

Department of the Treasury  
Internal Revenue Service

Release Number: 200748021

Release Date: 11/30/07

Legend:

Org = Name of Organization

NUM = EIN Number

Date1= Effective Date

Date2= Fiscal Year End of Effective Date

JAN 17 2007

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(c) because you were not operated exclusively for exempt purposes, a part of your net earnings inured to the benefit of private individuals, and you participated in a political campaign on behalf of a candidate for public office.

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 1120. These returns should be filed with the appropriate Service Center for the year ending Date2, 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 91<sup>st</sup> 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, 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

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**Legend:**

Org = Name of Organization  
Candidate = Candidate for Office  
State = Name of State  
Pres = President of Organization

ISSUES:

1. Should the Section 501(c)(3) exemption ruling issued to the ORG be revoked because it engaged in political activities that are prohibited under Section 501(c)(3)?
2. Should the Section 501(c)(3) exemption ruling issued to ORG be revoked because ORG failed to observe the record keeping and annual information returns filing requirements provided in the Code?

GENERAL STATEMENT OF FACTS:

**Media Exposure of ORG Activities**

An examination of ORG was started due to media reports alleging political contributions were made using ORG's grant funds.

A Newspaper article dated Aug. 8, stated that ORG made political contributions to "CANDIDATE FOR OFFICE"'s successful campaign for "State" Secretary of State using a "State" state grant. The contributions were made through two individuals and two companies who received payments from ORG, allegedly for construction related work, and who then made contributions of nearly identical amounts to "CANDIDATE FOR OFFICE"'s campaign. The EO<sup>1</sup> specialist obtained documents substantiating said statements.

The State awarded the grant to the ORG, a nonprofit organization founded by Pres to serve Asian Immigrants. is a "CANDIDATE FOR OFFICE" political ally and was ORG's President.

Records provided to the EO specialist show that in May, the "State" State Department of Parks and Recreation ("DPR") released \$ of a \$ grant to reimburse ORG for construction-related work after accepting minimal and inaccurate documentation that the work has been completed as required by law.

The August 8 article and an additional article dated April 8, reported that the political contributions were made through the following intermediaries:

- "Recipient"- received \$ from ORG on 9/1/ and \$ from ORG on

\* \* \* \*

<sup>1</sup> EO- Exempt Organizations Division of the Internal Revenue Service

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12/1/. He contributed \$ to "CANDIDATE FOR OFFICE"'s campaign on 12/28/. In a telephone interview he said he never performed any construction related work for the ORG.

- "Recipient"- received \$ from ORG on 12/1/. He contributed \$ to "CANDIDATE FOR OFFICE"'s campaign on 12/28/.
- "Recipient"- received \$ ORG on 2/8/. They contributed \$ to "CANDIDATE FOR OFFICE"'s campaign on 3/5/. They contributed \$ in March to ANOTHER CANDIDATES's campaign for State superintendent of public instruction.
- "Recipient" received \$ from ORG on 10/30. He is the brother in-law of the engineer who provided the estimate the ORG submitted to State DPR to get the grant. Contributor contributed to "CANDIDATE FOR OFFICE"'s campaign on 11/1/.
- Recipient- received \$ from ORG on 7/2. He contributed \$ to "CANDIDATE FOR OFFICE"'s campaign on 6/30.

The EO specialist obtained documents substantiating the above transactions.

The State of "State" Department of Parks and Recreation (DPR) opened an audit of the ORG and demanded proof that the DPR grant of \$ was spent on costs associated with the construction of a community center. The State auditors sought documentation over an extended period and President promised on several occasions to provide it—but failed to do so. According to a grand jury testimony,<sup>2</sup> President promised to personally deliver the documents Aug. 5, but did not show up.

A article dated Aug. 12, stated that ORG rented a city owned property for \$ /year to provide space for its multilingual information services to immigrants.

A article dated April 8, , reported that President was charged with grand theft for diverting \$ of taxpayer funds to "CANDIDATE FOR OFFICE"'s campaign fund. The criminal complaint was prepared by the "State" State Attorney General's ("A/G") office and the district attorney. These charges were the first to come out of several federal, state and local inquiries. No evidence was found that "CANDIDATE FOR OFFICE" had knowledge of President's scheme.

Grand jury testimony indicates that President created and submitted a fraudulent invoice to the State DPR to receive the grant, and that she later used the grant to reimburse people for their donations to "CANDIDATE FOR OFFICE". She used her own computer to turn an estimate from her engineer, for future work on the ORG's center into an invoice on President's letterhead that was given to the State DPR for reimbursement. Grand jury testimony also indicates that President created false records

\* \* \* \*

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supporting her use of the grant funds after investigations began about how the money was spent. A contributor, testified that President asked him to sign a false invoice purporting to document work he did for the ORG, but he refused. A Newspaper article dated April 8, reported that Federal authorities seized \$ of the unspent grant.

IRS' Information Document Request #001 (dated October 12,) asked for ORG's records. A ORG director told the EO specialist that all the records had been turned in to the State Attorney General's office.

The IRS requested a statute extension for year ending 12/31/ (which is one of the years in which the alleged political contributions occurred). In the absence of such statute extension the IRS report is making use of public information about ORG's activities.

OTHER FINDINGS OF FACTS:

ORG received initial funding from the Mayor's Office of Community Development (MOCD). Additional funding was provided by the Department of Children Youth and Their Families (DCYF) which granted ORG \$ /year starting in year- (or a total of approximately \$ ), to staff a referral hotline. In July, the Board of Supervisors' Budget Committee placed \$ of the ORG's yearly funding on reserve, pending a request for detailed information about the center's operation. These contributions and grants were reported on ORG's 990 returns. The \$ grant from the DPR was not reported on Form 990<sup>3</sup>.

The head of DCYF, said in a memo to the Board of Supervisors that the "center not only 'provided information and referral via telephone line, but also conducted outreach via community fairs, radio announcements and visits to other nonprofit organizations.'"

DCYF letter dated 1/12 to ORG stated that the DCYF's grant is cancelled and that ORG should cease all operations funded by DCYF.<sup>4</sup>

Grand jury testimony of contributor indicates that the center's board of directors asked few questions about the center's operations and received little information about the ORG's financial transactions.

A President's friend, who incorporated the ORG and served as its CFO, also helped President in her scheme. Contributor testified to the grand jury that Contributor was eager to help her son's political aspiration, and that she told that to people she knew, including ORG's board. Friend said that hoped that if she helped "CANDIDATE FOR

\* \* \* \*

<sup>3</sup> Grant income for Year do not show the \$ , The assets do not show the substantial grant funds that were part of ORG's assets as of 12/31.

<sup>4</sup> [ ]



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Directors of ORG at the time were President, et, al. The petition also states that President had taken a "leave of absence" from the Board.<sup>7</sup>

The Petition states: "

"

The ORG's Treasurer filed a statement for ORG-("Respondent") on 12/2/8. He stated that he had volunteered to serve as Treasurer; that ORG had no money and that it would rely on an attorney's "pro-bono" help to wind-up its affairs. At the present time, the ORG has not been dissolved.<sup>9</sup>

Before the IRS issued its exemption letter 1045 on January 19 that recognized ORG's exempt status under Section 501(c)(3) and gave it an advance ruling as a publicly supported organization under Sections 509(a)(1) and 170(b)(1)(A)(vi), it requested that ORG expand its initial board that included three directors.<sup>10</sup> The IRS recognized ORG's exempt status after receiving ORG's letter that said ORG had added two directors. Each of them signed a statement that read:

I [name], hereby state that I accept the position as Board of Director for the Org. I further state that, as a Board of Director, I will take an active part in the operation of the Org.

After these two members were added, the total board numbered five members and the officers were:

President and Director-  
Vice-President and Director  
Chief Financial Officer and Director

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\* \* \* \*

<sup>7</sup> See

<sup>8</sup> See

<sup>10</sup> See and related correspondence [ ]

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- a. of:  
 (i) cash .....


INVESTIGATION OF SAID MEDIA ALLEGATIONS OF POLITICAL ACTIVITIES:

At the present there is no information about any charges against ORG's board by the A/G or the district attorney.

**1. ORG'S Internal Investigation:**

Although the ORG's board was asked on IRS' IDR #1 dated Oct. 12, to describe any and all action that the board has taken in the matter (including internal investigations and other actions), no concrete information has been provided to show that the board undertook any action besides contemplating dissolution of the organization.

**2. "State" Dept. of Parks and Recreation Audit.**

Auditor is an auditor for the "State" Dept. of Parks and Recreation. She contacted President by phone on July regarding an audit. Auditor subsequently obtained ORG bank records. Auditors audit purpose was to verify that the product that was to be funded by the grant exists. In response ORG did not show that the product exists, namely, ORG did not produce the plans and the specifications that the grant funded. Therefore, the Audit conclusion was that the ORG had to return the money to the State. Auditors's recommendations were: "Close the project upon the



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participant refund of \$ \_\_\_\_\_ to the State.' That amount is \$ \_\_\_\_\_, the grant amount, plus interest earned on our money."<sup>11</sup>

**IRS' Audit Finding: ORG's Funds Given to "CANDIDATE FOR OFFICE"'s Political Campaign via Intermediaries**

<u>Date:</u>	Contributor Received:	Prior/Subsequent payment to "CANDIDATE FOR OFFICE"
9/1/	\$	
12/1/	\$	
12/28/		\$
	Contributor Received	
12/1	\$	
12/28/		\$
	Contributor Received	
2/8/	\$	
3/5/		\$
	Contributor Received	
10/30/	\$	
11/1/		\$
	Contributor Received	
7/2/	\$	
6/30/		\$
<u>Total:</u>		\$ _____

**"CANDIDATE FOR OFFICE"'s Action in Response to Said Media Allegations:**

"CANDIDATE FOR OFFICE" returned the \$ \_\_\_\_\_ contributions on his own initiative. An article dated Aug. 13, by \_\_\_\_\_ stated: "CANDIDATE FOR OFFICE" returns \$ \_\_\_\_\_ to State of "State" and: "  
\_\_\_\_\_ wrote:

LAW:

a. Requirements for Exemption under IRC (Internal Revenue Code) 501(c)(3)

\* \* \* \*

11 [ ]  
12 [ ]  
13 [ ]

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“SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC. 501(c)(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.”

FINAL-REG, TAX-REGS, §1.501(c)(3)-1(c)(3) “Action organizations. (i) An organization is not operated exclusively for one or more exempt purposes if it is an “action” organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph”

FINAL-REG, TAX-REGS, §1.501(c)(3)-1(c)(3)(iii). “An organization is an “action” organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term “candidate for public office” means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.”

In *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876 (2d Cir. 1988), cert. denied, 490 U.S. 1030 (1989), the court determined that the Association did not qualify as an organization described in IRC 501(c)(3) because it participated or intervened in a political campaign. The Association’s disqualifying activity was the distribution of its ratings of candidates for elective judicial office as “approved”, “not approved” or “approved as highly qualified.” The ratings were made on the basis of a comparison of the candidate with ideal standards of competence, ability, and other qualities; they did not involve comparisons with other candidates. The court stated that although this activity was nonpartisan and in the public interest, it nevertheless constituted participation or intervention in a political campaign and the Association therefore did not qualify as an IRC 501(c)(3) organization.

b. Requirement to File Annual Information Returns and Provide Information to IRS in Order to Retain and Support the Organization’s Exempt Status

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.

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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 ground that the organization had not established that it is observing the conditions required for the continuation of exempt status.

GOVERNMENT POSITION:

Issue 1

The Government contends that ORG failed to meet the "operational test" under Regulations Section §1.501(c)(3)-1(c) (3)(i) because it participated in prohibited political activities that preclude exemption under IRC 501(c)(3). Significant amounts were diverted from ORG's

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accounts and were paid over as political campaign donations through intermediaries without scrutiny and proper documentation showing they served legitimate public and charitable purposes.

Therefore ORG's exemption under IRC 501(c)(3) should be revoked.

TAXPAYER'S POSITION:

The report's findings were discussed by telephone with the ORG's directors. They promised to review the report promptly upon receiving it. Also, an audit closing conference with EO examination could be arranged should the ORG officers notify the EO examination to this effect.

The draft report was presented to ORG on May 9. The reply of Rep dated 5/15/ stated it wishes that IRS will wait until the Court decides if the allegations against President's are correct..

CONCLUSION:

Org has 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. Based on the above information, your exempt status under section 501(c)(3) should be revoked.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
Internal Revenue Service

ORG

Taxpayer Identification Number:

Form:

990

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.

Letter 3618 (04-2002)  
Catalog Number 34809F

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:

Local Taxpayer Advocate

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