



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**

April 12, 2016

Release Number: **201631013**

Release Date: 7/29/2016

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 May 12, 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 your organization became inactive since January 1, 20XX and that there have been no operations or regular financial activities conducted or planned. As such, you failed to meet the operational requirements for continued exemption under IRC 501(c)(3).

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

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

Sincerely,

Paul A. Marmolejo
Acting Director, EO Examinations

Enclosure:
Publication 892



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division

Date:
4/22/2015
Taxpayer Identification Number:

Form:

Tax year(s) ended:
January 1, 20XX
Person to contact / ID number:

Contact numbers:

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.

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

ISSUES:

Whether (EO) is qualified to be exempt under Internal Revenue Code (IRC) section 501(c)(3) since it ceased activities starting January 1, 20XX.

FACTS:

EO was incorporated in the state of on June 8, 19XX. On May 12, 19XX determination was made that organization is exempt from Federal Income Tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

Form 1023 stated that the EO was organized to plan, develop, construct, and operate a honoring , both present and past. The organization's purpose in so doing is to promote public awareness and understanding about this branch of in the State of . will receive in the .

EO jointly operated a fund-raising operation through telemarketing to the general public and selling advertisements in a monthly magazine. The stated charitable purpose was to serve the need of . They had no affiliation with the . The for-profit company putting out the magazine had three leased call centers in , one leased call center in and one leased office in .

The Attorney General was investigating the EO because there were indication that an officer/key employee of the EO was utilizing exempt organization funds for personal benefit and inurement. The AG completed their examination with the issuance of "Agreed Final Judgment and Permanent Injunction".

The "Agreed Final Judgment and Permanent Injunction":

- The individual officers/key employees were to turn any EO assets in their possession over to the court appointed receiver.
- The receiver was to sell all EO assets and turn over all money and to the and the .
- The officer/employee mentioned above is to pay \$XX to the State of representing attorney fees, and \$XX for penalties.

The AG's office seized control of the EO and an attorney, , was appointed by the courts to act as receiver for the dissolution of the EO as of December of 20XX. EO has not been conducting any exempt activities since January 1, 20XX. has completed the process of closing down the EO, collect any amount that is owed by

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

the defendants to the EO as ordered by the court and to distribute EO's assets per court order.

eliminated all of the leases and liquidated the office equipment. EO owned two real properties, one in _____ and one in _____. _____ sold both, under court supervision. The sales proceeds were distributed to bona fide charities which actually serves the purported charitable purpose of the receivership entities.

As of 12/31/20XX, _____ has distributed the assets to two other 501(c)(3) organizations – _____ and _____. There is around \$XX in the operating account which is being used to pay for storage, _____ fees and accountant fees.

LAW:

Internal Revenue Code (IRC) section 501(a) provides, in part, that organizations described in section 501(c) are exempt from federal income tax. Section 501(c)(3) provides in pertinent part, that an organization must be organized and operated exclusively for religious, charitable, or educational purposes and no part of its net earnings may inure to the benefit of any private shareholder or individual.

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

IRC 502 states that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under IRC 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under IRC 501.

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

Treasury Regulation §1.501(a)-1(b)(3)(c) states that the words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization. The word "shareholder," as used here, does not have the same meaning as it does in a for-profit corporation. An exempt organization cannot have shareholders, or it would not meet the organizational test. However, these are terms that Congress gave us.

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Explanation of Items		
Name of Taxpayer		Year/Period Ended
		December 31, 20XX

Treasury Regulation §1.501(c)(3)-1(b)(4) provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. Further, it provides that an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Treasury Regulation §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 which accomplish one or more 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.

Treasury Regulation §1.501(c)(3)-1(c)(2) states 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.

Treasury Regulations §1.501(c)(3)-1(d)(ii) 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.

Treasury Regulations §1.501(c)(3)-1(d)(1)(ii), states 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.

Treasury Regulation §1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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. This group of individuals is generally referred to as "insiders." This regulation places the burden of proof on the organization to demonstrate 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.

TAXPAYER'S POSITION:

Taxpayer has agreed to the revocation.

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GOVERNMENT'S POSITION:

IRC Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes. As of _____, the EO is not organized or operated exclusively for charitable, educational purpose and is in the process of terminating all its activities.

Treasury Regulations §1.501(c)(3)-1(d)(1)(ii) states that the EO needs to meet the three requirements of the Operational Test to qualify for exemption.

The three requirements are:

- 1. Engage primarily in activities which accomplish one or more of the exempt purposes specified in IRC section 501(c)(3) and (Treas. Reg. Section 1.501(c)(3)-1(c)(1)):** Conclusion – The EO has not been conducting any exempt purpose activities beginning of 20XX. The _____ Attorney General started its investigation of the EO's activities and decided to shut down the EO in 20XX. _____, the court appointed receiver, is in the process of terminating the EO. Therefore, the EO does not meet the primary activities test.
- 2. Not allow its net earnings to inure to the benefit of private shareholders or individuals (Treas. Reg. Section 1.501(c)(3)-1(c)(2)):** Conclusion – there were indication that an officer/key employee of the EO was utilizing exempt organization funds for personal benefit and inurement. Therefore, the AG decided to shut down the EO, liquidate all assets and donate all proceeds to other bona fide 501(c)(3) charities. Therefore, the EO does not meet the requirement that no net earnings inure to the benefit of private shareholders of individuals.
- 3. Not engage in substantial lobbying activity (Treas. Reg. Section 1.501(c)(3)-1(c)(3)), and not engage in any political activity (Treas. Reg. Section 1.501(c)(3)-1(c)(3)):** Conclusion – EO did not engage in any political or lobbying activity.

The above mentioned treasury regulations state that if an organization fails to comply with **any** of these requirements, it will fail the operational test and lose its IRC section 501(c)(3) exemption. Its therefore, government's position that EO does not qualify to be exempt under 501(c)(3).

CONCLUSION:

As stated above, EO does not qualify to be exempt under IRC section 501(c)(3) or any other section of the Code because it did not meet the operational test.

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The service will not secure form 1120-H from the EO because all the proceeds have been donated to bona fide charities as per instructions of the court.