



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

Release Number: 202404006
Release Date: 1/26/2024
UIL Code: 501.03-00

Date:

Taxpayer ID number (last 4 digits):

Form:

Tax periods ended:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Last day to file petition with United States
Tax Court:

CERTIFIED MAIL - Return Receipt Requested

Dear

Why we are sending you this letter

This is a final determination that you don't 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
Your determination letter dated , is revoked.

Our adverse determination as to your exempt status was made for the following reasons: You have not demonstrated that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3) and that no part of your net earnings inure to the benefit of insiders. More than an insubstantial part of your activities was not in furtherance of an exempt purpose. You operated for the primary purpose of carrying on the unrelated trade or business of providing tax return preparation services.

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 **IRS.gov**.

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

What you must do if you disagree with this determination

If you want to contest our final determination, you have 90 days from the date this determination letter was mailed to you to file a petition or complaint in one of the three federal courts listed below.

How to file your action for declaratory judgment

If you decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. You can download a fillable petition or complaint form and get information about filing at each respective court's website listed below or by contacting the Office of the Clerk of the Court at one of the addresses below. Be sure to include a copy of this letter and any attachments and the applicable filing fee with the petition or complaint.

You can eFile your completed U.S. Tax Court petition by following the instructions and user guides available on the Tax Court website at **ustaxcourt.gov/dawson.html**. You will need to register for a DAWSON account to do so. You may also file your petition at the address below:

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

The websites of the U.S. Court of Federal Claims and the U.S. District Court for the District of Columbia contain instructions about how to file your completed complaint electronically. You may also file your complaint at one of the addresses below:

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439
uscfc.uscourts.gov

US District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
dcd.uscourts.gov

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).

Information about the IRS Taxpayer Advocate Service

The IRS office whose phone number appears at the top of the notice can best address and access your tax information and help get you answers. However, you may be eligible for free help from the Taxpayer Advocate Service (TAS) if you can't resolve your tax problem with the IRS, or you believe an IRS procedure just isn't working as it should. TAS is an independent organization within the IRS that helps taxpayers and protects taxpayer rights. Contact your local Taxpayer Advocate Office at:

Internal Revenue Service

Or call TAS at 877-777-4778. For more information about TAS and your rights under the Taxpayer Bill of Rights, go to **taxpayeradvocate.irs.gov**. Do not send your federal court pleading to the TAS address listed above. Use the applicable federal court address provided earlier in the letter. Contacting TAS does not extend the time to file an action for declaratory judgment.

Where you can find more information

Enclosed are Publication I, Your Rights as a Taxpayer, and Publication 594, The IRS Collection Process, for more comprehensive information.

Find tax forms or publications by visiting [IRS.gov/forms](https://irs.gov/forms) or calling 800-TAX-FORM (800-829-3676). If you have questions, you can call the person shown at the top of this letter.

If you prefer to write, use the address shown at the top of this letter. Include your telephone number, the best time to call, and a copy of this letter.

You may fax your documents to the fax number shown above, using either a fax machine or online fax service. Protect yourself when sending digital data by understanding the fax service's privacy and security policies.

Keep the original letter for your records.

Sincerely,

A handwritten signature in black ink that reads "Lynn Brinkley". The signature is written in a cursive style with a large, stylized "L" and "B".

Lynn A. Brinkley

Director, Exempt Organizations Examinations

Enclosures:

Publication I

Publication 594

Publication 892



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

Date:
July 11, 2023
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:
Address:

Manager's contact information:

Name:
ID number:
Telephone:

Response due date:
August 10, 2023

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.

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,

A handwritten signature in black ink that reads "Jason Brasch". The signature is written in a cursive style and is enclosed within a faint rectangular border.

Digitally signed by Jason E.
Brasch
Date: 2023.07.11 10:30:03 -07'00'

For Lynn Brinkley
Director, Exempt Organizations
Examinations

Enclosures:
Form 6018
Form 4621-A
Form 886-A
Pub 892
Pub 3498

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/Periods ended

ISSUES

1. Whether (the Organization) provided information verifying its continued qualification for exempt status under Section 501(c)(3) of the Internal Revenue Code (IRC), as required by IRC Section 6033(a)(1).
2. Whether the Organization engaged in nonexempt activities prohibited by IRC Section 501(c)(3).
3. Whether the Organization's exempt status should be revoked for engaging in nonexempt activities and failing to provide information verifying its continued qualification for exempt status for the tax period ending .

FACTS

The Organization was incorporated in the State of on , as a non-profit public benefit corporation. Article of its Articles of Incorporation state its purpose is to “ ” The Organization is currently in active good standing with the Secretary of State.

On , the Internal Revenue Service (IRS) received Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, from the Organization requesting exemption from income tax under IRC Section 501(c)(3). The Organization provided the following narrative description of its activities:

On , the IRS granted tax-exemption to the Organization under IRC Section 501(c)(3), and further classified it as a public charity described in IRC Sections 509(a)(1) and 170(b)(1)(A)(vi), effective

On , the Organization filed Form 990-EZ, *Short Form Return of Organization Exempt from Income Tax*, for tax year ended .

In , the assigned agent began an examination of the Organization's Form 990-EZ for tax years ended , and .

On , the assigned agent issued the initial contact letter and Information Document Request (IDR) to the Organization. No response was received by the assigned agent.

On , the assigned agent issued notice of third-party contact, IDR delinquency notice, and IDR to the Organization. No response was received by the assigned agent.

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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The assigned agent obtained bank statements for the Organization's checking and savings accounts with . The signature cards show as the signatory on the accounts.

The bank statements show the following deposits and withdrawals for tax year , compared to the amounts reported on the Form 990-EZ:

	Per Form 990-EZ	Per Bank Statements	Difference
Total Revenue/Deposits	\$	\$	\$
Total Expenses/Withdrawals			

On , the assigned agent issued IDR to the Organization requesting supporting documentation for the transactions listed in the bank statements. See the enclosed *Attachment* for the list of transactions.

On , the assigned agent received a fax from Mr. , Director, with a written response to IDR . The response included the following explanation of its sources of income:

On , the assigned agent issued IDR to the Organization with scheduled site visit for ,

On , the assigned agent conducted an interview and tour of facilities with at the Organization's property, located at , where he provided the following information:

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The Organization has board members:

1. , Executive Director
2. , Treasurer and Secretary
3. , Director.
4. , Director.
5. , Director and Controller

On , the assigned agent issued IDR to the Organization with scheduled in-person appointment for .

On , the assigned agent received a fax from with confirmation of e-filing Forms 990-N postcard for tax years , , and .

On , the Organization filed Form 990-N, *Electronic Notice (e-postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ*, for tax year ended , originally due . The Organization indicated on its Form 990-N that it received not more than \$50,000 in gross receipts during the accounting period, without subtracting any costs or expenses.

The bank statements show the following deposits and withdrawals for tax year , compared to the Form 990-N:

	Per Form 990-N	Per Bank Statements	Difference
Total Revenue/Deposits	Not more than \$	\$	\$
Total Expenses/Withdrawals			-

On , the Organization filed Form 990-N for tax year ended , originally due . The Organization indicated on its Form 990-N that it received not more than \$ in gross receipts during the accounting period, without subtracting any costs or expenses.

On , the Organization filed Form 990-N for tax year ended . The Organization indicated on its Form 990-N that it received not more than \$50,000 in gross receipts during the accounting period, without subtracting any costs or expenses.

On , the assigned agent received a phone call from cancelling the in-person appointment scheduled .

On , the assigned agent issued a delinquency notice for IDR with response due . No response has been received by the assigned agent.

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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On _____, the assigned agent expanded the examination to include tax years ended _____, _____, and _____. The assigned agent issued IDR _____ to the Organization requesting the relevant accounting records and financial statements with response due _____. No response has been received by the assigned agent.

LAW

IRC Section 501(c)(3) provides in part tax-exemption to corporations organized and operated exclusively for religious, charitable, or similar purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

IRC Section 6033(a)(1) provides in part that every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Treasury Regulations Section (Treas. Reg.) 1.501(a)-1(c) defines “private shareholder or individual” as referring to persons having a personal and private interest in the activities of the organization.

Treas. Reg. 1.501(c)(3)-1(c)(2) states that an organization is not operated exclusively for charitable purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) states in part that an organization is not organization exclusively for exempt purposes unless it serves public, rather than private, interests. Thus, it is necessary for the organization to establish that it is not organization or operated for the benefit of private interests such as designated individuals, the creator or their family, shareholders of the organization, or persons controlled, directly or indirectly, by such interests.

Treas. Reg. 1.6001-1(a) provides in part that any person subject to tax under Subtitle A of the Code, or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by such person in any return of such tax or information.

Treas. Reg. 1.6001-1(c) provides in part that every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033.

Treas. Reg. 1.6001-1(d) provides in part that the district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under Subtitle A of the Code.

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Treas. Reg. 1.6001-1(e) provides in part that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Treas. Reg. 1.6033-2(i)(2) provides in part that every organization which is exempt from tax shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of Subchapter F, Chapter 1 of Subtitle A of the Code, section 6033, and Chapter 42 of Subtitle D of the Code.

Revenue Ruling 59-95, 1959-1 C.B. 627 held that failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

In *Airlie Foundation, Inc. v. Commissioner of Internal Revenue (CIR)*, 70 T.C. 352 (1978) the Court held that in cases where an organization's activities could be carried out for either exempt or nonexempt purposes, courts must examine the manner in which those activities are carried out in order to determine their true purpose.

In *American Campaign Academy v. CIR*, 92 T.C. 1053 (1989), the Court held in part that operating for the benefit of private interests is a nonexempt purpose.

In *Northwestern Municipal Ass'n v. United States*, 99 F.2d 460, 463 the Court found that the phrase "net earnings", as used in Section 501(c)(3), may include "more than the term net profits as shown by the books of the organization or the difference between the gross receipts and disbursements in dollars."

In *United Missionary Aviation, Inc. v. CIR*, 60 T.C.M 1152, (CCH) 1990-566 the Court held in part that an organization does not qualify for tax exemption if it has a substantial nonexempt commercial purpose.

ORGANIZATION'S POSITION

The Organization has not provided a position.

GOVERNMENT'S POSITION

Issue #1: Whether the Organization provided information verifying its continued qualification for exempt status under Section 501(c)(3) of the Internal Revenue Code (IRC), as required by IRC Section 6033(a)(1).

IRC Section 6033(a)(1) requires exempt organizations to file annual information returns (Form 990, Form 990-EZ, or Form 990-PF) with an exception for organizations with annual gross receipts not normally more than \$5,000. Treas. Regs. 1.6001-1 and 1.6033-2(i)(2) require exempt organizations to keep permanent books of account or records to substantiate the information report on the annual information returns, and to

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provide such records as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status.

The activity and ending balances shown in the bank records do not match amounts reported on the Organization's Form 990-EZ for tax year . The bank records also show approximately \$ deposited into the Organization's bank accounts during , which far exceeds the \$50,000 filing threshold for the Form 990-N e-Postcard, indicating the Organization filed the wrong type of return.

The assigned agent requested explanation and supporting documentation to support the exempt nature of the expenditures listed in the bank records, including substantiation to justify the following cash and equivalent transactions made in and :

Amount	Description
\$	ATM withdrawals
	transfers to
	Transfers to unknown accounts
	Debits to unknown destinations

The Organization has not provided a response to IDRs and requesting it provide its books of account and financial statements to the assigned agent to evaluate its qualification for exemption.

In response to IDR , the Organization stated in writing it makes retail purchases on behalf of 's clients but provided no supporting documentation or substantiation for its expenditures during the examination years.

During the in-person field visitation, the Organization stated the ATM withdrawals were also for these clients of . The Organization did not fully respond to IDR by failing to provide the financial records to the assigned agent. The assigned agent informed the Organization that their response was incomplete and that they must provide the financial records.

The Organization has not provided a response to IDR requesting supporting documentation for the transactions claimed to be made on behalf of 's clients to the assigned agent.

The assigned agent made multiple attempts to request the necessary information from the Organization to properly evaluate its qualification or exempt status, and the Organization has not fully responded to the requests. The Organization did not request an extension of time to provide such information or provide a reason for its failure to respond. The assigned agent cannot properly determine the Organization is qualified for its tax-exempt status because of the Organization's failure to provide the necessary information.

The Organization has not provided information or records to assert its qualification for tax exemption under IRC Section 501(c)(3) as required by IRC Section 6033(a)(1).

Issue #2: Whether the Organization engaged in nonexempt activities prohibited by IRC Section 501(c)(3).

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Treas. Reg. 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) states in part that an organization is not organization exclusively for exempt purposes unless it serves public, rather than private, interests. An organization must establish it is not organized or operated for the benefit of private interests such as the creator or their family.

Executive Director _____ stated the Organization shares its bank accounts with _____, a for-profit income tax preparation organization owned and operated by _____ and _____ Director, _____. The Organization's bank accounts show the following sources of income received during tax years _____ and _____:

Amount	Source
\$ _____	State of _____ Franchise Tax Board income tax refunds
_____	IRS Dept of Treasury income tax refunds
_____	IRS Dept of Treasury COVID Economic Impact Payments (EIP)
_____	ATM Cash deposits
_____	_____ transfers in
_____	e-deposits
_____	Varo transfers in

The deposits from the State of _____ and IRS Department of the Treasury are addressed to specific individual taxpayers for either tax refunds or COVID-related relief payments. The Organization and _____ comingle assets and activities, making the for-profit business part-and-parcel to the operation of the exempt organization. The Organization could not distinguish the income, expenses and operations from that of the for-profit tax corporation. Similar to United Missionary Aviation Inc, v. CIR, the Organization has a substantial nonexempt commercial purpose, barring qualification from tax exemption.

As stated previously, the bank statements also reveal substantial dealings in cash and cash equivalents, including \$ _____ in ATM cash withdrawals and \$ _____ in transfers to _____ via _____ during tax years _____ and _____. There is no evidence in the record to support how these transactions furthered the Organization's exempt purpose, and the Organization has not provided documentation nor sufficient explanation to show as much. These withdrawals served _____' private interests by benefitting him personally, which is a nonexempt purpose under IRC Section 501(c)(3). As held in American Campaign Academy v. CIR, operating for the benefit of private interests is a nonexempt purpose.

Additionally, the activities described by _____—job referrals, childcare referrals, and income tax preparation referrals—serve the private interests of the referred businesses rather than those of the public. The referrals are made based on verbal agreements to specifically-named for-profit businesses, one of which is owned by a Director of the Organization. As the Court held in Northwestern Municipal Ass'n v. United States, the phrase 'net earnings' as used when defining inurement includes more than the term net profits as shown by the books of the organization or the difference between the gross receipts and disbursements in

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dollars. As such, the Organization is not operated exclusively for exempt purposes because its net earnings inure to the benefit of private shareholders and individuals.

The Organization has provided no evidence to establish it is not organized and operated for the benefit of the board members and their families as required by Treas. Reg. 1.501(c)(3)-1(d)(1)(ii). Thus, it is concluded that the Organization's expenditures and activities served private interests and allowed its net earnings to inure to the benefit of private individuals. As such, the Organization has engaged in nonexempt activities barring continued qualification for tax exemption under IRC Section 501(c)(3).

Issue #3: Whether the Organization's exempt status should be revoked for engaging in nonexempt activities and failing to provide information verifying its continued qualification for exempt status for the tax period ending .

The Organization has engaged in nonexempt activities and failed to provide documentation or testimony to support its exempt status and therefore does not qualify for exempt status under IRC Section 501(c)(3). The Organization fails to qualify for tax exemption effective the of the tax year in which it failed to qualify for exempt status, or .

CONCLUSION

The Organization has engaged in nonexempt activities and failed to provide information verifying its continued qualification for exempt status under IRC Section 501(c)(3) and should have its status revoked for the tax period ending , effective .