DEPARTMENT OF THE TREASURY
Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75424

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

UIL: 501.03-01

Release Number: **200730031**
Release Date: 7/27/07

ORG

LAST DATE FOR FILING A PETITION WITH THE TAX COURT: _____

Dear Sir:

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX.

Our adverse determination was made for the following reasons:

1. ORG is not operated for an exclusive exempt purpose, as is required by IRC section 501(c)(3) and Treas. Reg. section 1.501 (c)(3) -1(d).

2. A substantial part of the activities of ORG furthers private interests rather than public interests, which is prohibited by Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii).

3. The net earnings of ORG inures to the benefit of private shareholders and individuals, which is prohibited by IRC section 501(c)(3).

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. 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 also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling (

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax 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.

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,

Marsha A. Ramirez
Director, EO Examinations

Enclosures: 886-A – Explanation of Items

LEGEND:
ORG = Name of Organization
NUM = EIN
Issue:

Whether the section 501(c)(3) exempt status of ORG , a private non-operating foundation, be revoked effective January 1, 20XX .

Facts:

ORG (organization) was recognized as a private non-operating foundation, exempt under IRC section 501(c)(3), on February 24 , 20XX and effective for the year ending December 31, 20WW. Per their Form 1023, Application for Recognition of Exemption, which was filed in August of 20WW, the organization activities would exclusively consist of making grants to other 501(c)(3) organizations classified as public charities for religious , charitable, educational, scientific and literary purposes. The organization's Form 1023 also states that the organization would develop operating procedures to ensure that it adheres to the rules of IRC Sections 4941, 4942, 4943, 4944 and 4945 as applicable to private non-operating foundations. The Form 1023 also states that the foundation will be funded primarily from donations by its founders.

The organization's Forms 990-PF for years ending December 31, 20XX , December 31, 20YY , and December 31, 20ZZ , were selected for examination based on information obtained from a promoter in regards to abusive trusts.

Funding Analysis
Analysis of the organization's books and records determined that a majority of the organization's funding took place in 2002, with an original contribution of $15,000 received from its founders, . During 20XX , the foundation received one additional contribution of an automobile from its founders with a fair market value of $1,500. No additional contributions were received during years ending 20YY and 20ZZ . In addition to the 20XX contribution, the organization also generated a small percentage of total revenue from investment income during years ending 20XX and 20YY . The figures are as follows:

	20XX	20YY	20ZZ
Trustee Contributions	$1,500	$ 0	$ 0
Investment Income	$ 555	$ 33	$ 0
Total	$2,055	$ 33	$ 0

Expenditure Analysis
The following figures represent the organization's expenditure activity for years ending December 31, 20XX and 20YY . The organization did not have any disbursement activities during year ending December 31, 20ZZ.

Disbursements	20XX	20YY
• Grants (Organizations)	$ 0	$ 0
• Grants (Individuals)	$ 1,500	$ 0
• Legal Fees	$ 500	$ 0
• Professional Fees	$ 99	$ 0
• Travel	$ 0	$ 2,700
Total	$ 2,099	$ 2,700

During the course of the examination, it was concluded that a substantial percentage of the organization's total expenditures were of a personal nature and conducted for the personal benefit of its trustees and individuals.

The expenditures in question included the grant made to an individual in 20XX and the travel expenses paid during 20YY . During 20XX , the organization donated the automobile, received as a contribution from its founders, to an individual. However, the organization did not seek prior grant making authority from the Internal Revenue Service nor does it have any established procedures for selecting grantees or expenditure responsibility.

The travel expenses paid by the foundation were also determined to be for the personal benefit of trustees. These expenses primarily consisted of the costs for airfare, lodging, meals and a car rental for 10 day trip to Orlando, Florida for both of the trustees and their children. According to one of the trustees, this trip was under taken for the specific purpose of touring two hospitals located in the Orlando area for which the foundation was considering making grants to. However, through further discussions with the trustee, it was learned that the two hospital tours were conducted over a two day period with each being roughly 2 hours in duration and no contributions were made to either of these hospitals. The organization was also unable or unwilling to provide substantiation for these expenses.

Asset Analysis

The organization assets consist exclusively of cash and investments, which is held in an interest-bearing investment account. Based on the year-ending statement for 20YY , it was concluded that these assets were not properly reflected on the organization's Form 990 and by year ending 20YY , the assets held in this account had been depleted and reflected a negative balance.

	20XX	20YY	20ZZ
Per Return			
Beginning	$14,250	$12,706	$0
Ending	$12,706	$10,436	$0

Per Exam		
Beginning	$14,250	$ 2,920
Ending	$ 2,920	$ (74)

In addition to paying for personal travel expenses, it was also concluded that the trustees withdrew the remainder of the funds from the foundation's corpus during 20XX and 20YY and utilized these funds for their own personal benefit rather than for conducting the exempt purposes of the foundation. The organization was unable or unwilling to provide any documentation to substantiate for the use of these funds. (See attachment)

Law and Analysis:

IRC Section 501(c)(3) provides tax exemption for corporations and foundations that are 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.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in IRC 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 Regulation Section 1.501(c)(3)-1(c)(1) states that 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 Regulation Section 1.501(c)(3)-1(c)(2) states an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit or private shareholders or individuals.

Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more of the purposes specified in IRC Section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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.

Treasury Regulation Section 1.162-2(a) states in part that traveling expenses include travel fares, meals and lodging, and expenses incident to travel such as expenses for sample rooms, telephone and telegraph, public stenographers, etc. Only such traveling expenses as are reasonable and

necessary in the conduct of the taxpayer's business and directly attributable to it may be deducted. If the trip is undertaken for other than business purposes, the travel fares and expenses incident to travel are personal expenses and the meals and lodging are living expenses.

Treasury Regulation Section 1.162-2(a)(2) states that whether a trip is related primarily to the taxpayer's trade or business or is primarily personal in nature depends on the facts and circumstances in each case. The amount of time during the period of the trip which is spent on personal activity compared to the amount of time spent on activities directly relating to the taxpayer's trade or business is an important factor in determining whether the trip is primarily personal. If, for example, a taxpayer spends one week while at a destination on activities which are directly related to his trade or business and subsequently spends an additional five weeks for vacation or other personal activities, the trip will be considered primarily personal in nature in the absence of a clear showing to the contrary.

Taxpayers Position

The organization failed to submit an official protest or respond in any manner to the Service's proposed revocation of its exempt status within the required 30 day timeframe.

Government's Position:

The organization has failed to meet the operational test described in Treasury Regulation Section 1.501(c)(3)-1(c)(1), above.

A substantial percentage of the organization's total disbursements from 20XX through 20YY were clearly personal in nature and resulted in the total depletion of the foundation's corpus by 20ZZ . These personal disbursements included payment of expenses and cash disbursements for the benefit of the trustees, as well as a grants being provided to individuals for personal reasons.

As stated in Treasury Regulation Section 1.501(c)(3)-1(c)(1), "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)." Since the majority of the organization's disbursements were for personal purposes, the organization is clearly not engaging primarily in activities that accomplish exempt purposes under IRC Section 501(c)(3).

Further, as indicated in Treasury Regulation Section 1.501(c)(3)-1(c)(2), the organization is not operated exclusively for exempt purposes, because a substantial amount of its net earnings are inuring to trustees of the foundation.

The organization is also being operated for private rather than public interests since the majority of its total expenditures were personal in nature. As stated in Treasury Regulation Section 1.501(c)(3)-

1(d)(1)(ii), an organization is not operated for exempt purposes it is being operated for private interests.

Based on the above precedent, it is our position that the organization's exemption under IRC Section 501(c)(3) should be revoked.

Conclusion:

The organization did not meet the operational test under IRC Section 501(c)(3) during the three years under review. Therefore, it was concluded that this foundation was not organized or ever intended to be operated exclusively for exempt purposes described in I.R.C. Section 501(c)(3).

As a result, we are proposing that its tax exemption be revoked retroactive to the date of January 1, 20XX .

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
1100 Commerce Street
Dallas, TX 75242

January 1, 2001

ORG

Taxpayer Identification Number:

Form:
990-PF
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:

Internal Revenue Service
Taxpayer Advocate

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,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination