



**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**

October 9, 2015

Release Number: 201603040  
Release Date: 1/15/2016  
UIL Code: 501.03-00

Taxpayer Identification Number:

Person to Contact:

Identification Number:

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 December 5, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective July 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

You are not operating for any charitable, religious, educational, or other exempt purpose. Our examination, for the tax year ended June 30, 20XX, reveals that you are not engaged primarily in activities which accomplish religious, charitable, educational or other exempt purposes as required by Treas. Req. section 1.501(c)(3)-1(c)(1). Moreover, you failed the organizational test for exemption because your corporate status has been suspended; therefore, you are not a corporation, community chest, fund, or foundation as required by I.R.C. section 501(c)(3).

You failed to keep adequate books and records as required by I.R.C. sections 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627. Your organization is inactive and there have been no operations or financial activities conducted or planned. As such you fail to meet the operational requirements for continued exemption under I.R.C. section 501(c)(3).

Contributions to your organization are no longer deductible under IRC §170 after July 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 June 30, 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 91<sup>st</sup> 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

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 our assistance, which is always free, TAS will do everything possible to help you. Visit [taxpayeradvocate.irs.gov](http://taxpayeradvocate.irs.gov) or call 1-877-777-4778.

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

Enclosure:  
Publication 892



**Department of the Treasury  
Internal Revenue Service**

**Date:**

February 18, 2015

**Taxpayer Identification Number:**

**Form:**

990EZ

**Tax year(s) ended:**

June 30, 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 <b>886-A</b> (Rev. January 1994)	<b>EXPLANATION OF ITEMS</b>		Schedule number or exhibit
Name of Organization/Taxpayer	Tax Identification Number	Year/Period ended <b>June 30, 20XX</b>	

**Issue:**

1. Whether the tax exempt status of \_\_\_\_\_ (“\_\_\_\_\_”) should be revoked as of July 1, 20XX for failing to comply with the organizational and operational tests within the meaning of Section 501(c)(3) of the Internal Revenue Code (“Code”).
2. Whether the tax exempt status of \_\_\_\_\_ should be revoked as of July 1, 20XX for failing to maintain or provide records within the meaning of Section 6033(a)(1) of the Code.

**Facts:**

**Organizational information:**

\_\_\_\_\_ was incorporated in the State of \_\_\_\_\_ on June 7, 20XX. The Articles of Incorporation stated that \_\_\_\_\_ name was \_\_\_\_\_ and its specific purpose was “*to provide supplemental educational services to low achieving students in grades 6-12. These services will include English Language Development, Special Education services and instruction in all academic subjects.*”

\_\_\_\_\_ submitted the Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, to the IRS on February 27, 20XX, with the name \_\_\_\_\_. The enclosed bylaws, with no date, stated the objectives of \_\_\_\_\_ as “*to furnish on a charitable basis equipment, staff, and facilities, among other things, necessary or desirable to promote educational development of the urban youth residing in \_\_\_\_\_ and other depressed areas of \_\_\_\_\_.*”

\_\_\_\_\_ stated its activities and operations in the Form 1023 as follow:

“*The planned activities and operations of \_\_\_\_\_ are twofold. Firstly, our programs will provide supplemental educational services to youth ages 0-18. The programs will operate at local schools located in inner-city communities where state test scores are low. Some programs will operate off-site within school communities. \_\_\_\_\_ will focus on those areas where the majority of students are Special Education Learners, English Language Learners, children of migrant workers, or of Native American descent.*

*\_\_\_\_\_ will provide supplemental educational services in the following areas:*

- *Language*
- *Reading*
- *Math*
- *Science*

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- *Social Studies*
- *Spanish*
- *English as a Second Language (ESL)*
- *Visual and Performing Arts*
- *Social-Immersion Skills*
- *Personal Beauty and Hygiene*
- *Sex Education*
- *Homeland Security (Terrorism Response & Safety)*
- *Career Training*
- *College Counseling*
- *Domestic Engineering (Cooking, Budgeting, Sewing)*
- *Parenting Classes*
- *Counseling need and Referral Services*
- *Crisis Intervention*
- *Anger Management and dispute Resolution*
- *Drug and Alcohol Intervention/Referrals*
- *Personal Presentation and Interviewing Strategies*

Secondly, \_\_\_\_\_ will establish and operate \_\_\_\_\_ (grades 9-12) in the inner city where schools are overpopulated. The organization will serve as the parent company for a charter high school named “ \_\_\_\_\_ ”, which will specialize in technology, arts and project-based learning. The charter school will house between 100-300 students and will be located in an area with a high number of English Language Learners and low income families.”

The Form 1023 describes its programs and services as follow:

“ \_\_\_\_\_ will not charge its students or families for any services rendered. The community-based programs will provide supplemental education services such as tutoring, summer, vacation, evening and weekend classes in all academic core subjects, visual and performing arts, and all area listed in the Planned Activities and Operations section.

\_\_\_\_\_ will operate the charter school \_\_\_\_\_ will comply with \_\_\_\_\_ Education Code, and will not charge its students or families and money for tuition.

However, the charter school will operate an after-school program in which students can stay and participate in extra-curricular activities for a small monthly fee. As well, \_\_\_\_\_ will offer a before and after school child care program for school-aged children on the charter schools site. This service will be provided at a rate between \$50 - \$150 per week, depending on the family's income level.

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- will compile and sell various informational binders covering areas such as*
- *Parenting*
  - *Homeland Security*
  - *Career and College Counseling*
  - *Domestic Engineering*
  - *Personal Presentation and Interviewing Strategies*

*These informational binders will supplement the classes offered in many cases and will be free of charge. For those community members who are not interested in attending classes, yet want to purchase the accompanying literature (binders), the information will be sold at rates that correspond to a sliding scale bases on each family's income."*

stated that it would fund the organization through mail, e-mail, personal, phone, and government grant solicitations.

received its exempt status as an organization described under Sections 501(c)(3) and 170 (b)(1)(A)(vi) of the Code on December 5, 20XX.

Operational Information:

filed the Form 990-EZ, *Short Form, Return of Organization Exempt From income Tax*, for tax year ending June 30, 20XX as its final return. We audited this return and activities of . The return stated the following under the Federal Supplemental Information:

*" filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Bankruptcy Code on January 2, 20XX (case 2:12-BK-10037-TD). was appointed as a trustee for the debtor's estate...*

*The school ceased active operations in June 20XX.*

*The trustee was not provided with any accounting records for this fiscal year. Instead the trustee had to create the information necessary to prepare this tax return based on certain assumptions using historical information.*

*This income tax return was prepared based on all of the facts know to us as of the date this tax return was signed and we believe it is complete and accurate in all material respects...*

*To facilitate the administration of the estate and to minimize administrative costs, certain estimated administrative expenses incurred but unpaid by the bankruptcy estate have been included as a deduction on this tax return such costs can include trustee, legal, and accounting fees. The trustee, legal, and accounting expenses that have been incurred and*

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*not yet paid total approximately \$ . These expenses will be paid at the conclusion of the case with court order. The trustee is moving to close the case."*

Agent interviewed the trustee on June 10, 20XX. The trustee provided four months' worth of bank statements: July 20XX statement for bank account ends and September 20XX to November 20XX statements for bank account ends . The trustee was unable to provide the following records:

- Amended Articles of Incorporation
- Bylaws effective in year 20XX
- Board minutes
- General ledger and financial statements
- Invoices, receipts, and paid bills for expenses
- Cash receipts and disbursement journals
- Bank statement for August 20XX, December 20XX, January to June 20XX
- Cancelled checks

The bank statements indicated that the return was incorrect. did not report the \$ deposits shown in September 20XX statement. We were unable to verify any portion of the financial information because could not provide documents to show their existence and accuracy. Although they provided bank statements indicated that paid some bills, they were not the regular expenses such as rent, utility, and phone, etc.

The trustee stated that has been terminated but has not filed the Articles of Dissolution. On February 12, 20XX, Agent conducted research on the Secretary of State Corporations database revealed the corporate status of (entity number: ) was "FTB [Franchise Tax Board] Suspended."

The trustee stated that he had no knowledge of operation and could not provide any information about its activities for tax year ending June 30, 20XX. He filed the final return based on the limited documents provided by the court.

## LAW

### Organizational and Operational Requirements for Exemption:

Section 501(c)(3) of the Code provides that an organization must be organized and operated exclusively for a "charitable" or other exempt purpose. For an entity to be organized for an exempt purpose, it must be a corporation, community chest, fund or foundation.

Federal Tax Regulations ("Regulations") Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in Section 501(c)(3) of the Code, an organization must be both



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

The Regulations Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in Section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test.

The Regulations Section 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as an organization described in the Code 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.

The Regulations Section 1.501(c)(3)-1(d)(1)(ii) provides, in part, that the organization must establish 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."

Recordkeeping Requirements:

Section 6001 of the Code states in part that "[e]very person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe...."

Section 6033(a)(1) of the Code states that except as provided in section 6033(a)(3), every organization exempt from taxation 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 purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall 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; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

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The Regulations Section 1.6001-1(c) states that every organization exempt from the Code 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 Sections 6033 and 6033-1 through -3 of the Code.

The Regulations Section 1.6033-2(i)(2) states that organizations that are exempt from tax are required to submit additional information as required by the IRS for the purpose of inquiring into the organization's exempt status.

Revenue Ruling 59-95 states that an organization that fails to file an informational return or otherwise fails to comply with section 6033 may be subject to revocation of exempt status on the grounds that it has failed to show that it is continuing to observe the conditions required to maintain tax-exempt status.

### Government's Position

#### **Issue 1:**

For an organization to maintain its exempt status, it must meet the operational test under Section 501(c)(3) of the Code and Section 1.501(c)(3)-1(a)(1) of the Regulations. The operational test generally requires that an organization operates consistently with the requirements of the Codes. Otherwise, the organization is not operated exclusively for charitable purposes, and will lose its tax exempt status.

The Form 990-EZ states            ceased active operation in June 20XX. The few documents we observed confirmed this statement. Therefore,            did not maintain its operation as it described within the Form 1023, and has not carried on any exempt activities since June 20XX. Accordingly,            did not meet the operational test since June 20XX.            is not a charitable organization within the meaning of the Regulations Section 1.501(c)(3)-1(d) and should no longer be granted tax-exempt status under Sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code.

#### **Issue 2:**

Section 6033(a)(1) of the Code and the regulations thereunder require every organization exempt under Section 501(a) of the Code to file an annual return and keep books and records to substantiate the information.            could only provide four bank statements, which did not match the financial information reported on the Form 990-EZ.            could not provide supporting documents to support the information reported on the return. Therefore,            failed the reporting requirement and should not be exempt.

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**Taxpayer's Position**

The trustee orally agreed with the revocation to exempt status.

**Conclusion:**

failed the operational test because it stopped operating in 20XX. The exempt status of should be revoked effective July 1, 20XX.

is required to file Forms 1120, *U.S. Corporation Income Tax Return*, for tax year ending June 30, 20XX, and all the subsequent years, if applicable.