

Internal Revenue Service

Date: *Jul 31* 2009

Number: 200943047

Release Date: 10/23/2009

Department of the Treasury

Person to Contact:

Employee ID Number: *****

Tel: *****

Fax: *****

Refer Reply to:

In Re:

EO Revocation

Form Required to be Filed:

1120

EIN:

Tax Period(s) Ended:

UIL: 501.33-00

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

Not Applicable

Certified Mail

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under IRC Section 501(c)(3) effective January 1, 2004.

Our adverse determination was made for the following reason(s):

It was determined that your activities are not exclusively charitable and that assets of the organization have inured to the benefit of private individuals (i.e., your founders and/or officers) through disbursements of substantial funds of the organization to its two officers, the president and secretary-treasurer during the periods ending December 31, 20 , December 31, 20 , and December 31, 20 . Therefore, you are not operated exclusively for exempt purposes pursuant to section 501(c)(3) of the Internal Revenue Code. Furthermore, you have agreed to revocation of recognition of your exempt status under section 501(c)(3) of the Code.

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

You are required to file converted Forms 1120, U.S. Corporation Income Tax Return, for tax periods beginning on and after January 1, 20 with the Cincinnati Service Center, Cincinnati, OH, 45999-0012.

We will notify the appropriate State officials of this action, as required by Code section 6104(c). You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

You also 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 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. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"*, for Taxpayer Advocate telephone numbers and addresses.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

TEAM MANAGER

Enclosure:

Notice 1214 Helpful Contacts for your "Notice of Deficiency"

cc: *****



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service

Legend

ORG= Name of organization

Num= EIN number

ORG

Taxpayer Identification Number:

Num

Form:

Tax Year(s) Ended:

December 31, 20xx - December 31, 20xx

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

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer CC		Year/Period Ended December 31, 200X December 31, 200X December 31, 200X

Legend

CC = Name of Organization

NN = EIN Number

Year = Year 1

\$\$ = Dollar Amount

City, State= Location of ORG

ISSUES:

Related Firm= Name of the Related

Security Firm= Name of Security Firm

Whether CC organization does not qualify for exemption as described in Section 501(c)(3).

FACTS:

CC, (hereinafter referred to as CC), is an entity that was incorporated as a non-profit corporation in the City, State on November xx, Year 1. CC was granted exemption under Internal Revenue Code Section 501(c)(3) on July xx, 199X.

Article three, of the articles of incorporation, provides in part the exempt purpose is; to improve the quality of life for residents in very low and low income neighborhoods in the City, State, lessen the burdens of federal, state, or local governments by providing affordable housing, and assist persons and families of very low and low income to obtain adequate low-cost housing accommodations by developing, constructing, rehabilitating, and providing decent, safe, and sanitary housing.

Article four, of the articles of incorporation, identifies NN, NN, and NN as the trustees of CC. CC currently has two officers: NN, and , NN. The duties of the President are to attend meetings, make presentations to government agencies and work with government agencies to enable sales of properties. The duties of the Secretary-Treasurer are to assist the president with daily operations and clerical work.

Article nine, provides no part of the net earnings of the corporation shall inure to the benefit of or be distributable to its trustees, officers or other private persons having a personal or private interest in the activities of the Corporation, except that the corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article three hereof.

Article ten provides the corporation is formed exclusively for purposes under which a corporation may be formed under the non-profit corporation law and not for pecuniary benefit of financial gain.

CC activities involved efforts to de-concentrate, which is a redistribution of multi unit section X housing, in the Security Firm portfolio made up of approximately XXXX units on the east side of City, State, to outlying areas and to promote private investment in the acquisition, disposition, or renovation of the properties. CC entered into an agreement with Related Firm, which owned and managed the units, to identify properties that could be sold and rehabilitated in order to de-concentrate the low income housing in the area. CC identified these properties, inspected, and appraised them for potential rehabilitation. CC took out a loan of \$\$, (line of credit) to provided collateral for sales. CC purchased selected properties from CPO and resold them, usually on the same day, to pre-qualified buyers at a significant markup. Prospective buyers were identified thru an independent broker. This is the primary activity conducted by the EO since 200X. Proceeds from the sales were used to pay professional fees, payments to officers NN, and NN, and other miscellaneous expenses. Analysis of the bank statements revealed the percentage of net proceeds inuring to each officer was as follows:

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CC		

NN

200X	2x%	1x%
200X	3x%	5x%
200X	1,xxx%	1,xxx%
Total for three years	3x%	3x%

See exhibit # 1 for a detailed analysis of the amounts and percentages.

Requests for information - During the initial interview of the , NN., on May x, 200X, agent requested an explanation of how its activities further their exempt purposes. On June xx, 200X, a letter and Information Document Request, (IDR), was sent to the organization with a copy to the power of attorney, (POA), advising them the examination was expanded to include tax years ending December xx, 200X, and December xx, 200X. An explanation of how its activities furthered their exempt purpose was requested along with bank records for the additional years.

On July x, 200X no reply was received to the letter dated June xx, 200X. A follow up letter and IDR requesting the same information was sent out with a copy to the power of attorney, via certified mail.

A reply was received on July xx, 200X. Documents were provided on other 501(c)(3) organizations, which compared to the stated exempt purposes of CC, but no statement was provided with regard to their activities and only some of the bank records were provided for the subsequent years. On July xx, 200X, Agent called POA to discuss information provided and advised it does not establish how the activities of the CC further their exempt purposes. Agent also informed the POA of bank records still needed.

A reply was received on July xx, 200X. All requested bank records were not provided and no statement regarding their activities was provided. On July xx, 200X Agent called the POA and advised him of the information still needed. Agent requested a response by July xx, 200X.

On August x, 200X another letter and IDR was sent to CC, with a copy to the POA, asking for the remaining bank records and the statement of how their activities further their exempt purposes. Agent requested a response by August xx, 200X.

Reply received on August xx, 200X provided some of the remaining bank records that had been requested.

On August xx, 200X, a summons was issued directly to two third parties for the remaining bank records. A notice of summons was issued to CC and a copy to the POA, via certified mail.

On December xx, 200X a conference was held with CC, NN to discuss the proposed revocation of exempt status. NN. advised he does not agree with the proposal and will request an appeals conference.

LAW:

Section 501(c)(3) of the Internal Revenue Code (IRC) exempts from federal income tax organizations that are both organized and operated exclusively for one or more of the exempt purposes specified in section

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CC		

501(c)(3). An organization that fails to meet either the organizational or the operational test is not exempt. *Treas. Reg. § 1.501(c)(3)-1(a)(1)*.

For IRC § 501(c)(3), exempt purposes include religious, charitable, scientific, testing for public safety, literary, educational, and prevention of cruelty to children or animals. *Treas. Reg. § 1.501(c)(3)-1(d)(1)*.

The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense, and should not be limited by the separate enumeration in section 501(c)(3). The term includes relief of the poor or underprivileged, advancement of religion, advancement of education or science, lessening of the burdens of government, promotion of social welfare, lessening neighborhood tensions, and combating community deterioration. *Treas. Reg. § 1.501(c)(3)-1(d)(2)*.

Organizational test – The organizational test is met through an organization's articles of organization, which includes the corporate charter, trust instrument, or any other written document by which an organization is created. *Treas. Reg. § 1.501(c)(3)-1(b)(2)*.

An organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of the organization to exempt purposes and do not expressly empower the organization to engage, except in an insubstantial manner, in activities that do not further its exempt purposes.

In meeting the organizational test, the organization's purposes, as stated in its articles of organization, may be as broad as, or more specific than, the purposes stated in IRC § 501(c)(3). If the articles state that the organization is formed for "charitable purposes", such articles ordinarily shall be sufficient for purposes of the organizational test. *Treas. Reg. § 1.501(c)(3)-1(b)(1)(ii)*.

Operational test – An organization meets the operational test only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in IRC § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not furtherance of an exempt purpose. *Treas. Reg. § 1.501(c)(3)-1(c)(1)*.

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. *Treas. Reg. § 1.501(c)(3)-1(c)(2)*.

An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than private interest. To meet this requirement, an organization must establish "that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests".

An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. *Treas. Reg. 1.501(c)(3)-1(e)(1)*

The existence of a substantial nonexempt purpose regardless of the number or importance of exempt purposes will cause failure of the operational test. *Better Business Bureau v. U.S.*, 326 U.S. 279 (1945)

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IRC § 6001 provides every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

IRC § 6033 provides in part except as provided in paragraph (3), every organization exempt from taxation 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 purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall 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; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

IRC § 7491(a) provides the burden shifts where taxpayer produces credible evidence.--

(1) General rule.--If, in any court proceeding, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability of the taxpayer for any tax imposed by subtitle A or B, the Secretary shall have the burden of proof with respect to such issue.

(2) Limitations.--Paragraph (1) shall apply with respect to an issue only if--

(A) the taxpayer has complied with the requirements under this title to substantiate any item;

(B) the taxpayer has maintained all records required under this title and has cooperated with reasonable requests by the Secretary for witnesses, information, documents, meetings, and interviews; and

(C) in the case of a partnership, corporation, or trust, the taxpayer is described in section 7430(c)(4)(A)(ii).

TAXPAYER'S POSITION:

It is the contention of CC activities they conducted in the tax periods ending December xx, 200X, 200X, and 200X are in furtherance of their stated exempt purpose. They provided documentation of other 501(c)(3) organizations in comparison to their stated exempt purposes.

GOVERNMENT'S POSITION:

Net proceeds from property sales inured to the benefit of the NN, NN. See exhibit # 1 which provides an analysis of the proceeds inuring to the benefit of the officers. *Treas. Reg. § 1.501(c)(3)-1(c)(2)* provides 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.

CC has not provided any evidence to show its activities are in furtherance of section 501(c)(3) purposes for the tax periods shown above. Some documentation provided was prior to the years under examination. Other documentation simply attempted to compare CC, based on its stated exempt

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purpose, to other 501(c)(3) organizations. The concept of "de-concentration" was not mentioned in CC's purpose, nor has it been shown how this activity furthers CC's exempt purpose. The Service's concern is that selling housing units to persons who can afford to purchase them is no different from what a for profit real estate company does. There is no indication that the persons who purchase the multi-unit houses are required to actually live in them. This gives rise to the concern that instead of lessening the burdens of government, CC is doing the opposite, by allowing these housing units to be purchased by possible absentee landlords that created the slums in major cities in the first place. Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) provides an organization must establish it is operated exclusively for exempt purposes and not for private interest. It is incumbent upon the organization to establish that it meets both the organizational test and operational test. CC fails to meet either the organizational test or the operational test, and therefore is not exempt.

CC was required to provide information as an organization exempt under section 501(a). Several requests were made asking CC to explain how their activities furthered their exempt purposes, but no response was provided. Several requests were made for bank records, but not all of the records were provided by CC. Agent was required to summons records from third parties to ascertain all payments made by the organization. Since CC failed to comply with reasonable requests for information, asked for during the course of the examination, it does not qualify for exemption.

CONCLUSION:

CC is not a charitable organization exempt from tax under I.R.C. § 501(c)(3) for the taxable years of 200X, 200X, & 200X. Profits from the sales of housing units inured to the benefit of the president and treasurer of the organization. This organization also failed to respond to reasonable attempts to secure information to determine whether it qualified for exemption. Accordingly, CC is not a charitable organization for federal income tax purposes for the taxable years 200X, 200X, & 200X and, therefore, is not exempt from taxation under section 501(c)(3) for 200X, 200X, & 200X. We are revoking its exempt status effective January x, 200X. This organization is required to file Forms 1120 for all tax periods beginning after December xx, 200X.