



**DEPARTMENT OF THE TREASURY**

Internal Revenue Service  
TE/GE EO Examinations  
1100 Commerce Street, MS:4920:DAL  
Dallas, TX 75242

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

November 20, 2009

Release Number: **201007070**

Release Date: 2/19/10

LEGEND

ORG = ORGANIZATION NAME

ADDRESS = ADDRESS

XX = DATE

UIL Code: 501.03-00

ORG  
ADDRESS

Taxpayer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Internal Revenue Code:

IRC § 501(c) (3)

**CERTIFIED MAIL RETURN RECEIPT REQUIRED**

**LAST DATE FOR FILING A PETITION**

**WITH THE TAX COURT: \_\_ February 18, 20XX\_\_**

Dear

This is a Final Adverse Determination as to your exempt status under section 501(c) (3) of the Internal Revenue Code. On September 8, 20XX, you signed Form 6018 in agreement with the proposed revocation.

Our adverse determination was made for the following reasons: Failure to provide records of the organization and failure to meet the reporting requirements under section 6001 and 6033 of the Internal Revenue Code.

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.

Despite numerous requests to you to provide information to conduct an examination of your Form 990 for the year ended December 31, 20XX, no requested information has been provided to us. In addition, the organization has not filed any prior Form 990 returns.

Based on the above, we are revoking your organization's exemption from Federal income tax under section 501(c) (3) of the Internal Revenue Code, effective October 7, 20XX.

You are required to file Form 1041 and Form 990-PF. These returns should be filed with the appropriate Service Center December 31, 20XX, and 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 if you prefer, you may contact the local Taxpayer Advocate at:

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.

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

Sincerely yours,

Sunita Lough  
Director, EO Examinations



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
Mail Stop 1112, PO Box 12307  
Ogden, UT 84412

DATE OF THIS NOTICE:

CONTACT PERSON/ID NUMBER:

CONTACT TELEPHONE NUMBERS:

Toll Free  
Long Distance  
Fax

ORG  
ADDRESS

Employer Identification Number:  
Tax Period(s):  
Form(s):

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 (IRC) 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.

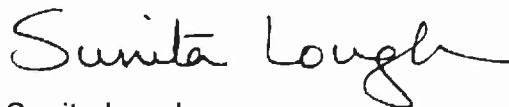
If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the IRC 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 IRC.

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.

Telephone Number (    ) \_\_\_\_\_ Hours \_\_\_\_\_

Sincerely,



Sunita Lough  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Form 886A, Report of Examination



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> ORG		<b>Year/Period Ended</b> 20XX12

December 20XX: Received phone call from CPA, CPA and after his researching the information the organization is liable for filing 990-PF forms as stated. Request for extension to complete forms 990PF, allowed 30 days.

January 20XX: No response. Per phone conversation requesting follow-up on there filing forms 990-PF with CPA he stated that he had completely forgotten about the request and will work on it.

February 20XX: No response. Called and left a voice message.

March 20XX: No response. 886-A Draft Notice prepared for revocation consideration.

April 20, 20XX: Received phone call from CPA POA Requesting 30 day extension.

June 10, 20XX: Received form 990EZ but required forms 990PF. CPA indicated that the organization should not have applied for exemption as this was a one time event fund raiser to help the employees and family in need from the Hurricane Katrina Disaster.

August 31, 20XX: Received and explained the situation to Revenue Agent in charge for resolution of revocation. Called and talked with CPA requesting a signed form 6018 for revocation. The organization will have to reapply for exemption if they ever choose to be exempt in the future.

September 25, 20XX: Received signed document 6018 as agreed for exemption.

ORG has failed to respond to the Internal Revenue Service correspondence or file the Forms 990PF for the tax period ending December 31, 20XX.

Law:

IRC § 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Treas. Reg. § 1.6001-1(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC § 501(a) and subject to the tax imposed by IRC § 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 IRC § 6033.

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Treas. Reg. § 1.6001-1(e) 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.

IRC § 6033(a)(1) provides, except as provided in IRC § 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 rules and regulations as the Secretary may from time to time prescribe.

Treas. Reg § 1.6033-1(h)(2) 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 IRC § 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 IRC § 6033 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.

**Government's Position:**

Section 6033 requires every organization exempt from tax under section 501(a) to file an annual return. The Service has prescribed Form 990-PF as the annual return for recognized private foundations. The organization has failed to meet this requirement for the 20XX and 20XX filing periods.

Section 1.6033-1(h)(2) of the Treas. Regs. requires organizations which have established their right to exemption from tax to submit such additional information as may be required to inquire further into its exempt status. Such a request was made by the Service on July 23, 20XX. By failing to provide the requested information and failing to file the prescribed tax returns, the organization is not observing the conditions required for the continuation of exempt status. Such actions result in the

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termination of exempt status. This position is supported by Rev. Rul. 59-95. The Service cannot meet the burden necessary to terminate private foundation status per section 507(a)(2). As such, the organization's private foundation status will continue per section 509(b) and shall hereafter be a taxable private foundation. As such the organization will be subject to all Federal income tax provisions, as well as, continue to be subject to the tax provisions of chapter 42, unless the organization terminates their private foundation status per section 507.

This examination does not dispute the Service's determination on November 28, 20XX regarding tax exempt status. Rather, it is the organization's activities, or lack thereof, that warrant revocation of exempt status. As such, the Service holds that the relief provisions of Section 7805(b) are not applicable.

**Organization's Position:**

CPA, CPA states that the organization filed a 1023 form for exemption in error. The fund raiser was only a one time event to help the employees of ORG due to hurricane Katrina in 20XX. No activity has taken place since 20XX leaving little to no money in the account. Rather than completing forms 990PF a request from both the Foundation and CPA has been made to revoke the status of the foundation as it was done in error. Form 6018 has been signed as agreed for revocation by Director, Director.

**Conclusion:**

The ORG has failed to meet the necessary requirements for exemption from Federal income tax. As such, the organization's exempt status is revoked, effective as of January 1, 20XX. The organization is liable for all applicable Federal income tax provision prescribed by internal revenue law and must file Form 1120 for all future tax periods commencing with the year ending December 31, 20XX. In addition, the organization will continue to be subject to chapter 42 taxes and must file Form 990-PF as a taxable private foundation.