



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

TE/GE EO EXAMINATIONS
1100 COMMERCE ST. MAIL STOP 4920 DAL
DALLAS, TEXAS 75242

501.03-00

Date: 2/14/2013

Release Number: **201322042**

Release Date: 5/31/2013

LEGEND

ORG – Organization name

XX – Date Address - address

ORG

ADDRESS

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Contact Numbers:

(Phone)

(Fax)

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 September 8, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective June 29, 20XX.

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

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.

Contributions to your organization are no longer deductible.

You are required to file income tax returns on Form 1120. If you have not already filed these returns and the examiner has not provided you instructions for converting your previously filed Forms 990-N (electronic postcard) to Forms 1120, you should file these income tax returns with the appropriate Service Center for the tax years ending December 31, 20XX and for all tax years thereafter in accordance with the instructions of the return.

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 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 yours,

Nanette M. Downing
Director, EO Examinations

Enclosures:

Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*
Form 6018, *Consent to Proposed Action - Section 7428*
Return envelope



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
2525 Capitol Street #217
Fresno, CA 93721-2227

ORG
ADDRESS

Date:
July 5, 2012
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Manager's name / ID number:

Manager's contact number:

Response due date:

Certified Mail - Return Receipt Requested

Dear _____ :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

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:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer: ORG		Year/Period Ended: 20XX12 & 20XX12

LEGEND

ORG - Organization name XX - Date Country - country President -
 president Secretary - secretary Treasurer - treasurer Secretary-1 -
 1st Secretary Treasurer-1 - 1st Treasurer

Issues

Issue 1 – Does ORG continue to qualify for exemption under Internal Revenue Code section 501(c)(3)?

Issue 2 – Is retroactive revocation of ORG warranted under Code section 7805(b)(3)?

Facts

ORG (EO) was founded as an association by PRESIDENT and TREASURER on June 29, 20XX. Article I of the Articles of Association show the organization's name as ORG. Article II states in part:

Said organization is exclusively for charitable, religious, educational, and/or scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organization under section 501(c)(3) of any future federal tax code.

The EO submitted Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, to the Internal Revenue Service (IRS) on April 29, 20XX. Form 1023 listed PRESIDENT as President, Secretary as Secretary, and TREASURER as Treasurer.

Form 1023 provided a narrative description of the EO's activities and stated:

The organization is involved in training people for working in the community as volunteers.

People will be trained in the care and education of children on a full-time basis.

The major project is scheduled to begin operations in early 20XX. The project is currently housed in a private home and will be overseen by the Executive Director and the Board of Directors.

During the application process the IRS requested detailed information about the EO's intended operations in a letter dated June 3, 20XX and asked the EO where the activities

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were to be conducted. In its response dated July 20, 20XX the EO makes no mention that it plans to conduct any of its activities outside of the United States.

The IRS issued a Determination Letter dated September 8, 20XX. The Determination Letter recognized the EO as an organization exempt from Federal income tax under Internal Revenue Code (Code) section 501(c)(3). The Determination Letter also recognized the EO as a public charity as described in Code section 170(b)(1)(A)(vi).

During the interview portion of the examination PRESIDENT (President) stated that the EO's primary exempt purpose is to train volunteers in Country to teach them how to help orphans. The EO accomplishes its goal by sending the President to visit different countries. The President said she has visited Country, Country, Country, Country, Country, Country, Country, Country, Country, Country, Country, and Country to feed orphans since 20XX. The President could not provide any details of the training provided to volunteers. The examination revealed that the EO did not incur any type of training expenses and training material does not exist.

The President stated that the major project that was scheduled to begin in early 20XX referred to the EO's inception and start up operations.

The President did not know why there was not mention on Form 1023 or subsequent correspondence of the EO's intention to carry on activities outside of the United States. The examination revealed the President signed Form 1023 and the letter dated July 20, 20XX. The examination also revealed that the EO carries on all its activities outside of the United States.

The EO is operated from the President's residence and an office in Country Country. The EO's Board of Directors is comprised of two other individuals; Secretary-1 is the Secretary, and Treasurer-1 is the Treasurer. Secretary-1 and Treasurer-1 reside in Country. The office in Country is rented year round and according to the President is used by the Secretary and Treasurer to carry out EO business, but the President could not provide support to show what business that was. The President stated that she travels to Country at least twice a year and stays for two or three months at a time.

In 20XX the President made two trips, one to Country and the other to Country, to provide assistance to orphans. The President visited Country from June 22nd to August 2nd. She met the Secretary and the Treasurer and together provided the assistance to orphans. The President stated that because the Secretary and the Treasurer live in Country, they know first hand where the orphans congregate. The three traveled to a shelter, the shelter does not have a name, located next to a market called . The orphans congregate at the rear of the market because the market throws out spoiled

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food in a dumpster. The orphans scavenge for food in the dumpster and on that particular day about 100 orphans loitered the immediate area. The three officers spoke to the children, some adults, and determined that the children needed food. The President took a taxi from the market to a nearby warehouse to purchase food to feed 100 orphans. She purchased chicken, rice, bread, cream corn, and water and returned to the shelter. At the shelter the officers cut the chicken and provide each child a piece of chicken to cook. The children used a discarded grill to cook the food themselves. Once all the children were fed the officers left the site. The total cost for this type of event to feed 100 children, is approximately \$ to \$. The President said that they provided approximately 35 similar meals during her visit.

The President visited Country from June 2nd to June 9th. The President said she saw something on television about an earthquake or a severe storm that struck Country and decided to provide assistance to the affected children. The President's coworker provided contact information for a person who lived in Country. The President contacted President, the President did not recall President's the last name, and began to discuss the needs of children impacted by the earthquake or the storm. The President flew to Country, met President, and began to visit the areas affected by the earthquake or storm to determine what assistance to provide to the children. The President purchased books, crayons, pencils, and soccer balls for the children. She said she spent approximately \$ to \$ on the donated items. President was not connected to a relief organization but operated a day care center. During the President's visit her lodging and meals were paid by the EO.

The EO does not work in conjunction with any other organization to provide the assistance to the orphans. The President said the trips in 20XX are indicative of all the trips she has taken. The President was asked to provide support to demonstrate that the trips served a bona fide charitable purpose and were not a personal vacation but she was unable.

The books and records show that the President is the EO's only donor. The President stated that other individuals have offered donations but she was unsure if accepting the donations would be problematic to the EO and declined the offers.

The books and records show that the President is the only person making deposits, writing, and signing checks. The books and records show numerous purchases that appear to be of a personal nature. The President provided verbal explanation for the purchases, but was unable to provide support to substantiate the charitable purpose of the expenses.

Law:

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Code section 501(c)(3) 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.

Code section 509(a) defines a private foundation as a domestic or foreign organization described in Code section 501(c)(3) other than an organization described in Code section 170(b)(1)(A)(vi), other than in clauses (vii) and (viii).

Code section 7805(b)(3) state in part that that any regulation may take effect or apply retroactively to prevent abuse.

Treasury Regulations (Regulations) section 1.501(c)(3)-1(a)(1) provides that in order to be exempt as an organization described in Code section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Regulations section 1.501(c)(3)-1(c)(1) 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.

Regulations section 1.501(c)(3)-1(d)(ii) 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.

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides that an organization must establish that it serves a public rather than a private interest and 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.

Rev. Proc. 98-1, 1998-1 I.R.B. 7 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 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

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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

After being informed of the operational requirements of an organization exempt under Code section 501(c)(3) and the public support requirements of a public charity the President agreed to the proposed retroactive revocation.

Government's Position Conclusion

Issue 1 – The EO's tax exempt status should be revoked because the EO did not demonstrate that it is operated for an exempt purpose. The EO did not demonstrate that it is carrying on the activities it proposed on Form 1023 and the EO was unable to demonstrate that its current activities are charitable. The EO was unable to demonstrate that the purchases furthered an exempt purpose and without corroborating support the purchases must be considered to have served a personal benefit and constitute private inurement to the President.

Issue 2 – The EO is not entitled to Code section 7805(b) relief because it did not provide accurate description of its intended activities or method of operation. The retroactive revocation is warranted because the EO never carried out its stated proposed activities.

The EO did not disclose the fact that it intended to operate outside of the United States nor the actual method of operation. Operating outside of the United States is not necessarily an issue, but if the IRS was advised of foreign operations it may have triggered a solicitation of operational details to ensure oversight. If the EO provided an accurate description of how it actually intended to operate tax exempt recognition would have been denied.