



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE: EO Examination
1100 Commerce Street
Dallas, Texas 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: September 19, 2011

Number: **201150031**
Release Date: 12/16/2011

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 :

This is a final adverse determination as to your exempt status under section 501(a) of the Internal Revenue Code (IRC). It is determined that you do not qualify as an organization described in IRC § 501 (c)(3) effective January 1, 20XX. Our adverse determination is made for the following reasons.

You have failed to produce documents to establish that you are organized and operated exclusively for exempt purposes within the meaning of IRC § 501(c)(3) and that no part of your net earnings inures to the benefit of private shareholders or individuals. Also, you have failed to keep adequate books and records as required by IRC § 6001 and 6033, and the regulations thereunder.

In our letters dated September 16, 2010, October 27, 20XX, and January 7, 20XX, respectively, we requested information necessary to conduct an examination of your Form 990 for the years ended 20XX and 20XX. We have not received the requested information.

Section 1.6033-2(h)(2) of the Income Tax Regulations provides, in part, that every organization that is exempt from tax shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status.

Since you have not provided the requested information, and have not established your exempt status, we hereby revoke your organization's exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code, effective January 1, 20XX.

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

Since your exempt status has been revoked, you are required to file a Form 1120, U.S. Corporation Income Tax Return, for all years beginning on or after January 1, 20XX.

It is further determined that your failure to file a written protest may constitute a failure to exhaust your administrative remedies. However, if you decide to contest this determination under the declaratory judgment provisions of IRC § 7428, an appropriate petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date 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 for the United States Tax Court, write to the United States Tax Court.

Please understand that filing a petition for a declaratory judgment under IRC § 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. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, 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. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate by calling and ask the Taxpayer Advocate for assistance or you can contact the Taxpayer Advocate for the IRS office that issued this adverse determination by writing to the Office of the Taxpayer.

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
400 North 8th Street Room 480 Box 74
Richmond, VA 23240

February 12, 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 Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 12/31/20XX, 20XX

ORG
Organization name XX - Date State - state President - president

Issue:

- (1) Can an organization that is classified as a 501(c)(3) organization continue to be so classified if they have not substantiated their exempt status by providing support for their claimed revenues, expenses and activities?

Facts:

ORG was incorporated in the State of State in June, 20XX and was recognized as exempt under Internal Revenue Code (IRC) Section 501(c)(3) in May, 20XX.

After numerous and repeated efforts to contract officers and board members, the President (President) was summonsed to talk with examiner. According to the President, he has stage 4 cancer (as verified by doctor's notes) and left the organization due to illness.

While the President did give some information, he did not have the books and records of the organization for the years ended December 31st, 20XX and 20XX. He thought that the books and records were where the organization had once ran a daycare.

While there were some non-financial information at the location where ORG once ran a daycare, what was found was not substantial or substantive of financial activity. The records that were found did not substantiate the activities of the organization.

The State of State was contacted in an effort to determine the amount of revenue that ORG obtained from the state and what bank account the revenue was deposited into. The State of State didn't give the banking information, and only stated the obvious: that ORG was not currently receiving state money. State had already sent 1099s that showed what State paid to the organization for daycare related services in 20XX and 20XX.

According to the State of State, ORG received \$ for the year ended December 31, 20XX and \$ for the year ended December 31, 20XX. The organization should have filed a Form 990 for both years, but none were ever filed.

Nothing could be found that substantiated the financial activities of the organization, and no books and records could be found that summarized and demonstrated the activities of the organization.

Law:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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Internal Revenue Code (IRC) Section 501(c)(3) organizations are corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), 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, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Tax Regulation 1.501(c)(3)-1(a) *Organizational and operational tests* (1) 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.

IRC 6033(a)(1) states that except for a few listed exceptions, every organization exempt from taxation under IRC Section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall 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.

Tax Regulation §1.6033-2(a)(1) states in part that every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return. Such return shall be filed annually regardless of whether such organization is chartered by, or affiliated or associated with, any central, parent, or other organization.

Tax Regulation §1.6033-2(a)(2)(i) states in pertinent part that every organization exempt from taxation under section 501(a), and required to file a return under section 6033 and this section (including, for taxable years ending before December 31, 1972, private foundations, as defined in section 509(a)), shall file its annual return on Form 990.

Tax Regulation §1.6033-2(i)(1) states that an organization which is exempt from taxation under section 501(a) and is not required to file annually an information return required by this section shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 12/31/20XX, 20XX

Tax Regulation §1.6033-2(i) (2) states that every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of the Internal Revenue Code.

Tax Regulation §1.6033-2(i)(3) states that an organization which has established its exemption from taxation under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not relieved of the duty of filing other returns of information.

Internal Revenue Code Section 6001 states that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Tax Regulation 1.6001-1(a) provides that any person subject to income tax, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of tax or information. Section 1.6001-1(e) of the regulations provides that the books and records shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Tax Regulation 1.6001-1(d) provides that books and records required by IRC section 6001 be kept in a safe and convenient place and at all time be available for inspection by authorized internal revenue officers employees. "The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under Subtitle A of the Code."

Tax Regulation 301.7701-6(a) states that the term *person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group.

The Tax Court stated that the regulations under IRC Section 501(c)(3) provides for two tests, an operational test and an organizational test. Failure to meet either test negates the exempt status of the organization. TC Memo 1993-116 WL 87864 (U.S. Tax Court).

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In Revenue Ruling 59-95, 1959-1 CB 627, (Jan. 01, 1959) an organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year. However, its records were so incomplete that it was unable to furnish such statements. Section 6033 of the Internal Revenue Code of 1954 provides that every organization, except as provided therein, exempt from taxation under section 501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and shall keep such records, render under 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. *Held*, failure or inability to file the required information return or otherwise to comply with the provision 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 an exempt status.

Exempt status is a privilege, a matter of grace rather than a right (Christian Echoes National Ministry 470 F 2d 849, 857 (1972)). When the creators control the affairs of the organization there is an obvious opportunity for abuse which necessitates an open and candid disclosure of all facts bearing upon the organization, operations and finances. Where such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the taxpayers fail to meet the requirements of IRC Section 501(c)(3) (Bubbling Well Church of Universal Love v Commissioner, 74 TC 531, 535 (1980). Afd 670 F 2d 104 (9th cir, 1981)).

In the 20XX Instructions For Form 990 And Form 990-EZ, return of organization exempt from income tax and short form return of organization exempt from income tax, p.14, states, "Recordkeeping. The organization's records should be kept for as long as they may be needed for the administration of any provision of the Internal Revenue Code. Usually, records that support an item of income, deduction, or credit must be kept for 3 years from the date the return is due or filed, whichever is later. Keep records that verify the organization's basis in property for as long as they are needed to figure the basis of the original or replacement property."

Government Position:

While the organization did have daycare activities, there were no books and records available and no way to substantiate the extent of the exempt activities. There is no financial information of any kind that could be located, and certainly no financial information that could be found for any time periods after December 31, 20XX.

No Form 990 returns were filed after December 31, 20XX and no Form 941s or 944s after December 31, 20XX. The organization appears to have, for all intents and purposes, stopped

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operating. There isn't enough records to determine an exact time in 20XX when the organization stopped operating as an exempt organization.

The exempt status of the organization should be revoked effective January 1st, 20XX. The organization should file Form 1120s for time periods after 20XX.

Organizational Response:

Conclusion: