



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

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

Date: SEP 24 2018

Number: 201903022
Release Date: 1/18/2019

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice:

Fax:

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:

UIL: 501.03-00

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear :

This is a final determination regarding your foundation classification. This modifies our letter dated August 8, 20XX, in which we determined that you were an organization described in section 509(a)(1) as described in section 170(b)(1)(A)(ii) of the Internal Revenue Code (Code). We have modified your foundation status to that of an organization described in section 509(a)(1) as described in section 170(b)(1)(A)(vi) of the Code as a publicly supported organization, effective for tax years beginning July 1, 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 7, 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)(1) as described in section 170(b)(1)(A)(vi) 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,

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



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

Date:
May 30, 2018
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact:

Employee ID:
Telephone:
Fax:
Address:

Manager's Contact Information:

Employee ID:
Telephone:
Response Due Date:

CERTIFIED MAIL – Return Receipt Requested

Dear :

Why you're receiving this letter

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to modify your organization's foundation status under Internal Revenue Code (IRC) Section 509(a).

Your exempt status under IRC Section 501(c)(3) is still in effect.

If you agree

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final letter modifying your foundation status.

If you disagree

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the

IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

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 letter modifying your foundation status.

Contacting the Taxpayer Advocate Office is a taxpayer right

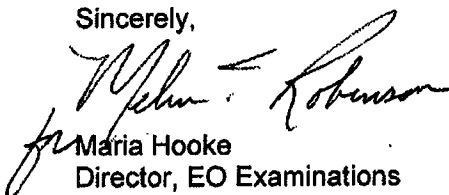
The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Additional information

You can get any of the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact the person shown at the top of this letter.

Sincerely,



Maria Hooke
Director, EO Examinations

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 June 30, 20XX

ISSUE

Whether the private foundation status of _____ (“ ”) should be reclassified to a publicly supported organization described in Internal Revenue Code (IRC)(the Code) §509(a)(1) as described in §170(b)(1)(A)(vi) of the Code?

FACTS

_____ was granted exemption as an organization described under §501(c)(3) of the Code and defined in IRC §§ 509(a) and 170(b)(1)(A)(ii) in August of 20XX.

As noted in the _____ current Certificate of Incorporation, the organization’s purposes are as follows:

- A. To promote and support the well-being of children by offering services to meet their needs for healthy living situations and supportive environments.
- B. To operate and maintain a center serving children and their families through center and community based programs, which may include residential care, educational programs for day and residential students, extended day treatment for children at risk of out of home placement or hospitalization, outpatient substance abuse treatment, individual and group therapy, vocational services, adoption support services, independent living skills, health care, after care programs to assist children living in the community, and other programs and services serving children.
- C. To identify and address the needs of children within the surrounding community.

According to an interview, tour of the organization, and review of the financial records, there is a small component of _____ overall program that is operated as a school. Per estimates, the school operations are approximately 0% of _____ activities and revenue and expenses. Operation of _____ school is not the primary function of the organization. The organization’s primary function is working with at-risk youth, children with learning disabilities, and children with psychiatric disabilities. Through providing outpatient treatment, mental health counseling, inpatient/residential care, and an on-site special education program, the organization is able to provide assistance to its target population.

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During the examination the financial information was reviewed and revenue sources were grouped into public support groups as per Section A, *Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)*. The following is a summary of that revenue grouping:

Revenue Sources

REVENUE	20XX	20XX	20XX	20XX	20XX
Gifts, Grants, and Contributions	\$0	\$0	\$0	\$0	\$0
Tax Revenues Levied for EO Benefit	\$0	\$0	\$0	\$0	\$0
Services or Facilities Furnished by Govt.	\$0	\$0	\$0	\$0	\$0
Investment Income	\$0	\$0	\$0	\$0	\$0
Unrelated Business Income	\$0	\$0	\$0	\$0	\$0
Other Income	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0

The school portion of maintains a regular facility that includes an area used for classroom and school type purposes.

The school portion of has a regular curriculum for the school purposes.

The school portion of has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on (at its facility).

LAW

IRC §501(c)(3) defines as tax exempt any corporation, community chest, fund, or foundation which is 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 such an organization may inure to the benefit of any private shareholder or individual. No substantial part of the activities of a 501(c)(3) organization 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.

IRC §509(a) states that for purposes of this title, the term "private foundation" means a domestic or foreign organization described in 501(c)(3) other than (1) an organization described in Code §170(b)(1)(A) (other than in clauses (vii) and (viii)); (2) an organization which normally receives more than one-third of its

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
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support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, (3) an organization which is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2); and (4) an organization which is organized and operated exclusively for testing for public safety.

IRC §170(b)(1)(A)(ii) refers to an educational organization which normally maintains a regular facility and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on.

IRC §170(b)(1)(A)(iv) refers to an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under §501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which 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.

Regulations §1.501(c)(3)-1(d)(2) expressly provides that relief of the poor, or distressed, or underprivileged is a charitable purpose.

Regulations §1.501(c)(3)-1(d)(3)(i) defines "education" as "the instruction or training of the individual for purpose of improving or developing his capabilities" or "the instruction of the public on subjects useful to the individual and beneficial to the public."

Regulations §1.170A-9(c)(1) states that an educational organization is described in Code §170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes federal, state, and other public-supported schools which otherwise come within the definition. It does not include organizations engaged in both educational and non-educational activities unless the latter are merely incidental to the educational activities. A recognized university that incidentally operates a museum or sponsors concerts is an educational organization within the meaning of section 170(b)(1)(A)(ii). However, the operation of a school by a museum does not necessarily qualify the museum as an educational organization within the meaning of this subparagraph.

Regulations §1.170A-9(f)(1) states that in general an organization is described in Code §170(b)(1)(A)(vi) if it is: (i) a corporation, trust, or community chest, fund, or foundation, referred to in Code §170(c)(2) (other than an organization specifically described in paragraphs (a) through (d) of this section), and (ii) a "publicly supported" organization. For purposes of this paragraph, an organization is "publicly supported" if it normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public. An organization will be treated as being "publicly supported" if it meets the requirements of either subparagraph (2) or subparagraph (3) of this paragraph.

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Regulations §1.170A-9(f)(2) discusses that an organization will be treated as a “publicly supported” organization if the total amount of support which the organization “normally” receives from governmental units referred to in Code §170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least 33 1/3 percent of the total support “normally” received by the organization.

Regulations §1.170A-9(f)(4)(i) state that an organization will be considered as “normally” meeting the 33 1/3 percent-of-support test for its current taxable year and the taxable year immediately succeeding its current year, if, for the four taxable years immediately preceding the current taxable year, the organization meets the 33 1/3 percent-of-support test described in subparagraph (2) of this paragraph on an aggregate basis.

Regulations §1.170A-9(f)(8)(i) provides that the term ‘support from a governmental unit’ includes any amounts received from a governmental unit, including amounts received in connection with a contract entered into with a governmental unit for the performance of service, unless such amounts constitute amounts received from the exercise or performance of the organization’s exempt functions as provided in Regulations §1.170A-9(f)(7)(i)(a).

Regulations §1.170A-9(f)(8)(ii) provides that any amount paid by a governmental unit to an organization is not to be treated as received from the exercise or performance of its exempt functions if the purpose of the payment is primarily to enable the organization to provide a service to the direct benefit of the public rather than to serve the immediate needs of the payor.

TAXPAYER’S POSITION

operates a school as part of its operations, however the operation of the school is not its primary activity. should be classified as a publicly supported organization described in IRC §170(b)(a)(A)(vi).

GOVERNMENT’S POSITION

no longer qualifies as a school as described in IRC §170(b)(1)(A)(ii). Although a portion of activities includes operation of school, which maintains a regular facility, regular curriculum and regularly enrolled body of students, the operation of the school is not the organization’s primary activity.

Regulations §1.170A-9(c)(1) requires an educational organization to have as its primary function, the presentation of formal instruction, a normally maintained regular faculty and regularly enrolled body of pupils in attendance. The school portion of activities does not qualify as the organization’s primary activity.

primary activity is the offering of a variety of services to local youth, including but not limited to residential treatment for children with psychiatric and/or behavioral disabilities, substance abuse outpatient treatment, short-term out of home placement and treatment for youths.

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does qualify as a publicly supported educational organization as described in IRC §§ 509(a) and 170(b)(1)(A)(vi). passes the public support test of an organization described in IRC §§ 509(a) and 170(b)(1)(A)(vi).

Regulations §1.170A-9(f)(1) provides that an organization is "publicly supported" if it normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public. An organization will be treated as being "publicly supported" if it meets the requirements of either subparagraph (2) or subparagraph (3) of this paragraph.

IRC §509(a)(1) as described in Regulation §1.170A-9(f)(2) describes an organization which receives more than 0% of its total support from donations and contributions from the general public.

Below is the calculation as to the public support test:

SUPPORT TEST COMPUTATION FOR IRC 509(A)(1)

<u>Public Support</u>	<u>0</u>	= 0%	TEST PASSED
Total Support	0		

CONCLUSION

170(b)(1)(A)(vi). should be reclassified as a public charity as defined by IRC §§ 509(a)(1) and