



DEPARTMENT OF THE TREASURY

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

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: 10/20/2016

Release Number: **201706022**
Release Date: 2/10/2017
UIL Code: 501.03-00

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

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 July 1, 20XX.

Our adverse determination was made for the following reasons:

Organizations described in I.R.C. § 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of I.R.C. 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. You have not established that you have operated exclusively for an exempt purpose.

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. If you have not already filed these returns and the agent has not provided you instructions for converting your previously filed Form 990 to Form 1120, you should file these income tax returns 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, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues:

District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

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

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

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.:

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

Enclosures:
Publication 892

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

Date:
March 28, 2016
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:
June 30, 20XX and June 30, 20XX
Person to Contact/ID Number:

Contact Numbers:
Telephone:
Fax:
Manager's Name/ID Number:

Manager's Contact Number:

Response due date:
April 27, 20XX

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,

Paul A. Marmolejo
Acting Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended 6/30/20XX 6/30/20XX

Issue:

Should _____ tax exempt status under Section 501(c)(3) of the Internal Revenue Code (Code) be revoked because it does not operate for an exempt purpose?

Facts:

_____ was incorporated in _____ on October 21, 19XX. _____ amended its articles of incorporation on February 10, 19XX to restate the purpose of the corporation. The amended purpose is “

”

_____ filed Form 1023, *Exemption Application for use of organizations applying for exemption under section 501(a) and described in section 501(c)(3) of the Internal Revenue Code*, with the Internal Revenue Service (Service) on December 21, 19XX. The information provided with the application explained

- _____ was formed to provide meaningful educational opportunities to economically deprived persons who have failed to successfully adapt to the traditional public educational programs.
- _____ is the outgrowth of a local _____ which originally began the school program. _____ later helped establish _____ as the corporate entity that would continue the school program as
- The school program provides reading, math, and writing programs specifically geared to the learning challenges of “hard core” high school dropout populations.
- _____ also offers counseling and work programs for the students.

_____ received its favorable determination letter for exemption under Section 501(c)(3) of the Code on February 19, 19XX. On March 11, 19XX, _____ received an updated determination letter that reflected its name change to _____. On January 13, 19XX, _____ received a determination that superseded the above determinations confirming the continued exemption under Section 501(c)(3) of the Code and granting non-private foundation by meeting the public support classification under Section 170(b)(1)(A)(vi) of the Code. Finally, on November 21, 19XX, _____ received a determination letter that superseded all prior determinations and confirmed the continued exemption under Section 501(c)(3) of the Code and changed the non-private foundation classification from publicly supported to that of a school under Section 170(b)(1)(A)(ii) of the Code.

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filed a Form 990-N for the tax year ended June 30, 20XX and Forms 990 and 990-T for the tax year ended June 30, 20XX.

The Form 990-N filed for June 30, 20XX is a postcard and does not contain financial information. The Form 990 for the tax year ending June 30, 20XX reported the following revenue:

Contributions: \$ X,XXX
Food Cart: \$XX,XXX
Space Rental: \$ X,XXX

The food cart and space rental revenues were also reported on Form 990-T.

, the director of , was interviewed on March 2, 20XX. He stated that lost its funding from Public Schools in June of 20XX. This had been the majority of revenue. In 20XX had approximately XX students enrolled in its educational program. Once it lost its funding, all of its programs essentially stopped and they ceased operating as a school. 20XX was the last year that served students.

stated that the sources of income since 20XX have primarily been from rental sources. They rent space on the outside south side of their property to four food trucks; the rental fees include amounts attributable to water and electricity use. They also rent two modular units on the east side of their property to a day care center. They also rent out their general and classroom spaces to a men's club that meets once a week. Food truck rents are \$XXX a month, but can vary depending on the season and utility use. The day care pays \$XXX a month and the men's club pays \$XXX a month. explained that they had to rent out the property to meet the utility expenses, repairs and maintenance, and property taxes on the building.

still receives a small amount of revenue from two contributors:
and

provided a file of invoices and bills of the organization. Invoices were for various utilities, repair and upgrade expenses, and property tax payments. also provided several years of bank statements. The bank statements for tax years ending June 30, 20XX and June 30, 20XX were analyzed during the examination. Regular monthly withdrawals included payments for telephone, internet, electricity, water, trash, insurance and bank charges. No invoices or withdrawals related to the conduct of educational programs.

In a letter dated April 25, 20XX, revoked property tax exemption for not using the property for exempt purposes. The letter stated their property would

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become XXX% taxable beginning with the 20XX/XX assessment year. payments in 20XX and in 20XX.

made property tax

The facility is located at . The facility is currently storing left over classroom instruction material, equipment, computers, furniture and supplies. also allows its tenants to store their equipment and supplies in and on the property. The tour of the facility found no indications that any current or recent educational programs are conducted at the facility.

stated that since 20XX, when they lost the funding from the Public Schools, has been trying to find funding and other educational programs to conduct. They have also been trying to find other organizations that they could collaborate with to conduct other educational programs. They were recently working with . However, the board of directors just recently voted against this collaborative partnership. They have also been talking with about conducting an aerospace program for youth at their facility. However, no set plans have been made. Despite these efforts, has not conducted any educational programs since June of 20XX.

Law:

Section 501(c)(3) of the Code provides, in part, exemption from federal income tax to organizations that are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, as long as no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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, the organization must be both organized and operated exclusively for one or more of the purposes specified in that section.

Regulations Section 1.501(c)(3)-1(c)(1) states 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 exempt purposes specified in Section 501(c)(3) of the Code. The Regulations further clarifies 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.

Regulations Section 1.501(c)(3)-1(d)(1)(ii) provides that in order to meet the operational test, an organization must be engaged in activities furthering "public" purposes rather than private interests. The organization must not be operated for the benefit of designated individuals or the persons who created it.

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Government's Position:

tax exempt status under Section 501(c)(3) of the Code should be revoked since it has not conducted exempt activities nor operated for exempt purposes since June 20XX.

Maintaining its building and allowing others to rent space on its property does not further any exempt purposes under Section 501(c)(3) of the Code. Although attempts at finding other educational programs have been made, no educational programs or partnerships have been found or conducted in the last _____ years. Any ideas or projects discussed have not come to fruition and have only remained in the conceptual stages. Simply having discussions with others about proposed programs or activities does not constitute operating for a charitable or educational purpose as required by Section 501(c)(3) of the Code.

cannot retain its exempt status simply because it may have a charitable purpose in the future. In fact, this precludes it from tax exempt status. An organization with no exempt activities is not operating for an exempt purpose. It cannot meet the requirements of Section 501(c)(3) of the Code which requires an organization to be organized and operated exclusively for exempt purposes. _____ does not operate for exempt purposes as required by Section 501(c)(3) of the Code.

Taxpayer's Position:

suggests with its ongoing efforts to search for other educational programs for the youth in the area that it continues to further its original exempt educational and charitable purposes. The rental activity is only conducted to help pay for the upkeep and maintenance of the facility so that it remains ready to open its doors with the next educational program. _____ requests additional time to find new programs and/or new partners to assist them in conducting new educational programs and to find funding sources for these programs. In this regard, they disagree with the Government's Position that they do not conduct activities that further exempt purposes.

Conclusion:

does not meet the requirements to remain exempt under Section 501(c)(3) of the Code because it is not operating for exempt educational or charitable purposes. _____ tax exempt status under Section 501(c)(3) of the code should be revoked. The effective date for this revocation is July 1, 20XX, the first day of the tax period under examination.