



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

Date:  
June 11, 2024  
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: September 9, 2024

Release Number: 202436014

Release Date: 9/6/2024

UIL Code: 501.03-00

**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: Organizations described in IRC Section 501(c)(3) and exempt from tax under Section 501(a) must be both organized and operated exclusively for exempt purposes and no part of the net earnings may inure to the benefit of any private shareholder or individual. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

You have not demonstrated that you are both organized and operated exclusively for charitable, educational, or other exempt purposes within the meaning of IRC Section 501(c)(3). As such, you failed to meet the requirement of IRC Section 501(c)(3) and Treasury Regulations Section 1.501(c)(3)-1(a).

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](https://www.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](https://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](https://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](https://uscfc.uscourts.gov)

**US District Court for the District of Columbia**  
333 Constitution Avenue, NW  
Washington, DC 20001  
[dcd.uscourts.gov](https://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).

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 if 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. Visit [TaxpayerAdvocate.IRS.gov/contact-us](https://TaxpayerAdvocate.IRS.gov/contact-us) or call 877-777-4778 (TTY/TDD 800-829-4059) to find the location and phone number of your local advocate. Learn more about TAS and your rights under the Taxpayer Bill of Rights at [TaxpayerAdvocate.IRS.gov](https://TaxpayerAdvocate.IRS.gov). Do not send your Tax Court petition to TAS. Use the Tax Court address provided earlier in the letter. Contacting TAS does not extend the time to file a petition.

#### **Where you can find more information**

Enclosed are Publication 1, Your Rights as a Taxpayer, and Publication 594, The IRS Collection Process, for more comprehensive information.

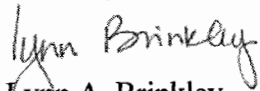
Find tax forms or publications by visiting [IRS.gov/forms](https://IRS.gov/forms) or calling 800-TAX-FORM (800-829-3676). If you have questions, you can call the person shown at the top of this letter.

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,



Lynn A. Brinkley

Director, Exempt Organizations Examinations

Enclosures:

Publication 1

Publication 594

Publication 892

cc:



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

**Date:**  
11/07/2022  
**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:**  
12/07/2022

**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**

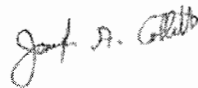
The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://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](http://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

Lynn A. Brinkley  
Acting Director, Exempt Organizations  
Examinations

Enclosures:  
Form 886-A  
Form 6018  
cc:

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
<b>Name of Taxpayer</b>		<b>Year/Period Ended</b>

**ISSUE:**

Whether \_\_\_\_\_ continues to qualify for exemption from Federal income tax under section 501(a) of the Internal Revenue Code (Code) as a charitable organization described in section 501(c)(3) of the Code.

**FACTS:**

\_\_\_\_\_ was incorporated under the laws of the State of \_\_\_\_\_ as a non-profit corporation in \_\_\_\_\_, for the purpose of the following:

In \_\_\_\_\_, \_\_\_\_\_ filed Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, with the Internal Revenue Service (IRS). The Form 1023 application contains the following statement made by \_\_\_\_\_ regarding its activities and operational information:

Based on its narrative statement of proposed activities and other information presented in its Form 1023 application and accompanying records, the IRS issued a favorable determination letter dated \_\_\_\_\_, granting \_\_\_\_\_ recognition of exemption under section 501(c)(3) of the Code. \_\_\_\_\_ was classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code based on its projected financial support.

In \_\_\_\_\_, the Tax Exempt and Governmental Entities (TE/GE) division of the IRS selected for examination the Form 990 return filed by \_\_\_\_\_ for the \_\_\_\_\_ calendar year. The notice of examination package issued to \_\_\_\_\_ is dated \_\_\_\_\_, and consists of IRS letter #6031, Form 4564, *Information Document Request (IDR)*, Publication 1, *Your Rights as a Taxpayer*, and Notice 609, *Privacy Act Notice*.

IDR #1 issued to \_\_\_\_\_ on \_\_\_\_\_, requests copies of the following records and information covering the \_\_\_\_\_ calendar year under examination:

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- Copy of bank, credit card and investment statements for \_\_\_\_\_ through \_\_\_\_\_
- Copy of the transaction register for PayPal, Venmo, cryptocurrency or other virtual payment for \_\_\_\_\_ through \_\_\_\_\_ (if applicable).
- Copies of financial records maintained electronically or in hard copy format including:
  - a. Chart of Accounts
  - b. Trial Balance (Beginning, Ending and Adjusted)
  - c. General Ledger
- Copy of auditor's report (if applicable).
- Written statement describing your exempt purpose(s) and current activities.
- Minute books showing any recorded meetings of your governing body (officers, directors, or trustees), including committee meetings.
- Copies of pamphlets, brochures, newsletters or other printed literature or advertising regarding your organization and its activities.

Records and other information furnished by \_\_\_\_\_ to the IRS examiner in response to the IDR's indicate that the organization owns real property consisting of a single one-story office building located at \_\_\_\_\_ . \_\_\_\_\_ general ledger and other records indicate that the organization's primary activity consists of maintaining the office building and leasing the premises to an unrelated third party, \_\_\_\_\_ is part of \_\_\_\_\_ , a 501(c)(3) organization. \_\_\_\_\_ has no relationship with other than as landlord and tenant. \_\_\_\_\_ derives rental income pursuant to the terms of its lease agreement. The IRS examiner secured a copy of the lease which is included in the agent's administrative file.

During the \_\_\_\_\_ calendar tax year, \_\_\_\_\_ did not own or lease any medical equipment or otherwise provide any type of medical services. Furthermore, \_\_\_\_\_ Form 990 return and underlying books and records show no evidence that the organization is engaged, directly or indirectly, in any charitable or educational activities or programs.

During a telephone discussion with the organization's President, \_\_\_\_\_ , on \_\_\_\_\_ , \_\_\_\_\_ confirmed that \_\_\_\_\_ rents its building to \_\_\_\_\_ and that \_\_\_\_\_ maintains the building as a landlord to \_\_\_\_\_ . \_\_\_\_\_ is not controlled by \_\_\_\_\_ and no Board members of \_\_\_\_\_ serve as an officer or director on \_\_\_\_\_ Board. According to \_\_\_\_\_ , \_\_\_\_\_ can sublease \_\_\_\_\_ building pursuant to the lease agreement. During the \_\_\_\_\_ tax year, \_\_\_\_\_ subleased \_\_\_\_\_ premises for use by a private dialysis service provider. \_\_\_\_\_ has no connection to or relationship with the dialysis service provider.

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During a follow-up conference call with \_\_\_\_\_ and \_\_\_\_\_ representative, on \_\_\_\_\_, the \_\_\_\_\_ President clarified certain statements made on the Form 1023, and Form 990 regarding the organization's activities. According to \_\_\_\_\_, \_\_\_\_\_ does not provide dialysis equipment or any type of dialysis services. The organization simply rents its building to a dialysis service provider. \_\_\_\_\_ does not have any control over the provision of dialysis services, or the rates charged by the service provider.

During the conference call held on \_\_\_\_\_, the IRS examiner informed \_\_\_\_\_ and the organization's representative, \_\_\_\_\_, that \_\_\_\_\_ current activities are substantially different from those described in the organization's corporate charter and in the Form 1023 application filed with the IRS almost \_\_\_\_\_ years ago. The rental of its real property to a charitable organization is not an inherently charitable activity and therefore, \_\_\_\_\_ does not operate in furtherance of charitable purposes or satisfy the operational test described in the regulations under Code section 501(c)(3). \_\_\_\_\_ President agreed in principle with the IRS examiner. The organization was unable to provide any court opinions or other published precedent which provides support for its exempt status based in its current operations.

**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.

Section 1.501(c)(3)-1(a)(1) of the Treasury Regulations states that 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 - charitable, religious, educational, scientific, literary, testing for public safety, or for the prevention of cruelty to children or animals. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c) of the regulations describes the operational test requirements for 501(c)(3) exemption. The operational test focuses on how the organization is actually operated, regardless of whether it is properly organized for tax-exempt purposes.



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Section 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). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. This is referred to as the "primary activities" test.

Revenue Ruling 58-617, 1958-2 CB 260, (Jan. 01, 1958) Rulings and determinations letters granting exemption from federal income tax to an organization described in section 501(a) of the Internal Revenue Code of 1954, to which contributions are deductible by donors in computing their taxable income in the manner and to the extent provided by section 170 of the Code, are effective only so long as there are no material changes in the character of the organization, the purposes for which it was organized, or its methods of operation. Failure to comply with this requirement may result in serious consequences to the organization for the reason that the ruling or determination letter holding the organization exempt may be revoked retroactively to the date of the changes affecting its exempt status, depending upon the circumstances involved, and subject to the limitations on retroactivity of revocation found in section 503 of the Code.

In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978), the Tax Court considered an organization that provided consulting services to groups that were mostly §501(c)(3) organizations. The organization charged fees for its services set at or close to its own cost. The court concluded that there was nothing to distinguish these activities from those of an ordinary commercial consulting enterprise and affirmed the Service's denial of exemption under §501(c)(3).

In *Federation Pharmacy Services, Inc. v. Commissioner*, 72 T.C. 687 (1979), affd, 625 F.2d 804 (8th Cir. 1980), the court held that, while selling prescription pharmaceuticals to elderly persons at a discount promotes health, the pharmacy did not qualify for recognition of exemption under § 501 ( c )(3) on that basis alone. Because the pharmacy operated for a substantial commercial purpose, it did not qualify for exemption under §501(c)(3).

*IHC Health Plans, Inc. v. Commissioner*, 325 F.3d 1188 (10th Cir. 2003), involved an operator of health maintenance organizations ("HM Os") that served approximately one-quarter of Utah's residents and approximately one-half of its Medicaid population. The court held that the organization failed to meet the community benefit standard to qualify for exemption under § 501(c)(3) because its sole activity was arranging for health care services for its members, in exchange for a fee. The court said that providing health-care products or services to all in the community is necessary but not sufficient to meet the community benefit standard. Rather, the organization must provide some additional benefit that likely would not be provided in the community but for the tax exemption, and that this public benefit must be the primary purpose for which the organization operates.

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Revenue Ruling 72-369, 1972-2 C.B. 245, an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code. Providing consulting/managerial services at cost to 501(c)(3) organizations is not sufficient to characterize the activity as charitable. The Revenue Ruling explained: "Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable."

Revenue Ruling 58-547, 1958-2 C.B. 275, A lease, the parties to which are both exempt from tax under section 501(c)(3) of the Internal Revenue Code of 1954 and which otherwise constitutes a business lease within the meaning of section 514 of the Code, will not be considered as substantially related to the charitable, educational, etc., purposes of the lessor solely because the lessee is likewise an exempt organization.

**TAXPAYER'S POSITION:**

has not presented its formal position in writing. However, as noted above, the organization's President indicated that he agreed with the IRS examiner's position when it was presented and explained to him during the conference call held on

**GOVERNMENT'S POSITION AND CONCLUSION:**

The facts indicate that received recognition of exemption under section 501(c)(3) of the Code in based largely on representations made in its Form 1023 application that the organization intended to provide dialysis services and related medical equipment at no cost to the members of the local rural community.

However, examination of Form 990 return and underlying books and records revealed that the organization does not provide any dialysis services or furnish any medical equipment for such services. Instead, maintains real property and receives rental income from leasing the property to an unrelated party and has not established that such activity is charitable. has no relationship with the service provider and exercises no oversight or control over the fees charged by the service provider.

The IRS asserts that the activities conducted by during the tax year under exam reflect a material change from the proposed activities and operations described in its Form 1023 application. See Rev. Rul. 58-617.

Renting out real property is a trade or business ordinarily carried on for profit and furnishing such service at, or above, cost lacks the donative element necessary to establish the activity as charitable. See Revenue Ruling 72-369, 1972-2 C.B. 245. has not established that it is operating with the donative intent required to be charitable. The fact that the lessee is a

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501(c)(3) exempt organization does not change the non-exempt character of the activity. See Rev. Rul. 72-369. See also *B.S.W. Group, Inc. v. Commissioner* and *Federation Pharmacy Services, Inc. v. Commissioner* cited above.

For the reasons stated above, and because primary activity is the rental of real property, fails to satisfy the operational test described in section 1.501(c)(3)-1(c) of the regulations.

**Conclusion:**

For the reasons stated above, the IRS has determined that is no longer exempt from Federal income tax under section 501(a) of the Code as an organization described in Code section 501(c)(3). The IRS is proposing to revoke 501(c)(3) tax-exempt status effective , the first day of the calendar year under examination.

Please note that this Form 886-A, *Explanation of Items*, which is also known as the revenue agent report (RAR), constitutes an integral part of the attached 30-day letter #3618. Please refer to the attached letter #3618 for additional information including appeals rights and other options available to the organization and, the instructions for how to respond.

**If you agree to this conclusion, please sign the attached Form.**

**If you disagree, please submit a statement of your position.**