



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4920DAL
Dallas, TX 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Number: 202001022
Release Date: 1/3/2020

Date: July 23, 2019

EIN:

Person to Contact:

Identification Number:

Telephone Number:

UIL: 501.03-00

CERTIFIED MAIL – Return Receipt Requested
LAST DAY FOR FILING A PETITION WITH THE TAX COURT:

Dear :

This is a final determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Code section 501(c)(3), effective January 1, 20XX. Your determination letter dated July 20XX is revoked.

Our adverse determination as to your exempt status was made for the following reasons:

Organizations exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code are required to operate exclusively for charitable, education, or other exempt purposes. Organizations are not operated exclusively for one or more exempt purposes if the net earnings of the organization inure in whole or in part to the benefit of private shareholders or individuals of the organization. See Treas. Reg. section 1.501(c)(3)-1(c)(2). We have determined that your net earnings inured to the benefit of private individuals through multiple and repeated transactions. As such, you have not operated exclusively for the exempt purposes and have operated for the benefit of private interests of individuals in contravention of the requirements of Treas. Reg. 1.501(c)(3)-1(d)(1)(ii).

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

Organizations that are not exempt under section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information please visit www.irs.gov.

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: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. Please refer to the enclosed Publication 892 for additional information. 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

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under section 7428 of the Internal Revenue Code.

You may be eligible for help from the Taxpayer Advocate Service (TAS). 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 1-877-777-4778.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



Maria Hooke
Director, EO Examinations

Enclosures:
Publication 892



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

Date:
November 14, 2018
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Employee ID number:
Telephone number:
Fax:
Address:

Manager's contact information:

Employee ID number:
Telephone number:
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 revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

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.

After we issue the final adverse determination letter, we'll announce that your organization is no longer eligible to receive tax deductible contributions under IRC Section 170.

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,

Peter Jensen

for Maria Hooke

Director, Exempt Organizations Examinations

Enclosures:
Form 886-A
Form 6018

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

Issue

Whether §501(c)(3) status should be revoked on the grounds that its net earnings inured to the benefit of its President,

Facts

(Organization) incorporated in the State of on August 13, 20XX. The Articles state the corporation's purpose is:

"...exclusively for charitable, religious, and educational purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, including spreading the Gospel of Jesus Christ for religious purposes."

Form 1023-EZ, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue code*, was submitted in July 20XX. () was listed as the President on Part I, of the Form 1023-EZ. Two additional officers and two other Directors were also listed. The IRS issued a determination letter in July 20XX recognizing the Organization as exempt under §501(c)(3) as a publicly supported entity described under §509(a)(2). To date, this determination has not been changed.

founded the Organization and serves as its President. He is also listed as the registered agent and incorporator on the Articles of Incorporation.

Requested corporate bylaws and Board of Director meeting minutes were not provided.

operates the Organization and conducts all activities.

During 20XX, activity schedule consisted of:

Day	Time	Weekly Hrs.	Activity	Location
Monday	6:30 a.m. – 6:30 p.m.	8	Life coach/mentor	(gr 7 -12),
Tuesday	8 a.m. – 2 p.m.	8	Life coaching ministry	Prison
Tuesday - Friday	3:30 – 6:30 p.m.	15	Athletic Coach	

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

Wednesday & Friday	Morning/early afternoon	12	Life coach/mentor	
Thursday	Morning/early afternoon	10	Bible Study	
Daily	5:30 a.m. – 7 a.m.		Host “ ” (fellowship -30 minute teleconference)	From residence

The Organization maintained one checking account. had sole control of the account, including debit card use, cash withdrawals, deposits and check writing. No other records, financial accounting or supporting documents were kept by the Organization. The bank statements served as the only chronicle of financial transactions.

No facility is maintained by the Organization. uses his personal car and phone to conduct activities.

In response to the Service’s query regarding the apparent use of Organization funds for personal expenses, the Organization provided a breakdown of all bank transactions. sat down with the Organization’s CPA (and corporate Director), reviewed each bank transaction and classified each expense. Classification of expenses was dependent upon the type of expenditure and location, as Organization activities generally occurred several hours away from residence. A General Ledger and Statement of Revenues and Expenses was created by the CPA for 20XX, providing monthly totals of income and expenses. The Organization also provided workpapers showing monthly expense classifications for each checking account transaction.

According to the Organization, its only source of income were contributions received from ministry participants. Total income (based on deposits reflected on the Organization’s checking account bank statements) to the Organization in 20XX amounted to \$ 0.

Total expenditures in 20XX (based on debits reflected on the Organization’s checking account bank statements) amounted to \$ 0.

stated his services are volunteered. He additionally stated that no compensation or reimbursement arrangement existed between the Organization and himself.

No Forms W-2 or Form 1099-Misc were filed by the Organization for 20XX. The Organization provided the following classification of expenditures for 20XX:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

-Personal	\$0
Ministry Purchases for Needy	\$0
Ministry Meals	\$0
Travel & Lodging	\$0
Vehicle Expenses	\$0 **
Study Books and Literature	\$0
Bank Service Charges	\$0
Office Supplies	\$0
Postage and Shipping	\$0
Telephone	\$0 **
Total	\$0 *

*The Organization's expenditure total is \$0 less than those reflected on the Organization's checking bank statements.

** Amounts constitute allocation of use of personal property- 0% to Organization. Note: Other 0% included in Personal total

The Organization acknowledges the expense classification, “-Personal”, as use of funds by for personal use. The following types of personal purchases made by include: cash (ATM) withdrawals, drug store purchases, convenience store purchases, massage services, food purchases, jewelry store purchases, dental services. The Organization considers the remaining classifications of expenses as exempt purpose expenditures.

The Organization filed Form 990-N, *Electronic Notice (e-postcard)*, for the years 20XX through 20XX. The Form 990-N is prepared and signed by the Organization CPA/Director.

Law

Internal Revenue Code

§501(c)(3) of the Internal Revenue Code provides for exemption from Income Tax for corporations, and any community chest, fund, or foundation, 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 which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

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.

§4958(c) defines the term “excess benefit transaction” as any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for performance of services unless such organization clearly indicated its intent to so treat such benefit.

§4958(e) defines “applicable tax-exempt organization” as an organization described in either §501(c)(3) or §501(c)(4) of the Internal Revenue Code or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction.

§4958(f)(1) defines a “disqualified person” as (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, and (C) a 35% controlled entity.

Treasury Regulations

§1.501(c)(3)-1(a)(1) provides 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.

§1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

§1.501(c)(3)-1(d)(3)(i) defines the word “educational”, as used in §501(c)(3) of the Code, as –

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

§1.501(c)(3)-1(f)(2)(i) states that, regardless of whether a particular transaction is subject to excise taxes under section 4958, the substantive requirements for tax exemption under section 501(c)(3) still apply to an applicable tax-exempt organization described in section 501(c)(3) whose disqualified persons or organization managers are subject to excise taxes under section 4958. Accordingly, an organization will no longer meet the requirements for tax-exempt status under section 501(c)(3) if the organization fails to satisfy the requirements of paragraph (b), (c) or (d) of this section.

§1.501(c)(3)-1(f)(2)(ii) provides that, in determining whether to continue to recognize the tax-exempt status of an applicable tax-exempt organization (as defined in section 4958(e) and §53.4958-2) described in section 501(c)(3) that engages in one or more excess benefit transactions that violate the prohibition on inurement under section 501(c)(3), the Commissioner will consider all relevant facts and circumstances, including, but not limited to, the following —

(A) The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;

(B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes;

(C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons;

(D) Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and

(E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f)(6) and §53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.

Court Case

In *Church of Gospel Ministry, Inc. v. United States*, 640 F. Supp. 96 [86-2 USTC 9497], 1986 U.S. Dist., due to the taxpayer's failure to keep adequate records, the court held that the taxpayer failed to sustain its burden to show that it was qualified for federal tax exemption as a corporation organized and operated exclusively for religious and charitable purposes, as required under IRC 501 (c)(3), and that it was further qualified to receive deductible charitable contributions under IRC 170(c)(2). The court

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

found that the inadequate records failed to show that the taxpayer's operations did not inure to the private benefit of its officers, as provided under IRC 6001. The court found that as a prerequisite to an IRC 6033 filing exemption, it was necessary for the taxpayer to show it qualified as an IRC 501 (c)(3) organization, which it could not.

Government's Position

The Organization's earnings have inured, in substantial part, to the benefit of . Treasury Regulations §1.501(c)(3)-1(c)(2) indicates an organization is not operated for exclusively exempt purposes if its net earnings inure in whole or part to an individual. Therefore, revocation of the Organization's §501(c)(3) status is warranted. was in a position of complete financial control during the year under examination. Because of this control, he was able to use the Organization's checking account debit card to pay his personal expenses. He did so on over 0 occasions during 20XX.

stated he was a volunteer and had no compensation or reimbursement arrangement with the Organization. Therefore, all the checks, cash withdrawals and debit card transactions from the Organization's checking account paying personal expenses benefited , and constitute inurement to him.

It is determined the following direct expenditures of Organization funds were not made for exempt purposes and benefitted :

Account #	Description	Annual Totals
0	-Personal	\$0 [^]
0	Travel and Lodging	\$0
0	Ministry Meals	\$0
0	Vehicle Expenses	\$0
Total inurement to		\$0

The Organization acknowledges the expense classification, " -Personal, " as use of funds by for personal use. No supporting documentation could be provided for the Travel and Lodging, Ministry Meals and Vehicle Expenses. Without substantiation (i.e. adequate written records), the expenditures cannot be verified as used for exempt purposes and are considered used for personal purposes as well.

Interaction with Section 4958 of the Code

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

The Organization, having been recognized in 20XX as an organization described in §501(c)(3) of the Internal Revenue Code, and remaining so recognized through the date of this report, is an “applicable tax-exempt organization”, as contemplated by §4958(e) of the Code.

is the founder and President of the Organization. He writes, signs checks and uses the debit card drawn on the Organization’s bank account. is an officer of the Organization and exercises substantial influence over the affairs of the Organization, and therefore meets the definition of a “disqualified person” as contemplated by §4958(f)(1) of the Code.

There was no intent by the Organization to treat any economic benefit to as compensation. Therefore, per §53.4958-4(c)(1) of the Treasury Regulations, any economic benefit that he received from the Organization is an automatic excess benefit transaction. All the transactions summarized in Exhibit 1 represent economic benefit to , and are thus all excess benefit transactions.

Following is a discussion of the five factors set forth in §1.501(c)(3)-1(f)(2)(ii) of the Treasury Regulations for revoking 501(c)(3) status on the grounds of inurement when the inurement also constitutes excess benefit transactions (“EBTs”):

Factor #1: Size and scope of exempt activities before and after EBTs

Revocation is being proposed on the grounds of inurement. The definition of the word “educational” in §1.501(c)(3)-1(d)(3)(i) of the Treasury Regulations includes “*the instruction or training of the individual for the purpose of improving or developing his capabilities*”. For the purposes of this report, the Organization’s mentoring, life, and athletic coaching can be considered educational in nature. In addition, religious purposes are promoted by the bible study as well as the mentoring and life coaching activities.

However, the exempt purposes carried out by any of the Organization’s activities, does not mitigate the numerous instances of inurement detailed in this report. Like the organization in *Church of Gospel Ministry, Inc. v. United States*, the Organization’s failure to keep adequate records does not demonstrate that its operations did not inure to the private benefit of its officer and sustain its burden to show that it is qualified for federal tax exemption under §501(c)(3). As such, consideration of this first factor weighs in favor of revocation.

Factor #2: Size and scope of EBTs in relation to size and scope of exempt activities

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

As shown, the level of EBTs during 20XX, is approximately 0% ($\$0 \div \0) of all funds received during the year. This is a substantial level of EBTs. Therefore, consideration of this second factor weighs in favor of revocation.

Factor #3: Multiple EBTs

There were over 0 transactions identified just by the Organization as instances of personal use of Organization funds by _____ that constitute both inurement and EBTs. EBTs were not isolated or infrequent. Consideration of this third factor also weighs in favor of revocation.

Factor #4: Whether safeguards have been implemented

The transactions constituting inurement and EBTs were routine and continuous. _____ ability to write checks, make withdrawals and use the debit card for personal expenses month after month reveal his complete control over the Organization's finances. This suggests a complete absence of any internal controls or safeguards, and the absence of an independent governing body exercising oversight. There is no indication that changes have been made or safeguards implemented. Consideration of this fourth factor also weighs in favor of revocation.

Factor #5: Whether the EBTs have been corrected

No correction of the EBTs have been made. Consideration of this fifth factor therefore also weighs in favor of revocation.

Summary

The inurement detailed in this report is a significant amount of inurement relative to the Organization's funds. This puts the Organization in violation of §1.501(c)(3)-1(c)(2) of the Regulations and warrants revocation of its exempt status under Code §501(c)(3). Given the routine and continuous nature of the inurement throughout 20XX, revocation is proposed effective January 1, 20XX.

Taxpayer's Position

The Organization's position is not known at this time.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Employer Identification Number:
Name of Taxpayer		Year/Period Ended December 31, 20XX

Conclusion

The Organization's net earnings have inured, in substantial part, to the benefit of its founder and President, . This violates §1.501(c)(3)-1(c)(2) of the Regulations and warrants revocation of EO's 501(c)(3) status effective January 1, 20XX. Form 1120, U.S. Corporation Income Tax Return, should be filed for 20XX, and each year thereafter as long as the Organization remains subject to federal income tax. If the proposed revocation becomes final, appropriate state officials will be notified of such action in accordance with §6104(c) of the Internal Revenue Code.