



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations

1100 Commerce Street M/C 4920 DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: NOV 04 2016

Release Number: **201706021**

Release Date: 2/10/2017

UIL Code: 501.03-00

Person to Contact:

Identification Number:

Telephone Number:

In Reply Refer to: TE/GE Review Staff

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: February 2, 20XX

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a Final Adverse Determination Letter that your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) is revoked. Recognition of your exemption under IRC section 501(c)(3) is revoked effective January 1, 20XX.

Our adverse determination was made for the following reason(s):

You have not established that you are operated exclusively for an exempt purpose or that you have been engaged primarily in activities that accomplish one or more exempt purposes within the meaning of IRC section 501(c)(3).

Contributions to your organization are not 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.

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 Liene
Director, EO Examinations

Enclosure:
Publication 892



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
300 N. Los Angeles Street, MS 7300
Los Angeles, CA 90012

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 21, 2016

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:
12/31/20XX Thru 12/31/20XX

Exemption under Section 501(c)(3)
of the Internal Revenue Code

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Dear

In regards to our current examination of your tax returns, we have determined that sufficient facts have been gathered to recommend a course of action.

We are enclosing Form 886-A, *Revenue Agent Report – Explanation of Items*, and Form 6018 – *Consent to Proposed Action – Section 7428*, proposing revocation to the organization's exempt status under Internal Revenue Code 501(c)(3). Please read the enclosed copy of the preliminary findings of our examination and decide whether you agree or disagree with us.

If you accept our findings, please sign, date and return the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, to the individual listed above.

If you disagree with our findings, please provide in writing any additional information you believe may alter the findings. Your reply should include a statement of the facts, the applicable law, and arguments that support your position. Please also include any corrections to the facts that have been stated, if in dispute.

Upon receipt of your response, we will evaluate any additional information you have provided prior to issuing any final report of examination.

You do not have to agree with our preliminary findings. Prior to the closing of the examination, you will be afforded the opportunity for a closing conference.

We would appreciate your response by July 8, 20XX. 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.

Revenue Agent

Enclosures:
Form 886-A
Form 6018

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended 12/31/20XX Thru 12/31/20XX

ISSUE:

Whether _____ continues to qualify for exemption as an organization described in Internal Revenue Code section 501(c)(3) because the organization did not engage in any activity that would further one or more exempt purposes set forth in Internal Revenue Code section 501(c)(3).

FACTS:

Background

_____ applied for tax exempt status under Internal Revenue Code section 501(c)(3) in 19XX. In August 19XX, the IRS recognized _____ as an organization described in Internal Revenue Code section 501(c)(3). _____ was further classified as a public charity under Internal Revenue Code section 509(a)(1) and 170(b)(1)(A)(vi). This status remains in effect currently. _____ is operated on a calendar year basis ending on December 31. Per Form 990, *Return of Organizations Exempt From Income Tax*, _____ governing body included _____, CEO, and _____, CFO.

Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, was not available internally. _____ did not provide its copy of Form 1023 upon request by the examining Agent. _____ describes on Form 990 that its mission is to provide residential care for men and women living with AIDS.

Articles of Incorporation

The Articles of Incorporation were reviewed for _____. The Articles of Incorporation were executed in the state of _____ on March 3, 19XX. The Articles of Incorporation states:

I

“The name of this corporation is

II

A. This corporation is a nonprofit Public Benefit Corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
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B. The specific purpose of this corporation is to provide a safe, less restrictive and an affordable environment in which some nursing care and supervision is needed for HIV/AIDS persons.

III

The name and address in the State of _____ of this corporation's initial agent for service of process is:

IV

- A. This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3), Internal Code.
- B. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

V

The property of this corporation is irrevocably dedicated to public purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or the benefit of any private person. Upon the dissolution or winding up of the corporation, its asset remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for public purposes and which has established its tax exempt status under Section 501(c)(3), Internal Revenue Code."

The Articles of Incorporation was signed by

Certificate of Amendment Of Articles of Incorporation

A Certificate of Amendment to the Articles of Incorporation was issued back in August 20XX. The Amendment to the Articles of Incorporation stated:

"The undersigned certify that:

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended 12/31/20XX Thru 12/31/20XX

1. They are the President and the Secretary, Respectively, of Residential Care Facility, A Corporation.
2. Articles 2 of the Articles of Incorporation of this Corporation is amended to read as follows:

II

- A. This corporation is a nonprofit **PUBLIC BENEFIT CORPORATION** and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes.
 - B. The specific purpose of this corporation is improving the physical and economic status of low and moderate-income persons living with and affected by HIV/AIDS, substance abuse, mental illness and other chronic illness with an emphasis on a safe and less restrictive and affordable environment in which emergency transitional and permanent housing, along with supportive services and supervision is provided.
3. The foregoing amendment of Articles of Incorporation has been duly approved by the board of directors.
 4. The foregoing amendment of Articles of Incorporation has been duly approved by the required vote of the members.”

The Certificate of Amendment of Articles of Incorporation was signed by

Activities

An examination was initiated for _____ for Form 990 for the year ending December 31, 20XX. Initial interview was conducted with _____, CEO and _____, CFO on March 26, 20XX, May 14, 20XX, and November 9, 20XX. _____ originally had six contracts with the Department of Public Health’s _____ to provide substance abuse/rehabilitation care, residential care, housing assistance, and community development to individuals living with AIDS. _____ revenue consisted primarily of contracts. _____ relied on the receipt of _____ contracts to accomplish their exempt purpose of providing residential care for men and women living with AIDS.

_____ lost its contracts with _____ in 20XX. As a result, _____ could not continue to provide services to men and women living with AIDS beginning in 20XX.

Subleasing the organization’s buildings has been _____’ only activity since 20XX.

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leased two buildings for its operation. leased the buildings from , real estate investor who was a business partner of ' President and CEO . One building is located at . The other is located at . The lease for the expires on December 31, 20XX. The lease for the expires on May 31, 20XX. The monthly lease payment for the two buildings is \$X,XXX and \$XX,XXX respectively.

On December 28, 20XX, entered into a contract to sublease both buildings to, , an unrelated business. Both sublease expires on January 1, 20XX. The monthly sublease payment for the two buildings is \$X,XXX and \$XX,XXX respectively.

In a meeting with , CEO on November 9, 20XX, indicated that does not plan to continue its primary activities of providing residential care for men and women living with AIDS due to the loss of their contracts. has attempted to attain more funding to continue providing residential care for men and women living with AIDS however they have been unsuccessful. As a result, indicated that he would like to terminate the organization's exempt status due to the lack of funding. does not plan to operate in the future.

originally attempted to formally terminate its exempt status under Internal Revenue Code section 501(c)(3) with the Internal Revenue Service however agreed with Agent that revocation of the organization's exempt status under Internal Revenue Service would be more appropriate.

LAW:

IRC § 501(c)(3) exempts from federal income tax organizations which are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Tax Reg. § 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.

Tax Reg. § 1.501(c)(3)-1(c)(1) of the regulations 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 of such exempt purposes specified in section 501(c)(3).

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
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Tax Reg. § 1.501(c)(3)-1(d)(i) states that an organization may be exempt as an organization described in 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Revenue Ruling 58-617, 1958-2 CB 260, (Jan. 01, 1958), provides that rulings and determinations letters granting exemption from federal income tax to an organization described in IRC §501(a) of the Internal Revenue Code of 1954, to which contributions are deductible by donors in computing their taxable income in the manner and to the extent provided by IRC §170, are effective only so long as there are no material changes in the character of the organization, the purposes for which it was organized, or its methods of operation. Failure to comply with this requirement may result in serious consequences to the organization for the reason that the ruling or determination letter holding the organization exempt may be revoked retroactively to the date of the changes affecting its exempt status, depending upon the circumstances involved, and subject to the limitations on retroactivity of revocation found in §503 of the Code.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, would destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

TAXPAYER'S POSITION:

is in agreement with proposed revocation of the organization's exempt status under Internal Revenue Code section 501(c)(3). does not plan to conduct any exempt activities under Internal Revenue Code section 501(c)(3) in the future. has signed Form 6018 agreeing to proposed revocation of their exempt status under Internal Revenue Code section 501(c)(3).

GOVERNMENT'S POSITION:

Revenue Ruling 58-617 provides that an organization's exempt status will remain in effect only so long as there are no material changes in the character of the organization, the purposes for which it was organized, or its methods of operation. was initially recognized as a tax exempt organization because of its charitable purpose, namely providing services to men and women living with AIDS.

Since 20XX, has ceased providing services that would accomplish its charitable purpose. The sole activity has been conducting since 20XX was subleasing the two properties it leases. Subleasing properties does not further one or more exempt purposes set forth in IRC §501(c)(3). As such, fails to meet the operational requirements to continue its exemption

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status under IRC §501(c)(3). Therefore, tax exempt status under IRC §501(c)(3) should be revoked effective January 1, 20XX.

CONCLUSION:

has failed to meet the operational requirements under Internal Revenue Code 501(c)(3) for the year under examination. As a result, exempt status under Internal Revenue Code 501(c)(3) should be revoked effective January 1, 20XX.