



DEPARTMENT OF THE TREASURY

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

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

November 9, 2010

Release Number: 201105042

Release Date: 2/4/11

LEGEND

ORG = Organization name XX = Date Address = address

Person to Contact:

Identification Number:

Contact Telephone Number:

Refer Reply to: TE/GE Review Staff

EIN:

ORG

ADDRESS

CERTIFIED MAIL - Return Receipt Requested

Dear

This is a final revocation letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service's recognition of your organization as an organization described in section 501(c)(3) is hereby revoked effective October 1, 20XX.

We have made this determination for the following reasons:

You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of I.R.C. section 501(c)(3). Organizations described in I.R.C. section 501(c)(3) and exempt under section 501(a) must be organized and operated exclusively for an exempt purpose. You have provided no information regarding your receipts, expenditures or activities. You have not established that you have operated exclusively for an exempt purpose.

As such, you failed to meet the requirements of I.R.C. section 501(c)(3) and Treas. Reg. section 1.501(c)(3)-1(d) in that you failed to establish that you were operated exclusively for an exempt purpose.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code, effective October 1, 20XX.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending September 30, 20XX, and for 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 91st 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 may call 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your 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,

Nanette M. Downing
Director, EO Examinations

Internal Revenue Service

Department of the Treasury

Date: April 22, 2010

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 Examination

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A (January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended September 30, 20XX

LEGEND

ORG = Organization name XX = Date Agent = agent Address = address
City = city State = state BM-1, BM-2, BM-3 & BM-4 = 1ST 2ND 3RD & 4TH BM

ISSUE:

Whether ORG , exemption as a Private Foundation, as described under Section 501(c)(3) of the Internal Revenue Code should be revoked due to their failure to establish the right to maintain such exemption.

FACTS:

ORG, was granted tax-exempt status as a Private Foundation, under section 501(c)(3) of the Internal Revenue Code, as January 1, 20XX. Since June 1, 20XX, numerous attempts were made to contact the organization by mail and telephone to schedule an appointment of the organization’s books and records. The purpose of the examination was to determine whether the operational activities of the organization were in accordance with the guidelines governing organizations exempted under Section 501(c)(3) of the Internal Revenue Code.

A chronology sequence of events are listed as follows:

- June 1, 20XX. Revenue AGENT mailed the appointment Letter 3611 to the address noted on record for ORG, requesting for an examination date of July 20, 20XX, to audit their operational and financial activities.
- As of July 20, 20XX, ORG, did not respond. Therefore, Agent AGENT traveled to the address on record. Per the Agent visit, no one answered the door.
- On July 24, 20XX, AGENT return to the address listed on record. Although there appeared to be lights on, no one answered the door. Therefore the Agent placed the appointment Letter 3611 in the mail box at the address noted on record.
- On August 6, 20XX, Revenue AGENT mailed the appointment Letter to the address of the CPA Firm who signed the 990-PF Return for year ended September 31, 20XX. In addition, Form 4759 was mailed to the local Postal Branch Manager requesting for a postal tracer to be performed on the address of ORG
- On August 31, 20XX, the Letter 3611 requesting for an appointment date which was mailed to the CPA Firm who prepared the 990-PF Return for year ended September 31, 20XX, was returned by the CPA Firm and stated that they had no contact with this organization in the past few years and, as such, requested a revocation of their Power of Attorney authorization. The Form 4759 mailed to the Local Postal Branch Manager was also returned stamped “not know this address”.
- On October 19, 20XX, a certified appointment Letter 3611 was mailed to all of the Officers listed on the 990-PF Return, The names were as noted :

Form 886-A (January 1994)	EXPLANATION OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended September 30,20XX

BM-1
Address
City, State

BM-2
Address
City, State

BM-3
Address
City, State

BM-4
Address
City, State

Per the Letters mailed to the Officers, Mr. BM-4 responded with a telephone call to the office and stated that he is no longer a Officer and he has not spoke with the founder BM-1 in period of two years.

- In addition the Agent used Accurint to trace the founder's current address, per the information in accurint the address agreed with what was listed on the 990-PF Return. The Agent also researched the state web/site and noted that this organization currently is not in good standing with the State of State.

LAW:

Section 501(c)(3) of the Code provides for exemption of organizations organized and operated exclusively for charitable purposes and that no part of the earnings of which inures to the benefit of private shareholders or individuals.

Section 6033 of the Internal Revenue Code of 1954 provides that every organization exempted from taxation under Section 501(a) of the Code shall file an annual return, stating specifically the items of gross income of gross income, receipts, and disbursements, and shall keep such records, render under oath such other oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 1.6033-2(h)(2) of the Federal Income Tax Regulations require that every organization which has established its rights to exemption from tax shall submit such additional information as may be required by the Internal Revenue Service to further inquire into its exempt status.

Section 1.600-1(c) of the Federal Income Tax Regulations states in part, every organization exempt from tax under Section 501(a) shall keep such permanent books of account records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such

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organizations shall keep such books and records as required to substantiate the information required by Section 6033.

Revenue Ruling 59-95, 1959-1 C.B. 627, describes an organization previously recognized as exempt. When the Service requested for a review of their financial statements, the organization was unable to do so due to their incomplete records. The Service concluded that failure or inability to file the required information return or otherwise to comply with Section 6033 of the Code and its implementing regulations may result in termination of its exempt status, on the grounds that the organization has not established that it is observing the conditions required for the continuation of its exempt status.

The Dual Test: Organized and Operated:

IRC 501(c)(3) requires an organization to be both "organized" and "operated" exclusively for one or more IRC 501(c)(3) purposes. If the organization fails either organizational test or the operational test, it is not exempt. Reg. 1.501(c)(3)-1(a)(1). Church of Visible Intelligence That Governs The Universe. v.U.S.4 Cl. Ct. 55.

The organizational test concerns the organization's articles of organization or comparable governing document. The operational test concerns the organization's activities. A deficiency in an organization's governing document cannot be cured by the organization's actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well written charter. Reg. 1.501(c)(3)-1(b)(1)(iv).

Operational Test:

- Section 1.501(c)(3)-1(d)(i) defines appropriate exempt purposes. An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:
 - religious
 - charitable
 - scientific
 - testing for public safety
 - literary
 - educational
 - fostering national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)
 - prevention of cruelty to children or animals.
- Reg. 1.501(c)(3)-1(c)(1) provide that an organization is operated exclusively for charitable purposes only if engages primarily in activities that accomplish those purposes in (1)above. It is not so operated if more than an insubstantial part of its activities do not further those purposes.

Burden of Proof:

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Name of taxpayer: ORG	Tax Identification Number EIN	Year/Period ended September 30, 20XX

The court in Church of Spiritual Technology v. United States, 510 U.S. 870, 114 S.Ct. 197 (Mem) U.S., 1993, cited a long line of authority holding that the applicant bears the burden of showing it is entitled to exemption. In Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. 1974), the court stated that “[I]ncome tax exemption must be strictly construed, with any doubts to be resolved in favor of the taxing entity. Consequently, determinations of the Commissioner are presumed correct.”

Similarly, the court cited Welch v. Helvering, 290 U.S. 111, 54 S.Ct.8 and cases following its structure that indicate “[P]laintiff thus bears the burden of proving its entitlement to an exemption.”

The Tax Court has consistently stated that a statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power. Harding Hospital, Inc. v. United States of America, 505 F.2d. 1068, 34 A.F.T.R.2d 74-6174, 74-2 USTC.

Taxpayer’s Position:

As of the date of this letter, ORG, has not responded to our attempts to conduct an examination of their financial and operational activities.

Government Position:

Since we have been unable to locate ORG, they have failed to furnish the information necessary to conduct an examination of its financial and operational activities which in turn is used to determine their continuing qualification for tax exempt status. Organizations seeking to obtain or maintain tax exempt status as a Private Foundation under section 501(c)(3) of the IRC must meet two basic tests. These organizations must be both organized and operated for 501(c)(3) purposes which ORG failed to demonstrate.

Conclusion:

Based on the above we have determined that your organization has failed the operational test under section 501(c)(3) of the Internal Revenue Code. Therefore, ORG no longer qualifies for tax exempt status, effective October 1, 20XX. This is the first day of the tax period in which the organization fails to qualify for exemption under IRC 501(c)(3) of the Code. Also, as of October 1, 20XX, contributions are no longer deductible as charitable contributions. In addition ORG will be required to file 1120, U.S. Corporation Income Tax Return Form 1120, U.S. Corporation Income Tax Return Form 1120 for all periods subsequent to September 30, 20XX.

CC: Notify State Attorney General (State)