



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: February 22, 2019

Release Number: **201926016**
Release Date: 6/28/2019
UIL Code: 501.03-00

EIN:
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: May 23, 2019**

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.

As you were a private foundation as of the effective date of the revocation, you are a taxable private foundation until you terminate your private foundation status under section 507 of the Internal Revenue Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

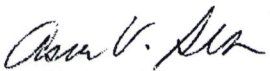
If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed 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,


for Maria Hooke

Director, Exempt Organizations Examinations

Enclosure:

Publication 892



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

Date:
03/12/2018
Taxpayer ID number:

Form:
990-PF
Tax periods ended:
December 31, 20XX

Person to contact:

Employee ID number:
Telephone number:
Fax:
Address:

Manager's contact information:

Employee ID number:
Telephone number:
Response due date:
April 12, 2018

CERTIFIED MAIL – Return Receipt Requested

Dear _____ :

Why you're receiving this letter

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 adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

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 adverse determination letter.

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,

Russell T. Renwicks

For

Maria Hooke

Director, Exempt Organizations Examinations

Enclosures:

Forms 886-A, Form 6018,
Publications 892 and 3498

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

ISSUE # 1

Whether () qualifies for exemption as a § 501(c)(3) organization when a substantial portion of its overall activities is providing management services for an automobile repair shop and real estate holdings?

FACTS

Since 20XX, has been a private foundation under § 501(c)(3) of the Internal Revenue Code. is the founder and only director of . Per its Articles of Incorporation, the purpose of is to engage in charitable and educational activities for the primary purpose of providing assistance to underprivileged children identified to by other charitable or governmental organizations.

Since 20XX, has managed a portfolio of real estate under an arrangement in which is entitled to retain all rental income for its management services. manages 0 properties consisting of commercial and residential rentals. does not own any real or personal property; however, the leased property at issue is owned by as an individual.

In 20XX, spent approximately sixteen hours per month on foundation activities, approximately six hours per month facilitating the collection of rent revenue, and an insignificant amount of time managing an automobile repair shop. With respect to facilitating the collection of rent revenue by , performs bookkeeping and accounting services with assistance of others. With respect to managing the properties, performs all functions of a property manager. These functions include overseeing the tenant population, arranging for repairs and maintenance, assuring collection of rents and similar duties.

On their Form 990-PF for the year ending December 31, 20XX, reported income of \$0 in interest, \$0 in dividends and \$0 in gross rents. There were no other sources of income reported. The auto repair shop income of \$0 and \$0 net operating loss from the auto repair shop is reported on their 20XX Form 990-T. also distributed \$0 in contributions to charities in calendar year 20XX.

LAW

Section 501(a) exempts from Federal income tax any organization which meets the requirements set forth in section 501(c), and section 501(c)(3) provides that an organization must satisfy three requirements if it seeks to qualify as an exempt organization under such section. Specifically, the organization must be (1) organized and operated exclusively for exempt purposes; (2) no part of its net earnings may inure to the benefit of any private shareholder or individual; and (3) no substantial part of its activities may be devoted to political or lobbying activities. The first requirement, specifically the operational test, is the only one at issue in this case, and the taxpayer bears the burden of proving that it meets such requirement. Dumaine Farms v. Commissioner, 73 T.C. 650, 663 (1980); Hancock Academy of Savannah, Inc. v. Commissioner, 69 T.C. 488, 492 (1977).

Section 1.501(c)(3)-1(d)(2), Income Tax Regulations, defines the term "charitable" and provides, in part:

The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: organizations designed (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and

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LAW (CONTINUED)

discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

A taxpayer satisfies the operational test only if it engages primarily in activities which accomplish one or more exempt purposes. Treasury Regulations section 1.501(c)(3)-1(c). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Treasury Regulations section 1.501(c)(3)-1(c); Better Business Bureau v. United States, 326 U.S. 279, 283 (1945); B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 356-357 (1978). The regulations and the cases contemplate that a single activity may be carried on for more than one purpose. However, the Tax Court has held that a single substantial non-exempt purpose will disqualify an organization under section 501(c)(3) regardless of the number of truly exempt purposes served. Copyright Clearance Center, Inc. v. Commissioner, 79 T.C.(1982); Federation Pharmacy Services v. Commissioner, 72 T.C. 687 (1979), affd. 625 F. 2d 804 (8th Cir. 1980); est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), affd. without pub. opinion 647 F. 2d 170 (9th Cir. 1981). If there is no substantial non-exempt purpose, the income from a trade or business may be exempt where the activity is carried out in furtherance of an exempt purpose. See, e.g., Industrial Aid for the Blind v. Commissioner, 73 T.C. 96 (1979); Peoples Translation Service v. Commissioner, 72 T.C. 42 (1979). Section 1.501(c)(3)-1(e)(1), Income Tax Regulations, provides, in part: An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes. See Plumstead Theatre Society v. Commissioner, 74 T.C. 1324 (1980), affd. per curiam 675 F. 2d 244 (9th Cir. 1982); Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202, 211 (1978). In determining whether an organization is exempt, the focus is on the purpose for engaging in the activity, not the nature of such activity. North American Sequential Sweepstakes v. Commissioner, 77 T.C. 1087, 1093 (1981); Ohio Teamsters Trust Fund v. Commissioner, 77 T.C. 189 (1981). The pertinent inquiry is whether an organization's exempt purpose transcends the profit motive rather than the other way around. Elisian Guild, Inc. v. United States, 412 F. 2d 121, 124 (1st Cir. 1969).

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court found that the provision of consulting services in the area of rural-related policy and program development to tax-exempt and not-for-profit clients several of the taxpayer's planned service areas, such as alternative housing, financing, solid waste management, and environmental impact programs, were of the sort ordinarily carried on for profit by commercial businesses such as banks, personnel agencies and trash disposal firms. Furthermore, the taxpayer's financing was not typical of a § 501(c)(3) organization, the taxpayer did not provide any free or below-cost services, and the taxpayer's clientele was not limited to § 501(c)(3) exempt organizations. As such, the Tax Court agreed with the commissioner that the taxpayer did not meet the "operational" test under § 501(c)(3) because it was primarily engaged in an activity which was characteristic of a trade or business.

Similarly, in Interneighborhood Housing Corp. v. Commissioner, T.C. Memo 1982-661, the Tax Court found that the taxpayer failed to prove that it is organized and operated exclusively for charitable purposes when a major part of their activity was the management of eight multiple family dwellings for a fee.

Revenue Procedure 2018-5, Sec. 12.03, states that the revocation or modification of a determination letter may be retroactive if:

(1) there has been a change in the applicable law; (2) the organization omitted or misstated material information. A misstatement of material information includes an incorrect representation or attestation as to the organization's organizational documents, the organization's exempt purpose, the organization's conduct of prohibited and restricted activities, or the organization's eligibility to file Form 1023-EZ; or (3) the organization operated in a manner materially different from that originally represented in an application for recognition of exemption.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
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TAXPAYER'S POSITION

Unknown

GOVERNMENT'S POSITION

While a larger portion of overall amount of operational time is dedicated to charitable purposes, spends a substantial amount of time on its management activities. Based on the facts presented, these activities are of a sort ordinarily carried on for profit by commercial businesses such management firms. See, B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978) & Interneighborhood Housing Corp. v. Commissioner, T.C. Memo 1982-661. As such, is operated for a substantial non-exempt purpose and therefore does not qualify for exemption under § 501(c)(3).

On their Form 1023 application, mentions fundraising via solicitations (Part VIII – Item 4a) and grant distributions (Part VIII – Item 13) as their only activities. Their purpose, as stated in Article II – Part A of their Articles of Incorporation, is to engage in charitable and educational activities for the primary purpose of providing assistance to underprivileged children identified to the Foundation by charitable organizations exempt under 26 USC section 501(c)(3) or governmental or similar organizations. There is no mention of managing property or an auto repair shop on their Form 1023 application or in their Articles of Incorporation.

In accordance with Rev. Proc. 2018-5, Sec. 12.03, the revocation of their determination letter would be retroactive to January 1, 20XX, since operated in a manner materially different from that originally represented in their Form 1023 application for recognition of exemption.

CONCLUSION

is operated for a substantial non-exempt purpose and therefore does not qualify for exemption under § 501(c)(3). tax exempt status under section 501(c)(3) has been revoked retroactively to January 1, 20XX.

If the revocation of their tax-exempt status is not sustained, then the rental income for its management services will be treated as unrelated business income. (See Issue # 2).