



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**

Date: **JAN 10, 2018**

Number: **201829007**
Release Date: **7/20/2018**

Person to Contact:
Identification Number:
Telephone Number:
In Reply Refer to:

**LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:**

UIL: 501.03-00

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 organized and 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).

You have not established that no part of your net earnings inure to the benefit of any private shareholder or individual.

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, _____ 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,

A handwritten signature in black ink that reads "Maria Hooke". The signature is written in a cursive, slightly slanted style.

Maria Hooke'
Director, Exempt Organizations. Examinations

Enclosure:
Publication 892



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

Date:
July 10, 2017
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact/ ID number:

Contact numbers:
Toll Free
Long Distance

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 may also 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:

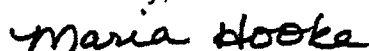
Internal Revenue Service
Office of the Taxpayer Advocate

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,



Maria Hooke
Director, Exempt Organizations Examinations

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

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

Date of Notice: July 10, 20XX

Issues:

Whether _____, (_____) which qualified for exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code but should be revoked due to the fact they have failed to meet the organizational and operational tests?

Facts:

(_____) filed Form 1023-EZ for exemption on August 8, 20XX and was granted exemption as a 501(c)(3) on August 28, 20XX with an effective date of exemption of May 15, 20XX.

An organization exempt under 501(c)(3) needs to 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.

_____ was selected for audit to ensure that the examined organization's activities and operations align with its approved exempt status.

_____ failed to respond with a copy of their Articles of Incorporation after being asked for several times.

The main activity of the organization is to maintain the cemetery's grounds year-round and to open and close graves upon the day of burials which may occur during the year.

- Correspondence for the audit was as follows:
 - Letter 3606 (Rev. 6-2012) with attachments were mailed to the organization on July 18, 20XX with a response date of August 17, 20XX.
 - July 25, 20XX, TCO Received faxed reply from organization addressing issues from Letter 3606 along with Form 4564, *Information Document Request (IDR)*.
 - May 22, 20XX, TCO sent letter 3844-B along with IDR requesting Articles of Incorporation and also sent them copies of their Form 990-N, Determination letter 5436, and Form 1023-EZ with the response due date of June 21, 20XX.
- Telephone contact for the audit was as follows:
 - **July 25, 20XX, AM**, Tax Compliance Officer (TCO) received a voice message from the chairman (_____) of the organization. TCO attempted to call the Chairman back but had to leave a voice message of his own to have the chairman call him back. The phone number given to the TCO was _____.

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- **July 25, 20XX**, PM, The Chairman of the org called back and wanted clarification from the IDR as to what exactly we were looking for. I explained what we requested in letter 3606 with Form 4564, *Information Document Request (IDR)*, and what they needed to send to us. I also indicated that they possibly could have filed the wrong application; they filed Form 1023-EZ as opposed to Form 1024 which would be most appropriate for most all cemeteries. I told him we would wait for his response before determining that information but he wanted to know what would happen if they did, indeed, filed the incorrect form for requesting their tax-exempt status. I explained briefly what would happen if they did file the incorrect form.
- **August 8, 20XX**, TCO reviewed reply from the organization and called the organization () requesting a copy of their Articles of Incorporation and a more detailed listing of their revenues and expenses for the year under audit. The Chairman said he would look at their information and get back to me.
- **August 16, 20XX**, TCO had been having phone issues with missed calls and saw that a call had been received from this organizations phone number (). TCO attempted to contact the org to see if there were any more questions. A phone message was left since no one answered the call.
- **October 12, 20XX**, TCO called and spoke with chairman of organization (). TCO asked for copy of Articles of Incorporation again as well as a more detailed listing of revenues and expenses. The chairman said he would fax a copy of both to me.
- **March 6, 20XX**, TCO had holiday season off as well as had surgery and recovery. No copy of Articles of Incorporation and detail information on revenues and expenses. Called the chairman of the organization and apologized for the lack of contact. Asked about the items still missing and he indicated he faxed information to me. No record was recorded of receiving such information. He said he had the information at home and would fax it to me again today or tomorrow.
- **March 14, 20XX**, No information was faxed in the time allotted and TCO called to see where the Chairman was at in gathering information and sending it. Chairman had a death in the family and got sidetracked in responding. Will try and get information to TCO by end of the week.

Law:

Internal Revenue Code (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 or to foster national and/or international amateur sports competition, or for the prevention of cruelty to children or animals, provided that no part of the net earnings

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inures to the benefit of any private shareholder or individual.

Treasury Regulations (Treas. Reg.) § 1.501(c)(3)-1(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in the section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. 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 which accomplish one or more of such exempt purposes specified in 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.

Section 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. (religious, charitable, scientific, testing for public safety, literary or educational).

FTR §1.501(c)(3)-1(a)(1) of the regulations states that in order to be exempt as an organization described in section 501(c)(3), an organization 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 test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as "operated exclusively" for one or more exempt purposes described in section 501(c)(3) of the Code if more than an insubstantial part of its activities is not in furtherance of a 501(c)(3) purpose. Accordingly, the organization does not qualify for exemption under section 501(c)(3) of the Code.

IRC §6001 of the Code provides that every 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. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Regulation §1.6001-1(c) of the Code provides that such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under 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 section 6033. See section 6033 and §§ 1.6033-1 through 1.6033-3.

Regulation §1.6001-1(e) of the Code provides that the books or records required by this section shall be kept at all time available for inspection by authorized internal revenue officers

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Regulation §1.6033-1(h)(2) of the regulations provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and section 6033.

Organization's Position

The organization was previously exempt under 501(c)(13) before being auto revoked for not filing a Form 990. When it reapplied for exemption the organization used Form 1023-EZ instead of Form 1024 and checked the box that they were eligible and received exemption under section 501(c)(3). The organization reapplied for exemption under a different section (501(c)(3)) than they previously were (501(c)(13)) before their revocation.

Government's Position

Based on the above facts, the organization did not respond to verify that they were organized and operated exclusively for one or more of the purposes specified in IRC Section 501(c)(3). The organization fails to meet either the organizational test or the operational test and therefore is not exempt.

No organizing documents were provided by the organization to verify that if the organization meets the organizational test for a Section 501(c)(3) organization. It was concluded that without being able to review the organizing documents we were unable to verify the organization was organized exclusively for charitable, religious, educational, and scientific purposes, within the meaning of 501(c)(3) of the Internal Revenue Code" and that it contained an appropriate dissolution clause for a 501(c)(3) organization. As a result does not satisfy the organizational test required by sections Section 1.501(c)(3)-1(b)(1)(i) of the Regulations.

does not meet the requirements of Section 1.501(c)(3)-1(c)(1) of the Regulations, which requires them to engage primarily in activities which accomplish one or more exempt purposes. Since they are operating for the substantial private benefit of their providers and members they are not operating exclusively for charitable, educational, religious or scientific purposes.

In analysis of the current description of activities, the organization's activities do not meet the operational requirements for a 501(c)(3) exemption. Although it provides some benefit to the public, a substantial purpose of the organization is promoting the services of the members

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Conclusion:

Based on the foregoing reasons, the organization does not qualify for exemption under section 501(c)(3) and its tax-exempt status should be revoked.

As a result, we conclude that they are not operating exclusively for public rather than private purposes. We conclude based on the stated facts that they do not qualify for tax exemption because more than an insubstantial part of their activities are not in furtherance of exempt purposes. Accordingly, the organization's exempt status is revoked effective January 1, 20XX.

Form 1120 returns should be filed for the tax periods after January 1, 20XX.