



**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

TE/GE: EO Examination

625 Fulton Street, Room 503

Brooklyn, NY 11201

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

**Number: 200644046**  
Release Date: 11/3/2006

Taxpayer Identification Number

April 17, 2006

Person to Contact:

Identification Number

Contact Telephone Number:

UIL: 501.03-01

**LAST DATE FOR FILING A PLEADING  
WITH THE TAX COURT, THE CLAIMS  
COURT, OR THE UNITED STATES  
DISTRICT COURT FOR THE DISTRICT  
OF COLUMBIA: \_\_\_\_\_**

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

This is a final determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). Recognition of your exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3) is retroactively revoked to October 1, 2000, because you have not established that you are operated exclusively for exempt purposes.

IRC section 501(c)(3) exempts from taxation organizations which are organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which do not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.6001-1 of the regulations requires that each person required to file a return maintain books and records to allow the Service to establish whether the taxpayer is liable for any tax liability. In addition to the general recordkeeping rules, organizations exempt from taxation under section 501(a) must also maintain the records required by section 6033 of the Code.

You failed to meet the requirements of Treasury Regulation section 1.501(c)(3)-1(d) in that you have failed to establish that you were operated exclusively for an exempt purpose, you have failed to file the required tax form (Form 990) for the years ended December 30, 2000 and 2001, and you failed to demonstrate that you are observing the conditions necessary for continuation of your exempt status.

We are revoking your exemption from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code effective October 1, 2000.

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 all years beginning September 1, 2001.

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 file a pleading seeking a declaratory judgment in the United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia before the 91<sup>st</sup> day after the date this final determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing pleadings for declaratory judgments and refer to the enclosed Publication 892. You may write to these courts at the following addresses:

United States Tax Court  
400 Second Street, NW  
Washington, D.C. 20217

United States Court of Federal Claims  
717 Madison Place, NW  
Washington, D.C. 20005

United States District Court for the District of Columbia  
333 Constitution Avenue, NW  
Washington, D.C. 20001

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 too-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

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

Enclosure:  
Publication 892



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service  
55 N. Robinson MC 4900 OKC  
Oklahoma City, OK 73102

UIL: 501.03-01

Taxpayer Identification Number:

Form:  
990

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.

Letter 3618 (04-2002)  
Catalog Number 34809F

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,

Marsha A. Ramirez  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

NAME OF TAXPAYER

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YEAR/PERIOD ENDED

**Redaction Legend:**

O = organization

P = President of O

**ISSUES:**

1. Under the circumstances described, we are proposing revocation of exemption under section 501(c)(3) of the Internal Revenue Code.

**FACTS:**

Original articles of incorporation were filed with the State on . A letter dated was issued by the Service with an advanced ruling period which began and ended granted the organization exempt status as a 501(c)(3) organization with foundation status reasonably expected to be a publicly supported organization described in section 509(a)(2).

The organization filed forms 990 for the years ended through . They were never audited with the exception of the year ended which was surveyed after assignment. O did not file form 990 for years ended or , nor has it filed a final return reporting dissolution and disposition of assets.

Information received from the state regulatory agency indicated that \$ of the organization's funds were misappropriated in March of . According to the disposition of the case, the person involved pled guilty and the entire amount was repaid in full.

The Secretary of State website showed the charter for O was revoked on . The current status of the organization is not active due to action taken by the Secretary of State.

The Secretary of State listed P as the last President of the organization. He is also listed as the President on the last form 990 filed for the year ended . P was contacted regarding the final disposition of the assets. The only remaining asset is the funds that were embezzled that were repaid.

During the examination process, the organization did not provide records to establish that it operated exclusively for 501(c)(3) purposes. In fact no documentation was ever provided by the organization.

**LAW:**

**In General**

Section 501(c)(3) of the Internal Revenue Code provides that 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... are exempt from Federal income tax under this section.

Federal Income Tax Regulation (Regulation) Section 1.501(c)(3)-1(a)(1) states: "In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated

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exclusively for one or more of the purposes specified in such Code section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.” (emphasis added)

IRC 6001

**NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.**

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

IRC 6033

**RETURNS BY EXEMPT ORGANIZATIONS.**

IRC 6033(a) ORGANIZATIONS REQUIRED TO FILE.--

IRC 6033(a)(1) IN GENERAL.--Except as provided in paragraph (2), every organization exempt from taxation 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 purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall 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; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

IRC 6652

**FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.**

IRC 6652(c)(1) ANNUAL RETURNS UNDER SECTION 6033 OR 6012(a)(6) .--

IRC 6652(c)(1)(A) PENALTY ON ORGANIZATION.--In the case of--

IRC 6652(c)(1)(A)(i) a failure to file a return required under section 6033 (relating to returns by exempt organizations) or section 6012(a)(6) (relating to returns by political organizations) on the date and in the manner prescribed therefore (determined with regard to any extension of time for filing), or

IRC 6652(c)(1)(A)(ii) a failure to include any of the information required to be shown on a return filed under section 6033 or section 6012(a)(6) or to show the correct information, there shall be paid by the exempt organization \$20 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of \$10,000 or 5 percent of the gross receipts of the organization for the year. In the case of an organization having gross receipts exceeding \$1,000,000 for any year, with respect to the return required under section 6033 or section 6012(a)(6) for such year, the first sentence of this subparagraph shall be applied by substituting “\$100” for “\$20” and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed \$50,000.

Treas. Reg. §1.501(a)-1. Exemption from taxation

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(a) *In general; proof of exemption.* (1) Section 501(a) provides an exemption from income taxes for organizations which are described in section 501(c) or (d) and section 401(a), unless such organization is a "feeder organization" (see section 502), or unless it engages in a transaction described in section 503. However, the exemption does not extend to "unrelated business taxable income" of such an organization (see part III (Section 511 and following), subchapter F, chapter 1 of the Code).

(2) An organization, other than an employees' trust described in section 401(a), is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form as set forth below with the district director for the internal revenue district in which is located the principal place of business or principal office of the organization. Subject only to the Commissioner's inherent power to revoke rulings because of a change in the law or regulations or for other good cause, an organization that has been determined by the Commissioner or the district director to be exempt under section 501(a) or the corresponding provision of prior law may rely upon such determination so long as there are no substantial changes in the organization's character, purposes, or methods of operation. An organization which has been determined to be exempt under the provisions of the Internal Revenue Code of 1939 or prior law is not required to secure a new determination of exemption merely because of the enactment of the Internal Revenue Code of 1954 unless affected by substantive changes in law made by such Code.

Books and Records

Internal Revenue Code (Code) Section 7602(a) provides the authority "to examine any books, papers, records, or other data which may be relevant or material" for the purpose of ascertaining the correctness of any return....

Regulation Section 1.6033-2(i)(2) provides 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 (Section 501 and following), chapter 1 of subtitle A of the Code, Section 6033, and chapter 42 of subtitle D of the Code."

Section 6001 of the Code provides, "Notice or Regulations Requiring Records, Statements, and Special Returns" provides, in part: "Every person...shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe."

Regs. 1.501(c)(3)-1(d)(1)(ii) provides that the burden of proof is upon the organization to establish that it is not organized or operated for the benefit of private interests.

Revenue Ruling 56-304, 1956-2 C.B. 306, states that charitable organizations are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. In addition, it should maintain adequate records and case histories to show the name and address of each recipient of aid, the amount distributed, the purpose for which the aid is given, the manner in which the recipient was selected and the relationship that exists between the recipient and members, officers, and trustees of the organization or a corporation controlled by the such individuals; in order to establish that distributions are made for charitable purposes. Section 274(d) "Substantiation Required" provides that no deduction is allowed under Section 162 for any traveling expense (including meals and lodging while away from home); for any item with respect to an

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activity which is of a type generally entertainment, amusement, recreation, or use of the facility used in connection with such an activity; or for any gifts, unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement- (a) the amount of the expense, (b) the time, place of travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift (c) the business purpose of the expense or other item, (d) the business relationship to the taxpayer of the persons entertained, using the facility or property, or receiving the gift.

Income Tax Regulation (Regulation) Section 1.274-5 addresses the substantiation requirements with respect to the business purpose of an expense. If the substantiation requirements are not met no deduction is allowed with respect to that expense.

Regulation Section 1.274-5T(b) identifies the elements that the taxpayer must substantiate with respect to the expenditure: (i) amount, (ii) time and place of travel, entertainment, amusement, recreation, or use of the facility or property, (iii) business purpose, and (iv) the business relationship to the taxpayer of each person entertained, using the facility or property, or receiving the gift. Section 1.274-5T(c) notes that a taxpayer must substantiate each element of an expenditure by adequate records or by sufficient evidence corroborating taxpayer's own statement. Section 274(d) contemplates that a taxpayer will maintain and produce such substantiation as will constitute clear proof of an expenditure referred to in Section 274. It states that a record of the elements of an expenditure made at or near the time of expenditure, supported by sufficient documentary evidence, has a high degree of credibility not present with respect to a statement prepared subsequent thereto when generally there is a lack of accurate recall. It states that the corroborative evidence required to support a statement not made at or near the time of the expenditure "must have a high degree of probative value to elevate such statement and evidence to the level of credibility reflected by a record made at or near the time of the expenditure supported by sufficient documentary evidence". It states that to obtain a deduction for travel, etc., a taxpayer must substantiate each element of the expenditure.

Return and Information Filing Requirement

IRC 6001

NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

IRC 6033

RETURNS BY EXEMPT ORGANIZATIONS.

IRC 6033(a) ORGANIZATIONS REQUIRED TO FILE.--

IRC 6033(a)(1) IN GENERAL.--Except as provided in paragraph (2), every organization exempt from taxation 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 purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall 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; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

Treas. Reg. § 601.201 Rulings and determination letters PART 01 OF 02.

Treas. Reg. § 601.201(6)(i) *Revocation or modification of rulings or determination letters on exemption and foundation status.* An exemption ruling or determination letter may be revoked or modified by a ruling or determination letter addressed to the organization, or by a revenue ruling or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph. In any event, revocation or modification will ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked or modified.

IRC 6652

**FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.**

IRC 6652(c)(1) ANNUAL RETURNS UNDER SECTION 6033 OR 6012(a)(6) .--

IRC 6652(c)(1)(A) PENALTY ON ORGANIZATION.--In the case of--

IRC 6652(c)(1)(A)(i) a failure to file a return required under section 6033 (relating to returns by exempt organizations) or section 6012(a)(6) (relating to returns by political organizations) on the date and in the manner prescribed therefore (determined with regard to any extension of time for filing), or

IRC 6652(c)(1)(A)(ii) a failure to include any of the information required to be shown on a return filed under section 6033 or section 6012(a)(6) or to show the correct information, there shall be paid by the exempt organization \$20 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of \$10,000 or 5 percent of the gross receipts of the organization for the year. In the case of an organization having gross receipts exceeding \$1,000,000 for any year, with respect to the return required under section 6033 or section 6012(a)(6) for such year, the first sentence of this subparagraph shall be applied by substituting "\$100" for "\$20" and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed \$50,000.

Treas. Reg. §1.501(a)-1. Exemption from taxation

(a) *In general; proof of exemption.* (1) Section 501(a) provides an exemption from income taxes for organizations which are described in section 501(c) or (d) and section 401(a), unless such organization is a "feeder organization" (see section 502), or unless it engages in a transaction described in section 503. However, the exemption does not extend to "unrelated business taxable income" of such an organization (see part III (Section 511 and following), subchapter F, chapter 1 of the Code).

(2) An organization, other than an employees' trust described in section 401(a), is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is

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necessary that every such organization claiming exemption file an application form as set forth below with the district director for the internal revenue district in which is located the principal place of business or principal office of the organization. Subject only to the Commissioner's inherent power to revoke rulings because of a change in the law or regulations or for other good cause, an organization that has been determined by the Commissioner or the district director to be exempt under section 501(a) or the corresponding provision of prior law may rely upon such determination so long as there are no substantial changes in the organization's character, purposes, or methods of operation. An organization which has been determined to be exempt under the provisions of the Internal Revenue Code of 1939 or prior law is not required to secure a new determination of exemption merely because of the enactment of the Internal Revenue Code of 1954 unless affected by substantive changes in law made by such Code.

Revenue Ruling 59-95, 1959-1 C.B. 627 provides, in part: "failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code 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 an exempt status."

Section 13.02 of Rev. Proc. 90-27, 1990-1, C.B. 514, (April 30, 1990), provides that a ruling or determination letter recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization.

Section 14.01 of Rev. Proc. 90-27, 1990-1, C.B. 514, (April 30, 1990) provides that a revocation or modification [of the exemption letter] may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented,... Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change

**GOVERNMENT'S POSITION**

The Secretary of State revoked the charter of O on \_\_\_\_\_ due to nonpayment and non-filing of required taxes and returns.

In the period from \_\_\_\_\_ forward O failed to file the annual return required by IRC 6033(a)(1) and has not provided such additional information required to establish its operation as an organization described in IRC 501(c)(3) as provided for in Reg. 1.6033-2(i)(2). It has failed to establish that it has served a public rather than a private benefit as required in Reg. 1.501(c)(3)-1(d)(1)(ii). It has failed to establish that it has satisfied the operational test of Reg. 1.501(c)(3)-1(c) of having operated exclusively for exempt purposes specified in IRC 501(c)(3) – religious, charitable, scientific testing for public safety, literary, or educational purposes.

O is therefore, not entitled to IRC 501(c)(3) exemption for this period and it is the government's position that \_\_\_\_\_ . IRC 501(c)(3) exempt status be revoked as of \_\_\_\_\_ .

**TAXPAYER'S POSITION:**

The Secretary of State revoked the charter of O on \_\_\_\_\_ due to nonpayment and non-filing of required taxes and returns. Because of this, the President believes legally the officers have no authority to enter into an agreement.

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The only remaining asset is the \$            in embezzled funds, which were paid back to the organization by the Sec./Treas. The Department of Revenue/Office of Charitable Gaming discovered that the organization's Sec./Treas. had embezzled the funds. She pled guilty to felony theft and repaid the money in exchange for a suspended sentence. She can no longer serve as a responsible person with monetary control for any charitable organization. If she does, she will serve a 5 year suspended sentence.

Because all of the 23 members of the organization are volunteers comprised of administrators and because of the disillusionment resulting from the embezzlement situation, it has been difficult to reach consensus on how the money should be distributed. All but one member has signed consents to give the remaining funds to the School Board.

There is no desire on the part of the members to reorganize and begin again.

**CONCLUSION:**

You failed to meet the requirements of treas. Reg. Section 1.501(c)(3)-1(d) in that you have failed to establish that you were operated exclusively for an exempt purpose, you have failed to file the required tax form(form 990 for years ended            and            , and you failed to demonstrate that you are observing the conditions necessary for continuation of your exempt status.

Revenue Ruling 59-95 can be used to support revocation where, despite application of section 6652(c), the organization will not supply information to enable the Service to make a determination whether there have been any substantial changes in the organization's character, purpose, or methods of operation and there is substantial doubt that the organization should continue to be exempt.

Treas. Reg. 1.6033-2(I)(2), provide the Commissioner with authority to request information from exempt organizations as may be required for the purpose of inquiring into its exempt status and if such information is not provided, good cause exists for revocation. Treas. Reg. § 1.501(a)-1(2). The organization has failed to demonstrate that it is observing the conditions necessary for continuation of its exempt status. Therefore, it is the Service's position the organization should be revoked effective            . O is required to file Forms 1120 for the tax periods after the effective date of the revocation.