



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

MC:4929CHI Battle

230 South Dearborn Street

Chicago, IL 60604

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

October 31, 2007

Number: **200807019**
Release Date: 2/15/2008

Legend

UIL:501.03-01

ORG = Organization name

XX = Date

ORG
Address

Employer Identification No:
Person To Contact/ID#:
Contact Telephone Number
Telephone:
Fax:
Form required to be filed:
1120
Tax Years:
Last Day to File a Petition with the
United States Tax Court:

Certified Mail

Dear _____ :

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). It is determined that you are no longer recognized as exempt from Federal income tax under IRC section 501(c)(3), effective January 1, 20XX, for the following reason(s):

You are not organized and operated exclusively for exempt purposes specified under IRC section 501(c) (3). You do not qualify for foundation status section 509(a) (1), (2), (3) or (4). You were originally granted foundation status 509(a) (3). However, your supported organization is a private, non-operating foundation which is not a permissible beneficiary. You do not pass the operational test under code section 501(c) (3) because you have no activities in furtherance of charitable purposes. You have agreed to this revocation by executing Form 6018 on May 3, 20XX.

Contributions to your organization are not deductible under IRC section 170. You are required to file Federal income tax returns on the form indicated above. You should file these returns within 30 days from the date of this letter, unless a request for an extension of time is granted.

File the returns in accordance with their instructions, and do not send them to this office. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under IRC section 7428.

If you decide to contest this determination under the declaratory judgment provisions of IRC section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination letter was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

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 your nearest Advocate's office, in this case by writing to:

IRS Taxpayer Advocate Office

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 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 IRC section 6104(c). You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosures;
Pub. 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE: EO Examinations
1100 Commerce Street
Dallas, TX 75242

ORG
ADDRESS

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 Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended
ORG		20XX

Legend

ORG = Organization name XX = Date XYZ = State
CO = 2nd company Company = 3rd company Organization = 4th company
TRUSTEE = Owner motto = company motto

ISSUE

Does the ORG meet the organizational and operational requirements in order to allow the organization to maintain its foundation status of 509(a)(3), and therefore its tax exempt status as a section 501(c)(3).

FACTS

The ORG was incorporated in XYZ on December 31, 19XX. The organization applied for and received tax exempt status as an organization described in section 501(c)(3) with a foundation status of 509(a)(3). On the application Form 1023 the ORG was to support two separate organizations. The two recipients of the ORGs' support were to be the CO and the Company. Both of the supported organizations were claimed to be either a charitable organization as described in section 501(c)(3) or described as other than a private foundation under sections 509(a)(1) and 170(b)(1)(A)(i) or (iii), or the supported organization was awaiting a determination letter that would clarify the tax exempt status.

Schedule D to the application shows that the CO was attempting to achieve tax exempt status as of the date of the application. That organization never received tax exempt status and remained a for profit corporation. As such, the ORG dropped them from the application and relied solely on providing support to the Company

The ORG received their determination letter dated September 24, 20XX, listing only the Company as a supported organization. A review of the filing status for Company indicates that they are a private, non-operating foundation and are not eligible for support by a section 509(a)(3) organization.

During the years 19XX through 20XX, TRUSTEE purchased an interest in Organization. The purchase was accomplished with Trustee's personal money that he obtained from his savings account. The interest in Organization represented an investment in a type of equipment for motto. The stated value of the investment was \$ as of February, 20XX.

Per the articles of incorporation, and more specifically, schedule "A" to the articles, Trustee transferred all interest in Organization to the foundation. At some point the investment with Organization became insolvent and Trustee spent over two years trying to obtain a return of his investment money. A letter dated December 31, 20XX (attached) from Organization shows that the investment had a zero value as of that date based on Organization's lack of cash reserve and realizable assets.

The ORG's bank account and financial records indicate that at no time did the foundation receive any funds from this investment account. The records further show that the only money ever to be received by the foundation was a check for \$ from Trustee in late 20XX, which was used to pay the accountant for services performed. Of that \$, \$ remains. The analysis also demonstrates that the foundation has not provided any support to the Company.

There are no Board minutes or minutes from any meeting held by the organization. The foundation Trustee, stated that there were no meetings and that there have never been any elections for trustee that he is aware of.

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LAW

An Internal Revenue Code Section 501(c)(3) that cannot meet the public support test of 509(a)(1) or 509(a)(2) but wishes to be classified as other than a private foundation must meet one of the three relationship tests as a supporting organization under Internal Revenue Code Section 509(a)(3). The relationship test is the primary test and without meeting the relationship test this foundation code can not be applied. The three possible relationships are as follows:

1. Operated, supervised or controlled by (Treasury Regulation 1.509(a)-4(g))
2. Supervised, or controlled in connection with (Treasury Regulation 1.509(a)-4(h))
3. Operated in connection with, one or more publicly supported organizations: Treasury Regulation 1.509(a)-4(i))
 - 1) Operated, supervised or controlled by – The first relationship (also known as the "parent-subsidiary relationship" requires a majority of the Internal Revenue Code Section 509(a)(3) organization's governing body to be appointed or elected by the members of the Internal Revenue Code Section 509(a)(1) or (2) organization's body acting in their official capacity.
 - 2) Supervised or controlled in connection with- The second relationship (also know as the "brother-sister relationship)" requires a common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organization.
 - 3) Operated in connection with – The third relationship has a two pronged requirement:
 - a) The Responsiveness Test – The publicly supported organization must have a significant voice in the policies of the supporting organization by reason of the connection between the two organizations.
 - b) The Integral Part Test – The supporting organization maintains a significant involvement in the operation of the publicly supported organization, which in turn depends on the supporting organization for the type of support it provides.

The responsiveness test. (i) For purposes of this paragraph, a supporting organization will be considered to meet the "responsiveness test" if the organization is responsive to the needs or demands of the publicly supported organization within the meaning of this subparagraph. In order to meet this test, either subdivision (ii) or subdivision (iii) of this subparagraph must be satisfied.

(ii)

- (a) One or more officers, directors, or trustees of the supporting organization are elected or appointed by the officers, directors, trustees, or membership of the publicly supported organizations;
 - (b) One or more members of the governing bodies of the publicly supported organizations are also officers, directors, or trustees of, or hold other important offices in, the supporting organizations;
- or

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- (c) The officers, directors, or trustees of the supporting organization maintain a close continuous working relationship with the officers, directors, or trustees of the publicly supported organizations; and
- (d) By reason of (a), (b), or (c) of this subdivision, the officers, directors or trustees of the publicly supported organizations have a significant voice in the investment policies of the supporting organizations, the timing of grants, the manner of making them, and the selection of recipients by such supporting organization, and in otherwise directing the use of the income or assets of such supporting organization.

(iii)

- (a) The supporting organization is a charitable trust under State Law;
- (b) Each specified publicly supported organization is a named beneficiary under such charitable trust's governing instrument; and
- (c) The beneficiary organization has the power to enforce the trust and compel an accounting under State law.

The integral part test 1.509(a)-4(i)(3) (i) For purposes of this paragraph a supporting organization will be considered to meet the "integral part test" if it maintains a significant involvement in the operations of one or more publicly supported organizations and that such publicly supported organizations are in turn dependant upon the supporting organization for the type of support which it provides.

There are two ways to satisfy the integral part test. Section 1.509(a)-4(i)(3)(ii) describes the first way as such: The activities engaged in for or on behalf of the publicly supported organizations are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the supporting organization, would normally be engaged in by the publicly supported organizations themselves.

The second method of satisfying the integral part test is described by section 1.509(a)-4(i)(3)(iii). Income Tax Regulations reads in part as follows:

(iii)

- (a) The supporting organization makes payments of substantially all of its income to or for the use of one or more publicly supported organizations, and the amount of support received by one or more of such publicly supported organizations is sufficient to insure the attentiveness of such organizations to the operations of the supporting organization. In addition, a substantial amount of the total support of the supporting organization must go to those publicly supported organizations which meet the attentiveness requirement of this subdivision with respect to such supporting organization. Except as provided in (b) of this subdivision, the amount of support received by a publicly supported organization must represent a sufficient part of the organization's total support so as to insure such attentiveness. In applying the preceding sentence, if such supporting organization makes payments to, or for the use of, a particular department or school of a university, hospital or church, the total support of the department or school shall be substituted for the total support of the beneficiary organization.

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- (b) Even where the amount of support received by a publicly supported beneficiary organization does not represent a sufficient part of the beneficiary organization's total support, the amount of support received from a supporting organization may be sufficient to meet the requirements of this subdivision if it can demonstrate that in order to avoid the interruption of the carrying on of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of the supporting organization. This may be the case where either the supporting organization or the beneficiary organization earmarks the support received from the supporting organization for a particular program or activity, even if such program or activity is not the beneficiary organization's primary program or activity so long as such program or activity is a substantial one.

In summary, the supporting organization must satisfy three criteria or prongs. First, the supporting organization must make payments of substantially all its income to or for the use of one or more publicly supported organizations. Second, the amount of support received by one or more publicly supported organizations must be "sufficient to insure the attentiveness of such organizations to the operations of the supporting organization. Third, a substantial amount of the total support of the supporting organization must go to those publicly supported organizations which meet the attentiveness prong with respect to the supporting organizations.

Treas. Reg. section 1.509(a)-4(a)(2) specifies that a section 509(a)(3) organization must be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or 509(a)(2).

Treas. Reg. section 1.509(a)-4(e)(1) addresses permissible beneficiaries in that it specifies that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organizations. An organization will be regarded as "operated exclusively" to support or benefit one or more publicly supported organizations if it supports or benefits an organization, other than a private foundation, which is described in section 501(c)(3).

Treas. Reg. section 1.501(c)(3)-1(c) specifies that with regard to the primary activities within the operational test, 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.

GOVERNMENT'S POSITION

The trustee for the ORG was not elected or appointed by the organization to which support was to be provided. The management or control of the foundation does not rest with those who manage or control the beneficiary, the foundation is neither operated, supervised, or controlled by nor supervised or controlled in connection with the specified beneficiary. Therefore, the foundation does not meet the first two relationship tests as outlined in Treasury Regulation 1.509(a)-4(g) and 1.509(a)-4(h)).

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In order for the foundation to pass the third relationship test it has to pass the responsiveness and integral part tests. As a result of the examination, the foundation fails the third relationship test in that the foundation was neither responsive nor an integral part, based on the following:

The first requirement of distributing substantially all of the foundation's income is not satisfied by the fact that the foundation does not and never did have any monies to distribute.

The second test that requires the amount of support to be sufficient to insure attentiveness is not demonstrated by the fact that there has never been an exchange of money between the foundation and the supported organization.

The case; Christie E. Cuddeback and Lucille M. Cuddeback Memorial Fund v. Commissioner, T.C. Memo 2002-300, sets forth guidelines for meeting the "integral part" test. In part the case reads as follows: While the trust established that 80 percent of its funds were donated to the beneficiary organization, it failed to demonstrate that it offered the beneficiary organization sufficient funds to avoid the interruption of its stated exempt functions, the operation of a nursing care and adult day facility offering grants to its underprivileged participants, and therefore failed to meet the requirements of the integral part test. Despite letters from the beneficiary organization stating that 50 percent of all its grants came from the trust, the documentation as a whole did not support a finding that the percentage of support from the trust was sufficient to avoid interruption of the beneficiary's grant program.

The supported organization, Company never received tax exempt status. The foundation code for this organization is as a private, non-operating foundation. During the examination it was determined that there was no contact with the beneficiary organization. There were no meetings, no elections and no support provided. In addition, there were no letters from the beneficiary indicating any influence over any decisions made.

ORG does not meet the requirements of Treas. Reg. section 1.509(a)-4(a)(2) which specifies that a section 509(a)(3) organization must be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or 509(a)(2). As a private non-operating foundation, Company are not permissible beneficiaries within the meaning of Treas. Reg. section 1.509(a)-4(e)(1) due to the lack of being publicly supported.

ORG fails the operational test under code section 501(c)(3) with regard to its primary activities and thereby is not entitled to retain its exempt status. The organization fails to qualify for foundation status of section 509(a)(1), (2), (3) or (4) and does not operate exclusively for one or more exempt purposes within the meaning of Treas. Reg. 1.501(c)(3)-1(c). The dormant nature and total lack of activity for the organization is evidence that more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

TAXPAYER'S POSITION

The taxpayer has stated that he desires the foundation to be terminated and agrees with having the exempt status revoked. He is going to disburse the remaining funds from the foundation's checking

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account per the dissolution clause of the articles of incorporation by writing a check to a section 501(c)(3) charity.

CONCLUSION

The ORG does not qualify for foundation status under code section 509(a)(1),(2),(3) or (4) based on the failure to pass the relationship test. The supported organization is a private, non-operating which is not a permissible beneficiary. The ORG does not pass the operational test under code section 501(c)(3) due to there being no primary activity and therefore the activity is not in furtherance of its exempt purpose. Based on the preceding and the taxpayer desires, the organization's exempt status will be revoked.