



## DEPARTMENT OF THE TREASURY

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

### TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

Release Number: **200842056**

Release Date: 10/17/08

UIL Code: 501.03-01

Legend

ORG = Organization name

ORG

ADDRESS

**June 24, 2008**

XX = Date      Address = address

Person to Contact:

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: September 22, 20XX

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.

You have failed to produce documents to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. Also, you have failed to keep adequate books and records as required by IRC section 6001 and the regulations there under.

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 January 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 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 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 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, Taxpayer Advocates Office. Or telephone contact 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

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
<b>Name of Taxpayer</b> <b>ORG</b>		<b>Year/Period Ended</b>  12/31/20XX

**LEGEND**

ORG = Organization name      XX = Date      XYZ = State      City = city  
Video = video      CO-1 = 1<sup>st</sup> company      address = address      Executives =  
executives      President = president      Secretary = secretary      Revenue  
Agent = revenue agent

**Issue:**

Whether ORG (herein after referred to as ORG) qualifies for exempt status under Section 501(c)(3) of the Internal Revenue Code.

**Facts:**

ORG is a trust exempt under Section 4947(a) (1) of the Internal Revenue Code. ORG filed Form 990PF for the 20XX tax year. President is the Executive trustee and Secretary is the secretary of the trust. The two are husband and wife.

Trusts that are exempt under Section 4947(a) (1) have the same requirement as exempt organizations described under section 501(c) (3).

Agent in charge of the examination placed three phone calls to the representatives of ORG on the 24<sup>th</sup> & 29<sup>th</sup> of May and June 4, 20XX. Each time on the voice mail system, agent identified himself by name, the agency he represented and the purpose of the call. These calls were not returned.

On June 5, 20XX agent placed another call to a different number that was believed to be the home of the Executives. Contact was made on this call with President. After the agent identified himself and the purpose for the call President stated, he doesn't answer any questions in reference to the                      from the IRS. After that call ended he placed a call shortly after to express, in summary, his displeasure with the IRS and that the agent in charge should view the video "                      ". The fact that President initiated the call to the Service indicates that the three phone calls placed in the months of May and June were received and retrieved because outbound calls from the agent's phone do not show the exact telephone number on a caller I.D. Therefore, in order for him to directly contact the agent he would have had to listen to the messages left on the voice mail system previously that included a name and telephone number.

On the same day, June 5, two correspondence letters were sent to Address which is the address for ORG as well as to the Executives personal home. The letter was addressed to President as representatives of ORG and it explained the Service's intent to conduct an examination of ORG. The correspondence also included Form 4564 Information Document Request that listed multiple items that needed to be provided during the examination as well Publication 1 "Your Rights as a Taxpayer".

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June 14, 20XX the Service received the correspondence back that was addressed to the P.O. Box with the words "Refused" written on the envelope. It also was labeled as, return to sender/ not deliverable as addressed/ unable to forward. The Postal labeled its first notice on the 7<sup>th</sup> of June.

On June 27, 20XX the Service received the correspondence back that was addressed to the Executives home address. It was stamped "UNCLAIMED" by the Postal Service and handwritten dates of June 7<sup>th</sup>, 12<sup>th</sup>, and 22<sup>nd</sup> were on the envelope.

Two separate summonses were issued to the representatives of the ; Executives. On October 3<sup>rd</sup> 20XX Revenue Agent served the summons to President by dropping it at his feet. Although . President showed up for the appearance on the 15<sup>TH</sup> of October 20XX the summons was invalid due to an error of the signature.

A second summon was issued to both and served on October 16<sup>th</sup>, 20XX by Revenue Agent. The summons was only served to Secretary and was dropped at her feet because President was not available. However, both parties appeared on October 29<sup>th</sup> 20XX.

Although the Executives appeared for both appearances they refused to provide any of the documents requested in the Information Document Request or attachments to the summonses. Both appearances were recorded by the Service and the taxpayers. The first appearance President informed the Service of his intent to record the conversation. For the second appearance notification was sent on October 16, 20XX providing advance notice of the Service's intent to record the conversation.

During each appearance President requested agent in charge to complete a questionnaire that he provided along with a signature. After the agent in charge refused such request and attempted to inform President and company of the consequences of not fully complying with summon by producing the books and records the representatives ended the conversation and departed.

The location for each appearance was the Federal Building in City, XYZ. During each appearance Agent displayed his credentials that permit him as an authorized employee to review the books and records of ORG.

On Oct 24, 20XX the Service received correspondence from ORG that included a copy of Video along with a copy of an affidavit presenting his account of the appearance on October 15, 20XX.

On November 13, 20XX the Serviced received another correspondence from ORG that included an Affidavit of Default.

January 10, 20XX the Service sent a certified letter to ORG informing the organization of their intent to revoke the organization due to non-compliance. Along with the letter another Form



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4564 Information Document Request was sent. Per records from USPS this notice was delivered on January 12, 20XX at 8:40 a.m with a notice.

**Law:**

Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) provides: An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirements 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 designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

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.

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 records 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.

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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-(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 grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under sections 6001 and 6033, 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 purpose for which it was granted tax exempt status and to determine its liability for any unrelated business income tax.

### **Taxpayer's Position:**

Taxpayer issued affidavits dated October 18, 20XX that contained a statement of facts based upon his experience of the appearance date October 15, 20XX. The following are, in part, his statements from the document:

1. He is not in receipt of any legal evidence that he has refused to produce any requested documents, books, and records.
2. He is not in receipt of any legal evidence of a properly executed summons from a Federal Court of competent jurisdiction demanding him to produce books, records and documents connected to this matter.
3. He is not in receipt of any evidence that the Internal Revenue Service and/or Revenue Agent has legal authority to summon any parties in connection with the enforcement or collection of income taxes under Subtitles A through C of the IRC.

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4. He is not in receipt of any evidence of the existence of implementing regulations for 26 U.S.C. § 7602 for Subtitles A through C income taxes.
5. He is not in receipt of any evidence of implementing regulations for 26 U.S.C. § 7602 other than those found in 27 CFR Part 70, which is for CO-1 and not Title 26 Income taxes.
6. He is not in receipt of any evidence that Treasury Decision 120-01 did not specifically transfer the functions of Revenue Officers to the Bureau of CO-1.
7. He is not in receipt of any evidence that the ORG is involved in CO-1 activities.
8. He is not in receipt of any evidence of a Delegation of Authority order from the District Director giving Agent or any other "Revenue Agent" connected to this matter, the authority to summon him or any third party of books and records.
9. He is not in receipt of evidence of a Pocket Commission for Revenue Agent, or any other "Revenue Agent" connected to this matter, giving enforcement authorization.
10. He is not in receipt of evidence that he cannot serve written instruction to any third party summoned in this matter to refuse compliance with a summons in regard to this matter.
11. He is not in receipt of any evidence that compelled the production of any books and records without due process of law that does not constitute an illegal search and seizure under the Fourth Amendment.

**Government's Position:**

Based on the facts of the examination, the organization does not qualify for exemption because of their refusal to comply with Section 6001 and 6033. According to the facts above Revenue Agent displayed his pocket commission providing him authority to carry out this section.

ORG has not allowed the Service the opportunity to determine if they comply with Treas. Reg. 1.501(c) (3)-1(d) (1) (ii) by providing the necessary books and records.

**Conclusion:**

It is the IRS's position that the organization failed to meet the reporting requirements under sections 6001 and 6033 to be recognized as exempt from federal income tax under 501(c) (3) of the Internal Revenue Code. Accordingly, the organization's exempt status is revoked effective January 1, 20XX.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service  
Reginald Alford  
401 W. Peachtree St. Rm 1109  
Atlanta, Ga. 30308

ORG

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