



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street MC 4920 DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: AUG 31 2017

Release Number: 201806010
Release Date: 2/9/2018
UIL Code: 501.03-00

Person to Contact:
Identification Number:
Telephone Number:
In Reply Refer to:

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:

CERTIFIED MAIL - Return Receipt Requested

Dear :

This is a Final Adverse Determination Letter that your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) is revoked. Recognition of your exemption under IRC section 501(c)(3) is revoked effective January 1, 20xx.

Our adverse determination was made for the following reasons:

You are not described in section 501(c)(3) of the Code because you are not operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3) and Treasury Regulations section 1.501(c)(3)-1(c)(1). You do not engage primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) and Treasury Regulations section 1.501(c)(3)-1(d).

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

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

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 for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for

initiating suits for declaratory judgment. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778.

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, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Maria Hooke
Director, Exempt Organizations Examinations

Enclosures:
Publication 892

Department of the Treasury
Internal Revenue Service
IRS Tax Exempt and Government Entities
Exempt Organizations Examinations

Date: **APR 05 2017**
Taxpayer Identification Number:

Form:
990 Return
Tax Year(s) Ended:
December 31, 20xx
December 31, 20xx
Person to Contact / ID Number:

Employee ID:
Contact numbers:
Telephone:
Fax:
Refer Reply To:

Dear _____ :

We're sending the enclosed material under the provisions of your power of attorney or other authorization on file with us, for the taxpayer listed below.

If you have questions, you can contact the person listed above.

Sincerely,

Maria Hooke
Director, EO Examinations

Taxpayer Name:

Enclosures: Letter 3618

Letter 3597 (Rev. 12-2016)
Catalog Number 34786R

Department of the Treasury
Internal Revenue Service
IRS Tax Exempt and Government Entities
Exempt Organizations Examinations

Date: APR 05 2017

Taxpayer Identification Number

Form:

Tax Year(s) Ended:

Person to Contact / ID Number:

Employee ID:
Contact numbers:
Telephone:
Fax:
Manager's Name / ID Number:

Employee ID:
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,

Maria Hooke
Director EO Examinations

Enclosures:

Report of Examination Form 6018

Publication 892

Publication 3498

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

Issue:

Should the tax exempt status of _____ under IRC Section 501(c)(3) be revoked as of January 1, 20xx?

Facts:

_____ was incorporated in the State of _____ on March 5, 19xx. The _____ is tax exempt under Internal Revenue Code (IRC) section 501(c)(3) as an organization described in IRC sections 509(a)(1) and 170(b)(1)(A)(vi).

The Certificate of Incorporation states the purposes of the _____ are:

- a) To render support and assistance for the study and promotion of the arts and sciences by means of contributions and grants
- b) To render support and assistance by means of contributions and grants to exempt organizations established to benefit the aged sick, infirm, indigent, and destitute
- c) To encourage the interchanged of ideas and personal contacts between _____ and people by sponsoring and conducting meetings, lectures and symposia and to distribute material and to publish printed matter in order to encourage and promote education and understanding among these people
- d) To encourage and promote good citizenship on the part of immigrants to the United States, to issue publications or such purpose, to sponsor meetings and forums for such purpose, and to engage in other appropriate educational efforts
- e) To contribute to religious instructions regardless of creed for the purpose of promoting understanding and harmony among persons of all faiths
- f) To render support to the relief of humanity from hardship and privation caused by war, disasters, and act of God; to contribute to organizations established for such purposes
- g) To render support by means of contributions and grants to established religious, charitable, scientific, literary and educational endeavors of all kinds and descriptions; to contribute to community chests and social welfare funds and generally to support activities of a charitable nature

The _____ constitution, effective October 29, 20xx, state its purposes are to organize and coordinate patriotic, cultural, educational, charitable and religious activities for the perpetuation of the language, ethnicity and civilization.

In return years ending 12/31/20xx and 12/31/20xx, the _____ reported its gross revenue and primary sources of income, as reflected in the table below.

Period Ending	Gross Revenue	Gross Rents	Gross Fundraising	Total Rents & Fundraising
12/31/20xx	\$xxx,xxx	\$ xxx,xxx	\$ xxx,xxx	\$ xxx,xxx
12/31/20xx	\$xxx,xxx	\$xxx,xxx	\$xxx,xxx	\$xxx,xxx

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Our examination of the Form 990, filed for years ending 12/31/20xx and 12/31/20xx, determined that the primary activity is the operation of a commercial catering facility. The has a club liquor license issued by the and operates the catering business from its wholly owned premises. The returns as filed do not accurately reflect items of income and expenditure. We were unable to reconcile the income and expenses reported on the Form 990 to the organization's books and records. A significant amount of the revenue, reported as derived from rents and fundraising events, were determined to be from the operation of a catering service and include the sale of liquor, as follows:

Catering revenue reported on 990 returns as

	20xx	20xx
Gross Rents:	\$ xx,xxx	\$ xxx,xxx
Gross Fundraising:	xxx,xxx	xx,xxx
Total Catering Revenue:	\$ xxx,xxx	\$ xxx,xxx

Total catering revenue for years ending 12/31/20xx and 12/31/20xx were derived from the trial balances.

Revenue from this commercial activity represents xx% and xx% of the reported gross revenue.

The files the Form 990-T. For the return year ending 12/31/20xx, it reported \$xxx,xxx as taxable income and \$xxx,xxx in related expenses. Our examination determined taxable income from the catering service to be at least \$xxx,xxx. Similarly, for year ending 12/31/20xx, the reports \$xxx,xxx as taxable income and \$xxx,xxx in related expenses. Based on a review of the trial balance, taxable income is at least \$xxx,xxx.

Our examination further determined that the expenditures are consistent with those of a commercial operation and include disbursements for liquor/beverage/food purchases, laundry services and payroll.

The referenced expenditures are not separately identified within the 990 returns under examination or within the 990-T return filed for calendar year ending 12/31/20xx. The expenditures are mingled with rental and direct fundraising expenses within the 990 returns subject to examination.

The operates the catering hall service under the name . They are one and the same entity. The advertises online as a catering service located in (), ; The posts its catering menu, address and contact information on internet web pages. The posted address and contact information for the commercial operation is the same as the . Catering hall advertisements can be found within the following website addresses:

-
-
-
-

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Within the third bulleted website, the catering hall is describes as being in business for xxyears, as being favorite catering service, locally recognized as the catering service with delicious food and affordable prices. It also states that its catering service is perfect for weddings, birthdays, senior events, baby showers, corporate events, fundraising events, and more. The last bulleted website solicits patronage to a New Year's Eve 20xx celebration where an open bar is part of the offering. ().

Law:

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for religious, charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation 1.501(c)(3)-1(a)(1) provides 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 the organization fails to meet either the organizational test or the operational test, it is not exempt.

Treasury Regulation 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes. 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 Regulation 1.501(c)(3)-1(d)(1)(ii) provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals. Thus, even if an organization has many activities which further exempt purposes, exemption may be precluded if it serves a private interest.

In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the Supreme Court interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes. The activities of the organization in Better Business Bureau of Washington, D.C., Inc. v. U.S. were in part aimed at promoting the prosperity and standing of the business community and were held to serve a substantial non-exempt purpose.

In Airlie Foundation v. Internal Revenue Service, 283 F.Supp. 2d 58 (D.D.C., 2003), the district court relied on the "commerciality doctrine" in applying the operational test. The operational test requires both that an organization engage "primarily" in activities that accomplish its exempt purpose and that not more than an "insubstantial part of its activities" further a non-exempt purpose. Because of the commercial manner in which the organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. The court stated:

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Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations.

Taxpayer's Position:

The organization does not agree that the tax exempt status of should be revoked.

Governments Position:

It is the government's position that the tax exempt status of the be revoked because it holds a club liquor license, and it is primarily engaged in the operation of a catering service indistinguishable from a commercial business.

The has failed to demonstrate that it meets the operational test, required of a § 501(c)(3) organization. In order to meet the operational test, the must show that it is engaged primarily in activities which accomplish one or more of such exempt purposes specified in section § 501(c)(3). We will not regard an organization as having met this test if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The operation of a catering hall is not an exempt purpose. The internet postings further demonstrate that the organization is operating similar to a commercial catering service, from which it derives substantially all of its revenue.

The is similar to the organization described in Better Business Bureau of Washington, D.C., Inc. v. United States because it has a substantial non-exempt purpose. The presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

This is also illustrated in Airlie Foundation v. Internal Revenue Service. The operational test requires both that an organization engage "primarily" in activities that accomplish its exempt purpose and that not more than an "insubstantial part of its activities" further a non-exempt purpose. Because of the commercial manner in which the organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. The advertises its catering service on the internet and also posts the menu offered. This advertising demonstrates that they are operating in a commercial manner and competing with similar for-profit entities.

Conclusion

is not operating as an organization described in Section 501(c)(3) of the Internal Revenue Code. Accordingly, we propose to revoke the organization's exempt status effective as of January 1, 20xx.