

DEPARTMENT OF THE TREASURY

**Internal Revenue Service
TE/GE EO Examinations**

Number: **200803028**

Release Date: 1/18/2008

October 24, 2007

LEGEND:

ORG = Name of Organization

NUM = Employer ID Number

Date1 = Effective Date

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 as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

Exemption from income tax is a matter of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions. Section 6033 requires organizations exempt from tax to keep such records and render such statements as are required by such rules and regulations as the Secretary may prescribe. Treasury Regulations section 1.6033-2 (h)(2) requires organizations exempt from tax to submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into the organization's exempt status.

failed to comply with the advisory included in our prior examination letter regarding its 990 filing requirement under IRC section 6033. You are not an educational or charitable organization within the meaning of Treasury Regulation section 1.501(c)(3)-1(d).

You have not been operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3). Treas. Reg. Section 1.501(c)(3)-1(a). You have not demonstrated that you primarily engage in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) as required by Treas. Reg. Section 1.501(c)(3)-(c)(1).

Based upon the above, we are revoking your organization's exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code retroactively to Date1.

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, 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, Local 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,

Marsha A. Ramirez
Director, EO Examinations



DEPARTMENT OF THE TREASURY

Internal Revenue Service
WASHINGTON, DC 20224

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

LEGEND:

ORG = Name of Organization

NUM = Employer ID Number

Date1 = Effective Date

> ORG

Date:

Taxpayer Identification Number:
NUM

Form:
990

Tax Year(s) Ended:

Person to Contact: / ID Number:

Contact Number:

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.

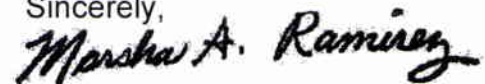
You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have 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
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,



Marsha A. Ramirez,
Director, EO Examinations

ENCLOSURES:

Publication 892
Publication 3498
Report of Examination: Form 4621, Form 886-A, Form 6018

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

Legend:

ORG = Name of Org
Date1 = Date of Incorporation
Date2 = Date of Exemption
Founder = Name of Founder

ISSUES:

Whether ORG should remain tax exempt under section 501(c)(3) of the Internal Revenue Code.

FACTS:

ORGANIZATION was incorporated in _____ on Date1. The organization was incorporated to operate an art gallery for the Arts. To provide professional and amateur artists the opportunity to exhibit, perform, and sell their work. Also, to develop programs and activities that encourages visitors and patronage of the gallery and historic Market. ORG was issued Form L-391 on Date2 recognizing Exemption from Income Tax under IRC section 501(c)(3) and subsection 509(a)(1) and 170(b)(1)(a)(vi).

ORG occupies the North Hall of the Market, which is owned by the Government and assigned by the Division. ORG has an art festival every Saturday, which allows local artists and crafters to showcase and sell their creations to the public. In _____, the organization began to operate a Sunday Flea Market. However, the resources to operate an art fair on both days of every weekend were not readily available, and most of the local shops and farmers stalls that drew shoppers to the Market were closed on Sundays. ORG entered into an agreement with the owner and sole proprietor of a business, to operate the Flea market each Sunday using ORG's exterior grounds. In return for 60% of the gross revenues from dealer's stall rental and a stall location without charge, Owner agreed to manage all reservations, define the space assignments, create and implement selling policies, coordinate with Local Police, maintain the bookkeeping, develop and place all advertising including the use of direct mail to promote the flea market. It was also stipulated that payments to ORG would be made weekly. An option to renew the agreement for future years was also included. Until _____, all renewal agreements have been oral between the parties. It was determined in the previous examination that the income from the Sunday flea market should be considered unrelated business income.

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

ORG is operated by Founder who is the Executive Director of the organization. ORG continues to operate the festivals on Saturdays and Sundays, and have the art exhibits throughout the year. ORG continues to conduct the performances during the spring and summer months. ORG is performing activities within section 501(c)(3) of the Internal Revenue Code, but has failed to file applicable tax returns for more than three consecutive years.

LAW:

Section 501(c)(3) of the Internal Revenue Code provides for the exemption of organization, which are organized and operated exclusively for religious, charitable, scientific, literary or educational purposes.

Section 1.6001-1(a) of the Regulations provides that except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Section 1.6001-1(e) of the Regulations addresses the retention of records. 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 so long as the contents thereof may become material in the administration of any internal revenue law.

Section 6033 of the Internal Revenue Code states that every organization exempt from taxation 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 purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, rendered under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

Section 6104(c)(1) provides that in case of any organization which is described in section 501(c)(3) and exempt from taxation under section 501(a), or has applied under section 508(a) for recognition as an organization described in section 501(c)(3), the Secretary at such times and in such manner as he may by regulations prescribe shall, notify the appropriate State officer of a refusal to recognized such organization as an organization described in section

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

501(c)(3), or of operation of such organization in a manner which does not meet, or no longer meets, the requirements of its exemption.

RATIONALE:

ORG is operating for 501(c)(3) purposes by providing art exhibits, dance recitals, and other performances. However, ORG failed to maintain records to provide that the Sunday operation of the flea market is promoting art awareness. Furthermore, ORG was previously informed in an advisory letter of the returns required to be filed in order retain their tax-exempt status. To date there is no indication that any returns have been filed by ORG.

CONCLUSION:

ORG's tax-exempt status should be revoked for failure to file returns for more than three consecutive years.