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DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

MC:4920 Mandatory Review

1100 Commerce Street

Dallas, TX 75242

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

November 1, 2007

UIL: 501.03-01

LEGEND:

**Release Date: 2/22/08**

ORG = Name of ORG

XYZ = State Date = 20XX/19XX

Company = Initial Org Name

Motto =

Organization = Second Organization

CO = Third Organization

ORG  
Address

Employer Identification #  
Person To Contact/ID#:  
Contact Telephone Number  
Taxpayer Advocate's Office, Address,  
Telephone Number:  
Telephone:  
Fax:

CERTIFIED MAIL

LAST DATE TO FILE A PETITION  
IN TAX COURT

January 30, 20XX

Dear :

This is a final adverse determination that you do not qualify for exemption from income tax under section 501(a) of the Internal Revenue Code (I.R.C.) as an organization described in I.R.C. § 501(c)(3). In addition, you do not qualify as an organization described in I.R.C. § 509(a)(1) & 170. Internal Revenue Service recognition of your status as an organization described in I.R.C. section 501(c)(3) is revoked, effective June 30, 20XX. Our adverse determination is made for the following reason(s):

You have not established you operated exclusively for exempt purposes within the meaning of I.R.C. § 501(C) (3). You failed to provide adequate documentation to confirm the organizations exempt activities.

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 the exempt purposes specified in IRC §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. Your organization has not provided any evidence you engaged in any activities that furthers your exempt purposes.

Contributions made to you are no longer deductible as charitable contributions by donors for purposes of computing taxable income for federal income tax purposes. See Rev. Proc. 82-39 1982-2 C.B. 759, for the rules concerning the deduction of contributions made to you between January 1, 20XX and the date a public announcement, such as publication in the Internal Revenue Bulletin, is made stating that contributions to you are no longer deductible.

You are required to file income tax returns on Form 1120 for all years beginning after July 1, 20XX. Returns for the years ending July 31, 20XX, July 31, 20XX, and July 31, 20XX, must be filed with this office within 60 days from the date of this letter, unless a request for an extension of time is granted. Send such returns to the following address:

Send such returns to the following address:

Tax returns for subsequent years are to be filed with the appropriate Campus identified in the instructions for those returns. If you decide to contest this determination in court, you must initiate a suit for

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declaratory judgment in 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 rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

The processing of income tax returns and assessment of any taxes due will not be delayed because a petition for declaratory judgment has been filed under I.R.C. section 7428.

The last day for filing a petition for declaratory judgment is January 30, 20XX.

If you have questions about this letter, please write to the person whose name and address are shown on this letter. If you write, please attach a copy of this letter to help identify your account. Keep a copy for your records. Also, please include your telephone number and the most convenient time for us to call, so we can contact you if we need additional information.

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. Or you can contact the Taxpayer Advocate office located nearest you at the address and telephone number shown in the heading of this letter.

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 I.R.C. section 6104(c).

This is a final revocation letter.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

Enclosures;  
Pub. 892

|                                |   |   |
|--------------------------------|---|---|
| Form <b>886A</b>               | Department of the Treasury - Internal Revenue Service | Schedule No. or Exhibit                     |
| <b>Explanation of Items</b>    |   |   |
| <b>Name of Taxpayer</b><br>ORG |   | <b>Year/Period Ended</b><br>June 30th, 20XX |

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ORG = Name of ORG  
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**Issue:**

- (1) Can an organization that is classified as a 501(c)(3) organization continue to be so classified if they have not substantiated their exempt status by providing support for their revenues, expenses and activities?

**Facts:**

According to the Organization, in 19XX, an individual was asked to teach a motto for the CO. Due to changes in the school district, the instructor decided to start an independent endeavor. In 19XX, the ORG began operations. In addition to a motto, the organization also has a computer lab at the location where practices are held.

In June, 19XX ORG was recognized as an association exempt under IRC 501(c)(3) and further described under IRC §170(b)(1)(A)(vi). In August, 19XX ORG was incorporated in the State of XYZ as Non-Profit Corporation.

On April 29<sup>th</sup>, 20XX a Revenue Agent completed an OCEP examination pertaining to the Form 990 on the organization for the tax period ended June 30<sup>th</sup>, 20XX. From that examination it was found that the organization had been in existence since 19XX but did not establish a bank account until December, 20XX. Prior to establishment of a bank account, funds were kept in a petty cash fund.

The issues were: (1) lack of records for the period July, 20XX through November, 20XX, (2) the organization's failure to provide additional information requested, and (3) it was noted at that time that the organization had changed from an association to a corporation and did not notify the Service of the change.

The ORG President did not respond to the request for additional information, and the President did not respond to any phone calls. The result of that OCEP examination was a no-change with written advisory, and a recommendation for a future field examination to insure that the organization is adequately maintaining its records and that no inurement or private benefit exists.

According to the Executive Director (who, in the OCEP examination was the President), in a phone conversation dated May 24<sup>th</sup>, 20XX the ORG has never been examined before.

According to Organization, the revenues and expenses are summarized below:

|                             |   |                                      |
|-----------------------------|---|--------------------------------------|
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| Year | Revenues | Expenses |
|------|----------|----------|
| 20XX | \$       | \$       |
| 20XX | \$       | \$       |
| 20XX | \$       | \$       |

According to Organization, the information was last updated on January 26<sup>th</sup>, 20XX. A Form 990 was filed for the year ended June 30<sup>th</sup>, 20XX. No Form 990 returns were filed for the year ended June 30<sup>th</sup>, 20XX. According to the Form 990 filed for the year ended June 30<sup>th</sup>, 20XX the ORG has no net assets at the start, or the end, of the year.

Using the figures from Organization, which states that the foundation staff reviewed the finances and other organizational elements of the ORG, the Net Assets for July 1<sup>st</sup>, 20XX should have been \$ and for June 30<sup>th</sup>, 20XX the net assets should have been \$.

**Law:**

IRC Section 501(c)(3) organizations are 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.

Tax Regulation 1.501(c)(3)-1(a) *Organizational and operational tests* (1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

IRC 6033(a)(1) states that except for a few listed exceptions, every organization exempt from taxation under IRC 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

|                             |   |                                      |
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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.

Tax Regulation §1.6033-2(a)(1) states in part that every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return. Such return shall be filed annually regardless of whether such organization is chartered by, or affiliated or associated with, any central, parent, or other organization. Tax Regulation §1.6033-2(a)(2)(i) states in pertinent part that every organization exempt from taxation under section 501(a), and required to file a return under section 6033 and this section (including, for taxable years ending before December 31, 19XX, private foundations, as defined in section 509(a)), shall file its annual return on Form 990.

Tax Regulation §1.6033-2(i)(1) states that an organization which is exempt from taxation under section 501(a) and is not required to file annually an information return required by this section shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created.

Tax Regulation §1.6033-2(i)(2) states that every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of the Internal Revenue Code.

Tax Regulation §1.6033-2(i)(3) states that an organization which has established its exemption from taxation under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not relieved of the duty of filing other returns of information.

Internal Revenue Code Section 6001 states that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

|                                |   |   |
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Tax Regulation 1.6001-1(a) provides that any person subject to income tax, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records 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 tax or information. Section 1.6001-1(e) of the regulations provides that the books and records shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Tax Regulation 1.6001-1(d) provides that books and records required by IRC section 6001 be kept in a safe and convenient place and at all time be available for inspection by authorized internal revenue officers employees. "The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under Subtitle A of the Code."

Tax Regulation 301.7701-6(a) states that the term *person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group.

The Tax Court stated that the regulations under IRC Section 501(c)(3) provides for two tests, an operational test and an organizational test. Failure to meet either test negates the exempt status of the organization. TC Memo 1993-116 WL 87864 (U.S. Tax Court).

Exempt status is a privilege, a matter of grace rather than a right (Christian Echoes National Ministry 470 F 2d 849, 857 (1972)). When the creators control the affairs of the organization there is an obvious opportunity for abuse which necessitates an open and candid disclosure of all facts bearing upon the organization, operations and finances. Where such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the taxpayers fail to meet the requirements of IRC Section 501(c)(3) (Bubbling Well Church of Universal Love v Commissioner, 74 TC 531, 535 (1980). Afd 670 F 2d 104 (9<sup>th</sup> cir, 1981)).

In the 20XX Instructions For Form 990 And Form 990-EZ, return of organization exempt from income tax and short form return of organization exempt from income tax, p.14, states, "Recordkeeping. The organization's records should be kept for as long as they may be needed for the administration of any provision of the Internal Revenue Code. Usually, records that support an item of income, deduction, or credit must be kept for 3 years from the date the return is due or filed, whichever is later. Keep records that verify the organization's basis in property for as long as they are needed to figure the basis of the original or replacement property."

|                                |   |   |
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**Government Position:**

The ORG refused to support its assertion that it is an exempt organization by refusing to make its records and activities available for examination as required by law. For that reason, nothing could be found to support the organization's assertion that it is a charity as described under IRC Section 501(c)(3).

**Conclusion:**

The ORG is not an exempt organization as described under IRC Section 501(c)(3) of the Internal Revenue Code, and should be revoked effective July 1<sup>st</sup>, 20XX. For that reason, for federal tax purposes the organization is best described as a for-profit organization subject to the same tax laws and regulations as any incorporated organization. The organization is required to file the same tax returns that a for-profit organization would need to file (Form 1120 for the organization; W-2s, 1099s, Forms 941 and Form 940 when applicable).

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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
Internal Revenue Service

ORG  
ADDRESS

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.



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 Ramirez  
Director Exempt Organizations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination