



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE: EO Examinations
1100 Commerce Street, MC 4920DAL
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

September 15, 2014

Number: **201502016**
Release Date: 1/9/2015

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

UIL: 501.03-00

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 January 2001 is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

You have failed 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. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. sections 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627.

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 year 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 under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st 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 these courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, D.C. 20217

United States Court of Federal Claims
717 Madison Place, NW
Washington, D.C. 20005

United States District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, D.C. 20001

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:

Internal Revenue Service
Office of the Taxpayer Advocate

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

Sincerely,

Barbara L. Harris
Acting Director, EO Examinations

Enclosure:
Publication 892

Letter 3607(04-2002)
Catalog Number: 34198.J

**Internal Revenue Service
Tax Exempt and Government Entities Division**

Department of the Treasury

Date:

April 23, 2014

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Manager's name:

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,

Mary Epps
Acting Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Issue:

Whether or not the _____, qualifies for exemption under Section 501(c) (3) of the Internal Revenue Code?

Facts:

The organization was granted exemption in January 20XX. The original name of the organization which was granted exemption was _____. The organization was granted exemption under 170(b) (1) (A) (vi) foundation status. An organization described in Internal Revenue Code 170(b) (1) (A) (vi) is one that normally receives a substantial part of its support from government units, direct or indirect contributions from the general public, or a combination of these sources.

The Agent requested that the organization provide copies of its Articles of Incorporation, Bylaws, IRS Determination Letter, and Application for exempt status. The organization was unable to provide any such documents.

During the interview the Agent asked questions regarding the organization purpose and according to the organizations President _____ the organization purpose is to help poor people. When asked how the organization completes its purpose, _____ replied that the organization gives poor people cash stipends. There was no other form of assistants to the poor. There were also no records to prove that the funds were actually distributed to poor people.

As part of the internal controls examination the Agent was able to determine that the organization had only one individual in charge. A review of the 20XX/12 Form 990-EZ (Part IV – List of Directors) the organization list _____ as the President, Treasurer, Clerk, and Director of the organization. During the interview with _____ the Agent was able to confirm that in fact _____ was the sole officer in charge.

_____ has not filed any Forms 990-T, to report any unrelated business income. It was also noted the organization never filed Form 940, 941, 1099, and W-2's.

During the examination of the organization, the Agent was able to identify the following issues:

Issue 1:

During the examination of tax year 20XX, the Agent sent several Information Document Requests (IDR's). The IDR's were issued with specific requests about the organization and its operations. A total of six IDR's were sent certified mail and were received by the Organization. Contact with the Organization's current President _____ was established and a field examination date of December 12, 20XX was agreed upon.

During the initial meeting, [redacted] was unable to provide any documentation that had been requested with the initial contact letter. In the initial IDR the Agent requested information that would help verify the amounts listed on the organizations Form 990-EZ for calendar year 20XX. When the Agent asked [redacted] about the Organizations financial records, [redacted] stated that all of the financial records from 20XX - 20XX were destroyed by water and were discarded. When the Agent asked [redacted] about the current year (20XX) records, [redacted] stated that the current year records were stolen out of a vehicle. Prior to the examination date [redacted] did not mention to the Agent, that there was going to be issues gathering the financial records.

After the initial meeting the Agent prepared and certified mailed IDR #4 dated December 17, 20XX requesting the following:

;

- 1) A written statement, signed under penalties of perjury, regarding the water damage events leading to the loss of their 20XX-20XX books and records
- 2) Provide a written statement from the landlord of [redacted] confirming the water damage event.
- 3) Provide a police report confirming the loss of their 20XX records from the car break in.

The IDR had a response due date of January 23, 20XX and a response has not been received to date..

A second request for a response to IDR#4 was sent certified mail on January 24, 20XX to the Organization with a revised response due date of February 7, 20XX. The certified letter was signed for and received. To date, the Agent has not received any of the information requested above.

Issue 2:

During the initial interview [redacted] revealed to the Agent that the organization did not have its own bank account. [redacted] stated that she used her personal bank account for the Organization's financial transactions.

The agent prepared and mailed certified mail IDR#5 requesting the following information:

1. Provide the Organization's bank statements and/or the name of the bank where the financial dealings of the Organization were handled.

The IDR had a response due date of January 23, 20XX and a response has not been received to date.

A second request for a response to IDR#5 was sent certified mail to the Organization on January 24, 20XX with a revised response due date of February 7, 20XX. The certified letter was signed for and received. To date, the Agent has not received any of the information requested above.

Issue 3:

The Organization appears to have other activities that are not consistent with its exempt purpose and for which the organization was granted exemption.

During the year under examination the Program rented and operated out of a store front on . According to the news article dated September 5, 20XX that address is the location for an ice cream and candy shop, called

According to the only activity the organization was involved in was the operation of the candy shop. It was also noted that all of the revenue generated was from the sale candy and other related items. The operation of a candy shop is not consistent with its exempt purposes. The Organization has not provided any information to support its exempt purpose or its activities.

Issue 4:

states she performed an intake interview for those individuals looking for help and that all payments made to these individuals were in the form of cash stipends. It is also noted that is the only one who decides who gets these cash stipends and there is no independent board to review these payments.

When the Agent requested the above intake interview sheets, stated all of the organizations records were destroyed from a large water leak that happened in January 20XX and all past records were thrown out.

According to the news article dated September 5, 20XX, is quoted as saying (see attached article):

“ ”

This statement and the lack of intake interview sheets leads the Agent to believe that there were no such intake interviews being conducted as indicated by during the interview on December 12, 20XX. .

Law:

Internal Revenue Code Section 501(c)(3) exempts Federal income taxes from organizations that are organized and operated exclusively for religious, charitable, etc. purposes where no part of its net earnings inure to the benefit of any private shareholder or individual and no substantial part of its activities involve the carrying on of propaganda or otherwise attempting to influence legislation.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that “in order to be exempt as an organization described in Section 501(c)(3) of the Code an organization must be both organized and operated exclusively for one of more purposes specified in such section. If any organization fails to meet either the organizational or operational test it is not exempt.”

Treas. Reg. § 1.501(c)(3)-1(c)(1). It provides that an organization will be regarded as operated exclusively only if it engages “primarily” in activities that accomplish one or more exempt purposes such as those specified in IRC § 501(c)(3) and that it will not be so regarded if more than an “insubstantial” part of its activities does not further an exempt purpose.

Under Federal Tax Regulation, §1.6001-1(a) & (c)

Returns and Records: a) In general, Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

c) Exempt organizations. In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033.

Treas. Reg. §1.6033-2(1)(2) provides, in part, “...that every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of subchapter F, chapter 1 of subtitle A of the Code, IRC §6033, and chapter 42 of subtitle D of the Code...”

IRC §6033, Treas. Reg. §1.6001-1(c) and Treas. Reg. §1.6033-2(a)(1) and (i)(2) require any organization exempt from tax under §501(a), to supply the Service with such information as is required by the revenue procedures and the instructions for Form 990, Return of Organization Exempt From Income Tax, and Schedules thereto, and to keep such books and records as are necessary to substantiate such information.

Rev. Rul. 59-95 states 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 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 an exempt status.

Rev. Rul. 90-27 provides procedures with regard to applications for recognition of exemption from Federal income tax under Sections 501 and 521 with respect to revocation or modification of exemption rulings and determinations letters.

Church of Scientology of California v. C.I.R., 823 F.2d 1310, 92 A.L.R. Fed. 231 (9th Cir. 1987). (3) Payment of excessive salaries will result in finding of inurement as will distributions or unaccounted for diversions by one who has complete and unfettered control over organization's resources.

United Hospital Services, Inc. v. U.S., 384 F. Supp. 776 (S.D. Ind. 1974). An organization must exclusively perform essential public services in order to qualify as a charitable organization and to be exempt from federal income taxation.

The term 'unrelated trade or business' is defined in section 513 of the Code as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its exempt functions.

Section 513(c) of the Code and section 1.513-(b) of the regulations provide that trade or business includes any activity which is carried on for the production of income from the sale of goods. An activity does not lose its identity as trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may not be related to the exempt purposes of the organization.

Rev. Rul. 79-360 describes the operation of health club facilities in a commercial manner by an organization exempt from tax under section 501(c)(3) of the Code, whose purpose is to provide for the welfare of young people, constitutes unrelated trade or business under section 513.

Rev. Rul. 79-361 describes the operation of a miniature golf course in a commercial manner by an organization exempt from tax under section 501(c)(3) of the Code, whose purpose is to provide for the welfare of young people, constitutes unrelated trade or business under section 513.

Taxpayers Position:

Government's Position:

It is the government's position that _____ has failed the Operation test. As consistent with Section 1.501(c)(3)-1(a) of the Income Tax Regulations an organization is not exempt if it fails either the organizational or the operational test. The

sole activity of the organization was the operation of a candy and ice cream shop. These activities represent carrying on a unrelated trade or business.

The Agent believes that the _____ Program is not operating for an exempt purpose for the following reasons.

1. Documentation to support the information reported on F990-EZ has not been provided.
2. Documentation to support the water damage and car thief that lead to loss of their books and records has not been provided.
3. Documentation regarding their purposes and operations has not been provided.
4. The substantial part of the organization revenue is from an unrelated business.
5. The organization 'fails' the public support test.

Taxpayer has burden to establish that it is entitled to tax exempt status; this is particularly true in this situations where there is great potential for abuse created by one individual's control. The lack of good internal controls may indicate the potential for diverted receipts, diverted assets, or other significant problems. To date, the Agent has not received any of the requested information, which would help determine if the above issues exist.

The Agent also sent out a letter detailing the interview responses from _____, regarding the organization. In this letter the Agent requested that the statements, _____ made be reviewed for accuracy and requested that _____ respond to any conflicting statements. To this date _____ has not responded to this interview response letter and it is the view of the Internal Revenue Service that the statements in the letter are accurate without conflict.

Based on the above facts and law, it is the IRS's position that the organization has failed to meet the operational test required under Section 501(c) (3) of the Code and applicable regulations.

Conclusion:

The Service has determined that the _____ is not operated exclusively for Section 501(c) (3) purposes for all years beginning on or after January 1, 20XX. Accordingly, the organization does not continue to qualify for exemption under Section 501(a) of the Internal Revenue Code for all years beginning on or after January 1, 20XX.