



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Number: **200817051**
Release Date: 4/25/2008

January 17, 2008

LEGEND

ORG = Organization name

XX = Date

UIL: 501.03-01
ADDRESS = address

ORG
ADDRESS

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

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

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 January 1, 20XX.

Our adverse determination was made for the following reasons:

A substantial part of your activities consists of providing down payment assistance to home buyers. To finance the assistance you rely on home sellers and other real-estate related businesses that stand to benefit from these down payment assistance transactions. Your receipt of a payment from the home seller corresponds to the amount of the down payment assistance provided in substantially all of your down payment assistance transactions. The manner in which you operate demonstrates you are operated primarily to further your insiders' business interests. Therefore, you are operated for a substantial nonexempt purpose. In addition, you operations further the private interests of the persons that finance your activities. Accordingly, you are not operated exclusively for exempt purposes described in section 501(c) (3).

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.

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 December 31, 20XX, 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 calling or writing to: Internal Revenue Service, 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



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DEPARTMENT OF THE TREASURY

Internal Revenue Service
24000 Avila Road MS 3000
Laguna Niguel, CA 92677

ORG
ADDRESS

Taxpayer Identification Number:

Form:
990-PF

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:

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 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended December 31, 20XX

Legend

ORG = Organization name xx = Date

Issue:

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

Facts:

The ORG was recognized by the Internal Revenue Service as a tax exempt organization under 501(c)(3) of the Internal Revenue Code on May 2, 1xxx. The primary activities of the organization have been participation in the Housing and Urban Development (HUD) program which involves the providing of financial assistance to low or very low income first-time home buyers.

In regards to the HUD program, the Office of the Inspector General at the US Department of Housing and Urban Development contacted the IRS regarding information revealed during HUD audits of some 501(c)(3) organizations participating in the agency's discount property purchase program. HUD auditors reported abuse dealing with two main issues: organizations involved in the discount property program (rehab/resale), and organizations providing down payment assistance. There were indications that ORG is/was involved in a down payment assistance program. The terms and conditions under which down payment assistance is offered suggest that the organization was more interested in closing sales for the benefit of sellers than they were in helping buyer's secure affordable housing.

On April 21, 20XX, the Internal Revenue Service (IRS) commenced an examination of the organization for the fiscal year ended December 31, 20XX to determine if the organization was operating exclusively for tax exempt purposes. As part of the examination, information and documents regarding the organization's activities was requested via an Information Document Request (IDR) as follows:

1. Articles of incorporation and all amendments.
2. Bylaws.
3. IRS exemption letter.
4. Original application for exempt status.
5. Minutes of board of director's meeting from 20XX through present.
6. Newsletter, pamphlets, brochures.
7. Description of all events, programs and activities during the fiscal year ending December 31, 20XX.
8. Interview with officers.
9. All accounting records (G/L, checks, invoices, etc.).

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10. Loan Agreements and contracts in reference to the down payment assistance program.
11. Down payment assistance transaction and closing statements.
12. List of home sellers names, addresses and social security numbers.

On June 9, 20XX, the IRS received notice that the letter was not deliverable and unable to be forwarded.

On September 11, 20XX the IRS mailed a postal tracer to the local post office to obtain a correct and current address of the organization. The postal tracer did not provide any information on the organization's address or information on the officers of the organization.

To date, the Internal Revenue Service has not received any of the requested information or documents from the organization

Law:

Internal Revenue Code Section 501(c)(3) provides for tax exemption to organizations organized and operated exclusively for charitable purposes and no part of the net earning which inures to the benefit of any individual.

Regulation section 1.501(c)(3)-1(a)(1), *Organizational and operational tests*, provides that 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.

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(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,

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shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 6001 if 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.

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 specially 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 regulation 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.

Revenue Ruling 59-95, 1959-1 C.B. 627 concerns an exempt organization that was requested to produce a financial 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

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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.

Government Position:

In accordance with the above cited provisions of the Code and regulations under section 6001 and 6003, 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) 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.

The ORG has not met the requirements to qualify for tax exempt status under 501(c)(3) of the Internal Revenue Code because it has not complied with the IRS's requests for information to determine if it is still qualified for tax exempt status under 501(c)(3) of the Code.

Therefore, revocation of the ORG's tax exempt status is recommended effective January 1, 20XX.