



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street
Dallas, TX 75242

501-03.00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: May 8, 2013

Release Number: 201333015

Release Date: 8/16/2013

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 notice of adverse determination that your exempt status under section 501(c) (3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective January 1, 20XX for the following reason(s):

You are not operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3). You are not and have not engaged primarily in activities which accomplish one or more exempt purposes. You are not a charitable organization within the meaning of Treasury Regulation 1.501(c)(3)-1(d); rather, your activities further a substantial nonexempt commercial purpose and serve private rather than public interests.

Because you did not protest the proposed modification of your non-private foundation status and have indicated your agreement by signing the Form 6018-A on February 21, 20XX, it is further determined that you have not exhausted your available remedies for purposes of declaratory judgment under section 7428 of the Code.

Contributions to your organization are no longer deductible.

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.

It is further determined that your failure to file a written appeal constitutes a failure to exhaust your available administrative remedies. However, 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 Claims Court, or the district court of the United States for the District of Columbia before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment.

To secure a petition form, write to the following address: United States Tax Court, 400 Second Street, NW, Washington, DC 20217.

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. 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 the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

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 above.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
7850 South West 6th Court
Mail Stop 7954
Plantation, FL 33324

Department of the Treasury

ORG
ADDRESS

Date: February 19, 2013
Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
 Telephone:
 Fax:
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:

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 EIN: EIN		Year/Period Starting January 1, 20XX

LEGEND

ORG - Organization name EIN - ein XX - Date State - state President
- president Secretary - secretary

ISSUE

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

FACTS

1) ORG was recognized as a tax exempt organization under 501(c)(3) of the Internal Revenue Code in March 20XX. ORG has failed to produce books and records for the tax period ending December 31, 20XX, in respond to the Internal Revenue Service correspondence requesting the exempt organization's books and records (See Exhibit A). The ORG responded to the request with a letter dated December 14, 20XX (See Exhibit B) that states: "First after my incarcerated status I no longer have access to those documentations either my wife as well, All She doing if she has too spend some money to keep the organization live until I come out. So, I am sure that all those documentation that you inquired will be impossible to provide as a prisoner." At the end of the letter it specifically makes reference to the different sections of the correspondence the Internal Revenue Service sent requesting documents that stated: "A (1-6) Impossible to provide, B (1-3) Impossible to provide, C (1-11) Impossible to provide."

2) ORG is not conducting required exempt activities as described in 501(c)(3) of the Internal Revenue Code. ORG filed reinstatement documents with State Department of State, Division of Corporations on January 5, 20XX, and is currently active with the state. These documents only list two officers / directors: President as President and Director and Secretary as Secretary. Correspondence form ORG, President (See Exhibit B) states: " The reason you must still keep the organization because when I get out this will be my primary business to give to the world. The corporation it's renewed because we don't want to loose the name and keep the license active. As far as donation activities we are not doing that right now". President pleaded guilty to one count of conspiracy to commit mail and wire fraud on July 22, 20XX and was sentenced 108 month or 9 years in Federal prison followed by three years of supervised release. President will not get out of Federal prison until sometime in 20XX and he has put the organization activities on hold until he is released.

LAW

Internal Revenue Code Section 501(c)(3) exempts from Federal income tax "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 (but only if all or part of its activities involve the provision of athletic facilities or equipment), 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

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of which is carrying on propaganda, 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 distribution of statements), and political campaign on behalf of (or in opposition to) any candidate for public office.”

Internal Revenue Code (IRC) section 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

IRC section 6033(a)(1) provides, except as provided in *IRC section 6033(a)(2)*, every organization exempt from tax under *section 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. section 1.6001-1(a) in conjunction with *Treas. Reg. section 1.6001-1(c)* provides that every organization exempt from tax under *IRC section 501(a)* and subject to the tax imposed by *IRC 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 such books and records as are required to substantiate the information required by *IRC section 6033*.

Treas. Reg. section 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. section 1.6033-1(h)(2) 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 *IRC section 6033*.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of *IRC section 6033* and the regulations 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 the continuation of exempt status.

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In accordance with the above cited provisions of the Code and regulations under *IRC section 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.

Federal Regulations Section 1.501(c)(3)-1(c)(1) states, "Primary Activities. 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 of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities as not in furtherance of an exempt purpose."

Federal Regulations section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. The words 'private shareholders or individual' refer to persons having a personal and private interest in the activities of the organization. The term "private shareholder or individual' is defined in regulation section 1.501(a)-1(c).

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides 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, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

TAXPAYER'S POSITION

The organization has not responded to preliminary letters or requests for returns.

GOVERNMENT'S POSITION

Based on the above cited law, it is the government's position that the ORG has failed to meet its reporting and operational requirement of an Internal Revenue Code, Section 501(c)(3) tax exempt organization. As such, the tax exempt status of the same should be withdrawn.

CONCLUSION

It is the IRS's position that the ORG failed to meet the reporting requirements under IRC §§ 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3). It is also the IRS's position that the organization filed the operational test under Federal Regulation Section 1.501(c)(3)-1 for

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lack of exempt activities, accordingly, the organization's exempt status is revoked effective January 1, 20XX.