

Internal Revenue Service

Department of the Treasury
TE/GE Exempt Organizations Examinations

Release Number: **200720027**

Release Date: 5/18/07

UIL Code: 501.03-01

Date: March 24, 2006

Legend:

Taxpayer = Organization's Name

N = EIN

TA = Taxpayer Advocate Office

Y = Tax Year

Taxpayer

Taxpayer Identification Number:

N

Form:

990

Tax Year(s) Ended:

Y

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:

TA

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

Legion

Taxpayer = Organization's Name

City = City's Name

N = EIN

Y = Year/Period Ended

EX = Exemption Date

S = State

IX = Incorporation Date

MA = Mailing Address

WA = Website Address

DA = Dissolution Date

P = President of Organization

O = Officer

BM = Board Member

RD = Revocation Date

Issue:

Whether Taxpayer qualifies for exemption under Section 501(c)(3) of the Internal Revenue Code.

Facts:

Taxpayer, N, was recognized as an organization exempt under Section 501(c)(3) of the Internal Revenue Code on EX. The Articles of Incorporation that were filed by Taxpayer along with their Form 1023 (Application for Recognition of Exemption) provided that the organization was incorporated in the S on IX.

The organization's mailing address as on file with the Internal Revenue Service (IRS) was MA. The website for the S Secretary of State shows WA. Additionally, the S Secretary of State's website provides that the organization was administratively dissolved on DA. Per contact with the S Secretary of State, it was determined that being administratively dissolved by the Secretary of State is not a final dissolution and that the organization can be reinstated at any time by filing Articles of Reinstatement and paying a nominal fee.

The Internal Revenue Service's records show that Taxpayer has not filed Form 990 since they were recognized for exemption in EX. According to information received before the beginning of the examination, the organization had income of \$ during the tax year ended Y but did not file the Form 990. The information also provided that the organization employed an Executive Director but did not pay in the employment tax withholdings or file Forms 941 during the year. Based on this information, the

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

organization would have been required to file Form 990 for the above period and therefore the organization was selected for examination to determine if the organization had income of more than \$25,000, if they should have paid in withholdings and if they were required to file both Forms 990 and 941.

On May 10, 2005, the phone number listed for the organization was called to set up the examination but the number was no longer in service. The agent then obtained a phone number for the President that was listed on the S Secretary of State's website. P, the last President of the organization, was contacted and informed of the examination of the Form 990 for the tax period ended Y. She provided that the organization had terminated around the end of 2002, but was not sure of the exact date. P did not know if the organization filed Articles of Dissolution and could not immediately provide the information needed to determine whether the organization dissolved properly.

A discussion was held with P concerning the amount of income during Y, but she was unable to recall the amount of income the organization received. P also said that she didn't think that she would be able to provide many books and records for the year under exam because after the organization terminated they no longer have the books and records.

P was contacted by phone again on May 16, 2005. She said that she had not been able to obtain any records for the organization so far. On May 16, 2005, an Information Document Request (IDR) requesting the specific information necessary to terminate the organization on IRS records was issued. The information was due back on June 15, 2005. No response to this IDR has been received from the taxpayer. The agent called P multiple times between June 27, 2005 and July 1, 2005 with no response. On July 1, 2005, a phone call was made to P's number but the person who answered the phone said that it was not her number and they did not know who she was. To determine that the correct number had been dialed, the number was called again but the same individual answered.

On July 7, 2005, IDRs were prepared and sent with Letter 3606 by certified mail to all of the Officers listed on the S Secretary of State's website, including P. There was no response from P. One of the letters was returned as undeliverable. The third Officer, O, called on July 14, 2005. She said that she was not an officer during the year under exam and hadn't been a member of the board for several years before that. O provided the names of several individuals who she thought were involved with the organization during Y. On July 21, 2005, a third party contact letter was sent out to the last known address of the organization. After waiting 10 days, follow up on several contacts was made. The individuals were not able to provide any information that would help the examination move forward. One of the individuals, however, provided a phone number for P which was not previously available.

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

P was contacted at the phone number received on August 22, 2005. She said that she had given the information to BM, who was a board member during the examination period, to review and thought that BM had sent in the information. She said she would check with BM to find out if the information was sent. On August 26, 2005, P was contacted to see what she found out about the information. She said the BM had not sent the information but that she would be sending it by August 29, 2005. P was contacted again on September 1, 2005. She provided that the information was put in the mail on August 30, 2005. As of September 12, 2005, the information was still not received. Several attempts were made to contact P but only her voicemail was reached and she never returned the phone calls.

On October 3, 2005, the examiner sent, by certified mail, a written notice (the demand letter) to the Exempt Organization requesting the Form 990 for the tax period ending Y to be filed with the Area Office within 90 days of the date of the demand letter. The demand letter informed the Exempt Organization of the \$20 per day (\$100 per day for organizations having gross receipts exceeding \$1,000,000 for the subject tax year) penalty imposed by I.R.C. section 6652(c)(1) and solicited a written statement explaining the cause for late filing. Because the Exempt Organization is exempt under I.R.C. section 501(a) and the Form 990 is required by I.R.C. section 6043(b), the demand letter also notified the Exempt Organization that if it fails, without reasonable cause, to file the Form 990, its exempt status will be revoked because it failed to establish it is observing the conditions required for continuation of exempt status. The letter was sent to P because that was the only valid address available for the organization. On October 24, 2005, the letter was returned because it was unclaimed by P. Previous certified letters were sent to P at the same address and she signed for them.

After receiving the certified letter back on October 24, 2005, the agent attempted to contact the organization again by mail. On October 26, 2005, the 90-day letter was sent again to P but by regular mail. As of February 9, 2006, no response has been received from the taxpayer regarding the 90-day demand letter dated October 3, 2005.

Exhibit A provides copies of Internal Revenue Service correspondence requesting the Exempt Organization to file the Form 990 for the tax period ending Y.

Law:

Section 6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

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

Section 6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 1.6001-1(a) of the regulations in conjunction with section 1.6001-1(c) provides that every organization exempt from tax under section 501(a) of the Code and subject to the tax imposed by section 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by section 6033.

Section 1.6001-1(e) of the regulations states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Section 1.6033-1(h)(2) of the regulations provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and section 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms)

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

and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Taxpayer's Position:

Taxpayer was sent a letter dated October 3, 2005 requesting that they file a Form 990 for the tax period ended Y. No response has been received from the taxpayer regarding the above stated letter.

Government's Position:

Taxpayer has not filed Form 990 for the tax period ended Y as required under section 6033 of the Code. Additionally, the organization does not have adequate records to sufficiently establish the amount of gross income, deduction, credits, or other matters required to be shown under section 6001 of the Code and section 1.6001 of the regulations.

Conclusion:

It is the IRS's position that Taxpayer failed to meet the reporting requirements under sections 6001 and 6033 to be recognized as exempt from federal income tax under 501(c)(3) of the Internal Revenue Code. Accordingly, the organization's exempt status is revoked effective RD.

Form 1120 returns should be filed for all tax periods after RD.