



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street
Dallas, TX 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: February 23, 2010

Release Number: **201021030**

Release Date: 5/28/10

LEGEND

ORG = Organization name XX = Date

ORG
ADDRESS

Person to Contact:

Badge Number:

Contact Telephone Number:

Contact Address:

Employer Identification Number:

Deadline to Petition Tax Court:

CERTIFIED MAIL

Dear

This is a final notice of adverse determination that your exempt status under section 501(c) (3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective January 1, 20XX the following reason(s):

You are not organized and operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3). You are not and have not been engaged primarily in activities which accomplish one or more exempt purposes. You are not a charitable organization within the meaning of Treasury Regulation 1.501(c)(3)-1(d); rather, your activities further a substantial nonexempt commercial purpose and serve private rather than public interests.

Contributions to your organization are no longer deductible effective January 1, 20XX.

Since your exempt status has been revoked, you are required to file Form 1120, U.S. Corporation Income Tax Return, for all years beginning on or after January 1, 20XX.

Income tax returns for subsequent years are to be filed with the appropriate Service Center identified in the instructions for those returns.

It is further determined that your failure to file a written appeal constitutes a failure to exhaust your available administrative remedies. However, 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 Claims Court, or the district court of the United States for the District of Columbia before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. To secure a petition form, write to the following address:

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

The last day for filing a petition for declaratory judgment is May 3, 20XX.

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 and ask for the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, 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.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations

Enclosures:
Publication 892

**Internal Revenue Service
Tax Exempt and Government Entities Division
100 West Capitol St.
STOP 29
Jackson, MS 39269**

Department of the Treasury

Date: November 20, 2009

LEGEND

ORG = Organization name XX = Date
Address = address

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Telephone Number:
Contact Fax Number:

ORG
ADDRESS

**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 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,

Cecil R. Weems
Exempt Organizations
EO Revenue Agent

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number		Year/Period ended 12/31/20XX 12/31/20XX

LEGEND

ORG = Organization name XX = Date Address = address City = city State = state
 DIR-1, DIR-2, DIR-3, DIR-4 & DIR-5 = 1ST, 2ND, 3RD, 4TH & 5TH DIRECTORS

Issue:

1. Whether ORG (hereinafter referred to as "ORG") is operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3):
 - a. Whether ORG is engaged primarily in activities that accomplish an exempt purpose?
 - b. Whether more than an insubstantial part of the activities of ORG are in furtherance of a non-exempt purpose?

Facts:

ORG was incorporated on June 19, 20XX, as a non-profit corporation in the State of State. The stated purpose of the organization is exclusively for charitable endeavors and other lawful activity as allowed under the State Nonprofit Corporation Law. It was organized and was to be operated exclusively as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 19XX.

On January 9, 20XX, ORG received from the Internal Revenue Service a determination letter advising the organization of recognition of exempt status under Section 501(c)(3) of the Internal Revenue Code, and an advance ruling on the foundation status under Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code.

ORG received its final determination letter from the Internal Revenue Service. This letter determined that ORG's exempt status under Section 501(c)(3) of the Code was still in effect, but that the organization failed the public support test and was classified as a private foundation.

ORG was notified by the Internal Revenue Service on of a pending examination of its books and records to be conducted on of the Form 990PF for year ended December 31, 20XX. The examination was subsequently expanded to include the Form 990PF for the year ended December 31, 20XX.

Tax Return History:

To date, ORG has filed a total of three Forms 990PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*. The table below shows the filing history of this tax form.

<u>Tax Year Ended</u>	<u>Filing Date</u>	<u>Due Date</u>
December 31, 20XX	May 29, 20XX	May 15, 20XX
December 31, 20XX	January 12, 20XX	May 15, 20XX
December 31, 20XX	July 29, 20XX	May 15, 20XX

Tax Return Information:

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/20XX 12/31/20XX

The address of the organization as shown on the Forms 990PF is Address City, State. The physical address of the organization is Address, City, State. Per the returns filed for 20XX and 20XX, Line 14 lists the books and records as being in the care of DIR-1, at the mailing address of the organization.

The summary of direct charitable activities on the Form 990PF for 20XX states, "Foundation provided direct professional counseling to more than 275 individuals in the areas of debt relief, housing and legal services." The Form 990PF for 20XX makes a similar statement, but does not list the number of individuals helped.

The organization has a board of directors, whose number changed each year. In 20XX, there were three directors, in 20XX there was only one director listed. The list of directors of the organization, as compiled from the Forms 990PF for the years ended December 31, 20XX and December 31, 20XX, from the Articles of Incorporation, and from the current listing from the state regulatory agency is shown below:

<u>Individual</u>	<u>Source/Year</u>	<u>Position</u>
DIR-1	Articles of Incorporation	Director
DIR-2	Articles of Incorporation	Director
DIR-3	Articles of Incorporation	Director, Treasurer
DIR-4	Articles of Incorporation	Director
DIR-4	Form 990PF 20XX	Sec/Treasurer
DIR-3	Form 990PF 20XX	Director
DIR-1	Form 990PF 20XX	Director
DIR-1	Form 990PF 20XX	Director
DIR-1	Secretary of State	Director, President
DIR-4	Secretary of State	Director
DIR-3	Secretary of State	Director, Secretary
DIR-5	Secretary of State	Treasurer

None of the board members are related and none appear to have business, professional, or family relationships with any of the other board members.

In 20XX & 20XX ORG had no employees. The president, DIR-1, was solely in charge of the operations of ORG.

Activities:

It was indicated in the statement of program service accomplishments on the Forms 990PF that the main activity of the organization was that the foundation provided direct professional counseling to individuals in the areas of debt relief, housing and legal services and the use of the debt management program".

After the examiner interviewed the director and the books and records provided by ORG it has been determined that the organization was inactive during the years of 20XX forward and that the organization probably will not be operational again and that the director was considering terminating the exempt status

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/20XX 12/31/20XX	

and discontinuing operations. ORG had no income or contributions during the years of 20XX & 20XX, no employees, did no advertising, had no operational expenses and no longer had a website.

There has been no documentation of information provided to verify that ORG was conducting any of the typical credit counseling activities. There was no documented telephone calls or in-person interviews or interactions between ORG and any consumers or clients.

Advertising:

During the years of the examination it has not been shown that ORG did any advertising of its services through referrals, TV, radio, or newspaper ads. There was a yellow pages ad in the telephone book, but the number when called was not ORG.

Training Materials:

There were no manuals, telephone scripts or any information or documentation provided that indicated that there were any counselor certifications or any ongoing training of counselors. There were no paid counselors during 20XX or 20XX.

Minutes:

There were no written minutes presented for the years of 20XX or 20XX.

Financial Information:

There was no income reported for the organization during 20XX or 20XX. The Forms 990PF showed contributions, but these were in error. The director paid some expenses for ORG, but they appeared to have been reimbursed. The large contribution in 20XX was not verified as a bona fide contribution to ORG. There was no client income or fees received in 20XX or 20XX.

A review of the bank statements for ORG indicated that there were transactions between the president and ORG, but these were determined to be in error, deposits of personal funds by DIR-1 and withdrawals of those funds by her. The statements for this account were requested and then summons from the bank.

Law:

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c) (3) is exempt from income tax. Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual. The term charitable includes relief of the poor and distressed. Section 1.501(c) (3)-1(d) (2), Income Tax Regulations.

The term educational includes (a) instruction or training of the individual for the purpose of improving or developing his/her capabilities and (b) instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3). In other words, the two components of education are public education and individual training.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/20XX 12/31/20XX

Section 1.501(c)(3)-1(a)(1) of the regulations 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.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that 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. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945).

Educational purposes include instruction or training of the individual for the purpose of improving or developing his/her capabilities and instruction of the public on useful and beneficial subjects. Treas. Reg. § 1.501(c)(3)-1(d)(3). In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purposes, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

Treas. Regs. § 1.501(c)(3)-1 - Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

a) Organizational and operational tests. (1) 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.

(2) The term exempt purpose or purposes, as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

(b) Organizational test--(1) in general. (i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its articles) as defined in subparagraph (2) of this paragraph:

(a) Limit the purposes of such organization to one or more exempt purposes; and

(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(ii) In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3). Therefore, an organization which, by the terms of its articles, is formed for literary and scientific purposes within the meaning of section 501(c)(3) of the Code shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely to receive contributions and pay them over to organizations which are described in section 501(c)(3) and exempt from taxation

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/20XX 12/31/20XX	

under section 501(a) are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set for the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for charitable purposes, such articles ordinarily shall be sufficient for purposes of the organizational test (see subparagraph (5) of this paragraph for rules relating to construction of terms).

(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles to engage in a manufacturing business, or to engage in the operation of a social club does not meet the organizational test regardless of the fact that its articles may state that such organization is created for charitable purposes within the meaning of section 501(c)(3) of the Code.

(c) Operational test--(1) Primary activities. 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

In the case of Consumer Credit Counseling Service of Alabama, Inc. v. U.S., 44 A.F.T.R.2d 78-5052 (D.D.C. 1978), the District Court for the District of Columbia held that a credit counseling organization qualified as charitable and educational under section 501(c)(3). It fulfilled charitable purposes by educating the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b). For this, it charged no fee. The court found that the counseling programs were also educational and charitable; the debt management and creditor intercession activities were "an integral part" of the agencies' counseling function and thus were charitable and educational. Even if this were not the case, the court viewed the debt management and creditor intercession activities as incidental to the agencies' principal functions, as only approximately 12 percent of the counselors' time was applied to debt management programs and the charge for the service was "nominal." The court also considered the facts that the agency was publicly supported and that it had a board dominated by members of the general public as factors indicating a charitable operation. See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts and legal analysis were virtually identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, discussed immediately above.

"Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term "charitable" used in section 501(c)(3) of the Code in its generally accepted legal sense. The regulation further states that the term "charity" includes lessening the burdens of government and the promotion of social welfare by organizations designed (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Government's Position:

It is the government's position that ORG conducted no educational activity or any other exempt functions during the years of the examination. There were no credit counseling sessions held and that since ORG had no clients this lack of any exempt purposes and also the fact that there is no intention at

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number	Year/Period ended 12/31/20XX 12/31/20XX

this point to begin operations again it is proposed that the exempt status granted to ORG under section 501(c)(3) be revoked.

No indication was found that there were non-exempt activities conducted, but rather that the organization did not do anything during the years of the examination.

Taxpayer's Position:

At the time of issuance of the report the taxpayer was in agreement with the revocation of exempt status of the organization.

Conclusion:

ORG was not operated exclusively for educational or for any other exempt purposes within the meaning of section 501(c)(3) of the Code. The organization was inactive and did not carry on any exempt activities during 20XX or 20XX, no educational training or counseling was provided to any individuals on credit or debt management issues, and ORG did not provide education to the community at large.

Therefore, the organization's exempt status under section 501(c)(3) of the Code should be revoked effective January 1, 20XX.