



**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

**TE/GE: EO Examination**

**1100 Commerce Street, MC: 4920 DAL**

**Dallas, Texas 75242**

501.03-00

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

**Date: February 28, 2011**

Release Number: **201121025**

Release Date: 5/27/2011

LEGEND

ORG = Organization name      XX = Date      Address = address

ORG  
ADDRESS

**Employer Identification Number:**  
**Person to Contact/ID Number:**  
**Contact Numbers:**  
Voice:  
Fax:

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear

In a determination letter dated November 9, 20XX, you were held to be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code (the Code).

We have determined you have not operated in accordance with the provisions of section 501(c)(3) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. You agreed to this revocation by signing Form 6018, Consent to Proposed Action – Section 7428. This is a final adverse determination letter with regard to your status under section 501(c)(3) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights.

Our adverse determination was made for the following reasons:

§ 1.501(c)(3)-1(d)(ii) of the Treasury Regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph 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.  
The Foundation serves only the private benefit of its founder, ORG. There are no charitable activities that further any exempt purposes described in section 501(c)(3) of the Code. Accordingly, you are not operated exclusively for one or more of the exempt purposes specified in section 501(c)(3) of the Code.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1041, *U.S. Income Tax Return for Estates and Trusts*, for tax years beginning January 1, 20XX, and thereafter. Form 990-PF is also required for each tax year until Private Foundation status is terminated under IRC § 507. Those returns should be filed with the appropriate service center.

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 of 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 91<sup>st</sup> day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

You also have the right to contact the office of the Taxpayer Advocate. You can 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 or 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.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

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

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing  
Director, EO Examinations



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
1616 Capitol Av Ste 450 Stop 4710 OMA  
Omaha, NE 68102-4923

December 17, 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

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer <b>ORG</b>		Year/Period Ended 20XX, 20XX, & 20XX

LEGEND

ORG = Organization name      XX = Date      Address = address      City = city  
State = state      Founder = founder      Trustee = trustee      RA-1 & RA-2 =  
1<sup>ST</sup> & 2<sup>ND</sup> RA      CO-1, CO-2, CO-3, CO-4, CO-5, CO-6, CO-7, CO-8, CO-9 & CO-10 =  
1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup>, 4<sup>TH</sup>, 5<sup>TH</sup>, 6<sup>TH</sup>, 7<sup>TH</sup>, 8<sup>TH</sup>, 9<sup>TH</sup> & 10<sup>TH</sup> COMPANIES

**PRIMARY ISSUE:** Whether the IRC § 501(c)(3) tax exempt private foundation status of ORG should be revoked, effective January 1, 20XX because it is not operated exclusively for tax exempt purposes.

**FACTS:**

**Trust Document**

The trust document dated August 16, 20XX, the ORG (the “Foundation”) was created via a Declaration of Trust (the “Declaration”) entered into Founder as the Settlor ( aka “Founder”).

“The ORG is established, organized and shall be operated exclusively for charitable, educational, scientific or literary purposes, including, for such purposes, the making of distributions to organizational described in 170(c), 2055(a) and 2522(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the “Code”).”

The Foundation has a clause prohibiting private inurement.

The trust is irrevocable.

The Foundation has a clause prohibiting engaging in any act of self-dealing IRC 4941, excessive business holdings, and all other Chapter 42 taxes.

Powers of Trustee:

“(k) To take such action in collecting the proceeds of any life insurance payable to the Trustee (after deducting all charges by way of advances, loans or otherwise) as the Trustee deems best, paying the expense thereof from the trust property; and the insurance company shall not take notice of the provisions of this Trust Agreement or see to the application of the proceeds, and the Trustee’s receipt to the insurance company shall be a complete release for any payment made; and,

(l) In the event that the Trust enters into any agreement by which funds will be borrowed to purchase a life insurance policy(ies), to enter into and perform the obligations under any and all documents created there under, to obtain the loan(s), to purchase the life insurance policy(ies), and to pledge the rights to the life insurance policy(ies) as security for repayment of the loan(s).”

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Upon dissolution the assets will go to:

1/3 CO-1 City, State  
1/3 CO-2 City, State  
1/3 CO-3 City, State

The signatures were Founder, Settlor, and Trustee, Trustee.

**Bylaws**

The Foundation has no bylaws.

**Amendments**

There are no amendments to the trust documents.

**Determination Letter**

Determination Letter states the Foundation received exemption on November 9, 20XX as a private foundation.

**Determination Application**

The determination application was signed on August 16, 20XX.

“The purpose of the Trust is to financially assist schools, colleges, charitable civic organizations, and the poor. It is anticipated that the income generated in the Trust will be distributed each year. The trustee shall determine the amount and the recipients each year.”

“The trust will hold an insurance policy on the life of the donor. Upon death, the Trust will receive the proceeds of that policy.”

**Minutes**

There are no minutes.

**Publications**

The Foundation has no publications.

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**Prior Examination**

The Foundation has had no prior IRS examination.

**Facility**

The Foundation has no facility. The mailing address is Address which is the location of the CO-4.

**Correspondence**

Note in the file:

“In 20XX, Founder paid a \$ fee to CO-5 to finance a single premium annuity Letter of Credit. It should have been paid by the Foundation. We will claim a \$ Donation for Founder & Foundation should report \$ income and \$ expense RA-1 4-7-XX.”

Per e-mail on 8/2/20XX from Founder to RA-1 -

"RA-1, I put the \$ in the account and it only needed \$ so I pulled out the \$."

**Forms 990**

The 990PF return for 20XX shows the Foundation on the cash basis of accounting. The 20XX, 20XX, & 20XX 990PF returns indicates the Foundation is on the accrual basis of accounting.

The 990PF return for 20XX the initial return box is checked and the Section 501(c)(3) exempt private foundation box is checked.

The 20XX, 20XX, & 20XX 990PF returns show the Section 4947(a)(1) nonexempt charitable trust box checked.

Based on discussion with POA, the Foundation is on the accrual basis of accounting and is a Section 501(c)(3) exempt private foundation. The boxes were checked incorrectly on the returns.

**Books and Records**

The Foundation does **not** have the following:

- Journal



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- Ledger
- Working Trial Balance
- Check Register
- Minutes
- Bank Account until late 20XX
- Bank statements for 20XX and part of 20XX
- Cancelled checks for 20XX and part of 20XX
- Paid invoices and receipts
- Annuity and life insurance contracts

**Expenditures**

No payments were made to 501(c)(3) organizations in 20XX, 20XX, or 20XX.

Payments made to accountant:

**CO-6**

20XX12      20XX12      20XX12

Ck #  
Ck #  
Ck #

Ck# was drawn on the CO-7 bank account on 6/21/20XX.

Ck# was drawn on the CO-7 bank account on 12/5/20XX.

**Summary of 990PF Returns**

20XX12      20XX12      20XX12      20XX12

Line 1, Contributions  
Line 11, Other Income

Total Income

Line 16a, Legal/Accounting Fees  
Line 17, Interest  
Line 18, Taxes  
Line 23, Other Expenses

Total Expenses

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Net Income (Loss)

Total Assets

Total Liabilities

Equity

Total Liabilities + Equity

**Summary of 4720 Returns**

	<b>20XX1</b>		
<b>Forms 4720</b>	<b>2</b>	<b>20XX12</b>	<b>20XX12</b>

Tax on undistributed income

**Summary of Bank Statements**

There are no bank statements prior to November 8, 20XX since there was no bank account for ORG.

<b>CO-5</b>	<b>Deposits</b>	<b>Withdrawals</b>	<b>Balance</b>
<b>Account:</b>			

**Opened 11/8/20XX**  
12/1/20XX

<b>CO-5</b>	<b>Deposits</b>	<b>Withdrawals</b>	<b>Balance</b>
<b>Account</b>			
<b>20XX</b>			

1/1/20XX  
2/1/20XX  
3/1/20XX  
4/1/20XX  
5/1/20XX  
6/1/20XX  
7/1/20XX  
8/1/20XX  
9/1/20XX

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10/1/20XX  
11/1/20XX  
12/1/20XX

**Loans of the Foundation**

1) Loan # at CO-8, Address, City, State, beginning date 5/7/20XX, maturity date 5/7/20XX, amount \$\$, stated rate, 7.75%.

The purpose of the loan is "TO REPAY ORG".

No collateral, personal guaranty of Founder.

2) Loan # at CO-8, Address, City, State, beginning date, 11/10/XX and maturity date 11/10/21, amount \$\$, stated rate 7.75%.

The purpose of the loan is "PURCH IMMED. ANNUITY FOR RA-2".

**LIFE INSURANCE POLICY:**

This was a premium financed policy and premiums were paid before 20XX.

20XX12

20XX12

Amount paid for policy

Interest earned on the policy

Interest wired to CO-10 on the loan

Check form CO-9 paid to CO-10 on 10-9-20XX

Paid off the loan 10-15-20XX

Difference - Loan Secured by Foundation

Founder, Founder received a commission of \$ for the purchase of the \$ insurance policy in 20XX.

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The Insurance Policy was cashed in for \$\$ on 10-9-20XX but the loan amount was \$ which was more than the policy was worth so the investment was a loss of \$ which they had to obtain a loan. The policy no longer exists. This was one of the items mentioned the taxpayer has no records. Self-dealing and Jeopardy of Investments were considered.

**Applicable Tax Law:**

**REGS, §1.501(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals**

REGS, § 1.501(c)(3)-1(d)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph 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.

**REGS, §1.501(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals**

Regs. § 1.501(c)(3)-1(c)(1) *Operational test*

(1) *Primary activities.* —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.

**IRC § 509. PRIVATE FOUNDATION DEFINED.**

Section **509(a)** GENERAL RULE. —For purposes of this title, the term “private foundation” means a domestic or foreign organization described in section 501(c)(3) other than —

Section **509(a)(1)** an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));

Section **509(a)(2)** an organization which —

Section **509(a)(2)(A)** normally receives more than one-third of its support in each taxable year from any combination of —

Section **509(a)(2)(A)(i)** gifts, grants, contributions, or membership fees, and

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Section **509(a)(2)(A)(ii)** gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and

Section **509(a)(2)(B)** normally receives not more than one-third of its support in each taxable year from the sum of —

Section **509(a)(2)(B)(i)** gross investment income (as defined in subsection (e)) and

Section **509(a)(2)(B)(ii)** the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511;

Section **509(a)(3)** an organization which —

Section **509(a)(3)(A)** is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

Section **509(a)(3)(B)** is —

Section **509(a)(3)(B)(i)** operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

Section **509(a)(3)(B)(ii)** supervised or controlled in connection with one or more such organizations, or

Section **509(a)(3)(B)(iii)** operated in connection with one or more such organizations, and

Section **509(a)(3)(C)** is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

Section **509(a)(4)** an organization which is organized and operated exclusively for testing for public safety.

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For purposes of paragraph (3), an organization described in paragraph (2) shall be deemed to include an organization described in section 501(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 501(c)(3).

**Section 509(c) STATUS OF ORGANIZATION AFTER TERMINATION OF PRIVATE FOUNDATION STATUS.** —For purposes of this part, an organization the status of which as a private foundation is terminated under section 507 shall (except as provided in section 507(b)(2)) be treated as an organization created on the day after the date of such termination.

**IRC § 508(a) NEW ORGANIZATIONS MUST NOTIFY SECRETARY THAT THEY ARE APPLYING FOR RECOGNITION OF SECTION 501(c)(3) STATUS.** —Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) —

**Section 508(a)(1)** unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

**Section 508(a)(2)** for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

**Section 508(b) PRESUMPTION THAT ORGANIZATIONS ARE PRIVATE FOUNDATIONS.** —Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501(c)(3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

**IRC § 508(e) GOVERNING INSTRUMENTS.** —

**Section 508(e)(1) GENERAL RULE.** —A private foundation shall not be exempt from taxation under section 501(a) unless its governing instrument includes provisions the effects of which are

**Section 508(e)(1)(A)** to require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under section 4942, and

**Section 508(e)(1)(B)** to prohibit the foundation from engaging in any act of self-dealing (as defined in section 4941 (d)), from retaining any excess business holdings (as defined in section 4943(c)), from making any investments in such manner as to subject the foundation to tax under section 4944, and from making any taxable expenditures (as defined in section 4945(d)).

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**GOVERNMENT’S POSITION:**

The IRC § 501(c)(3) tax exempt status of the ORG (the “Foundation”) should be revoked because it is not operated exclusively for tax exempt charitable purposes. The Foundation has no bylaws, minutes, books and records, and there were not any payments made to the charitable organizations named in the Trust document from the inception of the Foundation. There were no charitable activities to further their exempt purpose. This has been proven by the Foundation because they filed the Form 4720, *Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code* and have paid the excise tax for the failure to distribute income for December 31, 20XX to 20XX tax periods. Per Section 508(e)(1)(A), the Foundation is to operate in a manner as not to be subject to the tax under Section 4942 which required the filing of the Form 4720 for four consecutive years.

More than an insubstantial part of the Foundation’s operation is to serve the financial needs of its Founder, Founder. The Founder received commission for the purchase of the \$ insurance policy of \$ in 20XX which would have been reported on his personal return. Founder, the Founder, of the Trust document has taken charitable contributions on his personal tax return for the contributions given to this Foundation that has not performed any charitable acts. The total charitable contributions were taken on his 20XX to 20XX personal returns were \$. There is no interest to the public only private interest to the Founder per Regs.1.501(c)(3)-1(c)(1).

**TAXPAYER’S POSITION:**

Taxpayer agrees with revocation.

**CONCLUSION:**

Accordingly, the IRC § 501(c)(3) exempt private foundation status of the ORG (the “Foundation”) should be revoked, effective January 1, 20XX, because it does not operate exclusively for exempt purposes. The Foundation was set up to distribute income to three charities. The Founder did make contributions from 20XX to 20XX. From 20XX to 20XX, the Foundation has not given one dollar to any of the named charities listed in the Trust. They failed to distribute their qualified distribution amounts. The Foundation filed and paid the excise tax for section 4942, failure to distribute income, on the Form 4720 from 20XX to 20XX. The Foundation has not operated with a charitable purpose. The only person that benefited from the Foundation was the Founder being able to take charitable contributions from 20XX to 20XX.

Form 1041, *U.S. Income Tax Return for Estates and Trusts*, should be filed for future tax years ending December 31, 20XX. Subsequent returns are due no later than the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the trust’s accounting period.

**Note:** Form 990-PF is required for each tax year until Private Foundation status is terminated under IRC § 507.