



**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

1100 Commerce Street

Dallas, TX 75242

501.03-00

**TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION**

Date: March 5, 2013

Release Number: 201327013

Release Date: 7/5/2013

**LEGEND**

ORG - Organization name

XX - Date Address - address

Taxpayer identification Number:

Person to Contact:

Employee Identification Number:

Contact Numbers:

Telephone:

Fax

ORG  
ADDRESS

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code ("Code"). Our favorable determination letter to you dated December 20XX, 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):

As a result of our examination of your activities and financial records for the year ending December 31, 20XX we found that your organization has been inactive during 20XX and for several prior years. We found you conducted no operations or financial activities. As such, you fail to meet the operational requirements for continued exemption under 501(c)(3).

We hereby revoke your organization's exemption from Federal income tax under section 501(c)(3) of the internal Revenue Code effective January 1, 20XX. Contributions to your organization are no longer deductible under IRC §170.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax years ending after 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 under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

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:

We will notify the appropriate state officials of this action, as required by Code section 6104(c). You should contact your state officials if you have any questions about how this final determination may affect your state responsibilities and requirements.

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**

**Department of the Treasury**  
TE/GE – EO Examinations  
1100 Commerce Street, MS4900-DAL  
Dallas, TX 75242

Date: March 4, 2010

Taxpayer Identification Number:  
Form:  
Tax Year(s) Ended:  
Person to Contact/ID Number:  
Contact Numbers:  
Telephone:  
Fax:

ORG  
ADDRESS

**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 6018

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>	Schedule number or exhibit  990
Name of taxpayer  ORG	Tax Identification number  EIN	Year/period ended  December 31, 20XX

**LEGEND**

ORG - Organization name      EIN - ein      Date - XX      Program = program      State - state  
 President - president      Vice President - vice president      Secretary - secretary  
 CO-1, CO-2 & Co-3 - 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> COMPANIES

**ISSUE(S)**

Whether ORG qualifies for exemption under Section 501(c)(3) of the Internal Revenue Code.

**FACTS**

When the organization applied for 501(c)(3) status, it was formed for the purpose of providing a community based day care center, and the Program was created to help seniors, handicap and low-income families perform work related to energy conservation in their homes. The organization received the advance ruling letter dated December 21, 20XX stating that the Service has determined the organization, CO-1 (now known as ORG), as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is further classified as a public charity under section 509(a)(2). Because the organization failed to respond to and/or submit Form 8734, Support Schedule for the Advance Ruling Period, the Service classified the organization as a private non-operating foundation with a Form 990-PF filing requirement.

The organization, ORG, has filed Forms 990-EZ for 20XX and 20XX with all zeroes and has filed Form 990-N for 20XX. No return has been filed for 20XX. ORG filed their Forms 990-EZ indicating the organization is a public charity under Internal Revenue Code sections 509(a)(1) and 170(b)(1)(A)(vi), but completed the Schedule A with all zeroes.

On August 24, 20XX, the Internal Revenue Agent sent Letter 3934 and an Information Document Request (IDR) requesting a copy of the organization's original tax exemption ruling letter and any subsequent correspondence received from the Internal Revenue Service relating to their filing requirements.

On September 09, 20XX, President, President, responded to the IDR but failed to submit a copy of their original tax exemption ruling letter or any subsequent correspondence from the IRS. The agent contacted President on September 16, 20XX to request a copy of the organization's final determination letter. President stated he had a copy of the letter, but must have forgotten to include it and had recently moved, but would send a copy once he located it. The agent allowed the taxpayer ten business days to provide a copy of the letter.

On October 14, 20XX, there was no response from the taxpayer. On October 26, 20XX, after several unsuccessful attempts were made to contact President, the agent sent out a letter with a second IDR requesting a copy of the organization's final determination letter and/or completion of Form 8734, Support Schedule for Advance Ruling Period and Form 990, Schedule A, Public Charity Status and Public Support with response due on November 17, 20XX.

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On November 17, 20XX, there was no response from the taxpayer regarding the second IDR issued. The agent attempted to contact the taxpayer but only reached the organization's voice mail. On November 28, 20XX, Secretary, Secretary, left the agent a voice mail message after office hours, and on November 29, 20XX, Secretary called back during regular office hours. Secretary requested additional time to discuss the issues with his partner and how they want to proceed.

On December 28, 20XX, the agent contacted Secretary again regarding the status of the second IDR and/or what the organization had decided to do regarding the private foundation status versus the public charity status. According to Secretary, the organization is now a drug and alcohol program that has partnered with CO-2 (a 501(c)(3) organization). Secretary indicated ORG & CO-2 are one and the same and all finances are run through CO-2 for both organizations. There is no public funding/grants received for ORG The clients are on welfare and are paying their own rent. Secretary further indicated the support for ORG comes from the clients (volunteers) of ORG Secretary also indicated that these "volunteers" work on projects for CO-3, the volunteers are paid a stipend, and the profits go towards the expenses of ORG CO-3 is an organization considered to be a non-profit organization per the State of State, but has "failed to establish" at the federal level. Secretary also stated there are no books and records kept for the organizations, ORG and CO-3. If the construction company, CO-3, makes a profit, the profit goes to pay the expenses of ORG Secretary indicated he would contact his attorney and have the attorney complete the Forms 8734 and 990, Schedule A.

On February 28, 20XX, the agent contacted Secretary to setup a conference call for March 8, 20XX with Group Manager, Group Manager and the agent. The agent had received no response from the organization since December 28, 20XX. The agent attempted to reach Secretary prior to the conference call to confirm he would be available, but only reached his voice mail. The agent left a voice mail. The agent made a second attempt to reach Secretary, but was advised by person answering telephone that he was not available and did not know when Secretary could be expected. The agent made a third attempt to contact Secretary at the time of the scheduled conference, but only reached voice mail.

On April 4, 20XX, the agent sent out certified letters to the home addresses of the 20XX President, President, Vice-President, Vice President and Secretary, Secretary. Letters sent to President and Secretary were unclaimed and returned to sender on 5/2/20XX and 4/26/20XX respectively. Return receipt card was received and signed by Vice President; no date of signature was indicated.

On May 11, 20XX, the agent resent the letters via UPS Next Day Air with a response date of 5/25/XX. Secretary called on May 16, 20XX and stated that he did not understand how to respond since the organization has not had any activities/revenue to this point but was now working with a youth coalition and wanted to keep their exempt status. The agent advised

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Secretary that because the organization does not have any revenue for their exempt activities, the organization is not operating as an exempt organization and the Service is considering revocation. Secretary stated he would be taking the letter and IDR to the corporate attorney and to the Board of Directors for their decision on whether to dissolve or not.

On May 31, 20XX, the agent contacted Secretary and advised that since the organization has no activities, the Service may need to revoke unless they start cooperating. Secretary advised that he was "washing his hands of it" (meaning the organization) and to proceed however the agent was being advised regarding revocation. Secretary requested the Service send his organization a letter with our decision.

### LAW

Internal Revenue Code (IRC) section 501(c)(3) are corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propagand, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Federal Tax Regulations states that Internal Revenue Section 501(c)(3) requires an organization to be both "organized" and "operated" exclusively for one or more Internal Revenue Code Section 501(c)(3) purposes. If the organization fails either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(iv) of the Federal Tax Regulations states 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 organizations actual operations. Likewise, an organization whose activities are not within the statute will not qualify for exemption by virtue of a well-written charter.

Section 1.501(c)(3)-1(b)(4) of the Federal Tax Regulations states that an organization is not organized exclusively for one or more purposes unless its assets are dedicated to an exempt purpose(s). An organization's assets will be considered dedicated to an exempt purpose, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes.

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Section 1.501(c)(3)-1(c)(1) of the Federal Tax Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in Internal Revenue Code Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Federal Tax Regulations provides in part that an organization must be engaged in "public" activities. To satisfy the "operational test," the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of Internal Revenue Code Section 501(c)(3) and the applicable regulations.

Section 1.6001-1(a) in conjunction with Section 1.6001-1(c) of the Federal Tax Regulations provides that every organization exempt from tax under Internal Revenue Code Section 509(a)(1) and subject to the tax imposed by Internal Revenue Code 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 books and records as are required to substantiate the information required by Internal Revenue Code Section 6033.

Section 1.6001-1(e) of the Federal Tax Regulations 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.

Section 1.6033-1(h)(2) of the Federal Tax Regulations 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 Internal Revenue Code Section 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an organization 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 the organization was unable to furnish such statements. Internal Revenue Code § 6033 provides that every organization, except as provided therein, exempt from taxation under section 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. *Held*, failure or inability to file the required information return or otherwise comply with the provision of section 6033 of the Code and the regulations

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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 continuation of an exempt status.

### **GOVERNMENTS POSITION**

Generally, organizations exempt under Internal Revenue Code Section 501(c)(3) engage in activities that directly further the charitable or other purposes mentioned in that subparagraph. These activities must be identifiable, evident and justifiable on their information return (e.g. Form 990) to satisfy the operational test. In addition to these activities being identifiable, they must be supported with administrative and accounting records. Their revenue and expenses measure public activities for an organization under Internal Revenue Code Section 501(c)(3).

In accordance with the above cited revenue ruling, provisions of the Internal Revenue Code and Treasury Regulations under Sections 501(c)(3), 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.

As reflected in the conversations, filed returns and returns not filed, ORG has not and is not conducting the activities for which it was organized. The result of this is the organization's failure to pass the operational test. Therefore, ORG does not meet the requirements of Internal Revenue Code Section 501(c)(3).

### **ORGANIZATIONS POSITION**

On May 31, 20XX Secretary, Secretary of the organization, advised that he was "washing his hands of it" and recommended the Government to proceed to however it is being advised. Secretary requested that the Internal Revenue Service send his organization a letter with its decision.

### **CONCLUSION**

The organization, ORG, has not provided any information on its activities to show that they are performing exempt activities.

It is the Internal Revenue Service's position that the organization failed to meet the requirements under Internal Revenue Code and Treasury Regulations Sections 501(c)(3), 6001 and 6033 to be recognized as exempt from Federal income tax under Internal Revenue Code Section

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501(c)(3). Accordingly, the organization's exempt status is revoked effective January 1, 20XX.

Form 1120 returns should be filed for the tax periods ending after December 31, 20XX.