



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examinations

1100 Commerce Street, MC 4920 DAL

Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

December 10, 2014

Number: **201514014**
Release Date: 4/3/2015

Taxpayer Identification Number:

Person to Contact:

Identification Number:

UIL: 501.03-00

Contact Telephone Number:

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 July 26, 19XX 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 for the tax year ended December 31, 20XX, it was determined that either a) the organization has been inactive since 19XX and there have been no regular financial activities or operations conducted or planned since that time, or b) the organization has been operating but in a manner and for a purpose significantly different from the manner of operation and purpose for which it was granted exempt status.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

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
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,

Stephen A. Martin
Acting Director, EO Examinations

Enclosure:
Publication 892

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

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
15 New Sudbury Street, Room 875
Boston, MA 02203

Department of the Treasury

Date:
March 04, 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,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Issue:

Whether or not the
under Section 501(c)(3).

qualifies for exemption

Facts:

Article 2 Section 1 of the By-laws states

“The primary objective shall, through services and education, be to enable persons with AIDS/HIV in the state of to keep their pets with them until no longer possible.”

The organization was granted exemption in July, 19XX. The original name of the organization which was granted exemption was . According to the organization Articles of Incorporation, is a -based community service organization. provide pet food to persons with AIDS/HIV, in addition to organizing pet-related care. The organization was granted exemption under 509(a) (2) foundation status. An organization described in Internal Revenue Code 509(a) (2) is one that typically derives most of its gross receipts from an activity related to its exempt function. A copy of the organization’s original application, Form 1023, including all attachments and correspondence, was sent to the organization. The Agent also sent to the organization a copy of the organization’s original Articles of Incorporation and Bylaws.

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

Issue 1:

Since its inception in 19XX through the present (20XX), the organization has not conducted any activity on a consistent basis or any other activity in furtherance of its exempt purpose.

According to internal research, the organization has only filed one return (Form 990) in the years since its inception. This was in calendar year 19XX, years after it was granted exemption. It was not until years later that the organization filed another document with the Internal Revenue Service. The document that was filed is not considered a return by the Internal Revenue Service. Instead, this document (990-N) is used to maintain an organization’s exempt status and to maintain correct contact information. It is also for those organizations that have gross receipts under \$50,000 (for the tax year 20).

During the examination of tax year 20XX, the Agent sent several Information Document Requests (IDRs). These IDRs were issued with specific requests about the organization and its operations. A total of eight IDRs were sent certified mail and were received by

the organization. Contact with the organization's current Executive Director was established.

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. The Agent was able to internally request the original administrative file for
EIN # _____, now currently known as _____

In Information Document Request #4 (dated May 5, 20XX) the Agent requested copies of newsletters and other literature produced during the exam year (or any year). The Agent also requested any information to indicate the organization was operational, a list of the organization's activities, a statement of how the organization was able to carry on those activities, a description of the job that each board member or employee was required to perform, a statement of where the organization got its funds to operate, and a statement of from what premises the organization operates (ie. private residence, rental property, member of the organization's property, etc...). Also requested was documentation showing the name change from _____ to _____. To date, the Agent has not received any of the information listed above.

The Agent sent a certified letter to the organization. The certified letter was signed for and received on July 13, 20XX by _____. The certified letter contained Information Document Request #5 (IDR-5) and contained a response date of July 29, 20XX. The Agent requested the following information: How does the organization advertise its services for pet care? What type of care does the organization provide (feeding, walking, medical, financial, etc...Please describe)? Who in the organization provides the care? Are the care providing individuals volunteers or employees? How many individuals - volunteers or employees - does the organization have that engage in this endeavor? How often is the care provided? Does the organization charge fees for the care provided? In what area of _____ does the organization provide the care (certain blocks, area, entire state of _____ etc... please describe) Provide bank statements to show that the organization is providing financial benefits and/or receiving donations. To date, the Agent has not received any of the requested information.

Response from _____ :

_____ claimed that he sent the Agent all the information that was available to him. This included the annual meeting minutes dated March 5, 20XX. Review of the organization minutes showed that the organization had no business and no new business to discuss. These minutes were signed by three of the board members. A review of these minutes showed the Agent that the organization was not conducting any activities in regard to its exempt purpose. The Agent sent out several certified

letters to the organization with detailed IDRs, which contained specific questions on the organization's operations. _____ also provided the board member minutes for the tax years 20XX and 20XX. These minutes also reflected that there was no business and no new business in these years.

A letter sent by _____ to the Agent dated April 04, 20XX stated the following:

'This is our response to your request for information on our organization. For the years 20XX through 20XX we have not had any financials due to the fact we had no bank account or funds because our charity was under review by your agency so we halted all fundraising and have had no donations.'

The Agent noted that the organization came under audit for the calendaryear20XX. The Agent began to work this case in 20XX. The organization was not under audit from 20XX through 20XX; the statement above by _____ is incorrect.

The organization had no bank account or fundraising activities during the year under examination. According to a conversation with the organization's Director _____, as well as information submitted during the examination, the organization was not operational in the past few years and did not receive financial support. No financial information/documentation was submitted for review.

During the examination, the organization stated that the founder was ill, but that when he gets better, the organization planned to become active. In Information Document Request #4, the Agent requested an action plan showing what steps the organization would take to become active, with a detailed time line. This response was due by May 16, 20XX. No response was provided to the Agent.

Issue 2:

The organization has also engaged in other activities that are not consistent with its exempt purpose, and for which the organization was granted exemption.

The organization _____ was granted exemption for support of companion animals for AIDS/HIV patients. At some point during the organization's existence the name of the organization changed from _____, to _____

The Form 990-N filed shows a change of corporate identity taking place between 20XX and 20XX. With the name change the organization also decided to change its purpose and according to Guidestar, _____ characterizes itself as:

...a collective of Patients and Caregivers a grassroots non-profit. We offer donated high quality _____ to Qualified Patients on a donation or sliding fee basis.

Internet research revealed that _____, and its Director, _____, a longtime advocate of _____ use, was involved in an event that included vendors exhibiting the latest in equipment for _____ and discussions on therapeutic use of _____ for a range of debilitating conditions. (See attached dated February 27, 20XX) The article stated that _____ group, which serves as an information resource, **“helps poor patients with terminal illness pay for the state license and get access to treatment.”**

The Agent sent out a certified letter to the organization. The certified letter was signed and received on July 13, 20XX by _____. The certified letter contained Information Document Request #6 (IDR-6) titled ‘Financial Support’ and contained a response date of July 29, 20XX. In this letter the Agent requested the following Information from the organization: (1) how much financial support does the organization provide to individuals with terminal illnesses to assist in paying for the state license?; (2) from where does your organization’s financial support come?; (3) provide the name of the financial institution and the bank account numbers your organization utilizes; (4) how does the organization determine who receives its financial and/or medical assistance; (5) how do individuals become aware of the organization’s assistance; (6) is there an application that individuals complete for organizational review to determine eligibility for assistance; (7) provide a sample copy of the application used to determine if an individual qualifies for organizational assistance.; and (8) since the organization is providing financial benefits and/or receiving donations, there must be some kind of financial institution being used to collect and distribute funds. Provide bank statements which reflect these transactions.

The article _____ (_____ dated February 27, 20XX) stated the following:

State’s first _____, the event was put on by the and its director, _____, a longtime advocate of use.’

The Agent sent a certified letter to the organization which was signed for and received on July 13, 20XX by _____. The certified letter contained Information Document Request #7 titled (Advocacy) and contained a response date of July 29, 20XX. In this letter, the Agent requested the following information from the organization: (1) did the organization fund the _____; (2) if so, from where did it receive funds to sponsor the event; (3) did the organization receive donations or fees for sponsoring this event. The Agent has received no response to the information requested in IDR #7. To date, no information regarding the organization’s current activities and how those activities relate to its exempt purpose has been received by the Agent.

There is no apparent relationship between the original purpose of and the current activities of . Although, applied for and received tax-exempt status, and are two different organizations.

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 or more purposes specified in such section. If any organization fails to meet either the organizational or operational test it is not exempt."

Revenue Procedure 90-27, 1990-1 CB 514 (April 30, 1990), Section 14 -- Revocation or modification of rulings or determination letters recognizing exemption states that a ruling or determination letter recognizing exemption may be revoked or modified where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization. No plans on operating according to its exempt purpose are a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization.

Rev. Proc. 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.

Section 5.02 of Rev. Proc. 90-27 provides that "Exempt status will be recognized in advance of operation if proposed operations can be described in sufficient detail to permit a conclusion that the charity will clearly meet the particular requirements of the section under which exemption is claimed...The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts and the nature of the contemplated expenditures.

Section 14.01 of Rev. Proc. 90-27 provides that "a revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented...Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change...When Section 7805(b) relief is granted...retroactivity

of the revocation or modification ordinarily will be limited to a date not earlier than that on which the original ruling or determination letter is modified or revoked.

Taxpayers Position:

It is the position of the organization that the inactivity is only temporary due to illness of the founder.

Government's Position:

It is the government's position that the organization known as has failed the operational 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.

It is the government's position that the organization had a drastic change in its operations. The purpose of the organization changed from assisting AIDS/HIV patients with their pets to supporting and influencing the use of by AIDS/HIV patients. This change is considered to be a material change to the organization's exempt purpose and is grounds for the revocation of the organization's exempt status.

As a result of our examination for the tax year ended December 31, 20XX, it was determined that either a) the organization has been inactive since 19XX and there have been no regular financial activities or operations conducted or planned since that time, or b) the organization has been operating but in a manner and for a purpose significantly different from the manner of operation and purpose for which it was granted exempt status.

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. Since the organization's inception, it has neither consistently filed a return nor conducted the activity for which it was granted exemption. 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.