



## DEPARTMENT OF THE TREASURY

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

### TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

July 31, 2008

Release Number: 200846027

Release Date: 11/14/08

UIL Code: 501.03-01

#### LEGEND

ORG = Organization name      XX = Date      Address = address  
UIL: 501.03-01

ORG  
ADDRESS

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

LAST DATE FOR FILING A PETITION  
WITH THE TAX COURT: October 29, 20XX

Dear :

This is a final revocation letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service's recognition of your organization as an organization described in section 501(c)(3) is hereby revoked effective January 1, 20XX.

We have made this determination for the following reasons:

You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of I.R.C. section 501(c)(3). You failed to comply with the conditions of your exemption in that you did not file Forms 990 or respond to repeated reasonable requests to allow the Internal Revenue Service to examine your books, records, and activities. You have provided no information showing that you conduct a real and substantial charitable program.

As such, you failed to meet the requirements of I.R.C. 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 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 calling or write:

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>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended

**LEGEND**

ORG = Organization name      XX = Date      XYZ = State      President = president  
motto = motto      CO-1 = 1<sup>st</sup> company

**ISSUE**

Whether the organization known as ORG (hereinafter referred to as “ORG”) has operated exclusively for §501(c)(3) purposes and if not, whether their exempt status should be revoked?

**FACTS**

The organization, ORG, was incorporated in the State of XYZ on February 12<sup>th</sup>, 20XX.

The Internal Revenue Service (hereinafter referred to as “IRS” or “Service”) sent ORG Letter 1045 dated July 30<sup>th</sup>, 20XX which granted ORG tax-exempt status as an organization exempt from income tax under Internal Revenue Code (hereinafter referred to as “IRC” or “Code”) section 501(a) as an organization described in section 501(c)(3).

Because ORG was a newly created organization, the IRS did not make a final determination regarding the organization’s foundation status under section 509(a) of the Code. Instead, they were granted an advance ruling period in which they would be treated as a publicly supported organization under IRC §509(a)(1) further defined under 170(b)(1)(A)(vi). The advance ruling period began February 12<sup>th</sup>, 20XX and ended December 31<sup>st</sup>, 20XX. Contributions to the organization were deductible to the donor as provided under section 170 of the Code.

During the application for exemption process ORG was requested to provide a detailed narrative description of the services they will provide in which they responded as follows:

“We intend to provide the public motto services motto services motto services motto services motto services motto services fostering international amateur sports competition motto services.”

In addition, the organization submitted information that stated “ORG, is an international non-profit help organization dedicated to providing consumer protection services, alternative methods of debt reduction, financial situation negotiations, Fair Debt Collections Practices Act & Fair Credit Reporting Act...” The organization listed the following “Our Services – Advice, credit cards, credit report, bill collections calling, bankruptcy alternatives, consolidation, consumer education, financial relief, debt reduction, negotiating balances?”

This case was transferred from the Exempt Organization Compliance Unit (“EOCU”). The EOCU referred ORG for field examination as they were unable to verify the activities of the organization during a compliance check. The EOCU made contact with President, the President of ORG, in an attempt to gather information in order to verify exempt activities. President was sent Form 13770 requesting information related to their activities and the current operating status of the organization. Form 13770 was completed

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and signed by President on March 31<sup>st</sup>, 20XX. President indicated that the organization was not required to file Form 990 as they were inactive and became inactive on January of 20XX. In addition, President included the following statement:

“Organization was under an injunction filed by CO-1. As a result we were unable to conduct credit counseling for 2 years. I the President maintained the website & PO Box operation (sic) until 20XX.”

The Internal Revenue Agent (“Agent”) was assigned ORG for field examination on February 13, 20XX. The Agent attempted to contact the organization starting April of 20XX. Telephone numbers listed on the website for the organization were either incorrect or disconnected. In addition, telephone numbers initially secured by the EOCU were no longer in service. On May 23<sup>rd</sup>, 20XX, the IRS sent the organization correspondence (Letter 3611, Publication 1 and Form 4546 – Information document Request) informing the organization of the examination and requesting they contact the Agent. This correspondence was sent via the United States Postal Service (“USPS”) Certified Mail – Return Receipt Requested. The Agent performed additional research in which another address for ORG, different from the address on file with the Service, was secured. The Agent sent correspondence to this address on June 11<sup>th</sup>, 20XX. Both correspondence sent to the organization were returned by the USPS on June 18, 20XX as either “Unclaimed, Unable to Forward” or “Moved – left no address”.

Form 4759-Post Office Tracer was submitted to the USPS requesting the address of the individual that established the Post Office Box for ORG. The USPS provided the name of the Post Office Box applicant as President and his contact information. This address agrees with the last address on file with the Service for President. The IRS sent correspondence certified mail to President on August 15<sup>th</sup>, 20XX requesting he contact the Agent in charge of the examination. The IRS received PS Form 3811 – Domestic Return Receipt verifying delivery of correspondence sent August 15<sup>th</sup>, 20XX to President address on August 17, 20XX. As of September of 20XX, the Service has not been contacted by President.

The State of XYZ Department of Taxation’s website lists the organizations current status as “*Forfeit*”. Internal IRS documents indicate the organization has only filed Form 990 for tax period ending December 31<sup>st</sup>, 20XX. The organization has filed no other federal returns (e.g. 941’s, 1099 etc) since they were granted exemption.

## LAW

IRC 501(c)(3) exempts from Federal income tax: 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 (i)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

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## The Dual Test: Organized and Operated

IRC 501(c)(3) requires an organization to be both “organized” and “operated” exclusively for one or more IRC 501(c)(3) purposes. If the organization fails either the organizational test *or* the operational test, it is not exempt. Reg. 1.501(c)(3)-1(a)(1).

The organizational test concerns the organization’s articles of organization or comparable governing document. The operational test concerns the organization’s activities. A deficiency in an organization’s governing document cannot be cured by the organization’s actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well written charter. Reg. 1.501(c)(3)-1(b)(1)(iv).

### Operational Test

- Section 1.501(c)(3)-1(d)(i) defines appropriate exempt purposes. An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated *exclusively* for one or more of the following purposes:

- Religious
- charitable
- scientific
- testing for public safety
- literary
- educational
- fostering national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)
- prevention of cruelty to children or animals

- Reg. 1.501(c)(3)-1(c)(1) provide that an organization is *operated exclusively* for charitable purposes only if it engages *primarily* in activities that accomplish those purposes in (1) above. It is not so operated if more than an insubstantial part of its activities do not further those purposes.

### Meaning of “Operated Exclusively”

The meaning of the term ‘exclusively’ as used in the statutes is no longer open to debate. In Better Business Bureau of Wash., D.C. v. United States, 326 U.S. 279, 66 S.Ct. 112, 90 L.Ed. 67 (1945), the Supreme Court, in giving effect to § 811(b)(8) of the Social Security Act (in terms substantially the same as § 501(c)(3) of Int.Rev.Code), made this pronouncement:

“In this instance, in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single non educational purpose, if substantial in nature, will destroy the



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exemption regardless of the number or importance of truly educational purposes.” 326 U.S. at 283, 66 S.Ct. at 114, 90 L.Ed. 67. See also, Duffy v. Birmingham, 8 Cir., 190 F.2d 738 (1951); American Institute for Economic Research v. United States, Ct.Cl., 302 F.2d 934 (1962), cert. denied, 372 U.S. 976, 83 S.Ct. 1109, 10 L.Ed.2d 141 (1963); Scripture Press Foundation v. United States, Ct.Cl., 285 F.2d 800 (1961), cert. denied.

The most liberal of constructions does not mean that statutory words and phrases are to be given unusual or tortured meanings unjustified by legislative intent or that express limitations on exemption are to be ignored. See Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, 66 S.Ct. 112.

Furthermore, Section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

### **Public v. Private Purposes**

Reg. 1.501(c)(3)-1(d)(1)(ii) provide that to meet the operational test, an organization must be engaged in activities furthering “public” purposes rather than private interests. It must not be operated for the benefit of designated individuals or the persons who created it. The purposes specified in IRC 501(c)(3), pertaining to this particular organization, which are all “public” purposes, are separately analyzed below.

In order to establish that it meets the first criterion of the operational test for tax-exempt status, i.e., that it is “operated exclusively” for exempt purposes, an organization must prove that it is operated for a public purpose rather than for benefit of private interests, such as those of its creator or his family, shareholders, or designated individuals; presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption. Church By Mail, Inc. v. C.I.R., 765 F.2d 1387 C.A.9, 1985.

### **Charitable Organizations**

Reg. 1.501(c)(3)-1(d)(2) provide that the term “charitable” is used in IRC 501(c)(3) in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; promotion of social welfare.

### **Educational Purposes**

1. An organization that is organized and operated exclusively for educational purposes qualifies for exemption under IRC 501(c)(3).
2. The regulations under Reg. 1.501(c)(3)-1(d)(3)(i) define education as:

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- “the instruction or training of the individual for the purpose of improving or developing his capabilities”
- “the instruction of the public on subjects useful to the individual and beneficial to the community.”

### **Burden of Proof**

The court in Church of Spiritual Technology v. United States, 510 U.S. 870, 114 S.Ct. 197 (Mem) U.S.,1993, cited a long line of authority holding that the applicant bears the burden of showing it is entitled to exemption. In Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. 1974), the court stated that “[i]ncome tax exemption must be strictly construed, with any doubts to be resolved in favor of the taxing entity. Consequently, determinations of the Commissioner are presumed correct.”

Similarly, the court cited Welch v. Helvering, 190 U.S. 111, 115 (1933), and modern cases following its stricture that “[P]laintiff thus bears the burden of proving its entitlement to an exemption.” See also, Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104, 106 (9th Cir. 1981); Freedom Church of Revelation v. United States, 588 F. Supp. 693, 696 (D.D.C. 1984).

The Tax Court has **consistently** stated that a statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power. Harding Hospital, Inc. v. United States of America, 505 F.2d. 1068, 34 A.F.T.R.2d 74-6174, 74-2 USTC.

### **TAXPAYER’S POSITION**

The taxpayer’s position is unknown as the Service has been unable to contact ORG or any of its officers, despite several attempts.

### **SERVICE POSITION**

The issue affecting tax exempt status of ORG is the:

#### 1. Operational Test

Exempt status under §501(c)(3) is a privilege as opposed to a right. An organization granted tax-exempt status under §501(c)(3) maintains the responsibility for substantiating continued eligibility for recognition thereunder. Organizations seeking to obtain *or* maintain tax-exempt status under §501(c)(3) must meet two basic tests. Such organizations must be **both** organized **and** operated for §501(c)(3) purposes.

The organizational test is not being questioned at this juncture.

In St. David's Health Care System v. U.S., 349 F.3d 232 C.A.5.Tex.,2003 to pass the "operational test" for tax-exempt status, purported charitable organization must show that: (1) it engages primarily in activities which accomplish its exempt purpose; (2) its net earnings do not inure to benefit of private shareholders or individuals; (3) it does not expend substantial part of its resources attempting to influence legislation or

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political campaigns; and (4) it serves valid purpose and confers public benefit. Failure to satisfy any one of these requirements will result in denial of tax exemption. *Church of Visible Intelligence That Governs The Universe v. U.S.*, 4 Cl.Ct. 55 Cl.Ct.,1983

According to a written statement submitted by the president of the organization, ORG became inactive in January of 20XX. He further stated the organization was unable to perform credit counseling due to an injunction filed against them by CO-1. The written statement submitted to the EOCU provided no details regarding any activities. Instead it appears the organization was forced to become inactive from 20XX to 20XX due to an injunction filed by CO-1. Despite several attempts, the Service has been unable to secure information necessary for the examination. No information, other than information from a website, could be obtained that would evidence or substantiate any exempt function activities engaged in for the year under examination.

An organization must carry on exempt function activities in order to be entitled to continued recognition of tax-exempt status under §501 (c)(3), i.e., dormant organizations are not entitled to such exempt status as they cannot meet the operational test.

In Samuel Friedland Foundation v. United States, 144 F.Supp. 74, the courts found an organization was not exempt due to the following:

- The exempt organization (Freidland) failed to formulate and design a meaningful charitable program, one having a definite functional objective;
- Ergo, the accumulation of profits during this time was deemed unreasonable as no charitable purpose was identified.

In Erie Endowment v. United States, 3 Cir., 316 F.2d 151 (1963), the Third Circuit, confronted with the same problem, affirmed the district court's holding in Friedland case, supra, 144 F.Supp. at 92, and also made the following general pronouncement:

“Mindful of these principles, we are impelled to conclude that the Tax Court here correctly decided that the accumulations were unreasonable within the meaning of the statute. Several salient facts stand out. Foundation did not have a concrete or definite charitable program requiring the accumulation of a large percentage of its income. Under its corporate charter, Foundation possessed broad charitable powers, but the fact remains that it failed to formulate and design a meaningful charitable program, one having a definite functional objective. ..”

Revenue Ruling 59-95 and Cumulative Bulletin 1959-1, page 627, prescribes that failure or inability to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization on the grounds that the organization has not established that it is observing the conditions required for the continuation of its exempt status.

An exemption is an exception to the norm of taxation. An organization which seeks to obtain tax exempt status, therefore, bears a heavy burden to prove that it satisfies all the requirements of the exemption statute.



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The Supreme Court repeatedly has said that exemptions from taxation are not granted by implication. See, e.g., Mescalero Apache Tribe v. Jones, 411 U.S. 145, 156, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973), and authorities therein cited. The Tax Court has stated consistently that '(a) statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power.' American Automobile Association v. Commissioner, 19 T.C. 1146, 1158 (1953); Associated Industries of Cleveland v. Commissioner, 7 T.C. 1449, 1464 (1946).

### CONCLUSION

Organizations seeking to obtain or maintain tax-exempt status under §501(c)(3) must meet two basic tests. These organizations must be both organized and operated for §501(c)(3) purposes. Due to the lack of exempt function activities, we have concluded that the organization known as ORG has failed the operational test. It is the Internal Revenue Service's position that exemption under Internal Revenue Code §501(c)(3) should be revoked as of January 1<sup>st</sup>, 20XX.



**DEPARTMENT OF THE TREASURY**

Internal Revenue Service  
TEGE EO Examination  
31 Hopkins Plaza - Room 1400  
Baltimore, MD 21201

October 3, 2007

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