



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: September 30, 2020

Number: 202110038
Release Date: 3/12/2021

UIL: 501.03-00

Taxpayer ID Number:

Form:

Tax Period(s) Ending:

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 January 1, 20XX. Your determination letter dated August 15, 20XX is revoked.

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

Organizations described in IRC Section 501(c)(3) and exempt from tax under IRC Section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents or otherwise demonstrate that you are operated exclusively for exempt purposes and that no part of your net earnings inure to the benefit of private shareholders or individuals. You failed to respond to repeated requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by IRC Sections 6001 and 6033(a)(1) and the regulations thereunder.

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

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 20439

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 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.

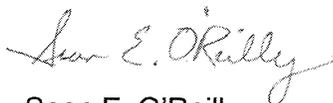
Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer 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 questions, you can contact the person listed at the top of this letter.

Sincerely,

Enclosures:
Publication 892



Sean E. O'Reilly
Director, Exempt Organizations Examinations



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

Date:
12/20/2019
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:
Address:

CERTIFIED MAIL – Return Receipt Requested

Manager's contact information:

Name:
ID number:
Telephone:
Response due date:

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,

Maria Hooke
Director, Exempt Organizations Examinations

Enclosures:
Form 886-A
Form 6018

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

Issue

Whether _____ is operating as a private foundation under IRC 501(c)(3) of the Internal Revenue Code ("IRC") sufficiently enough that tax-exempt status should be continued?

Facts

Organizational and Exemption History

_____ ("_____") was incorporated under the nonprofit laws of the state of _____ on March 5, 20XX. _____ was listed as the lone incorporator of the _____.

In November 20XX, the Foundation submitted Form 1023 an *Application for the Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* (Rev. June 20XX). The application stated that the _____ was a 501(c)(3) science and education non-profit corporation established to:

- Foster and support the development of science and technology;
- Stimulate development of science/technology-based commercial, National Defense, and National Security businesses;
- Generate science and technology jobs;
- Provide science and technology educational opportunities by collaboration with local tech. schools, colleges, and universities.

The _____ had no past activities, but stated that their present activities were:

“

”

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

Future activities were stated to be:

- Foster and support the development of science and technology;
- Stimulate development of science/technology-based commercial, National Defense, and National Security businesses;
- Generate science and technology jobs;
- Provide science and technology educational opportunities by collaboration with local tech. schools, colleges, and universities via a TEAM/ paradigm.

Per Form 1023, Part X (Public Charity Status), line 1a, the requested to be classified as a private foundation.

Form 1023, Part V (Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and Independent Contractors) listed and as the only directors for the . Form 1023, Part XI (User Fee Information) recorded the name and signature for . This section was signed on May 21, 20XX.

Based on information supplied in the Form 1023 application and related attachments, the was granted exemption under IRC 501(c)(3) as a private foundation on August 15, 20XX. The exemption was effective as of the date of incorporation (March 15, 20XX).

The attempts to conduct an examination

On March 22, 20XX, an initial appointment Letter 3611, Information Document Request ("IDR") 01 and Publication 1 was sent via certified mailing to:

The purpose of the letter and document request was to solicit an original or copy of the delinquent 20XX Form 990-PF return. The 20XX return was needed to conduct an official examination. At the time the initial appointment letter was issued, the 20XX Form 990-PF had not been filed. The response due date to the letter and document request expired on April 2, 20XX.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

On April 10, 20XX, a phone call was made to _____ at _____ to follow-up on information mailed on 3/22/20XX. _____ stated that he was to follow-up with _____ with respect to the information requested but needed additional time. Based on the conversation with _____, an extension up to 5/2/20XX was granted for compliance.

On May 2, 20XX, a follow-up call was made to _____. No one answered the phone. Consequently, Revenue Agent ("RA") left a voice mail message at the _____ number. As there was no response to the voice mail message left on May 2, another call was made to the _____ number on May 11, 20XX.

On May 11, 20XX, RA spoke with _____ who still did not have a copy of the Form 990-PF return for 20XX. _____ was unable to provide a definite time period in which the return would be submitted and suggested that RA speak with the other director, _____. RA requested that _____ have director call with details and a more specific time period.

On May 15, 20XX, _____ left a voice mail message stating that he had received our audit request information from _____ and that he was sending a copy of the delinquent 20XX return to our offices. A copy of the delinquent Form 990 return was received on May 30, 20XX.

Subsequent to the receipt of the delinquent 20XX Form 990-PF return, a second IDR was issued to examine the items reported on the return. IDR 02 was dated on July 1, 20XX with a response due date of July 13, 20XX.

On July 13, 20XX, RA made a phone call to _____ and _____ with respect to the second document request. There was no response to the phone call from _____ or _____.

From July 13 through September 19, calls were made to both directors of the _____ to get the examination in process. No appointments were scheduled nor mailed responses received with respect to the second document request. Therefore, RA issued the following letters to both directors noted on the return:

- Letter 5077-D (Delinquency Notice) issued on 9/19/20XX due on 10/3/20XX;
- Letter 5077-A (Pre-Summons Letter) issued on 3/28/20XX due on 4/8/20XX

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

No appointment was scheduled, or documents provided with respect to the 5077 letters and IDR 02 submitted. All correspondence was sent via certified mailing.

After a plethora of phone calls and voice mail messages left to both _____ and _____, from April 10, 20XX through August 16, 20XX, without any response, the RA left a message on the phones of each director indicating the next step would be the issuance of a summons for the documents previously requested.

On September 3, 20XX, RA prepared Form 2039 (Summons) and sent it via certified mailing to an address associated with _____. The response due date for the summons was September 16, 20XX. The summons response due date came and went without any reply from either of the directors of the _____.

Review of the Forms 990-PF returns

The 20XX Form 990-PF was the initial return being selected for examination. However, the _____ failed to respond to document requests and other inquiries to effectively conduct an examination. Consequently, RA was unable to examine any books and records to verify income, expenses, assets or liabilities, interview the directors related to the _____, or tour any facility holding assets noted on the return.

Thus, a review of the 990-PF returns from 20XX through 20XX was undertaken to show, at a minimum, what was reported. For each year noted, contribution income and/or administrative expenses, depending on the tax year was reported on the returns. **(See Exhibit A)**

From copies of Schedule B (Schedule of Contributors), _____ was listed as the primary contributor to the _____ for the years noted. From 20XX through 20XX, no expenses were reported, yet there was no corresponding increasing cash assets noted on the balance sheet.

A further review revealed that significant sections of the 990-PF returns were either incomplete, had zeros or was blank. This included:

- Part III, Analysis in Changes in Net Assets or Fund Balances. All amounts in this section were zeros;
- Part IV-Capital Gains/Losses for Tax on Investment Income listed "none";
- Part V – Qualification under Section 4940(e) for Reduced Tax on Net Investment Income. All fields were blank.
- Part VI – Excise Tax Based on Investment Income. Fields had zeros.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

- Part X – Minimum Investment Return section contained zeros.
- Part XI – Distributable Amount section also contained zeros.
- Part XII – Qualifying Distributions typically had an expense amount similar to the amount of contributions, but had zeros for the remaining part of the section;
- Part XV – Supplementary Information – Grants and Contributions Paid during the Year or Approved for Future Payment. This section was blank;
- Part XVI-A – Analysis of Income Producing Activities was blank; and
- Part XVI-B – Relationship of Activities to the Accomplishment of Exempt Purpose section was blank as well.

The balance sheet for each year **only** listed ending assets with a book or fair market value equal to or in excess of \$0 million dollars. (See Exhibit A) Disposition of assets from a prior year were not reflected in the subsequent year filing of a specific Form 990-PF return.

For each year, the stated that it had not conducted any charitable activities for one reason or another. (See Exhibit B) All returns were prepared and signed by

Law

Internal Revenue Code section 501(c)(3) provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the income Tax Regulations provides that in order to qualify for exemption an organization must be both **organized and operated** exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Treasury Regulations section 1.501(c)(3)-1(c)(1) states that, an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages *primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)*. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase “exclusively for educational purposes” in Better

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Treasury Regulations section 1.501(c)(3)-1(d)(i) provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Treasury Regulations section 1.501(c)(3)-1(d)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serves private interests.

Treasury Regulations section 1.501(c)(3)-1(d)(iii) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational", exemption will not be denied if, in fact, it is "charitable".

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

Treasury Regulations section 1.501(c)(3)-1(d)(3)(i) provide that the term educational includes the instruction of the public on subjects useful to the individual and beneficial to the community.

Treasury Regulations section 1.501(c)(3)-1(d)(2) Charitable defined. —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: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an “action” organization of any one of the types described in paragraph (c)(3) of this section.

Treasury Regulations section 1.501(c)(3)-1(d)(3)(1) defines educational 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.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

In **Stevens Bros. Foundation, Inc. v. Commissioner, 324F 2d 633 (10th Cir. 1963)** affirming **39 T.C. 93 (1962)** organization's exemption was revoked for failure to operate exclusively for charitable purposes where it entered into a partnership with and advanced funds to a for-profit entity owned and controlled by the organization's directors. The for-profit entity needed the funds to obtain construction contracts, which ultimately proved profitable. The court reasoned that the organization engaged in the transactions substantially for the purpose of benefiting its founders.

Treasury Regulations section 1.501(c)(3)-1(d)(5)(i) states that since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest. Therefore, the term "scientific" includes the carrying on of scientific research in the public interest.

Government's Position

The intended purpose of the _____ was to:

- Foster and support the development of science and technology;
- Stimulate development of science/technology-based commercial, National Defense, and National Security businesses;
- Generate science and technology jobs;
- Provide science and technology educational opportunities by collaboration with local tech. schools, colleges, and universities.

And based upon those intended purposes, the _____ was granted exemption under IRC 501(c)(3) as a private foundation.

Per the filed Forms 990-PF, Part IX-A (Summary of Direct Charitable Activities), the _____ has repeatedly stated that it did not conduct any activities during the year it operated. This statement was made on every Form 990-PF returned filed, as noted in Exhibit B.

As a private foundation, the _____ is required to make minimum distributions on the assets that it holds. Per Exhibit A, the _____ reports inventories for sale or other assets in the millions, yet never made one qualifying distribution in the intended examination period (20XX) or any period before or after that time.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

A superficial review of the Form 990-PF returns reflects the receipt of contribution income, yet no other assets other than inventories for sale/use or "other assets" are reported. The information on the return appears to be grossly incorrect, but not being able to fully examine that information has prevented the Service from performing its duties to the general public. And further determining if the _____ is operating for the purposes under which it was granted exemption.

While the _____ has been compliant in filing Forms 990-PF, it has failed to show that it is operating as a charitable, educational, scientific or any other type of organization enough to retain tax exempt status.

In egregiously failing to respond to multiple repeated requests for examination, the _____ has failed to show that it merits exempt status as a private foundation

The Law is clear. To be considered tax-exempt, an organization must be organized and operating as a tax-exempt organization. By its own claims and its neglect, The _____ has shown that it is not operating for tax-exempt purposes.

Taxpayer's Position

The Taxpayer has not advocated a position regarding the revocation of its exempt status.

Conclusion

Based upon the regulations and Code, we hold that your organization is **not** operated exclusively for **any** charitable, educational or scientific purpose, thereby defeating the retention of exemption. Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code.

Revocation of your exempt status will be effective as of January 1, 20XX. In accordance with this determination, you are required to file Federal income tax returns on Form 1120. Contributions to your organization are no longer deductible by donors under section 170(c)(2) of the Code.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or
Name of Taxpayer		Year/Period Ended 20XX/December

In accordance with the provisions of section 6104(c) of the Code a copy of this letter will be sent to the appropriate State officials.

On December 2, 20XX, the D.C. Circuit ruled that the Service will disclose our denials and revocations under section 6110 effective August 1, 20XX.