



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: February 21, 2012

Release Number: 201225014
Release Date: 6/22/2012

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

LEGEND

ORG – Organization name
XX – Date Address - address

**ORG
ADDRESS**

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 January 7, 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. You must 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.

The use of your assets by your creators, and the transactions with organizations controlled by them, demonstrates that you operated, in part, for the benefit of your creators. In addition, these actions have caused your net earnings to inure to the benefit of your creators. These actions are in violation of the operational test as described in Treasury Regulations section 1.501(c)(3)-1, and cause you to fail the operational test.

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

You have filed taxable returns on Form 1120 U.S. Corporate Income Tax Return, for the year(s) ended December 31, 20XX, 20XX, 20XX, 20XX and 20XX with us. For future periods, you are required to file Form 1120 with the appropriate service center indicated in the instructions for 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**



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Mail Stop 1112
PO Box 12307
Ogden, UT 84412

August 29, 2011

ORG
ADDRESS

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Taxpayer Identification Number:

Certified Mail – Return Receipt Requested

Dear

We propose to revoke our recognition of your exempt status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). We enclose our report of examination explaining why we are proposing this action.

If you accept our proposal, please sign and return the enclosed Form 6018, Consent to Proposed Action – Section 7428, unless you have already provided us a signed Form 6018. We will issue a final revocation letter determining you are not an organization described in section 501(c)(3). After the issuance of the final revocation letter we will publish an announcement that you have been deleted from the cumulative list of organizations contributions to which are deductible under section 170 of the Code. If you do not respond to this proposal, we will similarly issue a final revocation letter. Failing to respond to this proposal may adversely impact your legal standing to seek a declaratory judgment because you may be deemed to have failed to exhaust administrative remedies.

If you do not agree with our proposed revocation and wish to protest our proposed revocation to the Appeals Office of the Internal Revenue Service, then 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. This written request is called a protest. For your protest to be valid it need to contain certain specific information which generally includes a statement of the facts, the applicable law, and arguments in support of your position. For the specific information needed for a valid protest, please refer to page 6 of the enclosed Publication 3498, *The Examination Process*, and page 2 of the enclosed Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*. These documents also explain how to appeal an IRS proposed action.

If you do submit a valid protest, then 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 and Publication 892 explain how to appeal an Internal

In lieu of Letter 3618

Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation Services referred to in Publication 3498 generally do not apply after issuance of this letter.

You may also request that we refer this matter for Technical Advice as explained in Publication 892 and an annual revenue procedure. Please contact the individual identified on the first page of this letter if you are considering requesting Technical Advice. If we issue a determination letter to you based on a Technical Advice Memorandum issued by EO Rulings and Agreements function, then no further administrative appeal will be available to you within the IRS on the matter.

We will notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code. Currently, only certain states are eligible to receive notification of proposed revocation actions. You can call the person at the heading of this letter to find out if your State is eligible to receive a notice of revocation of your tax-exempt status.

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:

Taxpayer Advocate Service

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
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 December 31, 20XX and 20XX

LEGEND

ORG - Organization name XX - Date Address - address DIRECTORS -
directors DIR-1 - 1st DIR CO-1 - 1st COMPANY

ISSUES:

- 1) Whether the ORG continues to qualify as a supporting organization as described in section 509(a)(3) of the Internal Revenue Code.
- 2) Whether the ORG (ORG) continues to qualify for tax exempt status per section 501(c)(3) of the Internal Revenue Code.

FACTS:

ORG was incorporated in August of 20XX as a non-profit corporation.

ORG received tax exempt status on January 7, 20XX per section 501(c)(3) as a supporting organization as described in section 509(a)(3).

ORG received contributions primarily from DIRECTORS (DIRECTORS), or organizations controlled by the DIRECTORS. The DIRECTORS contributed \$, \$, and \$ for the tax years ended December 31, 20XX, 20XX and 20XX respectively.

ORG used the funds to invest in real estate properties in various locations. The real estate was improved using ORG funds and then sold to various parties in an attempt to increase the assets of ORG. One such property was lot Address.

During the period May 20XX through August 20XX the DIRECTORS resided in the Address property.

On August 1, 20XX DIR-1, acting for the ORG Board, sold the Address property to CO-1 for \$ with \$ down and a promissory note from CO-1 for the remainder.

CO-1 is an organization that is controlled by the DIRECTORS.

LAW:

Section 501(c)(3) of the Internal Revenue Code describes corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 509(a)(3) of the Internal Revenue Code describes a supporting organization as one that is organized, and at all times thereafter is operated, exclusively for the

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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benefit of, to perform the functions of, or to carry out the purposes of one or more 501(c)(3) public charities and is not controlled directly or indirectly by one or more disqualified persons other than foundation managers and other than on or more public charities.

Section 4946 of the Internal Revenue Code defines who is a disqualified person. One such person is a substantial contributor to the foundation.

Section 507(d)(2) of the Internal Revenue Code defines a substantial contributor as any person who contributed or bequeathed an aggregate amount of more than \$5,000, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the foundation from such person. The code goes on to detail that any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods (section 507(d)(2)(B)(iv)).

Treasury Regulations section 1.501(c)(3)-1(a)(1) states 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.

Treasury Regulations section 1.501(c)(3)-1(c)(1) describes the operational test as 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.

Treasury Regulations section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more charitable purposes unless it serves a public rather than a private interest. Thus, to be operated for exempt purposes, 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.

ISSUE 1:

TAXPAYER'S POSITION:

ORG agreed to the draft version of this report.

GOVERNMENTS'S POSITION:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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The DIRECTORS contributed \$ in 20XX, \$ in 20XX and \$ in 20XX. These amounts were in excess of \$ per year and constituted 100 percent of the contributions in each given year. As such, the DIRECTORS are substantial contributors of ORG as described in sections 507(c)(2)(A) and are therefore disqualified persons per section 4946(a)(1)(A) with regards to ORG. The 20XX and 20XX tax years are prior to the years under examination. However, section 507(d)(2)(B)(iv) provides that , “any person who is a substantial contributor on any date shall remain a substantial contributor for all subsequent periods.

After making the contributions listed above, the DIRECTORS retained control regarding how the assets were invested, how those investments were managed and the amount of the contributions that went to the supported organizations. This is evident by the DIRECTORS ability to reside in the investment property of ORG and subsequently sell the property to an organization that the DIRECTORS controlled.

This control is in violation of section 509(a)(3)(C) which states that a supporting organization “is not controlled directly or indirectly by one or more disqualified persons...” As such, ORG no longer qualifies as a supporting organization.

CONCLUSION:

The ORG does not continues to qualify as a supporting organization as described in section 509(a)(3) of the Internal Revenue Code.

ISSUE 2:

TAXPAYER’S POSITION:

ORG agreed to the draft version of this report.

GOVERNMENT’S POSITION:

As described in the Government’s position of issue 1, the DIRECTORS retained significant control over the use of their contributions to ORG. The DIRECTORS lived in the property that was owned by ORG and sold the assets of ORG to CO-1 that the DIRECTORS control.

The use of ORG’s assets by the DIRECTORS, and the transactions with organizations controlled by the DIRECTORS, demonstrates that ORG operated, in part, for the benefit of it’s creators. In addition, the actions have caused the net earnings of ORG to inure to the benefit of private individuals. These actions are in violation of the operational test as described in the Treasury Regulations section 1.501(c)(3)-1 and

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

cause ORG to fail the operational test. Treasury Regulations section 1.501(c)(3)-1)(a)(1) provide that an organization must meet both an organizational and an operational test to be exempt as an organization described in section 501(c)(3).

CONCLUSION:

The ORG does not continues to qualify for tax exempt status per section 501(c)(3) of the Internal Revenue Code, effective January 1, 20XX. As such, the organization shall be treated as a taxable corporation and will be required to file Form 1120 for all subsequent tax periods from the effective date of revocation.

Please be aware that even with the loss of your tax exempt status, your organization was still legally organization as a non-profit corporation. As such, your organization is required to follow the dissolution clause, per your articles of incorporation, when your organization terminates operations.