



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 24, 2010

Number: **201040030**
Release Date: 10/8/2010

LEGEND

ORG = Organization name
XX = Date Address = Address

ORG
ADDRESS

Taxpayer Identification Number:
Person to Contact:
Employee Identification Number:
Employee Telephone Number:
(Phone)
(Fax)

LAST DATE TO FILE A PETITION
IN TAX COURT: September 22, 20XX

CERTIFIED MAIL – RETURN RECEIPT

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated October 29, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. During the examination it was discovered that the ORG is performing services of a non-exempt nature for various companies and the STATE Department of Transportation. The activities of ORG, according to the Articles of Incorporation, are for the furtherance of 501(c)(3) purposes, and are organized exclusively for education, public outreach, and research under the provision of all applicable laws for a non-profit entity in the State of STATE.

It is the service's position that ORG failed to provide proof of an adequate amount of educational and outreach activities such as workshops, community involvement and awareness, school boards, etc. as was stated in the mission statement of ORG'S initial 1023 application.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments 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 under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

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 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 contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892

Internal Revenue Service

Department of the Treasury
801 Tom Martin Drive, Room 263
Birmingham, AL 35211

Date: December 31, 2009

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,

Nanette M. Downing
Acting, Director EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

LEGEND

ORG = Organization name XX = Date Address = address City = city
 State = state President = president DIR-1 = 1st DIR County =
 county Project = project CO-1, CO-2 & CO-3 = 1st, 2nd & 3rd COMPANIES

**TAX YEARS ENDING DECEMBER 31, 20XX &
 JANUARY 31, 20XX**

ISSUES PRESENTED:

1. Whether ORG is operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3):
 - a. Whether ORG is engaged primarily in activities that accomplish an exempt purpose?
 - b. Whether more than an insubstantial part of ORG's activities are in furtherance of a non-exempt purpose?

FACTS

Background

ORG was incorporated on December 20, 20XX for the purpose of carrying on a lawful business in pursuance of the laws of the State of State relating to non-profit corporations. In a determination letter dated October 29, 20XX, ORG was determined to be exempt from federal income tax as an organization described in IRC Section 501(c)(3). ORG is located at Address, City, State.

In its Articles of Incorporation, ORG stated its purpose is "To operate a non-profit corporation whose primary purpose includes Southeastern Indian Education, Research and Public Outreach. To borrow money for the purpose of carrying on the business of this Corporation, to lease, buy, sell, convey, rent and mortgage or pledge, both real and personal property as the same shall be necessary or incidental to the carrying on of said business, and generally to do all things that may be necessary or incidental to the carrying on of said business. Subject to the limitations and restrictions imposed by law, to make, accept, endorse, execute and issue promissory notes, bills of exchange, bonds, debentures, or other obligations from time to time for the purchase of property or for any purpose in or about the business of the company. To establish lines of credit with banking houses for the purposes herein above enumerated and set forth, and to incur indebtedness and to raise, borrow and secure the payment of money in any lawful manner, including the issue and sale of other disposition of warrants, bonds, debentures or obligations, negotiable and transferable instruments, and evidences of deeds of trust, or otherwise, for the purpose of adding additional capital or for any other purposes in or about its business or affairs without limit as to amount, except as provided by statute, this to be done on such terms and conditions and by such officers as said banking house or houses may require.

To acquire the property, rights, franchises, certificates and good will, including the whole for any part of the assets, and in connections therewith, assume no guarantee such liabilities of any person, firm association or other corporation as this Corporation may lawfully acquire or assume to pay for the same in cash, or bonds of this Corporation, or otherwise. To engage in any other lawful activity except that of banking or insurance.

The foregoing clauses shall be construed as powers, as well as objects and purposes, and the matters expressed in each clause shall, except as otherwise expressly provided, be in no wise limited by reference to or inference from the terms of any other clause, which shall be regarded as independent objects, purposes and power; and the enumeration of specific objects, purposes and powers shall not be construed to limit or restrict in any manner the meaning of general terms of any other clause, which shall be regarded as independent objects, purposes and powers; and the enumeration of specific objects, purposes and powers shall not be construed to limit or restrict in any manner the meaning of general terms of the powers of the Corporation now or hereafter conferred by law, nor shall the expression of one thing be deemed to exclude another not expressed, although it be of like nature.

The Articles were amended on September 4, 20XX to include the following clause: "To operate a non-profit corporation whose primary purpose includes Southeastern Indian Education, Research and Public Outreach. Said organization is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

According to the form 1023 application for recognition of exemption, ORG was formed to facilitate Native American participation in a curriculum of Southeastern Indian education, outreach, and research. Programs were to be developed to create an awareness and understanding of Southeastern Indian history and culture through the use of artifact collections, map collections, primary source historical documents, eye-witness accounts, land records, oral history, linguistics, genealogy, family papers, and published materials. The ORG will strive to provide a facility unlike any other presently functioning in the Southeastern United States in that it will bring widely scattered documents from many locations to one easily accessed location.

Activity Description

The primary activity of ORG (hereinafter ORG) during the tax years ending December 31, 20XX and January 31, 20XX was completing cultural resource services for the State Department of Transportation, CO-1, and CO-2. CO-2, Inc. is an independent environmental research and consulting firm specializing in applied biological and environmental sciences with offices in City, State, and City, State. The company, founded in 19XX by President, provides a wide spectrum of environmental services, including assessments of coastal, marine, and freshwater ecosystems,

terrestrial surveys, cultural resource surveys, wetland impact analyses and mitigation, permit coordination, and NEPA documentation.

During the examination it was discovered that the ORG is working along side another for-profit organization of a different name, CO-3. Both organizations have the same director, DIR-1, and perform essentially the same activities except for the minimal educational and outreach activities performed by ORG. The organization shares virtually the same employees, projects, and facility; therefore it is difficult to distinguish between the for-profit organization and the non-for-profit organization.

It was also noted in the minutes of the organization that on three separate occasions comments were made concerning the legitimacy of the activities as exempt function activities. This comment was also made by a potential attorney for the organization who "expressed concerns regarding 501(c)(3) goals."

Education

The founding members of ORG envisioned it as four different components with four different heads, outreach, education, research, and Native American participation. They wanted to involve Native Americans in research along with the scientists and archaeologists. One of the ways they accomplish their goals is to perform outreach programs at schools. In these lectures they tell the history of Native Americans and the importance of the preservation of archaeological artifacts. They teach the importance of not looting sites because those artifacts cannot be recovered. The County Board of Education gave the organization a grant for an archaeological program in which 300 kids participated in 20XX and 600 kids in 20XX. The children would visit the dig site, and the ORG employees would walk them through the whole excavation process: mapping, documentation, lab work, and data entry. The organization has also worked to have PROJECT project recognized as a National Trail of Tears site. They received a grant from ALDOT for mapping and geological research of the PROJECT project. They have held numerous presentations on the history of the site and a festival to commemorate it as a Trail of Tears site. ORG was incorporated in 20XX but began planning activities began in 20XX.

While the organization has performed numerous exempt function activities, the non-exempt activities represent a substantial portion of the total activities of the organization.

LAW

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c) (3) is exempt from income tax. Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual. The term charitable includes relief of the poor and distressed. Section 1.501(c) (3)-1(d) (2), Income Tax Regulations.

The term educational includes (a) instruction or training of the individual for the purpose of improving or developing his capabilities and (b) instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3). In other words, the two components of education are public education and individual training.

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), 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.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that 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. 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 of Washington, D.C. v. U.S., 326 U.S. 279 (1945).

Educational purposes include instruction or training of the individual for the purpose of improving or developing his capabilities and instruction of the public on useful and beneficial subjects. Treas. Reg. § 1.501(c)(3)-1(d)(3). In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purposes, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analyses of securities and industries and of the economic climate in general. The organization sold subscriptions to various periodicals and services providing advice for purchases of individual securities. Although the court noted that education is a broad concept, and assumed for the sake of argument that the organization had an educational purpose, it held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and was not entitled to be regarded as exempt.

An organization must establish that it serves a public rather than a private interest and "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." Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Prohibited private interests include those of unrelated third

parties as well as insiders. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; fruit; privilege; gain; [or] interest." Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

EXEMPT ORGANIZATION'S POSITION

The exempt organization will have a chance to respond when the report is sent to them.

GOVERNMENT POSITION

During the examination it was discovered that the ORG is performing services of a non-exempt nature for various companies and the State Department of Transportation. The activities of ORG, according to the Articles of Incorporation are for the furtherance of 501(c)(3) purposes, and are organized exclusively for educational, public outreach, and research under the provision of all applicable laws for a non-profit entity in the State of State.

It is the service's position that ORG failed to provide proof of an adequate amount of educational and outreach activities such as workshops, community involvement and awareness, school boards, etc. as was stated in the mission statement of ORG's initial 1023 application. A ruling or determination letter recognizing exemption may not be relied upon if there is a material change inconsistent with exemption in the character, the purpose, or the method of operation of the organization.

The term educational includes (a) instruction or training of the individual for the purpose of improving or developing his capabilities and (b) instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3). In other words, the two components of education are public education and individual training.

CONCLUSION

In conclusion, ORG has not been operated exclusively for exempt purposes. Substantially all of ORG's activities were not in furtherance of the exempt purpose of the organization. Accordingly, it is determined that ORG is not an organization described in section 501(c)(3), and is not exempt from income tax under section 501, effective January 1, 20XX.