

Department of the Treasury
Internal Revenue Service
625 Fulton Street 5th Floor
Brooklyn, NY 11201

UIL: 501.03-01

Release Number: **200836046**
Release Date: 9/5/08
Legend
ORG + Organization name
ORG
ADDRESS

June 11, 2008

Address = address

Person to Contact:
Contact Telephone Number:
In Reply Refer to: TE/GE Review Staff
EIN:

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: _____

Dear

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

Our adverse determination was made for the following reasons:

Exemption from income tax is a matter of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions. Section 6033 requires organizations exempt from tax to keep such records and render such statements as are required by such rules and regulations as the Secretary may prescribe. Treasury Regulations section 1.6033-2 (h)(2) requires organizations exempt from tax to submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into the organization's exempt status.

Despite numerous requests to you to provide information to conduct an examination of your form 990-PF for the year ended 12/31/20XX, no requested information has been provided to us.

Based upon the above, we are revoking your organization's exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code retroactively to January 1, 20XX.

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, 20XX, 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 _____, or writing to: Internal Revenue Service,

_____. 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

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| Form 886A | Department of the Treasury - Internal Revenue Service Explanation of Items | Schedule No. or Exhibit |
| Name of Taxpayer | | Year/Period Ended |
| ORG | | 20XX12 |

LEGEND

ORG = Organization name XX = Date XYZ = State CO-1 = 1st company
CO-2 = 2nd company website = website Secretary = Secretary
President = president

Issue:

1. Should the tax exempt status of ORG be revoked as of January 1, 20XX for failing to provide the requested information to the Internal Revenue Service?
2. Should the tax exempt status of ORG be revoked as of January 1, 20XX for failing to file the annual Form 990-PF?

Facts:

ORG was incorporated in the state of XYZ on October 29, 19XX. In July of 19XX, they filed a Form 1023 with the Internal Revenue Service requesting tax exempt status under Section 501(c)(3) of the Internal Revenue Code. According to the articles of incorporation which were filed with Internal Revenue Service as part of the Form 1023 Application for Exemption, the organization was formed with the purpose to operate, manage and do everything normally associated with establishing an educational and charitable youth services and community services center. The corporation shall offer programs and services developed for children, teens and young adults including, but not limited to, teaching the appreciation of culture through history, music, dance, arts and crafts workshops. Programs will also be offered to promote education and enhance job development skills by the presentation of workshops, seminars and lectures in the areas of job opportunities, personal grooming, and social works skills, obtaining a high school or General Education Diploma and personal presentation techniques.

On August 12, 19XX ORG was granted tax exemption under Internal Revenue Code Section 501(c)(3). The determination letter stated that because the organization was a newly created entity, a final determination of their foundation status under Section 509(a) of the code would not be made at that time. The organization was expected to be a publicly supported organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi). During the advance ruling period the organization would be treated as a publicly supported organization and not a private foundation. The advance ruling period was set from October 29, 19XX through December 31, 19XX.

Following the conclusion of their advance ruling period, ORG did not file Form 8734 as required. As a result, the organization was reclassified to a private foundation as of January 1, 19XX.

Research conducted of Internal Revenue Service records indicated that ORG has never filed an information return since their incorporation. A Revenue Officer was initially assigned the case in order to secure any delinquent returns. The Revenue Officer initially made contact with the Executive Officer, Executive Officer on October 8, 20XX. Executive Officer informed the

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Revenue Officer that the power of attorney, CO-1 would prepare the delinquent returns. The Revenue Officer spoke to an individual at CO-1 and it was indicated that CO-1 only handled payroll issues. The Revenue Officer then spoke with Secretary, the Secretary, to set a deadline for securing the delinquent Forms 990-PF. The initial deadline was set for November 4, 20XX and then extended to November 11, 20XX. The organization never submitted the requested delinquent Forms 990-PF to the Revenue Officer.

This case was then referred to examination in order to secure the delinquent Forms 990-PF. Internal Revenue Service records indicated that the organization filed Forms 941 and W-2 through December 31, 20XX. Mr. Executive Officer, the Executive Officer and Ms. Secretary, the Secretary, were issued W-2's by the organization for the 20XX, 20XX and 20XX calendar years. Executive Officer received a total of \$, \$, and \$ in wages respectively. Secretary received a total of \$, \$, and \$ in wages respectively.

Internal Revenue Service records also indicated that the organization received \$, \$, \$ and \$ from the City of XYZ Office of the Comptroller during the periods ending December 31, 20XX, 20XX, 20XX and 20XX. Further research conducted on website, indicated that the organization was approved for a grant under the CO-2. The contracts began on July 1, 19XX and expired on June 30, 20XX.

The first attempt to schedule an appointment was made on September 14, 20XX using Letter 3611. An information document request was included in the package mailed to the organization along with a copy of Publication 1. The organization did not respond to this request. On October 20, 20XX a second letter was sent certified mail. The letter was returned unopened and stamped unclaimed by the post office. Additional letters were then sent on March 9, 20XX, April 13, 20XX and November 4, 20XX. The letters were all sent certified mail. The letters were once again returned to the service unopened and stamped unclaimed by the post office. A message was left at the residence of Secretary on March 20, 20XX in which no phone call was returned.

On May 2, 20XX a final adverse action letter was sent to the organization. This letter stated that if we did not hear from the organization within seven days then adverse action would be proposed such as revocation of exempt status. On May 10, 20XX Secretary had responded to the adverse action letter. Secretary indicated that as of June 20XX, the organization no longer conducted any activities. Once the grant expired for the after school program conducted by the organization it was never renewed. Secretary stated that her ex-husband controlled the daily operations of the organization. In addition, there are no records available to examine. Secretary stated that she no longer has any contact with her ex-husband.

Law:

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes,

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provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation 1.501(c)(3)-1(a)(1) provides 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.

Internal Revenue Code Section 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 Treasury or his delegate from time to time prescribe.

Internal Revenue Code Section 6033(a)(1) provides, except as provided in IRC 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 form 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.

Treasury Regulation 1.6001-1(a) in conjunction with Treasury Regulation 1.6001-1(c) provides that every organization exempt from tax under IRC Section 501(a) and subject to the tax imposed by IRC Section 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits or other matters required to be shown by such person in any return of such tax. Such organizations shall also keep such books and records as are required to substantiate the information required by IRC Section 6033.

Treasury Regulation 1.6001-1(e) 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 so long as the contents thereof may become material in the administration of any internal revenue law.

Treasury Regulation 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 IRC Section 6033.

Treasury Regulation 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

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its exempt status and administering the provisions of Subchapter F, Chapter 1 of Subtitle A of the Code, IRC Section 6033, and Chapter 42 of Subtitle D of the Code.

Revenue Ruling 59-95, 1959-01 CB 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 IRC Section 6033 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.

Taxpayer's Position:

The organization has not stated whether they will agree or disagree to revocation.

Governments Position:

Issue 1:

It is the government's position that the tax exempt status of ORG under Section 501(c)(3) of the Internal Revenue Code should be revoked for failure to provide the information requested by the Internal Revenue Service.

Treasury Regulation 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, Chapter 1 of Subtitle A of the Code, IRC Section 6033, and Chapter 42 of Subtitle D of the Code.

ORG did not file a Form 990 when granted exemption as a public charity or a 990-PF when made a private foundation for failing to file Form 8734 at the end of their advance ruling period. The only information that the Internal Revenue Service has received on the activities of the organization is their Form 1023 Application for Exemption. However this does not provide any current information as to what ORG is currently doing. The information document request mailed to the organization requested operational and financial information that would be used to determine that ORG continued to qualify for exemption under Section 501(c)(3) of the Internal Revenue Code. As indicated by Secretary, the organization does not have any records to submit.

In accordance with the above cited provisions of the Code and regulations under IRC Section 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 of which it was granted tax exempt status and to determine its liability for any unrelated business income.

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Since the organization did not comply with the Internal Revenue Service's request for information and did not comply with Treasury Regulation 1.6033-2(i)(2), we can not determine whether their activities are consistent with their exempt status under Section 501(c)(3) of the Internal Revenue Code. Since the organization does not meet the requirements of Treasury Regulation 1.501(c)(3)-1, it is our position that their tax exempt status be revoked.

Issue 2:

It is the government's position that the tax exempt status of ORG under section 501(c)(3) of the Internal Revenue Code should be revoked for failing to file their annual Form 990-PF when required to do so.

Internal Revenue Code Section 6033(a)(1) states that, "Except as provided in paragraph (3), every organization exempt from taxation under section 501(a) shall file an annual return..."

Internal Revenue Code Section 6033(a)(3) states that the exceptions to file are:

(A) Mandatory exceptions:

- (i) Churches, their integrated auxiliaries, and conventions or associations of churches
- (ii) Any organization (other than a private foundation, as defined in section 509(a)) described in subparagraph (C), the gross receipts of which in each taxable year are normally not more than \$25,000, or
- (iii) The exclusively religious activities of any religious order

(B) Discretionary exceptions: The Secretary may relieve any organization required under paragraph (1) to file an information return from filing such a return where he determines that such filing is not necessary to the efficient administration of the internal revenue laws

(C) Certain organizations The organizations referred to in subparagraph (A)(ii) are—

- (i) a religious organization described in section 501(c)(3)
- (ii) an educational organization described in section 170(b)(1)(A)(vi)
- (iii) a charitable organization, or an organization for the prevention of cruelty to children and animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public;
- (iv) an organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in clause (i)
- (v) an organization described in section 501(c)(8); and

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- (vi) an organization described in section 501(c)(1), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a wholly-owned subsidiary of such a corporation

ORG did not meet any of the exceptions stated in section 6033(a)(3) of the Internal Revenue Code. A private foundation is not excluded from filing a Form 990-PF even if its gross receipts in each taxable year are normally not more than \$25,000. As per research conducted of Internal Revenue Service records and the XYZ City Comptroller's website, the organization did receive funds from December 31, 20XX through December 31, 20XX totaling \$. This information should have been reported to the Internal Revenue Service on Form 990-PF.

Revenue Ruling 59-95 held that failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Internal Revenue 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.

Using this revenue ruling as precedent, it is the government's position that the tax exempt status of ORG under Section 501(c)(3) of the Internal Revenue Code should be revoked.

Conclusion

The tax exempt status of ORG under Section 501(c)(3) of the Internal Revenue Code should be revoked because the organization has not established that it is observing conditions required for the continuation of exempt status such as filing annual Forms 990-PF information returns and failing to provide information that was requested from them by the Internal Revenue Service.

The effective date of revocation is January 1, 20XX the first day of the tax year under examination.

The organization will be required to file Form 1023 beginning in 20XX for all tax periods subsequent to the revocation of their tax exempt status.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
625 Fulton Street 5th Floor
Brooklyn, NY 11201

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.

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