

**Internal Revenue Service  
Appeals**

Release Number: **200850059**  
Release Date: 12/12/08  
Date: September 18, 2008

A  
B

**Department of the Treasury**

**Address any reply to:**

Office of Appeals  
One Cleveland Center-Suite 815  
1375 East Ninth Street  
Cleveland, OH 44114-1739

**Employer Identification Number:**

C

**Person to Contact:**

**Identification Number:**

**Contact Telephone Number:**

**Fax Number:**

**UIL:** 501.03-30

**Last Day to File a Petition with the United  
States Tax Court**

*Nov 17*

**Certified Mail**

Dear

This is our final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code ("Code"). Your tax-exempt status is revoked effective July 22,

It has been determined that the organization is not operated exclusively for exempt purposes as required by IRC section 501(c)(3) and Treas. Reg. section 1.501(c)(3)-1(d). More than an insubstantial part of your activities are in furtherance of non-exempt purposes and benefit private interests.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Form 1041 for any years in which you have taxable income, including those years which are still open under the statute of limitations. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for a declaratory judgment under section 7428 of the Code. You are also required to file Form 990-PF for all years until private foundation status is properly terminated under IRC section 507.

If you decide to contend this determination under the declaratory judgment provisions of IRC section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination letter was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

We will notify the appropriate State officials of this action, as required by section 6104(c) of the Code.

If you have questions about this letter, you may write to or call the contact person whose name, telephone number, and IRS address are shown on the first page of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you prefer to call and the telephone number is outside your local calling area, there will be a long distance charge to you.

The contact person identified on the front of this letter can access your tax information and help you get answers. You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate for the IRS office that issued this notice of deficiency by calling \_\_\_\_\_ or writing to \_\_\_\_\_. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. 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.

Sincerely yours,

Douglas H. Shulman  
Commissioner

By

Charles F. Fisher  
Appeals Team Manager

Enclosures:

Notice 1214 Helpful Contacts for Your "Deficiency Notice"

cc:

**Issue:**

Explanation of Proposed Revocation of Exemption under IRC Section 501(c)(3)

**Facts:**

The above-named organization was granted exemption as a private non-operating foundation described in IRC Section 501(c)(3) in May Form 1023, Application for Recognition of Exemption, which was filed in March states that the organization's activities would include providing grants to charities.

While reviewing the organization's books and records, we found that a substantial percentage of the organization's expenditures were loans and payments to disqualified persons during years ended December 31, and December 31,

**Applicable Law:**

IRC Section 501(c)(3) provides tax exemption for corporations and foundations that are operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in IRC 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.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) states 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.

Treasury Regulation Section 1.501(c)(3)-1(c)(2) states 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 or private shareholders or individuals.

Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more of the purposes specified in IRC Section 501(c)(3) 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 designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

**Government's Position:**

The organization has failed to meet the operational test described in Treasury Regulation Section 1.501(c)(3)-1(c)(1).

A substantial percentage of the organization's expenditures were personal in nature. The majority of these personal expenditures were loans to a disqualified person. Other expenditures include payments for repairs on a home owned by a private individual and payments for training courses. During years ended December 31,        and December 31,       , nearly all of the organization's expenditures were for personal purposes.

As stated in Treasury Regulation Section 1.501(c)(3)-1(c)(1), "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)." Since a substantial percentage of the organization's expenditures were for personal purposes, the organization is clearly not engaging primarily in activities that accomplish exempt purposes under IRC Section 501(c)(3).

Further, as indicated in Treasury Regulation Section 1.501(c)(3)-1(c)(2), the organization is not operated exclusively for exempt purposes, because a substantial percentage of its net earnings are inuring to disqualified persons.

The organization is also being operated for private rather than public interests due to the large amount of expenditures for personal purposes. As stated in Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii), an organization is not operated for exempt purposes if it is being operated for private interests.

Based on the above precedent, the organization's exemption under IRC Section 501(c)(3) should be revoked.

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

On May 7, 2007, the taxpayer submitted a written protest letter stating that she disagrees with our position. On May 14, 2007, her POA submitted a written protest letter also stating that he disagrees with our position. In the letter from her POA, he stated that, since there was no intent to make a gift to the foundation, the taxpayer never actually donated any funds into the organization. Consequently, he claims that the organization was never active.

#### **Conclusion:**

Since the organization does not meet the operational test under IRC Section 501(c)(3), we are proposing that its tax exemption be revoked.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**DEPARTMENT OF THE TREASURY**

Internal Revenue Service  
985 Michigan Ave., 10th Fl.  
Detroit, MI 48226

ATTN:

September 11, 2006

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.

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