



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE: EO Examinations

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 5/24/2017

Number: **201749013**
Release Date: 12/8/2017

Person to Contact:

Identification Number:
Contact Telephone Number:
Telephone:
Fax:

UIL: 501.03-00

EIN:

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a final determination that your exempt status under section 501(c)(3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective December 3, 20xx 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 private shareholders or individuals. Organizations described in I.R.C. section 501(c)(3) and exempt under section 501(a) must be organized and operated exclusively for an exempt purpose.

You have not established that you have operated exclusively for an exempt purpose.

As such, you failed to meet the requirements of I.R.C. section 501(c)(3) and

Treasury Regulation Section 1.501(c)(3)-1(a)(1) in that you failed to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3).

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code, effective December 3, 20xx

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20xx, and for all subsequent years.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

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

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We 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 our assistance, which is always free, we will do everything possible to help you.

Visit taxpayeradvocate.irs.gov or call 1-877-777-4778.

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

Sincerely yours,

Enclosures:
Publication 892

Director, EO Examinations



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

Date:
November 07, 2016
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact/ ID number:
Contact numbers:

Toll Free
Long Distance
Fax:
Manager's name/ ID number:

Manager's contact number:

Response due date:

Certified Mail - Return Receipt Requested

Dear _____ :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

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 revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You may also file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Director, Exempt Organizations Examinations

Enclosures: Form
886-A
Form 4621-A Report of Examination Form
6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		20xx12

Date of Notice: December 14, 20xx

Final Report

Issues:

Whether _____ qualify for exemption under Section 501(c)(3) of the Internal Revenue Code?

Facts:

_____, applied for tax-exempt status by filing the Form 1023, and was granted exemption as a 501(c)(3) tax exempt organization on June 30, 20xx, with an effective date of December 03, 20xx.

_____ was incorporated under the laws of the State _____ on September 12, 20xx. Organizing documents include Articles of Incorporation and By-Laws.

Per the Articles of Incorporation, _____ was formed for the following purposes:

- "This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes for which this corporation is organized are to provide union representation for the members of ".
- "This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(5) of the Internal Revenue Code".

The Articles of Incorporation include a dissolution clause which states that upon dissolution, the organization's assets "..... shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purpose and which has established its tax-exempt status under Section 501(c)(5) of the Internal Revenue Code".

Per the By-Laws, attached to the articles of incorporation, _____ was formed for the following purposes:

Section 1

To negotiate a collective bargaining agreement governing wages, hours and working conditions of members in the employment classifications represented by the _____.

Section 2

To bind the members together in a closer bond of association and organization separate from their respective department, governing themselves and acting for the mutual benefit and protection of its members.

Section 3

To promote fellowship among its members and to obtain and secure all rights and benefits to which its members are entitled.

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Section 4

To develop and carry forward projects designed to enhance the professions of its members in the

Section 5

To sue and be sued.

Section 6

To contract and be contracted with".

Form 1023 application, received April 30, 20xx, includes an attachment with a narrative description of the organization's activities.

Per attachment:

"Members of the formed the as a labor organization for management employees of the The purpose of is to obtain better working conditions for its members through the collective bargaining process and provide legal representation to members for employment related issues. Collecting monthly dues from the members provides the funds to operate and maintain as an organization.....".

The initial audit Letter 3606 with Form 4564, *Information Document Request*, and Publication 1, was mailed to the organization on July 16, 20xx. was asked to provide a detailed description of activities, a statement of revenues, expenses, assets, liabilities and meeting minutes for the year under examination. The organization was also asked to explain their exempt purpose under IRC section 501(c)(3).

Per audit reply dated August 19, 20xx:

Due to our Association trying to incorporate throughout the year of 20xx and not actually receiving notification that we had been approved until Oct. 18, 20xx, we did not have any official Board Meeting during the year of 20xx.

The organization did not provide a detailed description of activities for audit year as requested. The organization provided an end of year financial report which includes income, expenses, assets and liabilities for the audit year. The activities of the organization can be determined from the description of income and expenses included in the financial report.

Activities based on financial report:

Monthly income from member dues - (Collect member dues)

Monthly expense for legal insurance for members - (Pay premiums for members' legal insurance)

Income and expense relating to a retirement celebration - (Organize and facilitate retirement party for)

List of monetary donations made to other organizations - (Donated funds to non-profit organizations)

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The Treasurer of the organization confirmed that the preceding activities were the only activities the organization conducted during the audit year. This was confirmed in two separate phone conversations, May 11, 20xx and Sept.14, 20xx.

The organization did not initially respond to question #3 on the Form 4564 - Explain your exempt purpose under IRC section 501(c)(3).

The organization subsequently provided a response to question #3. Response was received June 29, 20xx.

Per response:

"Members of the _____ formed the _____ as a labor organization for management employees of the _____. The purpose of _____ to obtain better working conditions for its members through, the collective bargaining process and provide legal representation to members for employment related issues. Collecting monthly dues from the members provides the funds to operate and maintain as an organization.

_____ is a nonprofit public benefit corporation and is not organized for the private gain of any person. It has been organized under the nonprofit public benefit corporation law for charitable purposes".

Law:

Internal Revenue Code (IRC) § 501(c)(3) Requires tax exempt entities be organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes or to foster national and/or international amateur sports competition, or for the prevention of cruelty to children or animals, provided that no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulations (Treas. Reg.) § 1.501(c)(3)-1(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in the section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(a)(2) provides that for purposes of Reg. 1.501(c)(3)-1, the term *"exempt purpose or purposes" means any purpose or purposes specified in IRC 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(b)(1)(iv) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(b)(4) requires that an adequate dissolution provision must specify that upon the dissolution of the organization its assets shall be distributed for one or more *exempt purpose or shall be distributed to the Federal government, or to a State or local government, for a public purpose.

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Treas. Reg. 1.501(c)(3)-1(c)(1) provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

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

Treas. Reg. § 1.501(c)(3)-1(d)(1)(i) 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: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, 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.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes.

Better Bus. Bureau v. United States, 326 U.S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); Am. Campaign Acad. v. Commissioner, 92 T.C. 1053, 1065 (1989); Old Dominion Box Co., Inc. v. United States, 477 F.2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973) ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. Am. Campaign Acad. v. Commissioner, supra at 1065-1066.

Organizations Position:

No rebuttal at this time.

Government's Position:

APPLICATION OF LAW

IRC § 501(c)(3) sets forth two main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3) of the Internal Revenue Code.

Based on the Preceding Facts and Law:

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ORGANIZATIONAL

- Per Articles of Incorporation:
- "This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501 c(5) of the Internal Revenue Code".

Being organized "exclusively for charitable purposes within the meaning of Section 501 c(5) of the Internal Revenue Code" does not meet the requirement of - purposes specified in IRC section 501(c)(3), per **Treas. Reg. § 1.501(c)(3)-1(b)(1)(iv)**.

- Per the organization's Articles of Incorporation:
- "On the dissolution or winding up of the corporation, its assets. . . .shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable purpose and which has established its tax-exempt status under Section 501c(5) of the Internal Revenue Code".

organizational documents state that assets "will be distributed to an organization which has established its tax-exempt status under Section 501c(5) of the Internal Revenue Code." This does not meet the requirements for an adequate dissolution clause as specified in **Treas. Reg. § 1.501(c)(3)-1(b)(4)**- *requires that an adequate dissolution provision must specify that upon the dissolution of the organization its assets shall be distributed for one or more exempt purposes or shall be distributed to the Federal government, or to a State or local government, for a public purpose.*

(*Treas. Reg. 1.501(c)(3)-1(a)(2) provides that for purposes of Reg. § 1.501(c)(3)-1, the term "exempt purpose or purposes" means any purpose or purposes specified in IRC 501(c)(3)*)

OPERATIONAL

- Per the organization's Articles of Incorporation:
- ".....The specific purposes for which this corporation is organized are to provide union representation for the members of"
- Per By-Laws:
- "..... purpose is to negotiate a collective bargaining agreement governing wages, hours and working conditions of members in the employment classifications represented by the (see FACT section for complete list)
- Per attachment to the Form1023 application:
- The organization states that "..... was formed as a labor organization for management employees of the The purpose of is to obtain better working conditions for its members through the collective bargaining process and provide legal representation to members for employment related issues."
- Per End of Year Financial Report provided with reply to audit:
- The financial report indicates that the organization collects bi-weekly dues from its members.

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Name of Taxpayer		20xx12

- The financial report also indicates that the organization incurs a monthly expense of legal insurance for its members.

The foregoing statements indicate that _____ is operating primarily for the benefit of private interest rather than a public interest, does not operate exclusively for one or more exempt purposes as set forth in section 501(c)(3) of the IRC and the organization's net earnings inure in whole or in part to benefit the members of the organization.

It is the government's position that _____ does not meet the requirements to be an organization described in § 501(c)(3) of the IRC as set forth in Treas. Reg. §1.501(c)(3)- 1(c)(1), §1.501(c)-1(c)(2), §1.501(c)(3)-1(d)(1)(i) and §1.501(c)(3)-1(d)(1)(ii) and the organization's exemption should be revoked.

Conclusion:

Section 501(c)(3) of the Internal Revenue Code sets forth two main tests for qualification of exempt status. An organization must be both organized and operated exclusively for purposes described in IRC section 501(c)(3).

Based on the facts and circumstances presented, _____ does not qualify for recognition of exemption from federal income tax as an organization described in IRC section 501(c)(3).

_____ is not organized and operated exclusively for exempt purposes as set forth in IRC section 501(c)(3).

_____ organizing documents fail to meet the organizational requirements necessary to be recognized as a 501(c)(3) exempt organization. The organization's activities fail to satisfy the operational requirements for a 501(c)(3) exemption. Although it provides some benefit to the public, the substantial purpose of _____ is promoting the welfare and services of its members. In addition, the organizations net earnings inure to the benefit of its members, who are private individuals.

As a result, we conclude that _____ fails to satisfy the organizational test required by Treas. Reg. § 1.501(c)(3)-1(b)(1) and is not operated exclusively for public rather than private purposes as required by Treas. Reg. § 1.501(c)(3)-1(d)(1). Based on the stated facts, _____ does not qualify as an exempt organization under IRC section 501(c)(3).

Accordingly, _____ exempt status is revoked to effective date of exemption December 3, 20xx

Form 1120 returns should be filed for the tax periods after December 3, 20xx.

Organization has signed the Form 6018 agreeing to Revocation of exemption, effective December 3, 20xx.