



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE – EO Mandatory Review
1100 Commerce Street, MC 4920-DAL
Dallas, TX 75242

Release Number: **200822029**

Release Date: 5/30/08

Legend

Org= Organization name

Date: March 4, 2008

UIL Code: 501-03-01

Org

Address

XX = Date

Address = address

Employer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

In Reply Refer To:

TE/GE Review Staff

**LAST DAY FOR FILING A
PETITION WITH TAX COURT:**

June 2, 20XX

CERTIFIED MAIL – Return Receipt Requested

Dear

This is a Final Adverse Determination revoking your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

ORG has failed to provide evidence that you are currently operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). You are not a charitable organization within the meaning of Treasury Regulations 1.501(c)(3)-1(d) in that you failed to establish that you were operated exclusively for an exempt purpose. You have the power to levy and collect tax which is beyond the scope of a Section 501(c)(3) entity. Additionally, since governmental entities possess the power to tax, that makes you an integral part of the state government and integral parts of the state government do not qualify for exemption under 501(c)(3).

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 July 1, 20XX.

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

You are required to file Federal income tax return Form 1120. These returns should be filed with the appropriate Internal Revenue Campus for the year ending June 30, 20XX and for all years thereafter.

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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 exempt status was determined by calling _____, faxing _____, or writing to: Internal Revenue Service, Taxpayer Advocates Office.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals process, 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,

Marsha A. Ramirez
Director, EO Examinations

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX06

Issues:

Does ORG qualify for exemption from federal income tax under Section 501(c)(3) of the Code?

Issue 1 Facts:

ORG was issued a determination letter in July of 20XX. The organization was granted exemption as a educational organization within the meaning of 501(c)(3) of the Code. The organization was given an advanced ruling as to their foundation classification and was classified as a IRC 509(a)(1) and 170(b)(1)(A)(vi) public charity. Their foundation classification under IRC 509(a)(1) and 170(b)(1)(A)(vi) was never determined at the end of their advanced ruling period, because the organization claimed that they should be classified as a school.

The organization's activities consist of operating a school district with 20 different public schools located within their district. They operate schools with grades ranging from preschool to twelfth grade. As of 10/1/XX, there were a total of students attending these schools.

The school board was created under Revised Statute . It is given the power to levy and collect sales taxes (as approved by voters) for the purpose of providing additional funds for the payment of teacher's salaries by Revised Statute . In addition, it was given the power to levy taxes (as approved by voters) for the purpose of creating junior college districts by Revised Statute .

Revised Statute provides that the school board shall submit to the State Superintendent of Education a copy of its adopted budget no later than September of each year.

The Board of Education enacts policies and adopts regulations that govern the state wide operations of public schools that must be followed by public school boards. They also monitor the results of the school boards progress through annual report cards, approve all text books purchased with state funds, and conduct administrative hearings in cases involving controversies from school board actions.

Revised Statute states that the state is the one who mandates salary increases of non teacher school personnel.

The statutes can be looked up at

Issue 1 Law:

Section 501 of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided that no part

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of the net earnings of such corporations inures to the benefit of any private shareholder or individual. See § 501(c)(3).

Revenue Ruling 60-384, 1960-2 C.B. 172, explains that a wholly owned state or municipal instrumentality which is a separate entity and which is operated exclusively for purposes described in section 501(c)(3) of the Code may qualify for exemption from federal income tax. However, Revenue Ruling 60-384 goes on to explain that where the particular branch or department under whose jurisdiction the activity in question is being conducted is an integral part of a state or municipal government the provisions of section 501(c)(3) would not be applicable. "For example, where a public school, college, university or hospital is an integral part of a local government, it could not meet the requirements for exemption under section 501(c)(3) of the Code." It also holds that if the organization conducting the activity, although a separate entity, is clothed with powers other than those described in section 501(c)(3) it would not be a clear counterpart of a section 501(c)(3) organization. For example, where a wholly-owned state or municipal instrumentality exercises enforcement or regulatory powers in the public interest such as health, welfare, or safety, it would not be a clear counterpart of an organization described in section 501(c)(3) of the Code even though separately organized since it has purposes or powers which are beyond those described in section 501(c)(3).

Revenue Ruling 74-15, 1974-1 C.B. 126, provides that a public library organized as a separate entity under a State statute, without power to impose taxes for its operation but whose funds are obtained by certification of a tax rate needed for its operation to the rate-making authority, qualifies for exemption under section 501(c)(3) of the Code. In the revenue ruling, the organization it stated statute that granted these powers conferred upon the library board, its governing body, a limited power to determine the tax rate necessary to support its operations within specified maximum and minimum rates. The effect of the statute is not to grant the library board the power to impose or levy taxes.

Revenue Ruling 77-165, 1977-1 C.B. 21, provides that a state university that does not possess a substantial right to exercise the power to tax, the power of eminent domain, or police power does not qualify as a political subdivision within the meaning of section 1.103-1(b) of the regulations.

Revenue Ruling 87-2, 1987-2 C.B. 18, holds that income generated by a state lawyer's trust fund managed by the supreme court of the state is not subject to tax under the principle that income earned by a state, a political subdivision of a state, or an integral part of a state or political subdivision of a state is generally not taxable in the absence of specific statutory authorization for taxing such income. The criteria for determining integral part status on part of a lawyer trust account in the revenue ruling included the following factors:

1. The members of the fund are directly or indirectly appointed or approved by the supreme court of the state.

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Name of Taxpayer ORG		Year/Period Ended 20XX06

2. The Supreme Court may remove any member of the fund without cause.
3. The fund is required to make quarterly reports to the Court.
4. The Supreme Court monitors the activities of the fund by having a judge of the supreme court present at its meetings.

Issue 1 Governments Position:

ORG is clothed with powers beyond those within the scope of Section 501(c)(3) of the Code. Per Revised Statute _____, the school board has been given the power to levy and collect taxes for the purposes of paying teacher's salaries and creating Junior College Districts. Unlike the Public Library described in Revenue Ruling 74-15 which was given the ability to determine the tax rate and still qualify for exemption under Section 501(c)(3) of the Code, the school board has the power to levy taxes. This is outside the scope of Section 501(c)(3) of the Code and is a power of a political subdivision per Revenue Ruling 77-165. Since ORG has the power to levy & collect tax which is beyond the scope of Section 501(c)(3) and is a power of a political subdivision, it does not qualify for exemption under Section 501(c)(3) of the Code. See Revenue Ruling 60-384.

ORG is also an integral part of the _____ state government. Since the school board has the power to tax, it is considered a political subdivision. Political subdivisions are integral parts of the state government. As described in Revenue Ruling 60-384, integral parts of the state government do not qualify for exemption under Section 501(c)(3) of the Code.

Even if the organization wasn't considered a political subdivision, it would still be an integral part of the _____ state government. Revised Statute _____ mandates the school board submit its annual budget to the State Superintendent of Education. Also, _____ Department of Education gives a annual report card the school board's educational performance, must approve all text books purchased with state funds, and conducts administrative hearings in cases involving controversies from school board actions. Because of the degree of control the state has over the school board through its different educational entities and appointees, it meets the approval, monitoring, and reporting integral part aspects of Revenue Ruling 87-2. Therefore, the school board does not qualify for exemption under Section 501(c)(3) of the Code since it is an integral part of the government based on the degree of control the state has over the organization. See Revenue Ruling 60-384.

Based on the above rational, ORG does not qualify for exemption under Section 501(c)(3) of the Code because it is considered to have powers beyond the scope of the code section and is an integral part of the state government.

Issue 1 Taxpayers Position:

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The organization agrees that they do not qualify as a organization described in Section 501(c)(3) of the Code.

Conclusion 1:

ORG does not qualify for exemption under Section 501(c)(3) of the Code. Accordingly, the organization's exempt status is revoked effective July 1, 20XX.

Note:

Please note that this is not a final report. The draft report is subject to review and modification by our Mandatory Review Staff. You will receive a final report from Mandatory Review.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
TE/GE EO Examinations
1122 Town & Country Commons, Room 128
Chesterfield, MO 63017-8283

ORG
ADDRESS

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:

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