



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street
Dallas, TX 75242

501.03-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: August 16, 2012

Number: **201252020**
Release Date: 12/28/2012

LEGEND

ORG - Organization name
XX - Date Address - address

Person to Contact:
Badge Number:
Contact Telephone Number:
Contact Address:
Employer Identification Number:

ORG
ADDRESS

CERTIFIED MAIL

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 October 30, 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

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

You have failed to produce documents to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. Also, you have failed to keep adequate books and records as required by IRC section 6001 and the regulations there under. In our letters dated June 1, 20XX, June 29, 20XX, July 29, 20XX and December 13, 20XX, we requested information necessary to conduct an examination of your Form 990 for the year ended December 31, 2009. We have not received the requested information.

Section 1.6033-2(h)(2) of the Income Tax Regulations provides, in part, that every organization which is exempt from tax, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status. You have not provided the requested information.

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 the tax years thereafter in accordance with instructions of the return.

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 in one of these three courts must be filed before the 91st day after the date that 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 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 United States Tax Court at 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.

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 the Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

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 in the heading of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations:EO:7922
31 Hopkins Plaza, Room 1400
Baltimore, Maryland 21201

Department of the Treasury

Date: December 21, 2011

LEGEND

ORG – Organization name
XX – Date Address - address

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:
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 (ORG) EIN		Year/Period Ended DECEMBER 31, 20XX

LEGEND

ORG - Organization name EIN - EIN XX - date Address - address
City - city State - state Country - country DIR-1 - 1st DIR
CO-1 - 1st COMPANY TA-1, RA-2 & RA3 - 1st, 2nd & 3rd ra

ISSUES:

1. Whether ORG is entitled to continued recognition of exempt status in accordance with §501(c)(3) of the Internal Revenue Code (Code)?
2. Whether the private foundation status of ORG should be modified from that described in §509(a)(2) to a private foundation described in §509(a) of the Code?

FACTS:

On June 1, 20XX the Service attempted to notify ORG that an examination of its 20XX Form 990 was commencing. The examining agent called the indicated individual, DIR-1 (DIR-1) the indicated executive director, and left a message at the telephone number listed on the filed 20XX Form 990. There were no other officers, directors, or trustees indicated on the filed return. The examining agent then attempted to contact ORG via the telephone number listed on the organization's website and a telephone number obtained from ACCURINT. These telephone numbers were not in service. Directory assistance was contacted in an effort to ascertain an alternative contact telephone number for ORG and no telephone number was revealed.

An initial appointment letter dated June 1, 20XX was mailed to the address indicated on the filed Form 990 for 20XX which requested the taxpayer to confirm the appointment scheduled for June 27, 20XX. This letter was not returned to the Service and the taxpayer did not otherwise contact the Service.

On June 27, 20XX the examining agent contacted the lessee of the property owned by DIR-1, the address listed on the filed Form 990 for 20XX, RA-1 (RA-1). RA-1 advised the Service that she moved into the Address house in July 20XX. RA-1 further advised that she had never had face to face contact with DIR-1 as her lease was with CO-1 in City, State. RA-1 concluded by advising that any mail delivered to the house is sent to RA-2 (RA-2) at CO-1.

On June 28, 20XX the examining agent contacted RA-2 of CO-1 in City, State. RA-2 advised that she had never met face to face with DIR-1 and that all transactions were facilitated through an associate of DIR-1 by the name of RA-3. Contact information was provided to RA-2 to provide to RA-3.

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Name of Taxpayer ORG (ORG) EIN		Year/Period Ended DECEMBER 31, 20XX

On June 29, 20XX a second examination letter was certified mailed to a Address indicated on ACCURINT as an address for DIR-1. This certified letter was received back by the Service as undeliverable.

On July 29, 20XX a third examination letter was sent to the D.C. address of the organization as indicated on ORG's website. There was no response to this letter and the letter was not returned to the Service.

On August 22, 20XX an email was received from DIR-1, presumably as a result from the contact information provided to RA-2. "My name is DIR-1, Executive Director of the ORG (ORG). I understand that you are trying to reach me. This is my email. Hope to hear from you soon. Best regards, DIR-1".

On August 31, 20XX the examining agent responded to the email received from DIR-1, "Good morning DIR-1, I require a telephone number in order to speak with you concerning a tax exempt organization. I have sent an examination letter for that organization which has been ignored. A responsible officer from ORG must contact me in order to commence with this examination. Thank you for making contact with me, my telephone number is #."

On September 2, 20XX DIR-1 responded, "Thank you for your message. We would appreciate some information regarding the proposed examination of ORG. In a previous email, you referred to a letter that you sent regarding the proposed examination. We never received that letter and could not have ignored it as your email suggested. We would appreciate it if you would forward that letter to this email so we would know how best to assist you to carry out the examination. Be rest assured of our fullest cooperation in this matter. Hope to hear from you soon. Sincerely, DIR-1". That same day the examining agent replied to DIR-1's email "I am attaching the appointment letter as you requested. Yet again, I require the name, telephone number, and address of a responsible US officer, director, or trustee in order to commence with this examination."

The examining agent again forwarded his September 2, 20XX response to DIR-1 on September 7, 20XX.

On September 8, 20XX the examining agent again forwarded the September 2, 20XX response and added "DIR-1, Yet again, I require the name, telephone number, and address of a responsible US officer, director, or trustee in order to commence with this examination. Where is the office location for the organization in DC? The address indicated on your website does not appear to be correct."

On September 9, 20XX the examining agent again forwarded the September 2, 20XX response and added "DIR-1 I have not received a response from you?"

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On September 10, 20XX DIR-1 responded "As I indicated in my previous email, I am currently in Country. I am the responsible officer for the organization in the US. Since I reviewed your email, I have initiated efforts to travel to the US so that I can be available for the examination. May I ask for a little time to enable me undertake that trip. Thank you for your understanding. Best regards, DIR-1".

On September 12, 20XX the examining agent responded to DIR-1, "I understand, however, while you are making your plans you may respond to the following:

- (1) What is the official U.S. Address for the organization?
- (2) Identify all officers, directors, trustees, and key employees of the organization?
- (3) Provide the home address and telephone number for the individuals identified in item (3) above?
- (4) Identify the individual(s) who maintained the books and records for 20XX?
- (5) Identify the individual(s) who have the 20XX books and records in their possession?
- (6) Identify the present physical location of the books and records for the organization?
- (7) Are you a U.S. citizen?
- (8) If you are not a U.S. citizen, what is your U.S. tax status?

Thank you for your response DIR-1 and your prompt attention to this matter."

This email was again forwarded to DIR-1 on September 21st and 28th, 20XX.

On September 29, 20XX DIR-1 responded "I have been traveling and just returned to station. I will provide the requested information by tomorrow. Thank you. DIR-1."

No further communications have been received from DIR-1 or ORG and no books or records have been provided in connection herewith.

LAW:

An organization will not be classified as a private foundation under §509(a) of the Code if it is an organization described in §170(b)(1)(A)(vi) or §509(a)(2).

Section §501(c)(3) of the Code provides for exemption of organizations organized and operated exclusively for charitable purposes, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

An organization is described in §509(a)(2) of the Code which:

- (A) normally receives more than one-third of its support in each taxable year from any combination of:

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- (i) gifts, grants, contributions, or membership fees, and
- (ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business.

Section §6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records, render such statements, make such returns, and comply with such rules and regulation as the Secretary of the Treasury or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Section §6033(a)(1) of the Code provides, except as provided in §6033(a)(2), every organization exempt from tax under §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.

Treas. Reg. §1.501(c)(3)-1(a)(1) describes the organizational and operational tests of §501(c)(3) and stipulates that to be an organization described in §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.

Treas. Reg. §1.509(a)-3T(c)(1) of the temporary regulations provides that support tests set forth in §509(a)(2) are to be computed on the basis of the nature of the organization's normal sources of support. An organization will be considered as normally receiving one third of its support from any combination of gifts, contributions, membership fees, and gross receipts from permitted sources and not more than one third of its support from items described in §509(a)(2)(B) for its current taxable year and the taxable year immediately succeeding its current year, if, for the current taxable year and the four taxable years immediately preceding the current taxable year, the aggregate amount of the support received during the applicable period from gifts, contributions, membership fees, and gross receipts from permitted sources is more than one-third, and the aggregate amount of the support received from items described in §509(a)(2)(B) is not more than one-third of the total support of the organization for such five year period.

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Treas. Reg. §1.6001-1(a) in conjunction with Treas. Reg. §1.6001-1(c) provides that every organization exempt from tax under §501(a) of the Code and subject to the tax imposed by §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 §6033.

Treas. Reg. §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.

Treas. Reg. §1.6033-2(i)(1) states that an organization which is exempt from taxation under section 501(a) and is not required to file annually an information return required by this section shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created.

Treas. Reg. §1.6033-2(i)(2) provides that every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and §6033 of the Code. Failure to comply with this request for information could result in the loss of tax exempt status.

Tax exemption is a privilege, a matter of grace rather than right and taxpayers have the burden of establishing entitlement thereto. Christian Echoes National Ministry, Inc. v. United States of America, 470 F.2d 849.

Revenue Ruling 59-95, 1959-1 CB 627, states that an organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year. However, its records were so incomplete that it was unable to furnish such statements. Section 6033 of the Code of 1954 provides that every organization, except as provided therein, exempt from taxation under §501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and shall keep such records, render under 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. The failure or inability to file the required information return or otherwise to comply with the provision of §6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an

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organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

DISCUSSION:

The Service has attempted to commence its examination of ORG since June 1, 20XX. ORG does not maintain a U.S. physical location and its sole officer resides outside of the U.S. While its sole officer, DIR-1, has represented his intent to cooperate in this examination he has not produced any books and records and has not communicated with the Service since September 29, 20XX.

Tax exemption is a privilege, a matter of grace rather than right and taxpayers have the burden of establishing entitlement thereto. See §§6001 and 6033 of the Code and Christian Echoes National Ministry, Inc. v. United States of America.

As ORG has not met its burden in establishing its entitlement to continued recognition of tax exempt status in accordance with §501(c)(3), such exemption is properly revoked effective January 1, 20XX.

ORG maintains a similar burden in establishing its entitlement to a foundation status as a public charity described in §509(a)(2).

Foundation status is computed based upon a five year moving computation. If public charity status is achieved computationally for a specific five year period then such entitlement to public charity status extends to the current fifth year and the succeeding year. See Treas. Reg. §1.509(a)-3T(c)(1). Therefore, in order for ORG to preserve its entitlement to public charity status it must establish that it was publicly supported for the five year period ending with the 20XX year which would encompass the subsequent year of 20XX which is the year under examination by the Service.

As ORG has not produced books and records to establish its entitlement to continued recognition of public charity status for the five year period ending in 20XX it is classified as a private foundation described in §509(a) as of January 1, 20XX.

TAXPAYER POSITION:

As ORG has not cooperated in the conduct of this examination by providing any books and records, its position regarding the issues of revocation of its tax exempt status and modification of its foundation status to that of a private foundation are unknown.

CONCLUSION:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG (ORG) EIN		Year/Period Ended DECEMBER 31, 20XX

1. The tax exempt status of ORG is revoked effective January 1, 20XX as it failed to establish its entitlement to continued recognition of exempt status in accordance with §501(c)(3) of the Code

2. The private foundation status of ORG is modified to that of a private foundation described in §509(a) effective January 1, 20XX as it failed to establish its entitlement to continued recognition of public charity status described in §509(a)(2).