



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75424

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: April 8, 2011

501.03-00

Number: **201126035**
Release Date: 7/1/2011

LEGEND
ORG - Organization name
XX - Date Address - address

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

**LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: July 7, 20XX**

CERTIFIED MAIL – Return Receipt Requested

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 January 1, 20XX.

Our adverse determination was made for the following reasons:

You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of I.R.C. section 501(c)(3). Organizations described in I.R.C. section 501(c)(3) and exempt under section 501(a) must be organized and operated exclusively for an exempt purposes. You have provided no information regarding your receipts, expenditures or activities. You have not established that you have operated exclusively for an exempt purpose.

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, Tel: (410) 962-2082, or write :

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,

Douglas H. Shulman
Commissioner
By

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892

Internal Revenue Service

Department of the Treasury
Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, Texas 75242

Date: October 28, 2010

Taxpayer Identification Number:

ORG
ADDRESS

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear Sir / Madam:

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:
Publication 892
Publication 3498
Report of Examination

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

LEGEND

ORG - Organization name XX - Date State - state Director - Director
 DIR-1 - 1st DIR

ISSUE:

Whether ORG, exemption under Section 501(c)(3) of the Internal Revenue Code should be revoked due to their failure to establish the right to maintain such exemption.

FACTS:

ORG was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code, as August 19XX. The purpose of the organization was to operate a group home for trouble children. As of the date of the examination this organization has cease to operate due to the corporate status being place in "Forfeiture" by the state of State as of year ended 20XX. The initial interview was conducted with the temporary Acting Director. Director indicated the original founder and director DIR-1 resigned from the position in June of 20XX based on allegations by the State of State Department of Human Resources that DIR-1 was using the assets of the organization for himself and family member's personal benefits. Based on the investigation, the State Inspectors cited the organization for violating State regulation and discontinued funding the organization. With the resignation of the original director, the Board selected Director to operate the organization until they closed their financial and operational activities. Director, indicated she was only in office for a short period. Therefore, she was not aware of the location of all of the organizational documents and financial records due to the changing of accountants. Due to her limited time in this position and the time it took to locate this organization, all of the documents and financial records were accepted as filed.

Per the examination, the Revenue Agent was able to secured and accept as filed delinquent 990 Information Returns for years ended 20XX and 20XX. The organization also submitted documents to support that all of the remaining assets of the organization was sold and the income used to paid the remaining debt of the organization.

The State Department of Taxation website lists the current status of ORG, as "Forfeit". According to the State Department of Taxation, an organization is considered "Forfeit" if they fail to file any required returns and/or pay any outstanding fees/penalties. Once an organization is classified as "Forfeit" they can only be reclassified as "Active" after filing any delinquent returns and/or paying outstanding fees, penalties and resubmitting the articles of incorporation. Per discussion with the Acting Director, the organization agreed with State of State position and has discontinued their financial and operational activities as an organization exempted under Section 501(c)(3) of the Internal Revenue Code.

LAW:

Section 501(c)(3) of the Code provides for exemption of organizations organized and operated exclusively for charitable purposes and that no part of the earnings of which inures to the benefit of private shareholders or individuals.

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

Section 6033 of the Internal Revenue Code of 1954 provides that every organization exempted from taxation under Section 501(a) of the Code shall file an annual return, stating specifically the items of gross income of gross income, receipts, and disbursements, and shall keep such records, render under oath such other oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 1.6033-2(h)(2) of the Federal Income Tax Regulations require that every organization which has established its rights to exemption from tax shall submit such additional information as may be required by the Internal Revenue Service to further inquire into its exempt status.

Section 1.6001-1(c) of the Federal Income Tax Regulations states in part, every organization exempt from tax under Section 501(a) shall keep such permanent books of account records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall keep such books and records as required to substantiate the information required by Section 6033.

The Dual Test: Organized and Operated:

IRC 501(c)(3) requires an organization to be both "organized" and "operated" exclusively for one or more IRC 501(c)(3) purposes. If the organization fails either organizational test or the operational test, it is not exempt. Reg. 1.501(c)(3)-1(a)(1). Church of Visible Intelligence That Governs The Universe. v.U.S.4 Cl. Ct. 55.

The organizational test concerns the organization's articles of organization or comparable governing document. The operational test concerns the organization's activities. A deficiency in an organization's governing document cannot be cured by the organization's actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well written charter. Reg. 1.501(c)(3)-1(b)(1)(iv).

Operational Test:

1. Section 1.501(c)(3)-1(d)(i) defines appropriate exempt purposes. An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- religious
- charitable
- scientific
- testing for public safety
- literary
- educational
- fostering national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)
- prevention of cruelty to children or animals.

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2. Reg. 1.501(c)(3)-1(c)(1) provide that an organization is operated exclusively for charitable purposes only if engages primarily in activities that accomplish those purposes in (1)above. It is not so operated if more than an insubstantial part of its activities do not further those purpose

Burden of Proof:

The court in Church of Spiritual Technology v. United States, 510 U.S. 870, 114 S.Ct. 197 (Mem) U.S., 1993, cited a long line of authority holding that the applicant bears the burden of showing it is entitled to exemption. In Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. 1974)' the court stated that "[1]income tax exemption must be strictly construed, with any doubts to be resolved in favor of the taxing entity. Consequently, determinations of the Commissioner are presumed correct."

Similarly, the court cited Welch v. Helvering, 190 U.S. 111, 115 (1933), and modern cases following its structure that "[P]laintiff thus bears the burden of proving its entitlement to an exemption."

The Tax Court has consistently stated that a statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power. Harding Hospital, Inc. v. United States of America, 505 F.2d. 1068, 34 A.F.T.R.2d 74-6174, 74-2 USTC.

Taxpayer's Position:

Since the State of State discontinued to fund the operational activities and placing their corporate status in "Forfeiture" as an inactive organization. The Board of Directors agrees with the revocation of ORG exemption under Section 501(c)(3) of the Internal Revenue Code.

Government Position:

Since the State of State has placed ORG in "Forfeiture" the organization can no longer continue to operate as an organization exempted under Section 501(c)(3) of the Internal Revenue Code. Organizations seeking to obtain or maintain tax exempt status under section 501(c)(3) of the IRC must meet two basic tests. These organizations must be both organized and operated for 501(c)(3) purposes. ORG, has not demonstrated that they continued to meet the operations test. Therefore, ORG, no longer continues to qualify for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

Conclusion:

Basic on the facts, law and argument, ORG, has not demonstrated that they continue to meet the operations test. Since the organization does not meet the operations test its our position that your tax exempt status should be revoked.

ORG, no longer qualifies for tax exempt status, effective January 1, 20XX. This is the first day of the tax period in which the organization fails to qualify for exemption under IRC 501(c)(3). Also, as of January 1, 20XX, contributions are no longer deductible as charitable contributions. In addition, ORG will be required to file the U.S. Corporation Income Tax Return Form 1120, for all periods subsequent to December 31, 20XX.