



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

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Number: 202052028
Release Date: 12/24/2020

UIL: 501.03-00

Date: April 28, 2020

Taxpayer ID Number:

Form:

Tax Period(s) ended:

Person to Contact:

Identification Number:

Telephone Number:

Fax Number:

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 (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3), effective July 1, 20XX. Your determination letter dated October 19XX is revoked.

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

You did not engage in exempt activities and failed to establish that you are operated exclusively for exempt purposes within the meaning of IRC Section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals.

As such, you failed to meet the requirements of IRC Section 501(c)(3) and Treasury Regulations Section 1.501(c)(3)-1(c), in that you have not established that you were operated exclusively for exempt purposes.

We previously provided you a report of examination explaining the proposed revocation 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 October 25, 20XX, you signed Form 6018, *Consent to Proposed Action – Section 7428*, in which you agreed to the revocation of your tax exempt status as described under IRC Section 501(c)(3). This is a final determination letter with regards to your federal tax-exempt status under Section 501(a).

Contributions to your organization are no longer deductible under IRC Section 170.

Organizations that are not exempt under IRC 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 IRC Section 7428 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 by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

U.S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., NW
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 IRC Section 7428.

We'll notify the appropriate state officials (as permitted by law) of our determination that you aren't an organization described in IRC Section 501(c)(3).

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.

Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in 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 can get any of the forms or publications mentioned in this letter by calling 800-TAX-FORM (800-829-3676) or visiting our website at www.irs.gov/forms-pubs.

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.

Enclosures:
Publication 892

Sincerely,



Maria D. Hooke
Director, EO Examinations



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

Date:
September 19, 2019
Taxpayer Identification Number:

Form:

Tax Year Ended:

Person to Contact:

Employee ID:

Telephone:

Fax:

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 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 period 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.

For 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,



for Maria Hooke
Director, Exempt Organizations
Examinations

Enclosures:
Form 886-A
Form 6018
Form 4621-A
Publications 892 & 3498-A

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended 20XX

ISSUE:

Whether _____ section 501(c)(3) exempt status should be revoked for failing to operate exclusively for one or more exempt purpose?

FACTS:

_____ was originally incorporated under the name of _____ under the laws of the State of _____ as a non-profit corporation on April 30, 19XX for the following purposes as stated in the Articles of Incorporation:

“The specific and primary purposes are to engage in developing a long range fundraising program and to establish and maintain a broad base of public support for the development and maintenance of _____, which is owned and operated by the _____, duly formed and existing under the _____ law of the State of _____, together with any additional hospital, or hospitals, or facilities developed by said _____, and to receive contributions from the general public and in turn make donations to the said _____, for the purpose of development of projects and programs approved by the board of directors of said District.”

Our Form M-4280 Determination of Exemption Under Section 501(c)(3) as a Public Charity dated December 11, 19XX granted _____ exempt status under section 501 (c)(3) of the Internal Revenue Code as an organization described under section 509(a)(3).

In an Information Document Request (IDR) dated March 12, 20XX, the organization was asked whether it was operating and to provide a detailed description of its activities, meeting minutes, bank statements and cancelled checks to substantiate that it is operating within the scope of section 501(c)(3) of the Internal Revenue Code.

The organization's Treasurer provided a written response, and the following documentation as follows:

- Articles of Incorporation, Bylaws, and all amendments, a copy of the Determination Application, Determination Letter, and all related correspondence.
- There have been no meetings from 7/1/20XX to present.
- Request for Newsletters, brochures, and publications produced by or for your organization which relates to its activities, the Treasurer listed NONE.
- There is no general ledger for this period.
- There was a bank account during the fiscal year ended 6/30/20XX, bank account included a savings with ending balance of \$0.00, and a checking account ending balance of \$0.00.
- Verification for Type III supporting organization was also requested and Treasurer stated the following “Please call me to discuss this”.

An initial interview call was conducted on June 6, 20XX with the Treasurer _____ to gather more information regarding Type III Supporting Organization, _____ stated:

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- That the supporting Organization has filed for bankruptcy and is no longer conducting activities in furtherance of its exempt purpose, although the supported organization has filed for bankruptcy and not longer conducting activities it is financially active in that it continues to receive Parcel Tax that is funding the bankruptcy.
- No activities have been conducted since 20XX.
- President has resigned, and or board members are deceased.
- No board meetings have been conducted since July 1, 20XX

was inactive during the period July 1, 20XX through June 31, 20XX. did not hold any activities for the benefit of , nor did it make any grants or distributions to . Based on this lack of activity, has not operated exclusively for exempt purposes.

LAW:

IRC § 501(c)(3) exempts from federal income tax organizations which are 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 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.

Tax Reg. § 1.501(c)(3)-1(d)(i) states that an organization may be exempt as an organization described in 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Tax Reg. § 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

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

Tax Reg. 1.509(a)-4(g) *Meaning of operated, supervised, or controlled by.* (1)(i) Each of the items *operated by, supervised by, and controlled by*, as used in section 509(a)(3)(B), presupposes a substantial degree of direction over the policies, programs, and activities of a supporting organization by one or more publicly supported organizations. The relationship required under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable or responsible to, the parent organization. This relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.

Tax Reg. 1.509(a)-4(h) In order for a supporting organization to be *supervised or controlled in connection with* one or more publicly supported organizations, there must be common supervision or control by the persons supervising

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or controlling both the supporting organization and the publicly supported organizations to insure that the supporting organization will be responsive to the needs and requirements of the publicly supported organizations. Therefore, in order to meet such requirement, the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations.

Tax Reg. 1.509(a)-4(i)(4)(ii) *Substantially all activities directly further exempt purposes –*

(A) *In general.* A supporting organization meets the requirements of this paragraph (i)(4)(ii) if it engages in activities substantially all of which -

- (1)** Directly further the exempt purposes of one or more supported organizations to which the supporting organization is responsive by performing the functions of, or carrying out the purposes of, such supported organization(s); and
- (2)** But for the involvement of the supporting organization, would normally be engaged in by such supported organization(s).

Tax Reg. 1.509(a)-4(i)(5) *Integral part test - non-functionally integrated Type III supporting organization -*

(i) *General rule.* A supporting organization meets the integral part test and will be considered non-functionally integrated if it satisfies either -

- (A)** The distribution requirement of paragraph (i)(5)(ii) of this section and the attentiveness requirement of paragraph (i)(5)(iii) of this section; or
- (B)** The pre-November 20, 1970 trust requirements of paragraph (i)(9) of this section.

Tax Reg. 1.509(a)-4(i)(5)(ii)

(B) *Distributable amount.* Except as provided in paragraphs (i)(5)(ii)(D) and (E) of this section, the distributable amount for a taxable year is an amount equal to the greater of 85 percent of the supporting organization's adjusted net income (as determined by applying the principles of section 4942(f) and § 53.4942(a)-2(d) of this chapter) for the taxable year immediately preceding the taxable year of the required distribution (immediately preceding taxable year) or its minimum asset amount (as defined in paragraph (i)(5)(ii)(C) of this section) for the immediately preceding taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the Internal Revenue Code during the immediately preceding taxable year.

TAXPAYER'S POSITION:

The taxpayer's position is that they are aware that they are not directly operating in furtherance of their exempt purpose, due to the fact that the supported organization is no longer in existence since it filed for bankruptcy. Treasurer stated that he is just maintaining the books and records for the organization.

GOVERNMENT'S POSITION:

Treasury Regulation section 1.501C(c)(3)-1(c)(1) states "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 its exempt purpose."

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In this case, and as described above, not hold any activities for the benefit of . Based on this lack of activity, section 501(c)(3) exempt status should be revoked.

was inactive in the tax year at issue. did , nor did it make any grants or distributions to has not operated exclusively for exempt purposes and

The organization received most of its revenue from investment income. Therefore, the organization would not meet the income requirements for reclassification as a Public Charity under section 170(b)(1)(A)(vi).

All supporting organizations must pass an organizational test, an operational test, a control test and a relationship test. Supporting organizations are classified as Type I, Type II or Type III supporting organizations based on how they satisfy the relationship test.

Organizational Test

A supporting organization must be organized exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified 509(a)(1) or 509(a)(2) organizations.

The organization's articles must state the specified publicly supported organization(s) on whose behalf the supporting organization is to be operated. The articles of a Type I or II supporting organization may designate its supported organization(s) by class or purpose. The articles of a Type III supporting organization may not.

Subject to certain requirements, a Type I or II supporting organization may support an organization not organized in the United States. A Type III supporting organization may not.

The organization's articles must not expressly empower the organization to engage in activities not in furtherance of these purposes or to operate to support or benefit any organization other than its specified supported organization(s).

Operational Test

A supporting organization must engage solely in activities that support or benefit its supported organization(s). In addition to making direct grants to its supported organization(s), a supporting organization generally may make grants or provide services or facilities to:

- individual members of the charitable class benefited by its supported organization(s),
- another supporting organization that supports the same supported organization(s) or
- a state college or university described in Internal Revenue Code section 511(a)(2)(B) (colleges or universities which are government instrumentalities).

However, any such grants or provision of services or facilities must support or benefit the supported organization(s), not just the direct recipients.

Control Test

Disqualified persons may not control a supporting organization, whether directly or indirectly. For this purpose—

- Foundation managers who are disqualified persons *only as a result of being foundation managers*, and not for other reasons, are not treated as disqualified persons for purposes of this control test; and
- *Control* means the practical ability to require the organization to perform any act which significantly affects its operations, or to prevent any such act.

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Relationship Test

A supporting organization is classified as a Type I, Type II or Type III supporting organization based on the type of relationship it has with its supported organization(s). Type III supporting organizations are further classified as functionally integrated ("FISO") and non-functionally integrated ("non-FISO"), as noted elsewhere.

Type I

A Type I supporting organization must be operated, supervised or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. The relationship between the supported organization(s) and the supporting organization is sometimes described as similar to a parent-subsidiary relationship.

Type II

A Type II supporting organization must be supervised or controlled in connection with its supported organization(s), typically by having a majority of the directors or trustees of the supported organization(s) serve as a majority of the trustees or directors of the supporting organization. The relationship between the supported organization(s) and the supporting organization is sometimes described as similar to a brother-sister relationship.

Type III

A Type III supporting organization must be operated in connection with one or more publicly supported organizations. All supporting organizations must be responsive to the needs and demands of, and must constitute an integral part of or maintain significant involvement in, their supported organizations. Type I and Type II supporting organizations are deemed to accomplish these responsiveness and integral part requirements by virtue of their control relationships. However, a Type III supporting organization is not subject to the same level of control by its supported organization(s). Therefore, in addition to a **notification requirement**, Type III supporting organizations must separately pass the **responsiveness** and **integral part tests**.

Notification requirement

A Type III supporting organization must provide the following documents annually to each of its supported organizations:

1. A written notice describing the type and amount of support provided by the supporting organization to the supported organization during the taxable year preceding the year in which the notice is provided;
2. A copy of the supporting organization's Form 990 or 990-EZ that was most recently filed as of the date the notification is provided; and
3. A copy of the supporting organization's governing documents, as most recently amended, to the extent not previously provided.

This information must be postmarked or electronically transmitted by the last day of the fifth month following the close of the taxable year to which the information pertains.

Responsiveness test

A Type III supporting organization must be responsive to the needs or demands of a supported organization. An organization meets this test with regard to a particular supported organization if:

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- The supported organization is *adequately represented* in the governing body of the supporting organization because:
 - The supported organization may appoint at least one officer, director or trustee of the supporting organization
 - At least one member of the governing body of the supported organization also serves as an officer, director or trustee of a supporting organization, or
 - The officers, directors, or trustees of the supporting organization and of the supported organization maintain a close and continuous working relationship; *and*
- Because of this relationship, the supported organization has a *significant voice* in how the supporting organization manages and uses its assets.

Integral part test

A Type III supporting organization may be *functionally integrated* (FISO) or *non-functionally integrated* (non-FISO) depending on the manner in which it meets the integral part test. Type III FISOs are subject to fewer restrictions and requirements than non-FISOs. In particular, distributions from private foundations to Type III non-FISOs are not qualifying distributions for purposes of satisfying a private foundation's required annual distributions under section 4942, and may be taxable expenditures under section 4945. In addition, Type III non-FISOs are subject to excess business holding rules under section 4943 and must meet annual payout requirements.

Non-Functionally Integrated Supporting Organization

- Non-functionally integrated Type III supporting organizations are described in Treas. Reg. 1.509(a)-4(i)(5), and are characterized by making *payments*, such as grants, to the supported organization(s). Non-FISOs are also subject to more restrictions and requirements than FISOs.
- Distribution requirement – Treasury issued final regulations on the distribution requirement for non-FISOs, effective December 21, 20XX. A Type III non-FISO must distribute its “distributable amount” each taxable year to or for the use of one or more supported organizations. The distributable amount for a taxable year is an amount equal to the greater of:
 - Distributable amount: 0% of the supporting organization’s adjusted net income for the prior taxable year.
 - Minimum asset amount: 0.0% of the excess of the aggregate fair market value of the supporting organization’s non-exempt-use assets in the taxable year immediately before the taxable year of the required distribution, over the acquisition indebtedness for the non-exempt-use assets, with certain adjustments. (See T.D. 9746; 2016-14 I.R.B. 515, for further details.)
- Attentiveness requirement – A non-FISO must distribute one-third or more of the organization’s distributable amount to one or more supported organizations that are *attentive* to the operations of the supporting organization. A supported organization is attentive to the operations of the supporting organization during a taxable year if at least one of the following requirements is satisfied:
 - The supporting organization distributes to the supported organization amounts equaling or exceeding 10% of the supported organization’s total support for the prior taxable year. (Treas. Reg. 1.509(a)-4(i)(5)(iii)(B)(1)); or
 - The amount of support received from the supporting organization is

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necessary to avoid interruption of a particular function or activity of the supported organization. The support is considered necessary if it is earmarked for a particular program or activity, as long as it is a substantial one. (Treas. Reg. 1.509(a)-4(i)(5)(iii)(B)(2)); or

- Based on all facts and circumstances, the amount of support received is a sufficient part of a supported organization's total support to ensure attentiveness. Pertinent factors include the number of supported organizations, the length and nature of relationships and the purpose to which funds are applied. (Treas. Reg. 1.509(a)-4(i)(5)(iii)(B)(3)).

CONCLUSION:

It is the position of the Internal Revenue Service that the organization failed to demonstrate it continues to operate exclusively for IRC 501(c)(3) Type III Non-Functionally Integrated Supporting Organization purposes; by not making payments, such as grants, or distributions to the supported organization, failing to meet the distribution requirement, and attentiveness requirement.

Second position of the Internal Revenue Service: _____ was inactive in the tax year at issue. _____ did not hold any activities for the benefit of _____, nor did it make any grants or distributions to _____. Based on this lack of activity, _____ has not operated exclusively for exempt purposes and section 501(c)(3) exempt status should be revoked.

Accordingly, we are proposing that the organization's exempt status be revoked effective July 1, 20XX.