct 11)	TV5	\$	
August 12, 2004 Invoice (Aug 12 - Oct 11)	Dish Antenna	\$	
August 12, 2004 Invoice (Aug 12 - Oct 11)	Restart Fee	\$	
August 12, 2004 Invoice (Aug 12 - Oct 11)	DISH Mover Promotion	\$	
August 12, 2004 Invoice (Aug 12 - Oct 11)	Sales Tax	\$	
August 12, 2004 Invoice (Aug 12 - Oct 11)	CCA Ship Delivery Disc	-\$	
August 9	Payment Rec'd	-\$	
September 1	Payment Rec'd	-\$	
October (No October Invoice Provided. Breakdown Should Mirror October 27, Invoice)	Charges	\$	

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October 17	Payment Rec'd	-\$		
October 27, 2004 Invoice (Nov 12 - Dec 11)	America's Top 60	\$		
	Addl Receiver Access			
October 27, 2004 Invoice (Nov 12 - Dec 11)	Fee	\$		
October 27, 2004 Invoice (Nov 12 - Dec 11)	Radio France/Intl	\$		
October 27, 2004 Invoice (Nov 12 - Dec 11)	TV5	\$		
November 16	Payment Rec'd	-\$		
November 27, 2004 Invoice (Dec 12 - Jan 11)	America's Top 60	\$		
November 27, 2004 Invoice (Dec 12 - Jan 11)	Radio France/Intl	\$		
November 27, 2004 Invoice (Dec 12 - Jan 11)	TV5	\$		
November 27, 2004 Invoice (Dec 12 - Jan 11)	Addl Receiver Access			
	Fee	-\$		
December 27, 2004 Invoice (Jan 12 - Feb 11)	America's Top 60	\$		
December 27, 2004 Invoice (Jan 12 - Feb 11)	Radio France/Intl	\$		
December 27, 2004 Invoice (Jan 12 - Feb 11)	TV5	\$		
			Automatic Draft from	
	Payment Rec'd	-\$	Foundation's	Bank
			Account	
			Automatic Draft from	
Due on	Payment Due	-\$	Foundation's	Bank
		\$	Account Per Invoice	

The total invoiced charges through \_\_\_\_\_ equaled \$ \_\_\_\_\_ (including credits). \_\_\_\_\_ received expense reimbursements per the general ledger/cancelled checks of \$ \_\_\_\_\_ on \_\_\_\_\_ and \$ \_\_\_\_\_ on \_\_\_\_\_. On \_\_\_\_\_ \$ \_\_\_\_\_ was automatically drafted from the XXX Foundation's Checking Account to pay for the \_\_\_\_\_ Invoice (Total: \$ \_\_\_\_\_ in reimbursements and direct payments. Reimbursement of \$ \_\_\_\_\_ included reimbursements of shipping charges per the check memo, which could account for the invoice vs. reimbursement/payment differences). Per the \_\_\_\_\_ invoice \_\_\_\_\_ was to be drafted from the organization's checking account on \_\_\_\_\_.

\_\_\_\_\_ during a telephone conversation indicated that to achieve a charitable/educational purpose she let other individuals interested in (learning) a foreign language watch the channels with her. A sign-in list along with any literature publicizing this educational offering was solicited but has not been received. It was also noted that \_\_\_\_\_ herself had a degree in French, which indicates that she possibly had some personal interest in the Radio France Int'l Channel as well as TV5 (International Channel). In looking at the Dish Network's Website, The America's Top 60 package includes a variety of Family, Sports, News, Lifestyle Entertainment, Public Interest,

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Religious and Shopping Channels. In looking at the charges for the channels involving foreign languages (Radio Int'l and TV5) the total charges for , equal \$ . Without any sign-in lists and other literature if one assigned % personal usage to the foreign channel charges the result of \$ . comes out well below the \$ paid by the Charitable Foundation.

**Law:**

**Treasury Regulation Section 1.501(c) (3)-1(c) (2)**

*Distribution of earnings.* —An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words “private shareholder or individual”, see paragraph (c) of §1.501(a)-1.

**Treasury Regulation Section 1.501(a)-1(c)**

The words “private shareholder or individual” in section 501 refer to persons having a personal and private interest in the activities of the organization.

**Treasury Regulation Section 1.501(c) (3)-1(d) (1) (i)**

An organization may be exempt as an organization described in section 501(c) (3) if it is organized and operated exclusively for one or more of the following purposes:

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

**Treasury Regulation Section 1.501(c) (3)-1(d) (1) (ii)**

An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private



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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

**Revenue Procedure 69-256, 1969-1 CB 150**

A testamentary trust established to make annual payments to exempt charitable organizations and to use a fixed sum from annual income for the perpetual care of the testator's burial lot is not exempt under section 501(c)(3) of the Code.

**Revenue Ruling 85-175, 1985-2 CB 276**

That part of the trust's grant program that gives preference to family members and relatives of the trust's grantor is not consistent with exempt status under section 501(c)(3) of the Code because it serves a private purpose of the grantor rather than a public purpose. If this program were a substantial part of its activities, the trust would not be described in section 501(c)(3). Moreover, a preference accorded to family members and relatives is not a criterion like financial need and academic achievement that is related to the purpose of an educational grant. Consequently, the trust's grants are not awarded on an objective and nondiscriminatory basis as required by section 53.4945-4(b) of the regulations.

**Revenue Procedure 84-46, 1984-1 CB 541**

The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which section 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

**Government's Position:**

To date the \_\_\_\_\_ has indicated that it has primarily achieved its charitable purpose by allowing individuals interested in learning a foreign language the ability to watch foreign language channel(s) subscribed from the Dish Network by the Foundation. The expense reimbursements \_\_\_\_\_ received for the Dish Network subscription costs covered installation fees as well as the full costs (America's Top 60) of non-foreign language channel subscription fees. In addition a direct bank draft was set up at the end of \_\_\_\_\_; The full costs of the subscription were deducted for the last viewing period of \_\_\_\_\_ ( \_\_\_\_\_ l) and the first subscription for \_\_\_\_\_ was to be deducted from the Foundation's bank account on \_\_\_\_\_ ( \_\_\_\_\_ ). In regards to the foreign language channel (subscription

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costs), the organization has failed to provide evidence that the activity/program involved public versus private interests (AAA herself and/or individuals known to her). In regards to the other charges, the organization has not provided any evidence showing that the costs of the installation and other programming had anything to do with the purported foreign language activity.

IRC Section 501(c) (3) and Treasury Regulation 1.501(c) (3)-1(d) (1) (ii) indicate that an organization is not an exempt organization if it inures to private interests.

Revenue Procedure 1984-46 indicates that where an organization operates materially different than that in which was originally represented on its application, revocation or modification will ordinarily take affect on the date of such change.

Revenue Ruling 1969-256 indicates that diversion of a trust's income to pay for personal expenses constitutes inurement of a part of the trust's earnings to the benefit of a private individual and the trust is being operated for the benefit of a private interest.

Revenue Ruling 1985-175 indicates that if an activity that gives preference to private interests is a substantial activity of an organization, then the organization (trust in this case) would not be described in IRC Section 501(c)(3).

It is the government's contention that inurement occurred through the payments made by the on behalf of for the Dish Network subscription costs based on the premise that even if the public was allowed to watch some of the networks programming, the Foundation should still not have been responsible for the payment of the full subscription costs of channels unrelated to the purported exempt purpose. The law cited above indicates that inurement is a disqualifier to 501(c)(3) exempt status. In addition as the organization did not purportedly begin a charitable program (foreign language channel) until it's the government's contention that pursuant to Revenue Procedure 1984-46, that any revocation of exempt status take affect for the year ending as from that year forward the organization failed to perform the charitable activities indicated in its application (while operating in a manner materially different then that which was indicated on the 1023 Application).

**Taxpayer's Position:**

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The taxpayer indicated that the organization did not have enough assets to provide for grants to qualifying entities and felt that they needed to build up enough assets in order to provide for this charitable activity. Furthermore, the taxpayer indicated that so far it did achieve a charitable purpose by **offering** the foreign language channel to individuals interested in learning a foreign language.

**Conclusion:**

There is clearly evidence of prohibited inurement as the disqualified person is deriving substantial benefits through the payment of Dish Network subscription costs by the Charitable Foundation. This purportedly represented the organization's first substantial activity. The only other activities since its inception included administrative duties and the attendance of a few different seminar trainings by the trustee. **We conclude that the**  
**failed to engage in the activity that it described on its Form 1023 application**  
**and derived prohibited inurement. An organization described in Section 501(c) (3) of the**  
**Code will not be exempt if there is any form of inurement present. We propose that its**  
**exempt status be revoked effective** **(date exemption granted).**