



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: January 8, 2013

Release Number: 201317020

Release Date: 4/26/2013

LEGEND

ORG – Organization name

XX – Date Address - address

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

(Phone)

(Fax)

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 1998 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.

You have not established that you are operated exclusively for exempt purposes described in section 501(c)(3) of the Code. From the nature of your activities and the expenses paid, it appears that a substantial amount of your funds are being used to provide financial benefits to members and for social and recreational events held for your membership, rather than for exclusively charitable purposes.

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

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of 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**

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
1100 Commerce Street
Dallas, TX 75242

Department of the Treasury

Date: August 20, 2012

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

ORG
ADDRESS

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
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

LEGEND

ORG - Organization name XX - Date Address - address City - city
State - state President - president CO-1 - 1st COMPANY

ISSUE

Does ORG continue to qualify for exemption under Section 501(c)(3) of the Internal Revenue Code when the organization has not provided the requested records as required by Section 1.6033-1(h)(2) of the Regulations?

FACTS

ORG. was granted exemption under 501(c)(3) in October of 20XX. According to the Secretary of State website, the Organization was formed on January 15, 19 as a non-profit organization. See Exhibit 1 for a list of the Organization's purposes as stated in its Article of Incorporation.

When the Agent was assigned the examination, the Internal Revenue Service's Information Document Recovery System was reserached to determine if any Form 990s had been filed. The search came back with "no documents found". Based on the examiner's research the Organization has failed to file any required returns since inception. The Internal Revenue Service requested that the organization file the Form 990 for the tax periods December 31, 20XX, 20XX, 20XX, 20XX, 20XX, and 20XX.

Since ORG had not filed a return; the agent did not have access to a current address or telephone number of an officer to contact. The Agent searched various websites in order to obtain the name and address of an officer.

On March 3, 20XX, the Agent prepared postal trace requests for four addresses found. On May 3, 20XX the Agent received a postal trace for Address, City, State. A contact letter was mailed to this address and returned undeliverable.

On October 4, 20XX, the Agent again reviewed the Internal Revenue Service Information Document Recovery System, and discovered the Organization had filed e-post card return for December 31, 20XX. Subsequent to October 4, 20XX, the Organization filed e-post card return for December 31, 20XX. Tax-exempt organizations (those normally with annual gross receipts up to \$ (\$ for tax years ending on or after December 31, 20XX) may be required to file an annual electronic notice, Form 990-N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ. This filing requirement applies to tax periods beginning after December 31, 20XX, and may apply to organizations that previously were not required to file returns.

Contact Detail:

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March 03, 20XX – The Agent left messages for the organization to contact the IRS as soon as possible.

March 19, 20XX - The Agent left messages for the organization to contact the IRS as soon as possible.

March 22, 20XX - The Agent left messages for the organization to contact the IRS as soon as possible.

March 22, 20XX - The Agent left messages for the organization to contact the IRS as soon as possible.

April 13, 20XX - The Agent left messages for the organization to contact the IRS as soon as possible.

May 5, 20XX - The Agent left messages for the organization to contact the IRS as soon as possible.

May 6, 20XX - The Agent left messages for the organization to contact the IRS as soon as possible.

May 3, 20XX - the Agent spoke with the President, regarding the Organization's filing requirement, information request and delinquent returns. President stated he would speak with other officers and board members to determine if the Organization would like to retain their exempt status. The President stated he would call the Agent back after speaking with the other officers and board members.

June 23, 20XX - The Agent contacted the Organization again on and left a message that it was imperative that the taxpayer call back as soon as possible. To date the Organization has not attempted to contact the Agent in regards to their filing requirements, information requested, delinquent returns or to retain their exempt status.

June 28, 20XX - The Agent left messages for the organization to contact the IRS as soon as possible.

April 20, 20XX - The Agent mailed a revenue agent report and 30-day letter package with applicable publication to the organization to Address, City, State. A return mail receipt was received dated April 20, 20XX by the Agent indicating the organization received the package.

July 12, 20XX - The Revenue Agent attempted to contact the Organization's President at his business address of "CO-1 leaving a message requesting a return call.

LAW

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974) [74-2 USTC ¶9816], holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See also Christian Stewardship Assistance, Inc. v. Commissioner, 69 [70] T.C. 1037, 1042 (1978) [CCH Dec. 35,422].

Better Business Bureau v. United States, 316 U.S. 279 (1945), holds that the existence of a single non-exempt purpose, if substantial in nature, will destroy the exemption under section 501(c)(3). An organization will be regarded as operated exclusively for one or more exempt

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purposes only if it engages primarily in activities which accomplish one or more of such purposes.

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

Treas. Reg. § 1.6001-1(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC §501(a) and subject to the tax imposed by IRC § 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 IRC § 6033.

Treas. Reg. § 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.

Treas. Reg. § 6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), 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.

Treas. Reg. § 1.6033-1(h)(2) 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 IRC § 6033.

Treas. Reg. § 1.6033-2(1)(2) provides in part, 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 subchapter F, Chapter 1, of subtitle A of the Code, IRD §6033, and Chapter 42 of subtitle D of the code.

IRC §6033, Treas. Reg. § 1.6001-1(c) and Treas. Reg. § 1.6033-2(a)(1) and (i)(2) require any organization exempt from tax under IRC § 501(a), to supply the Service with such information as is required by the revenue procedures and the instructions for Form 990-PF, Return of

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Private Foundation information returns, and Schedules thereto and to keep such books and records as are necessary to substantiate such information.

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 IRC § 6033 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.

Church of Gospel Ministry, Inc. v. United States, 641 F. Supp. 96 (1986) U.S. Dist., due to the taxpayer's failure to keep adequate records, the court held that the taxpayer failed to sustain its burden to show that it was qualified for federal tax exemption as a corporation organized and operated exclusively for religious and charitable purposes, as required under IRC § 501(c)(3), and that it was further qualified to receive deductible charitable contributions under IRC § 170 (c)(2). The court found that the inadequate records failed to show that the taxpayer's operations did not inure to the private benefit of its officers, as provided under IRC § 6001. The court found that as a prerequisite to an IRC § 6033 filing exemption, it was necessary for the taxpayer to show it qualified as an IRC § 501(c)(3) organization, which it could not.

TAXPAYER'S POSITION

Not Known

GOVERNMENT'S POSITION

In accordance with the above-cited provisions of the Code and Regulations under IRC Sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information return, (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exemption and to determine its liability for any unrelated business income tax.

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

Under Treasury Regulation Section 1.6033-2(i)(2), every organization exempt from tax, whether or not it is required to file an annual return, shall submit additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status. During our examination, we made several requests for information, but the Organization failed

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to supply the requested information. Except for organizations that are exempt from the annual filing requirements, Internal Revenue Code Section 6033(a)(1) and Treasury Regulations Section 1.6033-2(a) provide that every organization exempt from taxation under Internal Revenue Code Section 501(a) is required to file an annual return (Form 990) 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. Treasury Regulations Section 1.6033-2(i)(2) provides that every organization that is exempt from tax, whether or not it is required to file an annual return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status.

Treasury Regulations Section 6033(b) sets out an affirmation duty on the part of ORG to furnish annual information in such a manner as the Secretary may prescribe via forms and regulations. The Organization has clearly failed to provide the requested information despite adequate notice.

CONCLUSION

On numerous occasions, we requested information regarding and substantiation of your Form 990 for the year ended December 31, 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 which is exempt from tax shall submit additional information as may be required by the Internal Revenue Service for the purposes of inquiring into its exempt status.

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

Form 1120 returns should be filed for the tax periods ending after December 31, 20XX.