



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

Number: **200646019**
Release Date: 11/17/2006
Date: May 8, 2006
UIL: 501.03-01

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|---------|---------------------------------------|
| Org. | Person to Contact: |
| Address | Identification Number: |
| Address | Contact Telephone Number: |
| | In Reply Refer to: TE/GE Review Staff |
| | EIN: N |

**LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: Date 1**

Dear :

This is a Final Adverse Determination Letter as to the Org.'s exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

Organization not been operating exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). Org. also is not a charitable organization within the meaning of Treasury Regulations section 1.501(c)(3)-1(d). You are not an organization which operates exclusively for one or more of the exempt purposes which would qualify it as an exempt organization. You operate substantially for a non-exempt purpose, for private benefit, and its earnings inure to the benefit of private individuals.

Based upon these reasons, we are retroactively revoking your IRC section 501(c)(3) tax exempt status to Date 2.

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 Date 3, 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 (xxx) xxx-xxxx, or writing to: Internal Revenue Service, Taxpayer Advocates Office, Site of TAO.

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 Ramirez
Director, EO Examinations

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
P.O. Box 9941, M/S 1112
Ogden, UT 84409-0941

TAXEXEMPT AND
GOVERNMENT ENTITIES
DIVISION

February 24, 2006

Taxpayer Identification number:
N
Form(s):
990
Tax Year(s) Ended:
Date 1
Person to Contact/ ID Number:
Examiner
Contact Numbers:
Telephone: (xxx)xxx-xxxx
Fax (xxx)xxx-xxxx

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:

TAO

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 Ramirez
Director, EO Examinations

Enclosures:

Publication 892
Publication 3498
Form 4621-A, Report of Examination
Form 6018, Consent to Proposed Action
Form 886-A, Explanation of Items

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| Form 886-A (Rev. January 1994) | EXPLANATION OF ITEMS | Schedule number or exhibit 0001 |
| Name of taxpayer Org. | Tax Identification Number N | Year/Period ended Date 1 |

Issue Name: Tax Exempt Status

Per Return: 990

Per Exam: June 30, 2004

Issue: Whether exempt organization qualifies for exemption under Section 501(c)(3) of the Internal Revenue Code.

Facts: The organization sent letters of correspondence in response to an information request during an examination of the organization. The letters of correspondence included the following statements:

“All activities of the entity are conducted for profit . . .”

“There were no activities conducted by the entity during fiscal-year 2004 which would meet the criteria of a tax-exempt function within the meaning of Section 501-[c]-[3].”

“ . . . it has become abundantly clear that it is impossible for me to defend to you or the Service that the entity Org. is a non-profit within the meaning of Section 501-(c)-(3). The organization is not a non-profit entity within the meaning of the code section, performs no charitable function for unrelated persons or groups, and if it ever did meet that criteria at its inception back in the 1980’s – it certainly does not meet those criteria today. Taxpayer is aware of and in agreement with this determination.”

“The Form 990 filed for the year at question is wrong for many reasons, most notably the idea that revenue flowing into the entity has anything to do with a tax-exempt purpose.”

“Its sole source of funds IS the unrelated trade or business activity that has been conducted for years . . .”

“ . . . the organization over the years has evolved away from its original intended purposes (and client). . . . these activities are not (and could not be properly characterized as) as charitable activities.”

“ . . . Org’s tax-exempt status will (and should be) revoked by the Service.”

Law: IRC § 501(c)(3) provides that an organization organized and operated exclusively for charitable or educational purposes is exempt from Federal income tax, provided no part of its net earnings inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(3)-1(a)(1) states 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 an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as "operated exclusively" for one or more exempt purposes described in section 501(c)(3) of the Code if more than an insubstantial part of its activities is not in furtherance of a 501(c)(3) purpose.

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Treas. Reg. § 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals of the organization. Since inurement issues are highly fact dependent, the courts do not look with favor on failure to provide relevant facts and they do not hesitate to find an organization has failed to carry its burden if it is not forthcoming with the requested factual information. See e.g., Church of Gospel Ministry, Inc v. United States, 58 A.F.T.R.2d 86-5232 (Ct. Cl. 1986); Universal Bible Church, Inc. v. Commissioner, 51 CCH Tax Ct. Mem. 936 (1986).; Schoger Foundation v. Commissioner, 76 T.C. 380 (1981).

Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii) states that the *burden of proof is on the organization* to establish it is not organized and operated for the benefit of private interests.

Section 511 of the Internal Revenue Code imposes a tax at corporate rates under section 11 on the unrelated business taxable income of certain tax-exempt organizations, including those described in section 501(c)(3).

Treas. Reg. § 1.61-1 provides that gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as cash.

IRC § 6001 provides that every person liable for any tax imposed by the Code, 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(e) states that the books or records required by this section shall be kept at all time 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.

IRC § 6033(a)(1) 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 section 6033.

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

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Piety, Inc., Petitioner v. Commissioner of Internal Revenue, Respondent 82 T.C. 193; 1984 U.S. Tax Ct OVERVIEW: The taxpayer had submitted an application for recognition of exemption to the commissioner and claimed to be an organization described in I.R.C. § 501(c)(3). The commissioner determined that the taxpayer was not exempt under I.R.C. § 501(c)(3) because *it was not operated exclusively for exempt purposes.*

Taxpayer's Position: The organization is in agreement that they do not qualify as an exempt organization.

Government's Position: The organization does not qualify for exemption under 501(c)(3) or any other section.

The organization failed to meet the requirement set forth by Treasury Reg 1.501(c)(3)-1(a)(1) in that it is not operated exclusively for one or more of the reasons specified in Section 501(c)(3) of the Internal Revenue Code.

The organization failed to meet the requirement set forth by Section 1.501(c)(3)-1(c)(1) in that more than an insubstantial part of its activities is not in furtherance of a 501(c)(3) purpose.

The organization failed to meet the requirement of Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii) in that they did not provide proof that they organization is not organized and operated for the benefit of private interests.

Conclusion: The organization failed to meet the requirements to be recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Accordingly, the organization's exempt status is revoked effective July 1, 2003.

Form 1120 returns should be filed for the tax periods after July 1, 2003. **Please submit Form 1120 for the tax years ended June 30, Date 3 and Date 4 with the agent shown on the letter with which this was attached, before the end of the 30-day period (March 26, 2006).** Please file all subsequent returns with the appropriate service center.

In accordance with IRM 4.75.22.12(9)(e), the effective date of the revocation will be the first day after the end of the 90-day period (Date 5).