

Internal Revenue Service

Appeals Office
401 W. Peachtree St. NW
Atlanta, GA 30308-3510

Department of the Treasury

Taxpayer Identification Number:

Number: 201238032
Release Date: 9/21/2012

Person to Contact:

Date: June 27, 2012

Tax Period(s) Ended:

**ORG
ADDRESS**

Certified Mail

UIL: 7428 .00-00

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective May 15, 2003.

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

The organization has maintained that it was included under the group ruling of , as an organization described under section 501(c)(3) of the Internal Revenue Code. During the examination of the organization's books and records it was determined that the central organization did not follow the guidelines provided in Revenue Procedure 80-27, 1980-26, for the addition and deletion of subordinates covered by the group ruling. It has not been established that was included under the group ruling of the central organization.

The examination of the organization's books and records revealed the organization was not exempt under section 501(c)(3) because it was not engaged in activities that were charitable, religious, educational, scientific or literary. The organization was engaged in network marketing. The money earned from the network marketing was used to pay the personal living expenses of the founders and their family members.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of revocation, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

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 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: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

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 get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

Appeals Team Manager
Karen A. Skinder

Enclosure: Publication 892



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4915:DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

January 12, 2007

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, EQ 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.

Sincerely,

Marsha A. Ramirez
Marsha A. Ramirez
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 20XX12 and 20XX12

LEGEND

ORG - Organization name XX - Date State - state CO-1 - 1st COMPANY
 CFO - CFO Secretary - secretary BM-1 - 1st BM TEAM - TEAM RA-1
 & RA-2 - 1st & 2nd RA

ISSUES

1. Whether the tax-exempt status existed for the year 20XX, and whether the tax-exempt status is valid for 20XX and should be revoked to May 15, 20XX, start of the corporation.
2. Whether revocation of the organization's tax-exempt status should be applied retroactively.

BRIEF EXPLANATION OF FACTS

CO-1, (CO-1) was determined to be exempt from federal income tax under section 501(a) of the Internal Revenue Code (IRC or Code) as an organization described in section 501(c)(3). It was further determined that it was not a private foundation within the meaning of section 509(a) of the Code, because it is an organization described in sections 509(a)(1) and 170 (b)(1)(A)(ii).

CO-1 applied for and received a group exemption ruling under IRC section 501(c)(3) dated March 21, 20XX.

ORG was incorporated in the State of State effective 5/15/20XX. The Articles were filed by BM-1. The Articles of Incorporation filed with the State of State stated that the corporation was organized to sell appliances and engage in any lawful business permitted under State Business Corporation Code.

On February 2, 20XX the Articles were restated to reflect its purpose being to provide a source for Christian ministry to senior and disabled citizens. Other sections of the articles were added to help the organization conform to non-profit code requirements. The above filing was authorized by Article of Amendment approval by the Board on December 18, 20XX.

The annual registration dated January 31, 20XX listed CEO as CFO; CFO as BM-1 and Secretary as Secretary.

About the same time as the group ruling in 20XX, the TEAM's joined a network marketing group as a means to fund their tax-exempt activities. The network marketing activity was in the TEAM's name. On June 26, 20XX, they transferred the network marketing activity to a corporation controlled by the TEAM's called ORG and reported the network marketing activity along with other activity on a Form 990 for 20XX and 20XX. After initiation of the audit of CO-1, the TEAM's filed amended returns to remove the network marketing activity from the Form 990 of ORG for 20XX and add it to the TEAM's personal 1040 for 20XX. For 20XX they reported the networking activity on their personal Form 1040 but did not file an amended Form 990 for ORG removing the networking activity.

Total receipts reported on the Form 990 for ORG for 20XX as originally filed were \$\$ of which \$\$ came from network marketing activities. The balance of \$\$ came from other than network marketing activity, of which \$\$ received from the TEAM's.

At least \$\$ of the receipts reported on the original 20XX Form 990 was for transactions conducted prior to the corporation being formed. Similarly \$\$ of the \$\$ receipts reported on the amended return was actually incurred prior to incorporation.

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The receipts and expenditures reflected on the amended 20XX Form 990 were both \$\$, exactly the same amounts. Of the \$ \$ listed as spent by ORG; \$\$ went to CO-1; \$\$ to a mortgage payments on principal residence and \$ to RA-1 (their son). Most of the balance (\$) was not determined.

Payments listed for 20XX under Helps/Gifts for charitable purposes included substantial amounts paid directly to RA-1 their son and to RA-2 (\$ monthly) and payments of bills for RA-1 and various mortgage payments and payments to various utilities on a regular basis including electricity. Payments that were asked to be clarified and not answered were over \$\$.

LAW and Analysis

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an **insubstantial** part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that 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, 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.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the promotion of education.

The presence of a **single substantial** nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. Better Bus. Bureau v. United States, 326 U.S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); Am. Campaign Acad. v. Commissioner, 92 T.C. 1053, 1065 (1989); see also Old Dominion Box Co., Inc. v. United States, 477 F.2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973) ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). 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 does not operate exclusively for exempt purposes. Am Campaign Acad. v. Commissioner, supra at 1065-1066.

In Christian Stewardship Assistance vs. Commissioner 70 T.C. 1037, (1978) an organization was formed as a nonprofit corporation to support and assist religious, educational and/or other nonprofit organizations in their relationships with their contributors and in stimulating proper application of Christian stewardship principles among their contributors. To reimburse its cost of operation, petitioners charge a fee to each subscribing organization.

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Respondent determined that the described activities, although helpful to charitable organizations are not exclusively for charitable purposes, but rather serve private interest by advising individuals about methods to decrease Federal income and estate taxes.

In Rev. Rul. 69-545, 1969-2 CB117, a hospital did not qualify under section 501(c)(3) of the Code because it must be organized and operated exclusively for one or more of the purposes set forth in that section. Hospital B was initially established as a proprietary institution (same as network marketing) for the benefit of its owners. Although its ownership had been transferred to a nonprofit organization, the hospital continued to be operated for the private benefit of the original owners who exercised control over the EO through the board of trustees. They had used their control to restrict staff (determine amount contributions), to enter into favorable rental agreements (who deducts what expenses), and to limit emergency room care and hospital admission to their own patients. These facts indicated that the hospital was operated for the private benefit of its original owners, rather than for the exclusive benefit of the public.

In Living Faith, Inc v. Commissioner, 950 F.2d 365, a nonprofit organization operated restaurants and food stores in accordance with doctrines of the Seventh-day Adventist Church. Their application was denied because it was not operated exclusively for exempt purposes. Living Faith operated two vegetarian restaurants and health food stores in Illinois. These two facilities-the subject of this litigation-were open to the public. They had several purposes listed to (1) teach restaurant management, (2) teach vegetarian cooking, (3) minister to those...changing their way of life....,(4) learn how to communicate with others. In addition to purveying food and health products, Living Faith disseminated various informational materials which promoted both the healing and message of Jesus Christ and....

Each day before the facilities opened, Living Faith conducted devotional talks....., Bible reading....., Bible Studies.....It occasionally provided meals to the needy..... The nonexempt purpose cannot be substantial. A single activity may be carried on for more than one purpose. The fact that an organization's primary activity may constitute a trade or business does not, of itself, disqualify it from classification under 501(c)(3), provided the trade or business furthers or accomplishes an exempt purpose. If one of the activities purposes, however, is substantial and nonexempt, the organization will be denied exempt status under 501(c)(3), even if its activity also furthers an exempt purpose.

In making its decision, the Tax Court considered the following factors to be critical to its determination: (1) Whether an activity has a substantial nonexempt purpose is a question of fact; (2) Does it conduct its business in an apparently commercial manner? Does the organization use promotional materials and "commercial catch phrases" to enhance sales? (3) Is the organization in competition with commercial firms?

Rev. Rul. 72-369, 1972-3 C.B. 245, describes an organization formed to provide management and consulting services at cost to unrelated exempt organizations. This revenue ruling states: Providing managerial and consulting services on a regular basis for as fee is a trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501 (c)(3) of the Code.

Also in B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978) the court concluded that because its sole activity consisted of offering consulting services for a fee, set at or close to cost, to nonprofit, limited resource organizations, it did not qualify for exemption under section 501 (c)(3) of the Code.

TAXPAYER'S POSITION

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The organization believes that it is entitled to exemption under section 501(c)(3) because its primary purpose is to lead men and women to a life of Christian Fellowship and relationship with God. Its programs of caregiving through food programs, and aid to seniors, disabled and downtrodden in all aspects of their lives are section 501(c)(3) activities.

GOVERNMENT'S POSITION

Based on the facts of the examination, the organization does not qualify for exemption. It was formed May 15, 20XX as a profit corporation, and did not file conforming papers with the State to convert to a non-profit until February 3, 20XX. Any activity prior to May 15, 20XX would be an activity carried on by the TEAM's in their individual capacity. Activity carried in the corporation name from May 15, 20XX until February 3, 20XX would be that of the corporation and an appropriate return would be required.

ORG promotes a network marketing activity from a website that is more than insubstantial and directly confers a private benefit to its directors and at least one of its subordinate organizations. Although the purpose in operating the network marketing may arguably benefit the public in the education of water purification, the sale of these units by ORG or its directors clearly benefit the TEAM's private interest. See Rev. Rul. 69-545. As noted above, an organization that operates for the benefit of private interests, such as designated individuals, by definition does not operate exclusively for exempt purposes. This case is similar to Living Faith, in that network marketing is the means to generate revenues vs. operation of a restaurant and health food store. In the instant case ORG uses a website to advocate its network marketing as a means to secure financing for various exempt activities. However, the primary activity of ORG has never been to provide a Christian ministry to senior and disabled citizens. Since 20XX its main activity has been to solicit others to its networking marketing operations that directly benefit the founders of ORG, through networking marketing. ORG has only benefited indirectly from the activity by eventually getting whatever funds the Directors decide to leave in ORG.

During 20XX ORG listed \$ as being paid to help individuals in need, of that amount \$ appears to be paid directly or indirectly for the benefit of the TEAM's instead of for related parties.

CONCLUSION

Based on the foregoing reasons, the organization did not qualify for exemption under section 501(c)(3) during 20XX and does not qualify for exemption under section 501(c)(3) for 20XX. Its tax exempt status should be revoked.

Issue 2

LAW

IRC § 7805(b) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

Rev. Proc. 98-1, 1998-1 I.R.B. 7, 1998 WL 18164 provides that except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in

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the letter ruling provided that: (1) there has been no misstatement or omission of material facts; (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based; (3) there has been no change in the applicable law; (4) the letter ruling was originally issued for a proposed transaction; and (5) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment.

TAXPAYER'S POSITION

The organization claims that it meets the five criteria to obtain equitable relief under section 7805(b) on the basis that it operated under the good faith belief that it qualified as an educational and charitable organization under section 501(c)(3) of the Code.

GOVERNMENT'S POSITION

Section 7805(b) relief should not be granted in this case, since the organization, contrary to its position, does not meet the listed five criteria; the organization failed to conduct the tax-exempt activities that it reflected in its application for exemption. When the organization realized that it would not nor could not operate as authorized and changed its exempt purpose it did not notify the Service of this change as required by regulations. When it applied for group ruling it did not notify the Service that it was engaged in network marketing. It also did not mention that it was no longer a school as authorized in the original application. Accordingly, the failure to disclose the information is an omission of a material fact and the organization's tax-exempt status should be revoked retroactively.

CONCLUSION

Based on the foregoing, the organization is not entitled to section 7805(b) relief.