

Release Number: 200735027
Release Date: 8/31/07

Internal Revenue Service

Legend:
ORG = Name of Organization
NUM= EIN Number
Date1 = Effective Date

November 21, 2006
UIL: 501.03-01

ORG

Person to Contact:
Identification Number:
Contact Telephone Number:
In Reply Refer to: TE/GE Review Staff
EIN: NUM

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: _____

Dear _____ :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective Date1.

Our adverse determination was made for the following reasons:

You failed to meet the requirements of IRC section 501(c)(3) and Treas. Reg. section 1.501(c)(3)-1(d) in that you failed to establish that you were operated exclusively for an exempt purpose. Rather, you were operated for both public and private interests. Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. You operate substantially for a non-exempt purpose, for private benefit, and your earnings inure to the benefit of private individuals.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 5227 and Form 1041. These returns should be filed with the appropriate Service Center for the years beginning _____ and for all years thereafter.

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 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for 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 writing to: Internal Revenue Service, Taxpayer Advocates Office, Local 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,

Marsha A. Ramirez
Director, EO Examinations

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer A		Year Ended

Legend:

A = Name of Organization
 B = Name of Predecessor
 C = Location
 D = Trustee1
 E = Trustee2
 F = Beneficiary
 G = Beneficiary
 K = Supported Organization
 Date1 = Effective Date

ISSUE:

Should A (previously B) retain its tax-exempt status under 501(c)(3) of the Code?

FACTS:

Organizing Documents

A (previously B) was created under a Declaration of Trust in the State of C on December 1, 1996 by D. Article II of the Declaration of Trust states that "this organizational entity is an irrevocable Charitable Remainder Unitrust." Article VII states that "The creation of this Contract shall qualify as a Charitable Remainder Unitrust within and under the meaning of IRC (Internal Revenue Code) section 664, and the regulations thereafter." Article VII of the Declaration of Trust also provides that the unitrust contract "shall be amended to comply with current and subsequent regulations of IRC section 664 and Code of Federal Regulations (CFR) section 1.664-1 and 1.664-3."

The trust document lists D as the Donor. The two trustees listed are D and E. Two charities are listed under the Designation of Beneficiaries, F and G. Article IV of the Declaration of Trust states that "At no time shall the beneficiary charitable nonprofit organization be a trustee of this trust, nor shall it be allowed to act in any capacity to control the activities of this trust, or act in the administration of the trust until the death of the donor(s).

Article XVI of the Declaration of Trust addresses the asset income distribution. It states that "During the lifetime of beneficiary(s), the trustee(s) may pay the beneficiary(s) (in cash, kind, or partly each) in equal monthly installments on the last day of the month, five percent of the net fair market value of the unitrust corpus determined annually." This payment to the beneficiary is to be made, "for his/her health, education needs or support and maintenance."

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The Declaration of Trust states that upon the death of the donor(s) beneficiaries the five percent unitrust "shall be divided equally between said survivor beneficiaries." In Article XVII, the Declaration of Trust states that "upon the death of the survivor beneficiaries, this contract shall terminate and then the assets of the unitrust and any accruals shall be divided equally between the afore named charity and any other named IRC section 501(c)(3) charity for their general purposes."

Application for Recognition of Exemption (Form 1023)

B submitted a Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code to the Internal Revenue Service. The Form 1023 was signed by D on _____ and was stamped received by the Los Angeles District on _____.

The Board of Trustees were listed on Form 1023 as follows:

- D – Trustee, H
- E – Trustee, I

The statement of activities and operational information provided by the applicant in Part II of Form 1023 was limited to the following statement:

"This Trust is established within the intent and meaning of Par. 6 of Rev. Proc. 90-31 and paragraph 644(d)(2) and (3) of Title 26 USC, the Internal Revenue Code of 1986, as amended from time to time, and shall be held for the following purposes: distribution to beneficiaries, charitable, religious, educational, and scientific purposes: the organizations of such qualify as exempt under IRC 501(c)(3), or the corresponding section of any future federal tax code." (Based on the Declaration of Trust and the information submitted with the Form 1023, the reference to section 644 in Part II of Form 1023 appears to be a typographical error.)

In Part III of Form 1023, the B indicated that it is not a private foundation because it qualifies as a Section 509(a)(3) supporting organization. Organizations requesting classification under 509(a)(3) must complete Schedule D of Form 1023.

In Schedule D, the B stated that the organizations supported by the Trust are F and G. B noted that both of these organizations have received a ruling that they are not a private foundation by reason of section 509(a)(1) or 509(a)(2).

In response to question 3 of Schedule D, the applicant stated that B's governing instrument indicated that the majority of its governing board is elected or appointed by the supported organizations.

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No.
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On _____ the IRS sent a letter to the applicant requesting additional information in connection with the Form 1023. The EO determination specialist asked the organization to clarify its proposed activities. The specialist also asked the applicant to indicate the section of governing instrument which states that a majority of the board of B is elected or appointed by the supported organizations. In addition, the specialist asked the applicant to clarify who would be the beneficiaries of B.

In a response dated _____ the applicant stated that "The two charities listed are to be the final receiver of any funds remaining in the trust upon the death of the creator." The applicant also stated that the governing board of trustees of B was not appointed or elected by the supported organizations. Finally, the applicant stated that "there are only the two charitable organizations and the original creator as beneficiaries." The original creator was listed as D, J.

As a result of the applicant's response, a second request for information was issued by the IRS. The questions focused largely on B request for classification under Section 509(a)(3). The specialist requested that the applicant correct question 3a and complete questions 4 through 8 of Schedule D.

E responded to the second request by stating that the beneficiary organization had been changed "from those given before to K for which I am a trustee on and have been for several years."

The applicant also submitted a revised Schedule D. K was listed as the supported organization. The applicant also stated that "B is merely a conduit to channel contributions to these recognized charities upon the death of the creator of B."

In response to question 7a of Schedule D "What percentage of your organization's income does it pay to each supported organization?", the applicant stated that "100% of any remaining funds are to be paid to the charitable beneficiary upon the death of the creator beneficiary and the creator beneficiary is to receive 5% of the funds assets upon a yearly basis."

In response to question 7c of Schedule D "How much does your organization contribute annually to each supported organization?" The applicant responded "None annually, only upon death of the creator of the CRT."

Finally, in response to question 8 of Schedule D, "To what extent does your organization conduct activities that would otherwise be carried on by the supported

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organizations?", the applicant stated "None. It is only making a contribution of the remaining assets in the CRT when the creator dies."

Based on the Form 1023 and the responses to the inquiries from the Exempt Organizations determination specialist, the IRS granted exemption to the B in a letter dated [redacted]. The letter said that B was exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). The letter also determined that B was not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in section 509(a)(3).

LAW:

Internal Revenue Code Section 501(c)(3) provides for tax exemption to organizations operated exclusively for charitable purposes.

Regulation section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Regulation section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. The words "private shareholder or individual" refer to persons having a personal and private interest in the activities of the organization.

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the court held that regardless of the number of truly exempt purposes, the presence of a single substantial non exempt purpose will preclude exemption under section 501(c)(3) of the Code.

GOVERNMENT POSITION:

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer A		Year Ended

The Facts show that A (formerly B) is not organized or operated exclusively for a tax-exempt charitable purpose. B was formed as a charitable remainder trust under IRC section 664. The Declaration of Trust provides for an annual payment to the creator/donor beneficiary during his lifetime. The amount is stated in the Declaration of Trust as "five percent of the net fair market value of the unitrust corpus determined annually." The charitable beneficiaries are to receive a contribution of the remaining assets in the Trust upon the death of the creator. Therefore, the trust serves both public and private interests.

The Declaration of Trust states that B was formed as a Charitable Remainder Unitrust "within and under the meaning of IRC section 664 and the regulations thereafter." Unitrusts are one of two types of charitable remainder trusts described in IRC 664. Unitrusts are generally exempt from all taxes imposed by Subtitle A, Chapter 1, of the Internal Revenue Code, not because they are described in IRC 501(a), as are most tax-exempt organizations, but because IRC 664(c) provides for such treatment.

Conclusion

A (formerly B) was formed as a Charitable Remainder Unitrust within the meaning of Internal Revenue Code section 664. Therefore, based on the information, A tax exempt status under section 501(c)(3) should be revoked effective Date1. The trust is required to file Form 5227 and Form 1041.

Internal Revenue Service

Department of the Treasury
TE/GE

November 8, 2005

Date:

ORG

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

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:

IRS
Office of the Taxpayer Advocate
Local Office

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,

Revenue Agent

Enclosures:
Publication 892
Publication 3498
Report of Examination