



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examination

625 Fulton Street, Room 503

Brooklyn, NY 11201

Number: **200746020**
Release Date: 11/16/2007

Date: January 8, 2007

UIL: 501.03-01

Taxpayer Identification Number:

Redaction Legend

O = organization

Person to Contact:

Identification Number:

Contact Telephone Number:

LAST DATE FOR FILING A PLEADING
WITH THE TAX COURT, THE CLAIMS
COURT, OR THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
COLUMBIA: _____

Dear _____ :

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

Our adverse determination was made for the following reasons:

_____ has not established that it is operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). O. has failed to comply with the reporting requirements of Internal Revenue Code sections 6001 and 6033.

Based upon these reasons, we are revoking
status effective January 1, 2001.

501(c)(3) tax exempt

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, 2001, 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 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 91st 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 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, or writing to: Internal Revenue Service
Taxpayer Advocate Services

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

Enclosure:
Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
300 N. Los Angeles Street, MS 7300
Los Angeles, CA 90012

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.

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 E xaminations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer O		Year Ended

ISSUE:

To determine whether O is in compliance with the record keeping and reporting requirements of IRC §501(c)(3)

FACTS:

O was recognized by the Internal Revenue Service as a tax exempt organization under 501(C)(3) of the Internal Revenue Code in February, 1992.

The organization operates group residential homes for adolescent boys. The homes provide accommodations for six children and office space. The organization provides 24 hour supervision for the children:

1. The organization has three shifts for workers. (Daytime, Evening, Graveyard)
2. The workers provide meals, supervision, make sure that the children do their daily chores, homework, etc.
 - a. The organization hires counselors for the children as a requirement by Social Services.
 - b. The Department of Child Protective Services established guidelines and rules under a program statement that applies strict guidelines that the group home must meet in order to receive placement referrals.

OD founded the organization and she was the sole officer of the organization. OD was in charge of the operational and financial activities of the organization. She opened the mail, made deposits, and issued checks for expense payments. She provided a summary of all information to the accountant to prepare the financial statements.

Examination was initiated in July 2003. A contact letter was sent to the organization at the last known address. The last known address is for the S. No response was received from the contact letter. It was discovered that the O and OD worked at the same address, in the same building, as the S.

The organization has not filed the forms 990 since 1992. On March 11, 2004, the form 990 for 2001 was secured along with payroll returns. The supporting documentation included two sets of financial statements. One report was an annual report and the other statements were month to month financial reports. The year end amounts for the two statements did not reconcile to each other. A request was made for support documentation, which included a reconciliation work paper that would explain the discrepancy between the books and the return. In addition, a request was made for an explanation as to why the organization had two sets of books that did not reconcile to each other. Since that time, the organization has failed to cooperate with requests for documentation, including the documents that were requested with the initial contact letter, in order to conduct and complete the examination. Several

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer O		Year Ended

attempts were made to secure subsequent year returns and supporting documentation. No returns or documents have been provided.

When the 2001 forms 941s were secured and processed, tax was assessed and a Revenue Officer became involved with the collection of taxes. The RO began working on securing and collecting the delinquent 941s and taxes. Delinquent payroll taxes have been assessed since 1992 with an assessment totaling \$. Levies were being attached for the delinquent taxes.

A summons was issued on June 8, 2005 by an SBSE Revenue Agent. The RA stated that he was not able to locate OD (president) at her residence or at the office she works from, at S. He served the summons to her secretary. The organization's representative requested an extension of time to respond to the summons because OD was in the hospital scheduled for surgery. Additional time was permitted allowing more than 30 days extension. The representative requested more time to respond because OD was still in the hospital.

A second representative, an Enrolled Agent, called on August 8, 2005, requesting additional time to respond to the summons. She stated that it appeared that the organization was trying to cooperate because they hired her to help them get their books in order. Additional time was allowed until August 30, 2005. There were no documents received by August 30, 2005. On September 15, 2005, the Enrolled Agent left a voice mail message stating that the original representative was still looking in boxes for the requested documentation but had mailed a copy of the form 990 for 2001 to me. As of September 23, 2005, No returns or supporting documentation has been received.

Revenue agent called the Enrolled Agent to discuss the case status on February 16, 2006. She stated that OD had passed away on and the organization had filed Bankruptcy protection on. She indicated that she is no longer representing the organization and faxed over copy of Bankruptcy documents and a Certificate of Vital Record for OD.

The organization and S had closed their operations and filed Bankruptcy protection. An attorney represented the organization to file the bankruptcy on and signed the Bankruptcy documents as an authorized agent.

APPLICABLE LEGAL PRINCIPLES:

IRC §501(c)(3) provides exemption from federal income tax to "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or

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individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

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.

Reg. §1.6001-1(a) states, in part, "...any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information."

Reg. §1.6001-1(c) further addresses exempt organizations stating, "In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033. See section 6033 and §§1.6033-1 through -3."

Reg. §1.6001-1(e) of the regulations states that the books or records required by this section shall be kept at all times 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) states, "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."

Reg. §1.6033-1(h)(2) of the regulations 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.

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Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions 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 exempt status.

GOVERNMENT'S POSITION:

In accordance with the above cited provisions of the Code and regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

It is the IRS's position that O has failed to meet the reporting requirements under sections 6001 and 6033 to be recognized as exempt from federal income tax under 501(c)(3) of the Internal Revenue Code. The organization has failed to cooperate by providing books, records or substantiation that would be sufficient to show the items of gross income, receipts and disbursements. Therefore, the organization has not established that its operations meet the criteria as a public charity under IRC §509(a)(1) and 170(b)(1)(A)(vi). The organization has failed to establish exempt status under IRC §501(c).

CONCLUSION:

O has not met the requirements to qualify for tax exempt status under 501(c) (3) of the Internal Revenue Code.

O has not complied with the IRS' requests for information to determine if it is still qualified for tax exempt status under 501(c)(3) of the Code.

Therefore, O's exempt status is revoked effective January 1, 2001. Form 1120 should be filed for the tax periods since year 2001 and years after.