



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
TE/GE: EO Examination
1100 Commerce, MS 4920 DAL
Dallas, Texas 75242-1100

Date: OCT 05 2017

Number: **201809008**
Release Date: 3/2/2018

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice:

Fax:

UIL: 501.03-00

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear _____ :

This is a final determination regarding your foundation classification. This modifies our letter dated November 28, 20xx, in which we determined that you were an organization described in section 509(a)(1) as described in section 170(b)(1)(A)(iv) of the Internal Revenue Code (Code). We have modified your foundation status to that of a public charity described in section 509(a)(2) of the Code, effective for tax years beginning November 28, 20xx.

Your tax exempt status under section 501(c)(3) of the Internal Revenue Code is not affected. Grantors and contributors may rely on this determination, unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

We previously provided you a report of examination explaining the proposed modification of your tax-exempt status. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On June 16, 20xx, you signed Form 6018, *Consent to Proposed Action - Section 7428*, in which you agreed to the modification of your foundation classification to 509(a)(2) of the Code. This is a final determination letter with regards to your Federal tax-exempt status under section 501(a) of the Code.

You are required to file Form 990, Return of Organization Exempt from Income Tax. Form 990 must be filed by the 15th day of the fifth month after the end of your annual accounting periods. A penalty of \$20 a day is charged when a return is filed late, unless there is a reasonable cause for the delay; however, the maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year whichever is less. In addition

organizations with gross receipts exceeding \$1,000,000 for any year will be charged a penalty of \$100 a day when a return is filed late; however, the maximum penalty charged cannot exceed \$50,000. These penalties may also be charged if a return is not complete, so be sure your return is complete before you file it.

If you are subject to the tax on unrelated business income under section 511 of the Code, you must also file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return.

If you decide to contest this determination in court, you must initiate a suit for a declaratory judgment in the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia before the 91st day after the date this final determination letter was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

United States Tax Court,
400 Second Street
Washington, D.C. 20217

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your 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 call the contact person at the telephone number shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,

Maria Hooke
Director, Exempt Organizations Examinations

Publication 892

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

Date:
July 5, 2017
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to contact/ ID Number:

/
Contact Numbers:
Toll Free
Long Distance
Fax:

Certified Mail- Return Receipt Requested

Dear _____ :

We have enclosed a copy of our report of examination explaining why we propose modifying your foundation status under section 509(a) of the Internal Revenue Code (Code).

Your exempt status under section 501(c)(3) of the Code is still in effect.

If you accept our findings, take no further action. We will issue a final letter modifying your foundation status.

If you do not agree with our proposed modification of your foundation status, you may provide additional information that you would like to have considered, or you may submit a written appeal. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference with Appeals, you must submit a written protest within 30 days from the date of this letter. An Appeals officer will review your case. The Appeals Office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final letter.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have 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:

Office of the Taxpayer Advocate

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,

Maria Hooke
Director, Exempt Organizations Examinations

Enclosures:
Publication 3498
Publication 892
Signed 6018
Form 4621-A
Report of Examination 886-A

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		20xx12

Date of Notice:

Final Report:

Issues:

Whether _____ qualifies for exemption under Section 501(c)(3) classification 170(b)(1)(A)(iv), operated for the benefit of a college or university which is owned and operated by a governmental unit per the Internal Revenue Code?

Facts:

Organization is identified as _____ and is incorporated under the laws of the State of _____ as of November 28, 20xx.

Form 1023EZ was filed on November 13, 20xx asking for reinstatement under Section 7 of Revenue Procedure 2014-11, effective the date of the filing of the Form 1023EZ.

On Form 1023EZ, under structure of the organization they marked they were incorporated.

Under Foundation Classification status Part IV of the Form 1023EZ, organization attested they were operated for the benefit of a college or university that is owned or operated by a governmental unit. Sections 509(a)(1) and 170(b)(1)(A)(iv).

They were granted tax exemption under section 170(b)(1)(A)(iv).

Organization called on December 13, 20xx to reply to Letter 3606 and IDR that was sent on November 22, 20xx. _____, President of the organization, stated she had just received the Letter 3606 and IDR. She said the letter originally went to the past President.

_____ questioned the reason for the examination and why it was being conducted and what was needed from her. _____ identified the activities of the organization as a group of educators who conduct fundraising activities so they can give scholarships to students who are going into the education field.

She said it was an error when they marked Foundation Classification 509(a)(1) and 170(b)(1)(A)(iv) attesting they are operated for the benefit of a college or university that is owned or operated by a governmental unit on Form 1023EZ.

Organization replied on January 17, 20xx with a list of activities they held for the June 30, 20xx tax year. Organization held a Scholarship Luncheon and an Old School Dance. scholarships were given in the amount of \$x,xxx each, and _____ for \$xxx for book awards.

Organization is hosting the Regional Conference for the _____ and collected members payments. _____ said all money received for this activity was expensed out for the conference in 20xx.

Numerous requests were made for organization to send in Articles of Incorporation as part of examination. _____ replied they were using the _____ By-Laws for the organizing documents. Organization listed themselves as a corporation on 1023EZ and with the State of _____.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		20xx12

Received call from _____, President. She said that the 1023EZ was filled out incorrectly and this organization is not incorporated. This organization is an association. She said when the organization attested to the organizing documents being completed on 1023EZ they did so by thinking they were complete because they were using the _____ By-Laws.

We have now received By-Laws dated April 22, 20xx. By-laws are signed by two officers and contain the correct clauses and verbiage required for 501(c)(3).

Law:

Internal Revenue Code (IRC) section 170(b)(1)(A)(iv) Exclusion—Organizations for the Benefit of Certain State and Municipal Colleges and Universities

(1) Organizations described in IRC § 170(b)(1)(A)(iv) are excluded from private foundation status under IRC 509(a)(1).

(2) An organization is described in IRC § 170(b)(1)(A)(iv) if:

- a. it normally receives a substantial part of its support (excluding exempt-function income) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public,
- b. it is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of an IRC 170(b)(1)(A)(ii) college or university, and
- c. the benefited college or university is an agency or instrumentality of a State or political subdivision thereof, or is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions.

IRC § 501(c)(3) Requires tax exempt entities be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes and to foster national and amateur sports competition.

IRC § 509(a)(2) an organization which normally receives more than one-third of the support from gifts, contributions, grants, or membership fees and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and normally receives not more than one-third of its support in each taxable year from the sum of gross investment income (as defined in subsection (e)) and the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511.

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Treas. Reg. § 1.501(c)(3)-1(a) In order to be exempt under §501(c)(3) the organization must be both organized and operated exclusively for one or more of the purposes specified in the section.

Treas. Reg. § 1.501(c)(3)-1(c)(1) of the regulations provides 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.

Treas. Reg. § 1.501(c)(3)-1(d)(ii) of the regulations 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.

Revenue Ruling 71-97, 1971-1 C.B. 151 states a national society for women organized to recognize scholastic achievements and to serve universities and colleges where chapters are established qualifies for exemption under section 501(c)(3).

An organization organized to encourage and recognize outstanding achievements of citizens toward the progress and betterment of human endeavor is exempt under section 501 (c)(3) of the code. See Revenue Ruling 66-146, C.B. 1966-1, 136. Awarding scholarships to students based upon scholastic standing is advancing education. See Revenue Ruling 69-257, C.B. 1969-1, 151. By recognizing and encouraging scholastic achievement and leadership ability, and providing service to the schools, the organization in this case furthers the overall educational programs of the universities and colleges.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. *Better Bus. Bureau v. United States*, 326 U.S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); *Am. Campaign Acad. v. Commissioner*, 92 T.C. 1053, 1065 (1989); see also *Old Dominion Box Co., Inc. v. United States*, 477 F.2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973) ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. *Am. Campaign Acad. v. Commissioner*, supra at 1065-1066.

Organizations Position:

Organization sent back Form 6018 signed agreeing to the reclassification of their foundation status to 509(a)(2).

Government's Position:

does not qualify to be a 170(b)(1)(A)(iv)
(Organizations for the Benefit of Certain State and Municipal Colleges and Universities).

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		20xx12

However it was determined that you are described in Internal Revenue Code Section 509(a)(2) as one that receives combination of gifts, grants, contributions, membership fees, and gross receipts (from permitted sources) from activities related to your exempt functions and normally receive not more than one-third of your support from investment income and unrelated business taxable income qualify for Section 509(a)(2).

Conclusion:

Organization does not meet 501(c)(3) section 170(b)(1)(A)(iv), but does meet 501(c)(3) section 509(a)(2). Organization needs to be reclassified to the correct section 509(a)(2).