



**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:** March 19, 2013

**Number:** 201402017  
**Release Date:** 1/10/2014

**LEGEND**

ORG – Organization name

XX – Date Address - address

**ORG**

**ADDRESS**

**Employer Identification Number:**

**Person to Contact/ID Number:**

**Contact Numbers:**

Telephone:

Fax:

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear \_\_\_\_\_ :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter dated April 20, 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 reasons:

ORG does not operate exclusively for charitable purposes as noted in section 1.501(c)(3)-1(c)(1) of the regulations. This section provides 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). ORG failed to meet the operational test described in Treasury Regulation Section 1.501(c)(3)-1(c)(1).

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 1120. 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, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91<sup>st</sup> day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the court at the following addresses:

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 you have to file a petition in a United States court. The Taxpayer Advocate can, however see a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

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



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities Division  
1100 Commerce Street, MC 4900-DAL  
Dallas, TX 75242

ORG  
ADDRESS

Date:  
January 2, 2013  
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Manager's name / ID number:

Manager's contact number:

Response due date:

### **Certified Mail - Return Receipt Requested**

Dear

#### **Why you are receiving this letter**

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

#### **What you need to do if you agree**

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

#### **If we don't hear from you**

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

#### **Effect of revocation status**

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

#### **What you need to do if you disagree with the proposed revocation**

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. 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 the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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:

Internal Revenue Service  
Office of the Taxpayer Advocate

**For additional information**

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:  
Report of Examination  
Form 6018  
Publication 892  
Publication 3498

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>	Schedule number or exhibit
Name of Organization/Taxpayer	Tax Identification Number	Year/Period ended
ORG	EIN	12/31/20XX thru 12/31/20XX

**LEGEND**

ORG – Organization name    XX – Date    EIN – EIN    State – State    CEO - CEO

**Issue:**

Should the tax exempt status of ORG ("the Foundation") be revoked as of January 1, 20XX, for failing to comply with the operational test of the Internal Revenue Code ("Code") Section 501(c)(3)?

**Facts:**

The Foundation was incorporated in the state of State on December 07, 20XX. The Foundation stated its specific purposes on its Articles of Incorporation as:

*"To educate, develop, and train the young individuals to appreciate and love music & art through vocal instructions, as well as theatre techniques."*

The Bylaws, dated January 21, 20XX, stated the primary objectives and purposes as:

- (a) "To enhance people's lives by promoting the furtherance of education, through music and arts, through its programs;*
- (b) to make charitable grants to other Section 501(c)(3) charitable organizations; and*
- (c) to conduct any other charitable or activities which would be qualified activities as defined by section 501(c)(3) of the Internal Revenue Code."*

The Foundation filed a Form 1023, *Application for Recognition of Exemption* Under the Code Section 501(c)(3), with the IRS on April 14, 20XX. CEO was the Chief Executive Officer and the primary contact person for the determination matters. She also signed the Form 1023. The Foundation described its activity as:

*"ORG is a State nonprofit public benefit corporation established to educate, train and develop young individuals from ages 7 through 18 to appreciate and love music and art through vocal instructions, as well as, theatre techniques."*

We granted tax exempt status under the Code Section 501(c)(3), as an entity described under the Code Section 509(a)(2), on April 20, 20XX.

The assigned Internal Revenue Agent ("Agent") initiated the examination of the Foundation's operation on November 7, 20XX, for the activities conducted during the year ended December 31, 20XX. The Foundation filed a Form 990N for this year and listed CEO as the President. The agent contacted CEO, and she indicated that the Foundation did not receive sufficient funding to maintain its operation. The Foundation had not been operational for a few years. The only record available for the year ended December 31, 20XX would be the filing records related to the Form 990N.

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit
Name of Organization/Taxpayer	Tax Identification Number	Year/Period ended	
ORG	EIN	12/31/20XX thru 12/31/20XX	

CEO stated the Foundation would not be operational in the near future, and might never be operational. The agent pointed out to CEO that, through the internet research, another name was found associated with the foundation. The agent asked whether she knew anything about the US Housing Corporation or US Housing Foundation. The agent's concern was that someone might be taking advantage of the Foundation. She understood our concern and agreed that we should revoke the exempt status of the Foundation.

**LAW**

The Code Section 501(c)(3) exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Treasure Regulations Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in the Code 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.

Treasure Regulations Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in the Code 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. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test.

Treasure Regulations Section 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as an organization described in the Code Section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Treasure Regulations Section 1.501(c)(3)-1(d)(1)(ii) provides, in part, that the organization must establish it is not organized or operated for the benefit of private interests, "such as designated

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>	Schedule number or exhibit
Name of Organization/Taxpayer  <b>ORG</b>	Tax Identification Number  <b>EIN</b>	Year/Period ended  <b>12/31/20XX thru 12/31/20XX</b>

individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.”

**Government's Position**

For an organization to maintain its exempt status, it must meet the operational test under Treasury Regulations Section 1.501(c)(3)-1(a)(1). The operational test generally requires that an organization operates consistent with the requirements of the Code. Otherwise, the organization is not operated exclusively for charitable purpose, and would lose tax-exempt status.

The Foundation was properly organized, and met the organizational test. The Foundation could not maintain its operation as it described within the Form 1023, that was filed in April 20XX. Accordingly, the Foundation could not meet the operational test. Therefore, the Foundation is not a charitable organization within the meaning of Treasury Regulations Section 1.501(c)(3)-1(d). The Foundation should no longer be granted tax-exempt status under the Code section 501(c)(3) and described under the Code Section 509(a)(2).

**Taxpayer's Position**

The Foundation agrees with the IRS position.

**Conclusion:**

The exempt status of the Foundation is revoked effective January 1, 20XX.

Forms 1120 should be filed for the tax periods ending December 31, 20XX, and all the subsequent years, if applicable.