



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
MC:4957:DAL:OS
1100 Commerce St.
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

501.03-00

October 27, 2010

Release Number: 201103061

Release Date: 1/21/11

LEGEND

ORG = Organization name XX = Date Address = address

ORG

ADDRESS

Form Number:

Tax Year Ended:

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Contact Telephone Number:

(Phone)

(Fax)

In Reply Refer to: TE/GE Review Staff

Dear

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective July 1, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in I.R.C. §501(c)(3) and exempt under section 501(a) must be organized and operated exclusively for exempt purposes. You have failed to demonstrate that you are operated exclusively for exempt purposes since your organization has been inactive and has failed to conduct any activity in furtherance of a charitable purpose.

Based upon these reasons, we are retroactively revoking your IRC §501(c)(3) tax exempt status effective for all years beginning on or after July 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, U.S. Corporation Income Tax Return, for the years ended June 30, 20XX, and for all years thereafter with the appropriate Service Center immediately and by the due date of Form 1120 for all subsequent years.

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 Court of Federal Claims 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 (213) 576-3140 or writing to:

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.

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

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Internal Revenue Service

Department of the Treasury

Date: December 2, 2009

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,

Sunita Lough
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 6/30/20XX

LEGEND

ORG - Organization name XX - Date CEN-ORG - Cen-Org Chapter - chapter

ISSUE: Should the IRC § 501(c)(3) tax exempt status of ORG be revoked because it is not operated exclusively for tax exempt purposes.

FACTS:

The ORG (the "Organization") was created under the Group Exemption of CEN-ORG (the "Central Organization"). The organization is exempt as described in IRC § 501(c)(3) and IRC § 509(a)(3). The status code date of the organization is April 20XX. There are no organizing documents specifically created for the "CHAPTER"; this chapter adopted the central organizations documents which includes information about the practices of the subsidiary associations. The organization has no assets and was never active.

The Organization never filed Form 990, but was included on the Central Organization's return for 20XX and 20XX in an attached schedule that stated that the organization had no activity. During the year 20XX there would have been no requirement for the organization to file since there was no revenue. The Pension Protection Act (PPA) of 20XX changed the filing requirement for supporting organizations that had transactions occurring after July 25 20XX.

LAW:

IRC § 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, no 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.

Rev. Rul. 60-143: It is the position of the Service that alumni associations generally are not organized and operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code, except in those cases where the association is controlled by or operated as

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an integral part of an educational institution or otherwise shows a substantial integration with such an institution.

Rev. Rul. 56-486, C.B. 1956-2, 309: An alumni association, formed at the instigation of university officials, was incorporated for the purpose of fostering a spirit of loyalty and fraternity among the graduates and former students of the university and to effect united action in promoting the general welfare of the university as an educational institution. The financial affairs of the association are under the direct control of the administrative officers of the university. Held, since the association (1) is organized primarily for the purpose of promoting the welfare of the university with which it is affiliated, (2) is operated as an integral part of it, and (3) is subject to the control of the university as to its policies and destination of funds, it qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 as a corporation organized and operated exclusively for educational purposes.

Section 509(a)(3) organizations must meet all three of the following tests:

- 1) Organizational and Operational Tests under section 509(a)(3)(A).
- 2) Relationship Test under section 509(a)(3)(B).
- 3) Disqualified Person Control Test under section 509(a)(3)(C).

Overall, these tests are meant to ensure that a supporting organization is responsive to the needs of a public charity and intimately involved in its operations and that the public charity (or publicly supported organization) is motivated to be attentive to the operations of the supporting organization and that it is not controlled, directly or indirectly, by disqualified persons.

Organizational and Operational Tests

The Organization is not organized to benefit one or more specified publicly supported organizations. Pursuant to Treas. Reg. § 1.509(a)-4(c)(1)(iii) and (iv), an organization's governing instrument must state the specified publicly supported organization(s) on whose behalf the organization is to be operated and cannot expressly empower the organization to support or benefit any organizations other than the specified publicly supported organization(s).

Moreover, the operational test set forth in Treas. Reg. § 1.509(a)-4(e)(1) is not satisfied. A supporting organization will be regarded as "operated exclusively" to support a specified publicly supported organization(s) only if it engages in activities which support or benefit the specified publicly supported organizations(s). As was discussed under the Primary Issue above, the Organization has not been active and is not operated exclusively for the benefit of the publicly supported organizations.

The operational test requires the Organization to exclusively engage in activities that benefit specified publicly supported organizations.

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Relationship Test

As set forth in Treas. Reg. § 1.509(a)-4(f)(2), there are three permissible relationships:

- (a) operated, supervised, or controlled by;
- (b) supervised or controlled in connection with; and
- (c) operated in connection with one or more publicly supported organizations.

The relationships “operated, supervised or controlled by” and “supervised or controlled in connection with” presuppose a substantial degree of direction over the policies, programs and activities of the supporting organization by a publicly supported organization. The “operated, supervised or controlled by” relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity or the membership of the publicly supported organization. The “supervised or controlled in connection with” relationship is established by the fact that there is common supervision or control by the persons supervising or controlling both the supporting and the publicly supported organizations (*i.e.*; that control or management of the supporting organization is vested in the same persons that control or manage the publicly supported organization).

In the present case, the facts indicate that there was no substantial control or direction over the policies or activities of the Organization by the publicly supported organization.

The third and final relationship possible for section 509(a)(3) organizations is the “operated in connection with” relationship which requires that the supporting organization be responsive to the needs or demands of the publicly supported organization and constitute an integral part of, or maintain a significant involvement in the affairs of, the publicly supported organization. This relationship is satisfied where the supporting organization meets both the “responsiveness” and “integral part” tests. The integral part test has not been met in this case.

While the responsiveness test guarantees that the publicly supported organization can influence the activities of the supporting organization, the integral part test ensures that the publicly supported organization will be motivated to attend to the operations of the supporting organization. The integral part test is considered to have been satisfied if the supporting organization maintains a significant involvement in the operations of one or more publicly supported organizations and the publicly supported organizations are in turn dependent upon the supporting organization for the type of support which it provides. Treas. Reg § 1.509(a)-4(i)(3)(i). In order to meet the integral part test, either Treas. Reg. § 1.509-4(i)(3)(ii) or (iii) must be satisfied.

Treas. Reg. § 1.509(a)-4(i)(3)(ii) provides that the activities engaged in for or on behalf of the publicly supported organizations must be activities to perform the functions of, or to carry out the

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purposes of, such organizations and, but for the involvement of the supporting organization, would normally be engaged in by the publicly supported organizations themselves. Thus, this part of the integral part test applies in those situations in which the supporting organization actually engages in activities which benefit the publicly supported organizations as opposed to simply making grants to the publicly supported organizations. The Organization does not meet this test because it does not perform any activities for or on behalf of the publicly supported organizations. The Organization is not active.

Income Tax Regulations section 1.509(a)-4(j) regarding control by disqualified persons provides: A supporting organization may not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more publicly supported organizations.

TAXPAYER'S POSITION:

Taxpayer did not respond to proposed revocation report.

GOVERNMENT'S POSITION:

The IRC § 501(c)(3) tax exempt status of The ORG should be revoked because it is not organized or operated exclusively for tax exempt purposes.

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. (Reg. 1.501(c)(3)-1(a)(1)).

The facts show that the Organization is not active and does not have organizing documents. The organization has not been active since it received it's EIN in 20XX.

Accordingly, there is no indication that the organization is being operated for an exempt purpose and the exempt status of the organization should be revoked.