



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: May 13, 2015

Number: 201534014
Release Date: 8/21/2015

Person to Contact:
Identification Number:
Contact Telephone Number:
In Reply Refer to: TE/GE Review Staff
EIN:

501.03-00

**LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:**

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective January 1, 20XX.

Our adverse determination was made for the following reason:

You paid the personal expenses of the President during tax years ended December 31, 20XX, 20XX, and 20XX. I.R.C. §501(c)(3) precludes Federal income tax exemption if net earnings inure to the benefit of private shareholders or individuals. Because I.R.C. §501(c)(3) prohibits inurement of earnings, your exempt status is hereby revoked effective January 1, 20XX.

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. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX and for all years thereafter.

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 in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

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 Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling, Tel: _____ or write:

Taxpayer Advocate

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778.

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, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Margaret Von Lienen
Director, EO Examinations

Enclosure:
Publication 892

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
12309 N Mopac Expressway
Cedar Bend Professional Center
Austin, TX 78758

Department of the Treasury

Date: December 22, 2014

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.

Letter 3618 (Rev.6-2012)
Catalog Number 34809F

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 identifies 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,

Stephen A. Martin
Acting Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

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| Form 886-A | EXPLANATION OF ITEMS | Schedule or Exhibit No. Page 1 of 6 |
| Name of Taxpayer | | Year Ended December 31, 20XX, 20XX, 20XX |

Issues:

Whether EO's 501(c)(3) exempt status should be revoked on the grounds that:

- 1) The Exempt Organization (EO) failed to operate exclusively for exempt purposes as required by the Internal Revenue Code Section 501(c)(3) during the years of examination.
- 2) Its net earnings inured to the benefit of a "private shareholder" during the years of examination.

Facts:

Background information

.. ("EO", Exempt Organization), was granted exemption from federal income tax, in determination letter dated 06-14-20XX, under Section 501(c)(3) of the Internal Revenue Code, and further classified, as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. The organization was unable to provide a copy of its Determination Application, Form 1023. A copy of the Administrative Record was requested to the IRS Records Unit, but no records were available.

described its exempt purpose as to "Minister the Gospel of Jesus Christ through Christian Music and preach in churches and concert halls across the United States," according to Form 990.

The interview was conducted by Revenue Agent (RA) at the CPA's office. Present at the interview were (the POA and CPA) and (the President) who attended via telephone call.

The EO does not have a place to conduct business. Their books and records are kept by the CPA firm. All EO's correspondence is received at CPA's office address. The phone number listed on the Form 990 is the CPA's number.

The EO provided a current Officer's List. Its current Officers are , President, and , Secretary, Treasurer and mother.

(President) is an ordained minister since October 15, 19XX and a musician, "minister/musician who performs at various locations across the United States. He ministers through his Christian music and by preaching at his concerts." He performed at various locations and some performances were in churches while others were at concert venue type locations. He does not perform any ministerial services, as per EO's statement. also had a tour manager and agent, (the Manager).

The EO does not keep Minutes of board meetings or any other activities. However, the EO kept a list of concerts, dates and places for the concerts, and it was provided to us.

is also the President of another 501(c)(3) organization, . (). It is to note that during the interview the organization stated not to have any related organizations.

The President has a website also, www. .org, where he accepts donations, sells his CD's and downloadable music for set up prices. In the past, this website was owned by the EO, and it was transferred to as a loan payment to him back in 20XX.

The EO Bylaws state that the President had control over the organization's business. It states that "The Corporation finds its headship under the Lord ... and in its President. [...] he shall have general management of the business of the Corporation and have general supervision of the other officers."

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| Form 886-A | EXPLANATION OF ITEMS | Schedule or Exhibit No. Page 2 of 6 |
| Name of Taxpayer | | Year Ended December 31, 20XX, 20XX, 20XX |

President Personal Expenses

The examination revealed that the President, used organization's funds for personal use. The EO provided a statement explaining that the President did not have "any other payment source" when the expenses were incurred; and that "he did not think of (or was aware of) the implication of using" those funds. The payments for those expenses were as follows:

- Payment for personal expenses
 - of (car repairs)
 - Rejuvenation Dentistry
 - Rejuvenation Dentistry
- \$ _____

The POA said that those expenses were supposed to be "reclass" as a loan payment to the President, but they did not "catch" the expenses when the Form 990 was prepared.

The EO also stated that other personal expenses were reclassified at the end of the year in the amount of \$ _____. The expenses were treated as loan repayment to the President in the Form 990 for 20XX. Other purchases found on the books and records reaffirm the use of the exempt organization funds for expenses personal in nature like: The _____ for \$ _____; meals for \$ _____; safe deposit box for \$ _____, and auto expense for \$ _____, though the EO stated not to own a vehicle during the interview. _____, gas and personal massage, were found among other recurring purchases in the EO's bank statements.

No contemporaneous records or evidence of an agreement prepared beforehand were provided by the EO in agreement to reclassify President's personal expenses as loan repayments.

Loan Payable to President

The Form 990 for year ending Dec. 31, 20XX shows a payable to an officer with a balance of \$ _____. The President loaned money to the EO for touring expenses. One of the payments to the President was done via transfer of assets. One of those assets was the EO's website.

The following is to show how the transactions occurred. It is to note that the years before year 20XX, are out of the scope for this examination; therefore, that information should be used for background reference only.

- On Sept. 28, 20XX, _____ loaned \$ _____ to _____ to cover touring expenses, according to EO statement.
- On Feb. 28, 20XX, an additional promissory note was executed in the amount of \$ _____ with an Addendum stating that the "sums may be paid at any time on the note". The EO was unable to locate the executed copy of the additional promissory note.
- On Sept. 3, 20XX, the EO's board passed a resolution to transfer assets in the value of \$ _____ to _____ and to treat that amount as his loan payment. The assets were as follows:

- Website _____
- Mailing List _____
- E-mail List _____
- Total _____

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| Form 886-A | EXPLANATION OF ITEMS | Schedule or Exhibit No. Page 3 of 6 |
| Name of Taxpayer | | Year Ended December 31, 20XX, 20XX, 20XX |

| Loan Activity | Date | Out of Examination Scope | | | |
|--|----------------|--------------------------|------|------|------|
| | | 20XX | 20XX | 20XX | 20XX |
| Loan Balance as of | Sept. 28, 20XX | | | | |
| Additional Loan from President | Feb. 28, 20XX | | | | |
| Transfer of Assets treated as Loan Payment | Sept. 3, 20XX | | - | | |
| Loan Balance as of | Jan. 1, 20XX | | | | |
| Loan Payments during 20XX | Year 20XX | | | | |
| Personal Expenses paid by - Reclass | Year 20XX | | | | |
| Ending Balance-as per books | Dec. 31, 20XX | | | | |
| Ending Balance Reflected on Form 990* | Dec. 31, 20XX | | | | |
| Difference Amount | | | | | |

The EO did not have a website since it had been transferred to back in 20XX. Nevertheless, books and records showed several expenses to website enhancement and maintenance.

There were recurrent expenses incurred for , the and . is a website that empowers www. .org. This website is where the President sells and promotes his show “ ” () and CDs. The is an online marketing, branding and social media website. promotes items and duplicates CDs and DVDs on the internet.

Other expenses like the postage and freight made up to \$; and supplies for \$. The EO does not have a place to conduct business. The above mentioned expenses could not be tied up to the exempt activities reported by the EO.

The analysis of the expenses suggests that the EO is combining the expenses incurred by CD productions and with the ones of the EO. It is to note that the www. .org website did not mention (the EO), since the show was the same show that the EO was working on and using all of its resources to put on.

Loan Receivable

The Form 990 for year 20XX shows a Note and Loan Receivable in the amount of \$.

Books and records show an A/R . During the interview the EO was asked if there were any related organizations, and the answer was no. Nevertheless, the Form 990 shows an A/R for with a beginning balance of \$ and an ending balance of \$.

The EO explained that the transaction was erroneously charged to the EO's credit card by President's former agent and manager. The expense was incurred by in the amount of \$.

The analysis of the loan receivable confirms the recurrence of combining EO expenses with the ones incurred by .

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| Form 886-A | EXPLANATION OF ITEMS | Schedule or Exhibit No. Page 4 of 6 |
| Name of Taxpayer | | Year Ended December 31, 20XX, 20XX, 20XX |

Credit Card Expenses

The EO stated that the President's tour manager and agent, _____, had the authority to use the credit card to pay for expenses and that some expenses incurred by _____ were charged to the EO.

The President and his Manager were using the same credit card to pay for expenses incurred by the two ministries, _____ and _____

The EO's credit card was used for both ministries as stated by EO: "Due to tour venues been located across the country, credit card was used as the primary payment source for tour expenses rather than _____ checks. In some cases, the Manager used the _____ credit card for expenses which should have been split on some basis between the two ministries. In other words, the _____ credit card was used for some expenses that were of benefit to both ministries, but _____ was billed for this."

The EO had the following credit card expenses:

| | Amount | Amount |
|-----------------------|---------------|---------------|
| Payments | | |
| Fin. Charges | | |
| CC. Fees | | |
| Travel: Flights | | |
| Travel: Hotel | | |
| Touring/Tickets | | |
| Touring: Travel/Auto | | |
| Meals | | |
| Misc. | | |
| Advertising Marketing | | |
| Tour: Supplies | | |
| Printing | | |
| Shipping | | |
| | | |
| Total | | |

*As per note on worksheet, _____ paid _____ and _____ paid _____ (total \$ _____)

No worksheets or breakdown of expenses were received from EO in regards to what expenses were incurred by the EO and by the other organization. The EO provided available invoices for some of the expenses.

The EO's Business Checking account was used in the same manner. Several expenses incurred by _____ were paid out of that account.

Overall, the provisions governing organizations exempt under IRC Section 501(c)(3) prohibit charitable organizations from allowing their assets to inure to the benefit of any individual or entity. Violations of these requirements are grounds for revocation.

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| Name of Taxpayer | | Year Ended December 31, 20XX, 20XX, 20XX |

Law:

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for religious, charitable, scientific, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual". The words private shareholder or individual in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(i) states that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: (a) Religious, (b) Charitable, (c) Scientific, (d) Testing for public safety, (e) Literary, (f) Educational, or (g) Prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that 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, 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.

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) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c) of the regulations specifies that with regard to the primary activities within the operational test, 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.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(c)(2) entitled distribution of earnings, provided 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. For the definition of the words "private shareholder or individual", see paragraph (c) of §1.501(a)-1.

Section 1.6001-1(c) of the regulations requires that an exempt organization must maintain records sufficient to demonstrate that it is entitled to tax exempt status.

Section 1.6033-2(h)(2) of the regulations holds that an 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.

In **Bubbling Well Church of Universal Love, Inc. v. Commissioner**, the tax court held that "where the creators control the affairs of the organization, there is an obvious opportunity for abuse, which necessitates an open and candid disclosure of all facts bearing upon the organization, operations, and finances so that the Court can be assured that by granting the claimed exemption it is not sanctioning the abuse of the revenue laws." Implicit in this determination is that the taxpayer has a responsibility to show through its "candid disclosure" of its activities and operations that it continues to qualify for

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exemption. The "Bubbling Well" opinion goes on to say that if such disclosure is not forthcoming, the logical inference is that the facts, if disclosed, would show that the organization fails to meet the requirements of 501(c)(3).

Revenue Ruling 72-369 states, in part, that in order for an organization to pass the operational test the organization's resources must be devoted to purposes that qualify as exclusively charitable.

Government's Position:

It is the government's position that _____ (EO) does not qualify for exemption under IRC Section 501(c)(3), and therefore its tax exempt status should be revoked for the following reasons:

- EO does not operate exclusively for exempt purposes as required by IRC Section 501(c)(3). Its operations do not serve a charitable purpose.
- EO operated for private benefit rather than public interest during year under examination.
- EO's net income inure to the benefit of a private shareholder or individual during the year under examination.

The EO has failed to take the necessary steps to ensure that no earnings inure to the benefit of a private shareholder. The fact that the EO violated IRC Section 501(c)(3) by allowing their assets to inure to the benefit of private parties, is the primary reason for proposing revocation of their exempt status.

The EO's President benefited by paying his personal expenses and incurring into private inurement, which benefit is prohibited. Net earnings cannot benefit a private shareholder or individual. IRC 501(c)(3) prohibits private inurement.

The EO failed to keep track of the organization's expenses. The EO was combining its expenses with the ones incurred by (_____, a separate organization), which had the same President, _____. The EO failed to use its funds to serve its exempt purpose.

As indicated above, the operational test is not satisfied where any part of the organization's earnings inure to the benefit of private shareholders or individuals; and where the organization serves a private benefit rather than public interests. EO has failed the operational test during the years under examination. Based on the foregoing, EO no longer qualifies for exemption under I.R.C Section 501(c)(3) and the regulations, and therefore its tax exempt status should be revoked.

TP's Position:

The EO indicated that there were minimal personal expenses paid with ministry funds during the year 20XX and that the President's personal expenses were supposed to be "reclass" at the end of that year to the loan repayment. The EO also stated that the President "did not think of (or was aware of) the implications of using" the ministry funds. Thus, their position is that the 501(c)(3) status of the organization should remain.

Conclusion:

After reviewing all the facts, law, and positions of the parties involved, it has been determined that the exempt status of the organization should be revoked. EO's net earnings have inured, in substantial part, to the benefit of its President and other organization. This violates Section 1.501(c)(3)-1(c)(2) of the Treasury Regulations, and warrants revocation of EO's 501(c)(3) status effective **January 1, 20XX**.

Form 1120, *U.S. Corporation Income Tax Return*, should be filed for 20XX, 20XX, 20XX, and each year thereafter as long as organization remains subject to Federal Income Tax.