



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examination

1100 Commerce Street

Dallas, Texas 75242

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: March 19, 2013

Number: 201414026
Release Date: 4/4/2014

LEGEND

ORG - Organization name
XX - Date Address - address

Employer Identification Number:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

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 (the Code). Our favorable determination letter dated February 26, 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 reasons:

Under Treas. Reg. § 1.6033-2(i)(2), every organization exempt from tax, whether or not it is required to file an annual information return, shall submit additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status. During our examination we made several requests for information, but you failed to supply the requested information.

Revenue Ruling 59-95 states if an exempt organization fails to comply with the requirements of Section 6033 of the Code and its corresponding Regulations, the organization will no longer qualify for exempt status. As described in the previous paragraph, your organization has not complied with Section 1.6033-2(i)(2) of the Regulations since no reply to information document requests have been received. Per Revenue Ruling 59-95, you do not qualify for exempt status under Section 501(c)(3) of the Code since

your organization has failed to provide the required information as prescribed by Regulations of Section 6033 of the Code.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120. Those returns should be filed with the appropriate Service Center.

Processing of income tax returns and assessment 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 Claims Court or the District Court of the United States 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 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 court 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 you have to file a petition in a United States court. The Taxpayer Advocate can, however see a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You can call 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 section 6104(c) of the Internal Revenue Code.

If you have any questions in regards to this matter please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
550 Main St., Room 6417
Cincinnati, OH 45201

Department of the Treasury

Date: February 12, 2012

LEGEND

ORG - Organization name

XX - Date Address - address

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 (the 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 protest our proposed revocation to the Appeals Office of the Internal Revenue Service, then 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. This written request is called a protest. For your protest to be valid it needs to contain certain specific information which generally includes a statement of the facts, the applicable law, and arguments in support of your position. For the specific information needed for a valid protest, please refer to page 6 of the enclosed Publication 3498, The Examination Process, and page 1 of the enclosed Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

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. 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.

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 years.

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
Form 6018
Report of Examination

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

LEGEND

ORG - Organization name XX - Date

ISSUE

Whether the organization is organized and operated in compliance with the requirements of §501(c)(3)

FACTS

ORG was issued exempt status with a starting date in June of 20XX. ORG was recognized as a §501(c)(3) public charity under §170(b)(1)(A)(vi) and §509(a)(1). The original purpose was as a residential facility that could provide life skills training to residents. The original plan included possible adults who had been incarcerated or had learning difficulties, or an elder residential care facility.

ORG was subsequently caring for at risk youth. The facility was a residential facility with counseling and other services provided by different agencies.

In the year prior to the audit year, a fire damaged the building used by the charity. The date of the fire was in January of 20XX. The burned property was not used again after the fire. It was eventually razed.

ORG tried to maintain some activity in subsequent years. By 20XX (audit year), only one individual was in the program. Services ended in that year.

Documents and records were also damaged in the 20XX fire. The remaining undamaged documents and records were stored in the garage on the same property as the damaged facility. These documents and records were subsequently vandalized. None of these documents and records survived to the present day.

LAW:

Documents and Records:

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c) is exempt from income tax.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that 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 propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in any political campaign on behalf of any candidate for public office.

Income Tax Reg. Section 1.501(c)(3)-1(d)(2) defined the term "charity" to include "relief of the poor and distressed."

Income Tax Reg. Sec. 1.501(c)(3)-1(d)(3) defined the term "educational" to include (a) The instruction or training of the individual for the purpose of improving or developing his capabilities and (b) The instruction of the public on subjects useful to the individual and beneficial to the community. Treas.

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Section 1.501 (c) (3)-1 (a) (1) of the Regulations provides that, in order to be exempt as an organization described in 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.

The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. *Better Business Bureau of Washington. D.C. v. U.S.*, 326 U.S. 279 (1945).

In *Better Business Bureau of Washington D.C., Inc. v. United States*, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

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." *Treas. Reg. § 1.501(c) (3)-1(d) (1) (ii)*. Prohibited private interests include those of unrelated third parties as well as insiders. *Christian Stewardship Assistance. Inc. v. Commissioner*, 70 T.C. 1037 (1978); *American Campaign. Academy v. Commissioner*, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; fruit; privilege; gain; [or] interest." *Retired Teachers Legal Fund v. Commissioner*, 78 T.C. 280, 286 (1982).

Section 6001 of the Code provides that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary 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.

IRC Section 6033(b) states, in part, that every organization described in section 501(c) (3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary may by forms or regulations prescribe, setting forth (1) its gross income for the year; (2) its expenses attributable to such income and incurred within the year; (3) its disbursements within the year for the purposes for which it is exempt; (4) a balance sheet showing its assets, liabilities, and net worth as of the beginning of such year; (5) the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors; (6) the names and addresses of its foundation managers (within the meaning of section 4946(b) (1)) and highly compensated employees; (7) the compensation and other payments made during the year to each individual described in paragraph (6); (9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to

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| ORG | | Dec. 31, 20XX |

prevent a diversion of funds from the organization's exempt purpose, or misallocation of revenue or expense.

Revenue Ruling 59-95, 1959-1 CB 627, held that an organization's failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of its exempt status, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

DISCUSSION and ANALYSIS:

A determination of an organization's exempt status as an organization described in § 501(c)(3), is based on both its stated exempt purposes and its methods of operating to accomplish its purposes. These are both factual determinations. The burden of demonstrating its continued entitlement to recognition under § 501(c)(3) lies with ORG, hereafter refer to as "ORG".

The first requirement of Treasury Regulation Section 1.501 (c)(3)-1 (a)(1) is the organizational test. The language included in ORG's Articles of Incorporation properly limits its activities to those permitted by IRC § 501(c)(3). Thus, satisfying this test.

The second requirement of Treasury Regulation Section 1.501 (c)(3)-1 (a)(1) is the operational test. An organization must sufficiently establish that it operates for a qualified public purpose rather than for the benefit of private interests.

ORG is unable to provide sufficient documents to establish that it was operating exclusively in furtherance of a qualified exempt purpose. The record clearly shows that ORG engaged in activities related to its exempt purpose. Without additional documentation it is not possible to establish that operation was within the requirements of §501(c)(3).

Much like the organization in Rev. Rul. 59-95, 1959-1 CB 627, ORG is unable to provide any of the information required by IRC § 6033 regarding its income and expenses. Nor can it provide records or details about the programs and activities it engaged in during Tax Year ended Year 20XX. It is ORG's burden to establish that it is in compliance with the provisions governing its tax exemption status. Without adequate records ORG cannot overcome this hurdle to continue as an exempt organization.

TAXPAYER'S POSITION:

Taxpayer has informed us that the organization is no longer active. They are no longer conducting charitable activities as of January 1, 20XX .

Taxpayer has also informed us that their records have been destroyed.

Taxpayer has been unable to file articles of termination with the state due to lack of funds.

GOVERNMENT'S POSITION:

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| Name of Taxpayer ORG | | Year/Period Ended Dec. 31, 20XX |

ORG is no longer organized as a §501(c)(3) organization because it has ceased operation as of January 1, 20XX.

The reduction in activities following the fire and loss of the property used in the charitable activities can be expected to create Net Operating Loss. This means that a conversion to a Form 1120 would not produce additional Tax revenue.

ORG conducted some exempt activities during the final year. Due to a lack of documents and records, we are not able to establish or document that these activities were conducted exclusively for exempt purposes.

CONCLUSION

Revocation is not the proper course for this organization.