



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street
Dallas, TX 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 28, 2010

Number: **201042038**
Release Date: 10/22/2010

LEGEND

ORG = Organization name
XX = Date Address = address

ORG
ADDRESS

Person to Contact:

Badge Number:

Contact Telephone Number:

Contact Address:

Employer Identification Number:

CERTIFIED MAIL

Dear :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in IRC §501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents or otherwise establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by IRC §§ 6001, 6033(a)(1) and the regulations there under.

Our records also indicate you have not filed an annual return on Form 990 since the year ended December 31, 20XX. IRC § 6033(a)(1) provides that with certain exceptions, every organization exempt from taxation under 501(a) shall file an annual return.

Contributions to your organization are no longer deductible effective January 1, 20XX.

Since your exempt status has been revoked, you are required to file Form 1120, U.S. Corporation Income Tax Return, for all years beginning on or after January 1, 20XX.

Income tax returns for subsequent years are to be filed with the appropriate Service Center identified in the instructions for those returns.

It is further determined that your failure to file a written appeal constitutes a failure to exhaust your available administrative remedies. However, 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 Claims Court, or the district court of the United States for the District of Columbia before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. To secure a petition form, write to the following address:

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

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 you tax information and can help you get answers. You can call 1-877-777-4778, and ask for the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in 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.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures: Publication 892

Internal Revenue Service

Department of the Treasury

TE/GE Division
55 S. Market St. HQ-7600
San Jose, CA 95113

Date: January 29, 2010

Taxpayer Identification Number:

Form:

ORG
ADDRESS

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, please sign and return the enclosed Form 6018, Consent to Proposed Adverse Action. We will send you a final modification or 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

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended 12/31/20XX

LEGEND

ORG = Organization name XX = Date Address = address City = city
State = state President = president

Issue:

Is ORG an organization exempt from tax under section 501(c)(3) of the Internal Revenue Code?

Facts:

Internal Revenue Service ("IRS") records show that ORG, hereinafter the "Organization", was incorporated in State on October 17, 20XX and received exemption under Internal Revenue Code (IRC) section 501(c)(3) and advance ruling as a public charity under Section 170(B)(1)(a)(vi) in June 20XX. The Organization's last filed information return Form 990 was for the year ending December 31, 20XX.

The said Form 990 reported that Organization provided temporary housing to over 75 people in 20XX, that the Organization's President (described also as Executive Director), leases a facility to the Organization, and that the board approved the lease as in the best interest of the program under the guidelines of the State Dept. of Social Services. The Form 990 Part V-A officers-attachment reported that the President is President and his address is: Address, City, State. The Form was signed by President, Board President on November, 17, 20XX. (See Exhibit "A" pertinent pages of Form 990).

On November 25, 20XX IRS sent Organization Letter 3611 and Forms 4564 *Information Document Requests ("IDR")* No. 001 through 004, along with Publication 1, *Your Rights as a Taxpayer*. The Letter 3611 notified the Organization that the IRS plans an examination of the books and records and requested to have the records listed on the attached Forms 5464 available for review.

An attached letter explained that Organization could not be reached by phone and that phone messages and the letter to Organization's officer requesting to call the IRS were not answered. The attached letter explained that every exempt organization needs to keep records of its activities and operations and provide them to IRS upon request in order to retain its exemption and asked to bring the records on December 18, 20XX at 9:00AM to IRS' office of the Tax Exempt Entities Division ("TE/GE") located at Address, City. The letter requested to contact the IRS promptly to confirm the audit appointment.

The information IRS requested from Organization on the enclosed Forms 4564 was:

A. Information about the activities, including:

- minutes of meetings of the board and the statement of officers filed,

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- publicity materials given to the public,
- contracts to which the Organization was a party in year 20XX,
- for rental contracts Organization had in 20XX to provide the names of the landlord(s) and disclosure of the relationship of the landlord(s) with any board members, and provide the information used by the Board at the time the contracts were signed to ensure the Organization's rental deals were set at fair market value and in the best interest of Organization in comparison with rental deals that Organization could have obtained from unrelated parties.
- Information who lived in the Organization's leased properties in 20XX,
- Information about affiliated organizations that shared officers or directors with Organization in 20XX-20XX.

B. Financial information for year 20XX, including:

- books of account for 20XX including cash receipts and cash disbursements,
- bank statements and check register and information for checks paid in year 20XX
- Records substantiating disbursements of \$ or more that Organization paid in 20XX

C. Information about other Federal Returns Organization had to file in 20XX

D. information about amendments to Organization's Articles of Incorporation (if applicable).

Although the letter was delivered and postal tracer provided by the U.S. Postal Service ("USPS") attached herein as Exhibit "B" shows that Organization receives mail at the address noted on the letter, no response was received from the Organization and its officers failed to contact the IRS as requested to confirm the scheduled audit appointment. Further, the requested information and the records specified were not delivered to IRS office on December 18, 20XX as requested.

On January 5, 20XX, The IRS sent a follow up letter to Organization and asked to contact the IRS by January 14, 20XX to confirm the re-scheduled examination date of January 21, 20XX to be held at IRS TE/GE office located at Address, City. Further, the Organization was advised that every organization which is tax-exempt needs to keep records of its activities and operations and provide them to IRS upon request in order to show it is qualified to retain its tax exemption.

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Organization declined to respond to IRS' follow up letter.

On January 8, 20XX the IRS received postal tracer that stated "no such address" in reply to IRS request to confirm if the address reported on said Form 990 for the Organization's President President (at Address, City, State) is where his mail is currently delivered (see Exhibit "C").

Law:

Section 501(c)(3) of the Internal Revenue Code provides for exemption from taxation for organizations "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur athletic competition, ..., 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..."

Section 1.501(c)(3)-1(c)(1) of the Income tax regulations 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."

Section 1.501(c)-1(d)(1)(ii) of the Income tax regulations states that "An organization is not organized or operated exclusively for one or more of the purposes specified ... 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."

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

Section 6033(a)(1) of the Code provides, except as provided in section 6033(a)(3), 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.

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Section 1.6001-1(a) of the regulations in conjunction with section 1.6001-1(c) provides that every organization exempt from tax under section 501(a) of the Code and subject to the tax imposed by section 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 section 6033.

Section 1.6001-1(e) of the regulations 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.

Section 1.6033-1(h)(2) of the regulations 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 section 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 section 6033 of the Code 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.

Taxpayer's Position:

The Organization has yet to submit its position.

Government's Position:

The government contends that the Internal Revenue Code clearly states that organizations exempt under IRC 501(c)(3) must establish that they are not organized or operated for the benefit of private interests "such as designated individuals, the creator or his family, shareholder of the organization, or persons controlled, directly or indirectly, by such private interests." Reg. 1.501(c)(3)-1(d)(1)(ii).

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Further, In accordance with the above cited provisions of the Code and regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the retention and submission of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax. See also Reg. Section 1.6033-1(h)(2).

As described above, the Internal Revenue Service asked Organization to provide specific information about its actual activities that proves it conducted charitable activities during the year ending December 31, 20XX and to show it is qualified for tax exemption under IRC 501(c)(3), but Organization declined to provide the information.

Conclusion:

It is the IRS' position that ORG failed to substantiate that it is qualified for exemption under IRC 501(c)(3) of the Internal Revenue Code. Accordingly, the Organization's exempt status should be revoked effective January 1, 20XX.

Form 1120 returns should be filed for the tax periods ending December 31, 20XX and forward. Subsequent returns are due no later than the 15th day of the 3rd month after the end of Organization's tax year. Returns should be sent to the following mailing address: