

Internal Revenue Service
Appeals Office
1000 Liberty Avenue
Room 816
Pittsburgh, PA 15222

Release Number: **201341037**
Release Date: 10/11/2013
Date:

JUL 16 2013

Department of the Treasury

Taxpayer Identification Number:

Person to Contact:
****, ID # ****
Tel: ****
Fax: ****

Tax Periods Ended:
December 31, 20XX
December 31, 20XX
December 31, 20XX

UIL: 0501.03-30

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"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, 20XX.

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

Section 1.501(c)(3)-1(a)(1) of the Federal Tax Regulations provides that, in order to be exempt as an organization described in IRC 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. You have failed to demonstrate that you are operated exclusively for tax-exempt purposes described in Section 501(c)(3) of the Code. Since at least **** you have conducted no programs or activities furthering tax-exempt purposes and instead, since that date, all your efforts have been directed towards seeking to monetize a fictitious non-cash asset. As such, you are not an organization described in Section 501(c)(3) and the favorable determination letter issued to you on **** regarding your exempt status is hereby revoked.

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

You are required to file Federal income tax returns on Forms **** 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 matters 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,

/s/
Acting Appeals Team Manager

Enclosure: Publication 892

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
985 Michigan Ave., 10th Fl.
Detroit, MI 48226
ATTN: A. Standen, EO: 7934

Department of the Treasury

Date: April 17, 2012

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 propose to revoke our recognition of your exempt status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). We enclose our report of examination explaining why we are proposing this action.

If you accept our proposal, please sign and return the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, unless you have already provided us a signed Form 6018. We will issue a final revocation letter determining you are not an organization described in section 501(c)(3). After the issuance of the final revocation letter we will publish an announcement that you have been deleted from the cumulative list of organizations contributions to which are deductible under section 170 of the Code. If you do not respond to this proposal, we will similarly issue a final revocation letter. Failing to respond to this proposal may adversely impact your legal standing to seek a declaratory judgment because you may be deemed to have failed to exhaust administrative remedies.

If you do not agree with our proposed revocation and wish to file a protest with the Appeals Office of the Internal Revenue Service, you must submit to us a written request within 30 days from the date of this letter. For your protest to be valid it needs to contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. The enclosed Publication 3498 and Publication 892 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. Please note that Fast Track Mediation Services referred to in Publication 3498, generally do not apply after issuance of this letter.

For the specific information needed for a valid protest, please refer to page 6 of the enclosed Publication 3498, *The Examination Process*, and page 2 of the enclosed Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

If you do submit a valid protest, then 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.

You may also request that we refer this matter for Technical Advice as explained in Publication 892 and an annual revenue procedure. 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 EO Rulings and Agreements function, then no further administrative appeal will be available to you within the IRS on the matter.

If you receive a final revocation letter, you will be required to file Federal income tax returns for the tax period(s) shown above as well as for subsequent tax years.

We will notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code. Currently, only certain states are eligible to receive notification of proposed revocation actions. You can call the person at the heading of this letter to find out if your State is eligible to receive a notice of revocation of your tax-exempt status.

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:
Form 6018
Publication 3498
Publication 892
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 December 31, 20XX December 31, 20XX December 31, 20XX

LEGEND

ORG - Organization name XX - Date State - state RA-1 - 1st RA

Issue:

Does ORG ("ORG") continue to qualify for exemption under Internal Revenue Code ("IRC") Section 501(c)(3)?

Facts:

ORG was incorporated in the State of State on May 22, 19XX and was organized to "serve the community and develop a school and foster home."

The Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, dated June 21, 19XX, stated that ORG would operate a 24-hour residential facility for disabled adults.

On October 12, 19XX, ORG was granted exemption under IRC Section 501(c)(3) as a public charity. Then, on May 7, 20XX, ORG was reclassified as a private non-operating foundation ("PF") due to the fact that it received no public support during its first 5 tax years.

ORG's annual information return (Form 990) for year ended December 31, 20XX reported a \$ contribution. No expenses or balance sheet items were reported on this return.

On the information returns of all subsequent years (from year ended December 31, 20XX through December 31, 20XX), ORG reported no income or expenses. On each of these returns, the only item reported was the \$ asset that was donated to ORG in 20XX.

In response to Information Document Request ("IDR") #2 dated November 2, 20XX, ORG stated, "the \$ noncash asset consists of US tax credits accumulated in the development of medical and clinical equipment between 19XX and 20XX."

The noncash asset (tax credits) was donated to ORG by RA-1. During the course of the examination, the agent learned that, on December 22, 20XX, a Permanent Injunction was filed by the United States Department of Justice against RA-1, and anyone in active concert or participation with him, for promoting and selling these tax credits. In the Complaint for Permanent Injunction filed on June 29, 20XX, The Department of Justice determined that the tax credits claimed to be owned by RA-1 had never existed and couldn't be transferred even if they did exist.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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In response to IDR #4 dated November 2, 20XX, ORG stated "the ORG organization is not currently active in terms of directly managing projects or providing grants to other tax-exempt organization (sic). ORG has an established ramp up project list when funds are available from leveraging the noncash asset. ORG has been working since 20XX to obtain credit lines to generate profits to fund the organizations (sic) charitable missions."

Applicable Law:

IRC Section 501(c)(3) provides tax exemption for corporations and foundations that are operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in IRC Section 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.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) 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 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 is not in furtherance of an exempt purpose.

Treasury Regulation Section 1.501(c)(3)-1(c)(2) states 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 or private shareholders or individuals.

Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more of the purposes specified in IRC Section 501(c)(3) 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 designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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Private Letter Ruling 20XX21022¹: This ruling describes an organization that was granted exemption as a public charity and reclassified as a private foundation for lack of public support during the advance ruling period. The IRS revoked the exemption of the entity for failure to meet the operational test due to its lack of activities.

Taxpayer's Position:

In a letter dated May 14, 20XX, ORG stated that it continues to qualify for exemption under IRC Section 501(c)(3).

ORG made the following statements in the letter:

ORG maintains that the IRC allows an exempt organization to be meeting the requirements of the code if it is engaged in charitable activities or "financial activities" needed to create corpus funds for the organization to fund the charitable activities. ORG has been and continues to this day to be involved in getting the noncash asset converted to cash in order to fund ORG projects and provide funds to other exempt organizations.

ORG has been pursuing aggressively to get the tax credits monetized through selling the tax credits or using the tax credits as collateral to fund a line of credit (LOC). Until the (sic) tax credits have no fair market value. ORG currently has seven (7) prospective funding entities in final due diligence to purchase the tax credits and two (2) parties to fund a line of credit. ORG estimates it will take another 45 to 60 days to complete the transaction.

Until the tax credits are converted to cash and to set up an investment corpus, no projects can be funded and ORG will not report any expenses on ORG annual 990-PF filings.

The IRS audited the tax credits while they were being earned, when donated to ORG and all subsequent audits (20XX, 20XX, 20XX, 20XX, 20XX and 20XX). The IRS didn't challenge ORG's exempt status in any prior IRS audits.

Government's Position:

ORG's protest letter provided no new or additional information to cause the Government to change its position that ORG does not qualify for exemption under IRC Section 501(c)(3).

* * * *

¹ While GCM's and private letter rulings may not be used or cited as precedents {§6110(k)(3)}, courts have long considered them helpful and instructive, along with revealing the interpretation put upon the statute by the agency charged with the responsibility of administering the revenue laws. *Hanover Bank v. Commissioner*, 369 U.S. 672; *Hill v. U.S.*, 945 F.2d 1529; *Xerox Corporation v. U.S.*, 656 F.2d 659.

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ORG does not pass the operational test as specified in Treasury Regulation Section 1.501(c)(3)-1(c) because the lack of activities is evidence that the entity is not operated exclusively for one or more charitable purposes. To be considered as operating exclusively for charitable purposes, an entity is required to engage primarily in activities which accomplish one or more exempt purposes as specified in IRC Section 501(c)(3).

Based on ORG's response to IDR 4 and its filed annual information returns, the entity have never conducted any type of charitable activities. Its only activity thus far has been to receive a contribution of other assets (reported at \$) in 20XX. The activities listed on Form 1023 and on ORG's Articles of Incorporation have never been conducted.

In their protest letter, ORG indicated that it is still attempting to sell the tax credits that were donated to ORG by RA-1. More specifically, the protest letter indicates that, until the tax credits are sold (or otherwise converted to cash), ORG cannot fund any charitable projects.

As indicated above, The U.S. Department of Justice filed a Final Injunction against RA-1 for promoting and selling these tax credits. The Complaint filed by the U.S. Department of Justice against RA-1 indicates that the tax credits claimed to be owned by RA-1 never existed and couldn't be transferred even if they did exist. Therefore, the tax credits claimed to be donated by RA-1 to ORG never existed and, consequently, are worthless.

ORG has never conducted any charitable activities. As indicated in their protest letter, ORG claims that, until it sells the tax credits (or otherwise converts them to cash), they will not be able to conduct any charitable activities. Since the tax credits are worthless and don't exist, they cannot be transferred to cash. Consequently, it appears that ORG will never be able to conduct any charitable activities.

In their protest letter, ORG claimed that the IRS has never challenged ORG's exempt status in prior audits. According to IRS records, before the current examination, ORG had never been examined by the IRS.

Since ORG has not conducted any charitable activities since its inception, we are proposing revocation of tax exemption retroactive to the date of formation (May 22, 19XX).

Conclusion:

ORG's tax exemption under IRC Section 501(c)(3) should be revoked, effective May 22, 19XX, for failure to meet the operational test described in Treasury Regulation Section 1.501(c)(3)-1(c).

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As an organization that is no longer exempt under IRC Section 501(c)(3), ORG is required to file Form 1120, annually. In addition, the State of State would be notified that ORG is no longer exempt.