



## DEPARTMENT OF THE TREASURY

Internal Revenue Service  
TE/GE EO Examinations  
MC:4920:DAL:OS  
1100 Commerce St.  
Dallas, TX 75242

501.03-00

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

March 4, 2011

Release Number: **201121026**

Release Date: 5/27/2011

LEGEND

ORG - Organization name    XX - Date    Address - address

Taxpayer Identification Number:  
Person to Contact:  
Employee Identification Number:  
Employee Telephone Number:  
(Phone)  
(Fax)

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 December 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective December 29, 20XX.

You agreed to this adverse determination, by signing Form 6018, on January 12, 20XX.

The revocation of your exempt status was made for the following reason[s]:

We have determined you no longer qualify as an organization described in section 501(c)(3) of the Internal Revenue Code and hereby revoke our previous ruling effective December 29, 20XX. You discontinued activities furthering exempt purposes, failed to file an appropriate final return, and have been administratively dissolved by your state of incorporation. As such, you do not operate exclusively for exempt purposes as is required for organizations described in section 501(c)(3) of the code.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

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, 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 contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:

Publication 892

Form 6018, Consent to Proposed Adverse Action



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

**DEPARTMENT OF THE TREASURY**

Internal Revenue Service  
TEGE: EO Examinations  
1100 Commerce Street  
Dallas TX 75242

December 14, 2010

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,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publications 892; 3498  
Form 6018, 886A, 4621  
Administrative Record

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit 1
<b>Name of Taxpayer:</b> <b>ORG</b> <b>EIN: EIN</b>		<b>Year/Period Ended</b> <b>20XX07</b>

LEGEND

ORG = Organization name                      XX - Date                      State - state                      CEO - CEO  
 Superintendent - superintendent

**ISSUE**

Whether an organization's exempt status under Internal Revenue Code § 501(c)(3) should be revoked because it has failed to provide books, records and other documents in accordance with Internal Revenue Code § 6001 and Treasury Regulations §1.6001-1(e).

**FACTS**

This is a ORG case assigned to the field on February 25, 20XX. The organization was a Charter School with State Department of Education. A search of STATE-SOS website showed that EO was administratively dissolved by the State of State on 12/29/20XX.

On June 17, 20XX a review of the State Board of Education website and National Association of Charter School Authorizer's website included an "State Charter Schools 20XX-20XX Evaluation Report. The report indicated on page and page that ORG was closed in June 20XX by the State Department of Education. According to the State Department of Education Office of the Technical Advisor for Charter Schools, the board's policy states that schools using public funds to buy assets, etc. and operating as a state sponsored school must return all remaining assets to the state board of education when the school closes or discontinues. The school board's attorney sent a letter to ORG requesting a listing of assets and, upon verification, that the assets be returned. The board files show that the asset listing was received and it is believed EO assets were returned to school board and redistributed within the school system. A final return was not filed in fiscal tax year 20XX, the year the school was closed. A final return is required to be filed. On July 2, 20XX a memo was prepared requesting audit expansion to include Form 990 filings. The memo was approved.

On September 1, 20XX a 90 day letter (demand to file) was sent to the EO's last known address. The letter requested that a final Form 990 for fiscal tax year 20XX as well as 20XX delinquent quarterly Forms 941 be filed. Periodic telephone calls and messages were also made.

On October 20, 20XX we received a letter from CEO, chairman of the board of directors in response to the 90 day demand to file letter. It stated that CEO was gathering the document(s) and they should be completed and mailed to my attention 30 days from 10/15/20XX. Thereafter several telephone messages requesting that CEO contact the examining agent were made without success.

On December 22, 20XX I spoke with CEO. He stated that he is interested in resolving this issue. He said SUPERINTENDENT, ORG School's superintendent, had access to the

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school's books and records. I spoke with SUPERINTENDENT. After properly identifying myself and stating the purpose of the call, SUPERINTENDENT indicated that he was unable to speak with me because he was driving. He would return my call as soon as he was able. Later SUPERINTENDENT called and stated that he returned all records to the Department of Education and does not have any documents. He will contact former CPA and payroll service to see if records are available. When I asked if he could obtain records from his bank he said that he did not have money to pay for administrative services to retrieve information. SUPERINTENDENT said he would be out of town for the holidays and would call me when he returned.

On February 4, 20XX after leaving several message in January, SUPERINTENDENT called. He said that he would again attempt to contact his payroll service. I explained to him that according to our records an unpaid balance of approximately \$ remains unpaid for 20XX calendar year employment taxes. According to SUPERINTENDENT, as far as he knows, all audited year employment taxes were paid. I also spoke with CEO, and he indicated that he prefers filing articles of dissolution. We reviewed information the steps he would need to take to begin the dissolution process with the state and the additional documents I would need in order for me to move forward with the case.

On February 12, 20XX after leaving several messages for each of them, letters were prepared and mailed CEO and SUPERINTENDENT requesting completed documents relative to EO dissolution and case closing.

On February 22, 20XX sent CEO 30 day letter #3618 with Pub #892; Pub #3498; Form 886-A Explanation of Items; 2 Copies of Form 6018 Consent to Proposed Action; Form 4621 Report of Examination.

March 11, 20XX examining agent received a letter/statement from CEO in response to my February 12, 20XX letter requesting a statement of undistributed EO net assets. CEO stated that EO assets amounted to \$. CEO' statements are supported by the State's Department of Education's charter school coordinator who related similar information cited above. .

March 11, 20XX examining agent received a letter addressed to the Acting Director, TEGE Division's EO Examinations Director stating he would like to conclude the business with the Internal Revenue Service and would like to schedule a meeting between Director, his newly hired CPA and himself. He further stated that he is relying on the cooperation of SUPERINTENDENT a former director to help in bring this matter to closure.

**LAW**

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**Section 6001 of the Code** provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep such records, render such returns, and comply with such rules and regulations as the Secretary 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.

**Treasury Regulation § 1.6001-1(a)** in conjunction with § 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.

**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 as long as the contents thereof may be 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 section 6033.

**Revenue Ruling 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.

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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.

Treasury Regulation 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph 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 designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

## CONCLUSION

Based on the facts presented above and the fact that as yet no response has been received, it is the Internal Revenue Service's position that the EO failed to meet the reporting requirements under IRC § 6001 and § 6033 and does not qualify as an organization exempted from federal income tax under IRC § 501(c)(3). Accordingly, the proposed revocation of ORG's tax exempt status is effective beginning July 1, 20XX.

A Form 1120 U.S. Income Tax Return must be filed for fiscal tax years ending June 30, 20XX, 20XX, 20XX, and 20XX. Subsequent returns, if any, should be sent to the following mailing address:

The effective date of the revocation will be the first day after the end of the 90-day period (91st day).