



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: OCT 12 2017

Release Number: 201806009  
Release Date: 2/9/2018  
UIL Code: 501.03-00

Person to Contact:

Identification Number:

Contact Telephone Number:  
Telephone:  
Fax:

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 for the following reason(s):

You did not respond to our requests for information about your financial records and activities necessary to complete our examination. Therefore, you have not demonstrated that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3).

As such, you failed to meet the requirements of Internal Revenue Code section 501(c)(3) and Treasury Regulation Section 1.501(c)(3)-1 (d), in that you failed to establish that you were operated exclusively for an exempt purpose.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code effective

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 , 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 91<sup>st</sup> 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

You may call the IRS telephone number listed in your local directory. An IRS employee there may be able to help you, but the contact person at the address shown on this letter is most familiar with your case. You may also call the Internal Revenue Service Taxpayer Advocate.

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](http://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



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

Date:  
June 28, 2016  
Taxpayer Identification Number:  
  
Form:  
  
Tax Year(s) Ended:  
  
Person to Contact/ID Number:  
  
Contact Numbers:  
Telephone:  
  
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 also may 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:

**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, EO Examinations

Enclosures:  
Report of Examination  
Form 6018  
Publication 892  
Publication 3498

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

ISSUE

Should the income tax exemption of a Section 501(c)(3) organization be revoked since the organization fails the operational test on the grounds that the failure to conduct any activities violates the requirement that it be operated exclusively for exempt purposes?

FACTS

filed Articles of Incorporation with the Secretary of States' Office on August 11, 20xx. The officers of as stated on this filing were and

filed Form 1023 "Application for Recognition of Exemption" on August 11, 20xx. The stated purpose of is to improve the emotional and physical health of children, by providing social, academic and cultural learning opportunities, in a safe, nurturing, afterschool environment. conducted its mission by participating in two federally funded Child Nutrition Programs.

The Food and Nutrition Service is an agency of the United States Department of Agriculture ("USDA") which administers the Child Nutrition Programs. The Child Nutrition Programs include the Child and Adult Care Feeding Program ("CACFP") and the Summer Feeding Service Program ("SFSP").

The CACFP has an at-risk afterschool component which offers federal funding to afterschool programs that serve a meal and/or snack to children in low-income areas.

The SFSP was established to ensure that children in low-income areas continued to receive nutritious meals when school was not in session and operates in the summer when school is not in session. The at-risk afterschool component of the CACFP and the SFSP are hereinafter referred to as the "Feeding Programs."

In , the Feeding Programs are administered by the Department of Human Services ("DHS"). The Food and Nutrition Service is an agency of the United States Department of Agriculture ("USDA") which administers the Child Nutrition Programs. The Child Nutrition Programs include the Child and Adult Care Feeding Program ("CACFP") and the Summer Feeding Service Program ("SFSP").

Sponsors are organizations which participate in the Feeding Programs. Both private nonprofit and for-profit organizations can participate as Sponsors in the at-risk afterschool component of the CACFP. However, only nonprofit organizations are eligible to participate as Sponsors in the SFSP.

Sponsors seeking to participate in the Feeding Programs are required to submit an application to DHS for approval. Sponsors are required to obtain DHS approval for each Site from which they intend to operate the Feeding Programs.

A Site is the location where meals are served under each of the Feeding Programs during a supervised time period, and these Sites can include locations such as schools, recreation centers, playgrounds, parks, churches, community centers, and housing projects.

When Sponsors enter into an agreement with DHS, they acknowledge their responsibility to oversee the administration of the Feeding Programs at their approved Site(s).

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Based on guidance published by the USDA, DHS regulations set forth specific requirements for persons who are eligible to receive meals under the Feeding Programs ("Eligible Persons") and for what meals are eligible to be served under the Feeding Programs ("Eligible Meals").

Based on guidance published by the USDA, DHS regulations set forth strict requirements for Sponsors to keep and maintain certain records, which include, but are not limited to, daily site records in order to document the number of Eligible Meals served and documentation of the allowable operating and administrative costs for the Feeding Programs.

In order to receive reimbursement, Sponsors access the DHS website using their personalized login information and submit data for their Sites, which include the number of eligible meals served to generate a reimbursement claim ("Claim"). The amount of reimbursement on each Claim is based on a straight-forward calculation ("Claim Amount"). The number of Eligible Meals served to Eligible Persons is multiplied by a rate established by Congress. Additionally, the average daily attendance of each feeding site is calculated by dividing the number of Eligible Meals served by the number of days in operation ("Average Daily Attendance").

Sponsors must provide a budget with the submission of an application to participate in each Feeding Program. The budget is made up of Revenues (Claim Amounts), Operating Expenses (food, food service labor, supplies, rent, maintenance, utilities) and Administrative Expenses (administrative labor, office rent, office supplies, audit fees, communication, insurance and legal fees). There is no line item for depreciation because DHS generally prohibits Sponsors from making capital expenditures; i.e. vehicles, buildings, and equipment. The Sponsor's budgets are evaluated and approved by DHS employees.

Based on guidance published by the USDA, DHS regulations set forth strict requirements for Sponsors regarding the use of Claim Amounts received from the Feeding Programs that exceed a Sponsor's expenditures at the end of that Feeding Program. Those funds must be used in a way that benefits services to children or other Child Nutrition Programs operated by the Sponsor. If the Sponsor terminates its relationship with the Feeding Programs, the excess funds must be returned to DHS. The Sponsors receive training from DHS to establish their knowledge and understanding of the proper use and disposition of excess funds.

\_\_\_\_\_ participated as a Sponsor for the Feeding Programs beginning in June \_\_\_\_\_ was a Sponsor for the Feeding Programs through (Agreement Number \_\_\_\_\_) and \_\_\_\_\_ (Agreement Number \_\_\_\_\_), which had approved Sites in cities including \_\_\_\_\_

In April 20xx, a federal grand jury, in the Eastern District of \_\_\_\_\_, returned a Superseding Indictment against \_\_\_\_\_, charging her with conspiring to fraudulently obtain USDA program funds. From in or about January 20xx to in or about August 20xx, \_\_\_\_\_, knowingly and intentionally conspired to fraudulently obtain USDA program funds under the care, custody and control of DHS, to which she was not entitled in violation of Title 18, United States Code, Section 1343.

\_\_\_\_\_ participated as a Sponsor for the Feeding Programs during the summer months in the years 20xx, 20xx, and 20xx and during the school years 20xx and 20xx.

In \_\_\_\_\_ applications to participate as a Sponsor, \_\_\_\_\_ listed Sites where children would be fed and listed the maximum number of children fed at each Site.

\_\_\_\_\_ made payments by check to certain \_\_\_\_\_ employees. These payments constituted bribes in exchange for which certain DHS employees, knowing that inflated claims would be submitted, approved

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the applications containing a specified number of Sites and a maximum number of children who would be fed at each Site.

During the time participated in the Feeding Programs, greatly inflated the number of Eligible Meals served, thus claiming more children were fed at the Sites than were actually were fed.

Because applications were approved for a specified number of Sites and a specified number of children, inflated Claims were approved and paid for by DHS without further scrutiny. The Claims were approved because the number of Eligible Meals submitted for reimbursement did not exceed the number which had been approved in the applications.

The Claims submitted were through the internet and most Claims were paid through transfers from the State of which travelled interstate to bank account.

All in violation of Title 18, United States Code, Section 1349.

In August 20xx, a federal investigation was conducted by the United States Department of Agriculture—Office of Inspector General, United States Secret Service, Federal Bureau of Investigation, Internal Revenue Service-Criminal Investigations, and the United States Marshals Service into the Feeding Programs as administered by DHS in the state of

No payments were made to or after the investigation started. According to the Grand Jury indictment, the final payment to was on June 25, 20xx.

On August 3, 20xx, pled guilty to Count 1 of the Superseding Indictment charging with conspiring to commit wire fraud. The charge relates to a conspiracy to fraudulently obtain United States Department of Agriculture (USDA) program funds intended to feed children in low income areas during the school year and summer.

On March 15, 20xx, , who pled guilty to conspiring to commit wire fraud on August 3, 20xx, was sentenced to months imprisonment, to be followed by three years of supervised release. She was also ordered to pay joint restitution of \$ surrendered for service of sentence at the institution designated by the Bureau of Prisons on June 13, 20xx.

, prison number , is currently incarcerated in the Federal Correctional Institute in

The officers listed on the Form 1023 were:

- , President
- , Vice President
- , Treasurer
- , Secretary
- , Board member

received Letter 947 from the Internal Revenue Service granting exemption as a 501(c)(3) organization on June 14, 20xx

The Fiscal Year End for is

filed Form 990 for the fiscal years ended (the initial return) and (The last Form 990 filed with Internal Revenue Service) The was dated February 12, 20xx and signed by . The officers listed on this document were:  
, Officer

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, Officer  
, Officer  
, Officer  
, Officer

has not filed Form 990 for the periods ended , or

entire funding came from its participation in the Feeding Program, after August 20xx, there was no longer any funding coming to through DHS and the Feeding Program was shut down and no activity was carried on from that date forward to the present time.

has failed to respond to Internal Revenue Service requests for books and records.

Appointment Letter was mailed via ground shipment by United Parcel Services (UPS) to address , as shown on the Form 990 for the period ended . This Letter advised that it had been selected for examination for the period ended . This letter was returned by UPS on as undeliverable with a label stating "The Receiver Is Out Of Business".

Another Appointment Letter 3611 dated was mailed certified through the United States Postal Service (USPS) to certain addresses. These addresses were as follows:

The letter mailed to the PO Box was picked up by an individual and certified receipt was signed on June 21, 20xx. The other letters were returned as undeliverable. There has been no contact by or any person, with the revenue agent, as a result of the delivery of the letter mailed to the post office box address.

Modified Letter 3611 dated June 13, 20xx was mailed certified through USPS to certain addresses and addresses found for officers as shown on the last filed Form 1023. The Letter 3611 was modified to include the following statement to the Original Letters mailed on May 23, 20xx and May 27, 20xx, as follows:

"Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents to establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. Your



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continued failure to respond to reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities and your failure to file information returns as required by IRC 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627, could result in the revocation of your exempt status."

The Modified Letter 3611 dated June 13, 20xx was mailed to the following addresses:

[both of these two letters were returned as undeliverable]

[these letters were delivered, however no contact has been made with the revenue agent]

This last certified letter was delivered and a phone call was made to the revenue agent by . The caller informed the revenue agent that she was not an officer of and has had no contact with that organization for several years. The agent explained to that Internal Revenue Service records showed that she was identified as an officer on the Application For Exemption Form 1023 and again identified as an officer on the last Form 990 filed for the period ended June 30, 20xx. The Internal Revenue Service has not received any documentation that she has resigned or been replaced, therefore, she is still an officer of and as such, she had the authority to conduct organizational business and bind the organization to agreements. re-state that was not an officer and explained that she was uncomfortable discussing with the agent and would not hold herself out to be an officer of informed the revenue agent that he could contact by mail at or call him at phone number informed the agent that is the son of . The revenue agent called this phone number on June 21, June 23 and June 27, 20xx and reached an answering machine. The revenue agent left a message for a return call; however no return phone call has been made to the revenue agent.

The revenue agent called the phone number for , President at on the following dates May 23, 25 and 26, 20xx and June 2 and 7, 20xx. The agent reached the answering for and the agent left a message for her to return the agents phone call. returned one phone call on May 25, 20xx, however, the agent was away from his phone and no other contact has been made from her.

**LAW:**

**IRC Section 501(c)(3)** of the Internal Revenue Code ("IRC") exempts from federal income tax organizations which are organized and operated exclusively for charitable, educational, and other exempt

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purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

**Tax Reg. Section 1.501(c)(3)-1(a)(1)** provides that 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 such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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

**Reg. 1.501(c)(3)-1(c)(1)** provide that an organization is "operated exclusively" for charitable purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3).

**REG 1.501(c)(3)-1(b)(4)** provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, **upon dissolution**, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

**IRC Section 509(a)(2)** of the IRC specifies such public charities normally receive more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and from gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities.

**Rev Proc. 90-27, 1990-1 C.B. 514**, (April 30, 1990) states that a ruling or determination letter recognizing exemption may be revoked or modified by (1) a notice to the taxpayer to whom the ruling or determination letter originally was issued, (2) enactment of legislation or ratification of a tax treaty, (3) a decision of the United States Supreme Court, (4) issuance of temporary or final regulations, or (5) issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organization to which section 503 applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

**GOVT POSITION:**

Since the organization has failed to carry on exempt operations since \_\_\_\_\_ through the present, this constitutes a failure to meet the operational test and thus it does not qualify for tax exemption under Section IRC 501(c)(3) of the IRC.

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**TAXPAYER POSITION:**

The taxpayer has not responded to any letters mailed to it as stated in the Facts section of this report.

**CONCLUSION:**

The organization does not qualify for exemption under IRC 501(c)(3), therefore its tax exempt status should be revoked effective