



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

Release Number: **200836044**

Release Date: 9/5/08

Date: May 22, 2008

UIL Code: 501.03-01

Legend

ORG = Organization name

ADDRESS

Address = address

Taxpayer Identification Number:

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
OF COLUMBIA: August 20, 20XX

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 January 1, 19XX because it is determined that you are not operated exclusively for an exempt purpose.

IRC 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. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities accomplishing one or more of the exempt purposes specified in section 501(c)(3).

We have determined that you failed to operate exclusively for charitable, educational or religious purposes thereby failing to meet the "operational test" under Treas. Reg. 1.501(c)(3)-1(c). Your activities, including your financial transactions, more than insubstantially furthered non-exempt purposes. Moreover, you failed to establish that you were not operated for the benefit of private interests of your officers, as required for continued recognition of exemption pursuant to Treas. Reg. 1.501(c)(3)-1(d)(1)(ii).

We are revoking your exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code effective January 1, 19XX.

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 January 1, 19XX.

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:

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 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

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG EIN:		Year/Period Ended December 31, 20XX

LEGEND

ORG = Organization name XX = Date XYZ = State CO-1 = 1st company

ISSUE:

Should the above named organization retain their exempt status as an organization described in Section 501(c)(3) of the Internal Revenue Code?

FACTS:

ORG, hereafter referred to as ORG, was organized as a non-profit corporation under the laws of the State of XYZ by filing Articles of Incorporation with the state on January 29, 19XX. The purpose of the organization, as stated in its articles, is "To assist in locating missing children and other such activities allowable for a non-profit corporation, in connection with the foregoing." The organization's activities were to be funded through donations and grant monies received from the general public.

The organization's Articles were amended on 4/21/19XX to include a purpose clause which specifically stated that the organization would be operated exclusively for charitable, religious, educational and scientific purposes and a powers clause prohibiting any part of its net earnings from inuring to the benefit of, or being distributable to its members, trustees, officers, or other private persons.

ORG filed an Application for Recognition of Exemption under I.R.C. Section 501(c)(3) in March of 19XX. In its Application, the organization stated that its exempt purpose was to assist families and law enforcement agencies in locating missing children and provided a detailed list of proposed activities for furthering this purpose. Based on the information presented in its application, ORG received a favorable ruling as an organization described in I.R.C. Sections 501(c)(3) and 170(b)(1)(A)(vi) on May 29, 19XX.

ORG was administratively dissolved by the state on October 10, 20XX for its failure to file the required annual statements with the state's Bureau of _____ for 20XX, 20XX and 20XX.

The Attorney General for the State of XYZ began investigating the activities of ORG in 20XX based on reports filed with their office relating to the organization's on-going solicitation of contributions and alleged false representations made in connection with those solicitations.

In July of 20XX, a complaint was filed with the _____ Circuit Court against the above referenced organization and its directors by the Attorney General. In the complaint, the Attorney General alleged that the organization and its directors committed _____ counts of misconduct in violation of XYZ law governing charitable organizations and requested the court issue both a preliminary and

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a permanent injunction against the organization and its officers to bar any further business from being conducted in the name of ORG and requesting the dissolution of its assets. Included in the counts of miscount, the Attorney General alleged that the organization never engaged in any meaningful charitable activities and its officers violated their fiduciary obligations in various ways, including their failure to comply with applicable state and federal laws governing charitable organizations and by allowing all the organization's charitable assets, comprised primarily of boats and vehicles donated from 19XX to 20XX with an total estimated value over \$ to be wasted or diverted for the private benefit of its principal officers.

On July 20, 20XX, a preliminary injunction was issued by the court prohibiting the organization's officers from continuing to conduct business in the name of the charity and from continuing to waste, divert or otherwise misuse charitable assets.

On November 28, 20XX, a permanent injunction was issued by the court ordering the directors to reimburse the value of all assets lost to the charity through their wrongful conduct; transfer these funds and any remaining assets to a court designated charitable organization under the doctrine of cy pres; and dissolve the corporation for its failure to conduct its activities in furtherance of any charitable purposes.

ORG was selected for examination based on a referral received from the XYZ Attorney General's Office. The organization's last filed Form 990 was for fiscal year ending December 31, 19XX. Therefore, the scope of the examination was limited to a review of the organization's operations from calendar year ending December 31, 20XX to the present.

During the course of the examination, no documentation was provided by the representatives of ORG for review. However, a thorough review was conducted on all evidentiary and court documentation relevant to the Attorney Generals court proceedings against the organization and its officers. Based on this review, it was determined that the organization did not conduct any exempt purpose activities during the years under review. It was also determined that the organization's officers solicited donations of both money and property from the general public through false and/or misleading representations about its true purpose and then utilized these assets exclusively for their own private interests.

LAW:

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

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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 that 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 of private shareholders or individuals.

Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii), provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

TAXPAYER'S POSITION

The responsible official of the organization agreed to the proposed revocation of the organization's exempt status under I.R.C. section 501(c)(3) by executing a Form 6018 with an effective date of January 1, 19XX.

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.

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 no charitable activities were conducted by ORG during the years under review, 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 all of its net earnings are inuring to the benefit of the organization's directors.

The organization is also being operated for private rather than public interests since the organization's primary activity is soliciting donations from the general public specifically for the

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personal benefit for its officers. As stated in Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii), an organization is not operated for exempt purposes if it is being operated for private interests.

In addition, the Circuit Court's ruling has officially terminated the organization's corporate status and ordered that its assets be recovered and distributed to a CO-1. As a result of this ruling, the organization no longer meets the organizational requirements described in Treasury Regulation Section 1.501(c)(3)-1(c)(1) because it is no longer organized as a non-profit organization under state law and barred from conducting any activities as a public charity in the future.

Based on a review of all facts and circumstances and the legislative support referenced above, it is the Internal Revenue Service's position that ORG is not organized or operated for any exempt purpose and its net earnings inured to the benefit of its principal officers during each of the years under review. Therefore, ORG does not meet requirements for continued exemption as an organization described in I.R.C. Section of 501(c)(3) during any of the years under review and its exempt status should be revoked retroactively to January 1, 19XX.

CONCLUSION:

The organization is not organized or operated as a 501(c)(3) organization. The organization's Articles of Incorporation have been dissolved by the state, no activities are being conducted in furtherance of any charitable purposes and all of its net earnings have inured to the private interest of its officers. The exempt status of the organization should be revoked with an effective date of January 1, 19XX.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

ORG
ADDRESS

Taxpayer Identification Number:

Form:

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 Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination