



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

Date: October 16, 2015

Release Number: 201603037
Release Date: 1/15/2016
UIL Code: 501.03-00

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:
(Phone)
(Fax)

CERTIFIED MAIL – RETURN RECEIPT

Dear:

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated May 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 reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You did provide information stating that your organization has been inactive for several years and that there have been no operations or financial activities conducted or planned. As such, you fail to meet the operational requirements for continued exemption under section 501(c)(3). You have also failed to keep adequate financial books and records as well as failed to file any Form 990 returns since you filed your 20XX Form 990 return.

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 the United States Tax Court at the following address:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

You also have the right to contact the Office of the Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS 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 TAS assistance, which is always free, TAS will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778. 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,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Publication 892



**Department of the Treasury
Internal Revenue Service**

230 S. Dearborn Street,
MC 4923 CHI, Room 1700
Chicago, Illinois 60604

Date:

May 8, 2015

Taxpayer Identification Number:

Form:

990

Tax year(s) ended:

December 31, 20XX

Person to contact / ID number:

Contact numbers:

Phone Number:

Fax Number:

Manager's name / ID number:

Manager's contact number:

Phone 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,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit: Letter 3618
Name of Taxpayer		Year/Period Ended 20XX/December 31

ISSUE

Whether or not _____ is operating exclusively for **any** charitable, educational, or scientific reason under IRC section 501(c)(3) and should continue to qualify for tax-exempt status?

FACTS

Organizational Information

_____ (“_____”) was formally known as _____ (“_____”). _____ was organized under the Nonprofit Corporation laws of the State of _____ on May 12, 20XX. Its purpose was:

“To facilitate the recovery, processing and distribution of human organs and/or tissue and for any other lawful purpose.”

_____ submitted an application for exemption under Internal Revenue Code (“IRC”) section 501(c)(3) which was postmarked on September 19, 20XX.

Exemption was granted to _____ on May 27, 20XX as an organization described under IRC section 170(b)(1)(A)(vi). Exemption was retroactive to the date of incorporation.

Operational Test - No Exempt Activity

From the date the organization was incorporated until August 15, 20XX, _____ conducted the activity that was stated in its original Form 1023 Application.

On August 15, 20XX, _____ entered into a *Bill of Sale, Assignment and Assumption Agreement* (“*Agreement*”) with _____ (“_____”) is a nonprofit organization operating under the laws of the State of _____. _____ is federally recognized as exempt under IRC 501(c)(3) as a private foundation.

The agreement between _____ and _____ allowed for the sale of fixed and cash assets and the assumption of vendor liabilities at a settlement rate. Assets were being sold as _____ was in the process of dissolving its business and winding up its business affairs. _____ acquired the business for \$ _____ : \$ _____ which was for the cash and fixed assets and the remaining \$ _____ as a settlement to _____ accounts payable vendors.

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The agreement was signed by _____ as Chief Operating Officer of _____ and _____ as Executive Director of _____ was arrested on drug trafficking charges in 20XX, tried and sentenced to 5 years in prison. _____ is a current resident of the Federal Correctional Institution in _____.

On September 14, 20XX, _____ was administratively dissolved with the State of _____. No formal articles of dissolution were filed by _____ with the Secretary of State of _____ initiating its own dissolution. No subsequent state reports were filed or fees paid to the Secretary of State of _____ since the administrative dissolution.

_____ electronically filed its 20XX Form 990 return on July 25, 20XX. The 20XX return was not designated as a termination. No subsequent Form 990 returns have been filed since that time.

_____ has no plans or intentions to continue operations or file any Form 990 returns.

LAW

Internal Revenue Code section 501(c)(3) provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the income Tax Regulations provides that in order to qualify for exemption an organization must be both **organized and operated** exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Treasury Regulations 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 Regulations section 1.501(c)(3)-1(d)(i) provides 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,

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Name of Taxpayer		Year/Period Ended 20XX/December 31

- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Treasury Regulations section 1.501(c)(3)-1(d)(iii) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational", exemption will not be denied if, in fact, it is "charitable".

Treasury Regulations section 1.501(c)(3)-(2) Charitable defined. —The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "action" organization of any one of the types described in paragraph (c)(3) of this section.

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Treasury Regulations section 1.501(c) (3)-1(3(1)) defines educational as

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(ii) *Examples of educational organizations.* —The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example (2). An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Section 6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the Internal Revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 6033(j)(1) states, in general, that if an organization described in section 501(a)(1) fails to file an annual return or notice required for 3 consecutive years, that organization's exempt status will be considered revoked on and after the due date of the return due for that third year.

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Section 1.6001-1(a) of the regulations in conjunction with section 1.6001-1(c) provides that every organization exempt from tax under section 501(a) of the Code and subject to the tax imposed by section 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by section 6033.

Section 1.6001-1(e) of the regulations states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

In accordance with the above cited provisions of the Internal Revenue Code and Treasury Regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

ARGUMENT

has not conducted any activity since its assets and liabilities were absolved in an agreement with . Additionally, has not filed a Form 990 return since July 25, 20XX. The automatic revocation rules under IRC 6033(j) only apply after an organization has failed to file Form 990 returns for 3 consecutive tax years. The 3 year period for an automatic revocation would be effective May 15, 20XX.

There is no expectation that will be conducting any activity in the future or file any required Form 990 returns.

Section 1.501(c)(3)-1(a)(1) of the income Tax Regulations provides that in order to qualify for exemption an organization must be both **organized and operated** exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c) (3).

Further, has failed to comply with IRC 6001 and 6033 and has not

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established that it is observing the conditions required for the continuation of exempt status.

The operational test in this organization has not been met to sustain tax-exempt status. If evidence clearly indicates that the organization does not operate for an exempt purpose, as required by **1.501(c)(3)-1(c) (1)**, its exempt status should be revoked pursuant to **Proc. 84-46, 1984-1 C.B. 541**.

TAXPAYER'S POSITION

Taxpayer has not advocated a position.

GOVERNMENT'S POSITION

Based upon the regulations and Code, we hold that your organization is **not** operated exclusively for **any** charitable, educational, or scientific purpose, thereby defeating the retention of exemption.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code.

Revocation of your exempt status will be effective as of January 1, 20XX. In accordance with this determination and should you operate in the future, you are required to file Federal income tax returns on Form 1120. Contributions to your organization are no longer deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code a copy of this letter will be sent to the appropriate State officials.

On December 2, 2003, the D.C. Circuit ruled that the Service will disclose our denials and revocations under section 6110 effective August 1, 2004. *Tax Analysts v. IRS*, 350 F.3rd 100 (D.C. Cir. 2003)