



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
TEGE EO Examinations Mail Stop 4920 DAL  
1100 Commerce St.  
Dallas, Texas 75242

**Date: February 3, 2009**

Number: **200919054**

Release Date: 5/8/2009

LEGEND

UIL: 501.03-01

ORG = Organization name

XX = date

Address = address

ORG

ADDRESS

**Taxpayer Identification Number:**

**Person to Contact:**

**Employee Identification Number:**

**Employee Telephone Number:**

Phone

Fax

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

**CERTIFIED MAIL**

Dear \_\_\_\_\_ :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated **February 26, 20XX** is hereby revoked and you are no longer exempt under section 501(a) of the Code effective **January 1, 20XX**.

The revocation of your exempt status was made for the following reason(s):

You have failed to produce documents to establish that you are organized and operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. You failed to respond or cooperate with repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. §§ 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627.

Organizations are not operated exclusively for exempt purposes if the net earnings of the organization inure in whole or in part to the benefit of private shareholders or individuals of the organization. See Treas. Reg. § 1.501(c)(3)-1(c)(2). During the years 20XX and 20XX, we have determined that the organization was operated for a substantial non-exempt purpose of serving the private interests of the foundation's creators. As such, you have not operated exclusively for

exempt purposes and have operated for the benefit of private interests of individuals in contravention of the requirements of Treas. Reg. 1.501(c)(3)-1(d)(1)(ii).

Contributions to your organization are no longer deductible under IRC section 170 after January 1, 20XX. You are required to file income tax returns on Form 1041, *U.S. Income Tax Return for Estates and Trusts*. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return. Form 990 PF is required for each year until Private Foundation status is terminated under IRC Section 507.

Processing of income tax returns and assessments 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 under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

You also 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 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

See the enclosed Publication 1546, Taxpayer Advocate Service - Your Voice at the IRS, for Taxpayer Advocate telephone numbers and addresses.

We will notify the appropriate State Officials of this action, as required by Code section 6104(c). You should contact your State officials if you have any questions about how this final 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,

Douglas Shulman, Commissioner

By

Vicki Hansen

Acting Director, EO Examinations

Enclosures:

Publication 892

Publication 1546

Notice 437



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY

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

February 15, 2008

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, Exempt Organizations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

<b>Form 886-A</b>	<b>EXPLANATION OF ITEMS</b>	<b>Schedule or Exhibit No.</b>
<b>Name of Taxpayer</b> ORG		<b>Year Ended</b> 20XX12, 20XX & 20XX

**LEGEND**

ORG = Organization name      XX = Date      Address = address      City = city      XYZ = State  
 RA = RA      Manager = manager      Founders = founders      Founder = founder  
 Trustee = trustee      HS-1 = HS-1      Co-1 = 1<sup>st</sup> Company

**Issues:**

Whether the ORG continues to qualify for exemption from Federal income tax as an organization described under Section 501(c)(3) of the Internal Revenue Code within the meaning of section 509(a)?

**Facts:**

The ORG (hereinafter referred as EO [Exempt Organization]) was created on November 17, 20XX, in City, XYZ, with a Trust Agreement between the CO-1, of City, XYZ, Founder and Founder and Trustee, as the Trustees.

According to Form 1023, *Application for Recognition of Exemption*, dated January 28, 20XX:

"The trust [was] organized and [would operate] exclusively for religious, charitable, educational, scientific, and literary purposes. The trust [would] be classified as a private foundation and [planned] to be a grant-making trust."

"The Trust [would] make grants to other IRC 501 (c)(3) organizations classified as public charities for religious, educational, scientific, and literary purposes."

"The Trust [would] develop operating procedures to assure that it [adhered] to the rules of the IRC Section 4941, 4942, 4943, 4944, and 4945 as applicable to private foundations. The foundation [would] be funded by its creators Founder and Trustee."

The organization's sources of financial support were going to be coming from

"Donations from the Charitable Trust creators 90%, and Investment Income 10%."

"The use of office space and equipment [was going to] be donated by the founders."

A collection of coins donated by Founder and Trustee was also shown on Form 1023 as follows:

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Type of Coins	Denomination	Number of Coins	Fair Market Value in December 20XX	Grand Total
Gold		58		
Gold		22		
Gold		20		
Silver		400		
			Total	

The ORG was determined exempt from Federal income tax under section 501(a) described in section 501(c)(3) of the Internal Revenue Code, according to Determination Letter 1076, dated February 26, 20XX.

On June 30, 20XX, Founders purchased real property consisting of a residence and 22.55 acres of land in City, XYZ, from HS-1 and received evidence of title by a Warranty Deed with Vendor's Lien. The following day, the Founders transferred the property to the ORG using a Cash Warranty Deed that included an assumption of encumbrances on the property. The Organization's 20XX Form 990-PF, *Return of Private Foundation*, lists the property as a depreciable asset and includes a liability described as "Note Payable Home Loan Corp." The case file documents that the Founders use this property as their personal residence. No rental income is reported on the Forms 990-PF. The EO checked "no" on Part VII-B, line 1(a) of the 20XX Form 990-PF which asks if during the year the Organization "engage[d] in the sale or exchange...of property with a disqualified person." The maintenance and utility bills of this property have been paid with EO resources according to 990-PFs on record.

According to 990-PF. for the tax years ending December 31, 20XX and 20XX, the EO owns a RV Vehicle and a Pop-Up Trailer. Search showed nevertheless, that several other vehicles are listed in XYZ and XYZ under the ORG's name (see **Exhibit "A"**). There was no evidence provided by the ORG to support the need of having these types of vehicles to accomplish its exempt purpose.

The EO was contacted in February 20XX by a Revenue Agent from XYZ. The EO requested the audit to be moved to City, XYZ, since, according to Founder, his "case was very complicated and the books and records were too voluminous." His request was granted and the case was transferred to a Revenue Agent in City, XYZ.

An appointment was scheduled for the EO on October 17, 20XX, and mailed out to the EO.

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Accompanying the letter of appointment were Publication 1, *Your Taxpayer Rights* and an IDR, *Information Document Request*. Founder called the agent requesting additional time since, as per Founder, the case was very complicated and the books and records were too voluminous. A new date was granted, as per Founder's request.

The Internal Revenue Service requested in letters dated October 1, October 11, and October 26, 20XX, the EO to provide books and records for examination to verify the correctness of income or gross receipts, deductions and credits, and to determine that the organization is operating in the manner stated and for the purpose set forth in its application for recognition of exemption for the tax periods ending December 31, 20XX and 20XX. The ORG replied to these letters, each time, by asking for additional time, refusing to have the examination at the EO's site, and complaining that the IRS was contacting him by phone instead of exclusively in writing.

A new appointment was granted, as per Founder's request, which he confirmed by telephone to the RA, despite his previous specific request not to have any phone contact with the IRS. On November 8, 20XX at 12:30, Founder and Trustee appeared for the examination at the IRS location in , XYZ. Also present at the examination were RA, Revenue Agent and Manager, Manager. As per Founder's request, they were allowed to voice record the interview and brought two recorders. The IRS also had a recorder. As soon as the interview started, Founder presented a "Public Servant Questionnaire" (see **Exhibit "B"**) to the Agent and Manager to fill out for him before any questions asked. This questionnaire is a 3 page document that contains personal information questions. The IRS personnel refused to complete the questionnaire until IRS attorneys approve on it. Founder decided not to provide any information other than his name and chose to terminate the examination at that point. The Service noted that when the Founders came into the office, contrary to what Founder had previous stated, regarding voluminous books and records, they were only carrying one small briefcase with a couple of vanilla folders inside.

Summons for the EO's books and records were served on December 18, 20XX requiring the Founders, as Trustees, to appear at the City POD on January 15, 20XX, at 12:30 and 2:00, respectively, and produce the Organization's books and records, as described in the Summons at their appearance. This site was chosen because it was closer to the EO's physical address. When personnel from the Service and the City Sheriff's Department attempted to personally serve the summons at the Address property, Founder indicated by telephone he would come to the gate, but then failed to appear. Service was obtained through the Founders post-office box and Certificates of Service returned. The Founders failed to appear at the designated time and place, nor have the Founders produced any of the requested books and records. These actions show the ORG's unwillingness to cooperate with the service.



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On November 21, 20XX, the Organization was sent a letter, together with Forms 872, *Consent to Extend the Time to Assess Tax*, asking for consent to extend the statute of limitations on the 20XX Form 990-PF for the Organization and both Founders. A signed certified mail receipt was received back, but the signed forms were never returned. A letter and Forms 872 applicable to the Founder 20XX Form 1040s was mailed separately to both Trustee and Founder by certified mail, but the packages were returned as "unclaimed."

There is no evidence that the foundation made the required qualifying distributions at the time prescribed as the books and records were not provided for years ending on December 31, 20XX, 20XX and 20XX.

Up to the date of this report, no EO books or records have been produced, nor has the EO provided responses to any IRS requests for information.

#### Law:

#### **Record Keeping Requirements**

Section 6001 of the Code 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.

Section 6033(a)(1) of the Code 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.

Section 1.6001-1(a) of the regulations in conjunction with section 1.6001-1(c) provides that every organization exempt from tax under section 501(a) of the Code and subject to the tax imposed by 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 organization shall also keep such books and records as are required to substantiate the information required by section 6033.

Treas. Reg. § 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 as long as the contents thereof may be material in the administration of any internal revenue law

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Treas. Reg. § 1-6033-2(i)(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 I.R.C. § 6033.

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.

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.

#### **Exclusively Exempt Purposes Required:**

IRC section 501(c)(3) exempts from Federal income tax: 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 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 individual, so substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Regulation section 1.501(c)(3)-1(c)(1) provides 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.

Regulation section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for

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one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. The words "private shareholder or individual" refer to persons having a personal and private interest in the activities of the organization.

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly by such private interests.

In Revenue Ruling 67-5, 1967-1 C.B. 123, it was held that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities which were beneficial to them, but detrimental to the foundation. It was further held that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. Therefore, the foundation was not entitled to exemption from Federal income tax under section 501(c)(3).

Revenue Procedure 90-27, 1990-1 CB 514, (Apr. 30, 1990) provides that a ruling or determination letter recognizing exemption may be revoked or modified by (1) a notice to the trust to whom the ruling or determination letter originally was issued, (2) enactment of legislation or ratification of a tax treaty, (3) a decision of the United States Supreme Court, (4) issuance of temporary or final regulations, or (5) issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which section 503 applies, engage in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change. In cases where a ruling or determination letter was issued in error or is no longer in accord with the holding of the Service, when section 7805(b) relief is granted (see sections 15 and 18 of Rev. Proc. 90-4), retroactivity of the revocation or modification ordinarily will be limited to a date not earlier than that on which the original ruling or determination letter is modified or revoked.

#### Government's Position

In accordance with the foregoing, it is therefore recommended that the exempt status of the ORG be revoked effective January 1, 20XX.

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It is the IRS's position that the organization 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 failed to respond to repeated reasonable requests to provide evidence to support the Form 990-PF, and consequently failed to provide evidence of exempt activities to warrant its exemption.

Founder, Exec. Trustee and Trustee, Secretary Trustee, are using the exempt organization assets for private benefit. There was no evidence presented to justify the use of real property and recreational vehicles acquired by the organization to serve exempt purposes, which include the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code. The EO's level of private benefit rises to a more than insubstantial level and the private benefit is ongoing. The Courts have found that when an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition is not organized and does not operate exclusively for exempt purposes.

#### **Taxpayer's Position**

We have not obtained the taxpayer's position due to exempt organization's unwillingness to cooperate and provide any information or documentation for the examination.

#### **Conclusion:**

The ORG does not qualify for exemption from Federal income tax as an organization described under Section 501(c)(3) of the Internal Revenue Code within the meaning of section 509(a). The organization failed to provide evidence to substantiate its exempt activities as required by I.R.C. § 6001 and 6033 and does not operate exclusively for exempt purposes.

The organization's exempt status should be revoked effective to **January 1, 20XX**.

The effect of this determination will be that the ORG is required to file Form 1041, *U.S. Income Tax Return for Estates and Trusts*, should be filed for tax years ending December 31, 20XX, 20XX, 20XX, and 20XX. Subsequent returns are due no later than 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the Trust's accounting period.

Form 990-PF return should also be filed for the tax period ending **December 31, 20XX**.

Note: Form 990-PF is required for each year until Private Foundation status is terminated under IRC

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section 507.