



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street
Dallas, TX 75242

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: 9/12/2011

Release Number: **201203032**

Release Date: 1/20/2012

LEGEND

ORG - Organization name

XX - Date Address - address

ORG

ADDRESS

Person to Contact:

Badge Number:

Contact Telephone Number:

Contact Address:

Employer Identification Number:

CERTIFIED MAIL

Dear

This is a final notice of adverse 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 January 1, 20XX for the following reason(s):

You are not operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3). You are not and have not been engaged primarily in activities which accomplish one or more exempt purposes. You are not a charitable organization within the meaning of Treasury Regulation 1.501(c)(3)-1(d); rather, your activities further a substantial nonexempt commercial purpose and serve private rather than public interests.

Because you did not protest the proposed modification of your non-private foundation status and have indicated your agreement by signing the Form 6018 on June 15, 20XX, it is further determined that you have not exhausted your available remedies for purposes of declaratory judgment under section 7428 of the Code.

Contributions to your organization are no longer deductible effective January 1, 20XX.

Since your exempt status has been revoked, you are required to file Form 1120, U.S. Corporation Income Tax Return, for all years beginning on or after January 1, 20XX.

Income tax returns for subsequent years are to be filed with the appropriate Service Center identified in the instructions for those returns.

It is further determined that your failure to file a written appeal constitutes a failure to exhaust your available administrative remedies. However, 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 Claims Court, or the district court of the United States for the District of Columbia before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. To secure a petition form, write to the following address: United States Tax Court, 400 Second Street, NW, Washington, DC 20217.

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

You also have the right to contact the Office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access you tax information and can help you get answers. You can call 1-877-777-4778, and ask for the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
300 N. Los Angeles St., MS 7300
Los Angeles, CA 90012

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Employer Identification Number

Form Number
Tax Year

Date: January 10, 2011

Person to Contact/ID Number
Contact Number

Tel:
Fax:

ORG
ADDRESS

Dear

On May 29, 20XX, the IRS issued a report of examination proposing revocation of ORG (hereinafter ORG) tax exempt status under Internal Revenue Code (IRC) section 501(c)(3) on the ground that ORG was not operated for one or more exempt purposes under such section. The facts as stated in the report of examination dated May 29, 20XX were obtained primarily through your verbal testimony. On behalf of ORG, you consented to the proposed revocation and signed Form 6018 *Consent to Proposed Action – Section 7428* to memorialize the present intent.

Subsequent to the issuance of the report dated May 29, 20XX, we discovered additional information relevant to the tax exempt status of ORG. The additional information was obtained from third parties and was provided to you for your records.

Enclosed please find our revised report of examination. The revised report seeks to supplement the facts as set forth in the report dated May 29, 20XX. Please note that the Government maintains its position that ORG's tax exempt status should be revoked effective January 1, 20XX.

If you agree with the Government's position, no action is required on your part. If you disagree with the Government's position, please state your position in writing. You may cite established legal precedent to support your position. Please respond by **January 21, 20XX**.

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.

Sincerely,

Perry Tu
Revenue Agent

Enclosure:

- Revised Report of Examination dated January 10, 20XX

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer	ORG (EIN)	Years Ended December 31, 20XX Thru December 31, 20XX

LEGEND

ORG - Organization name XX - Date Address - address City - city
 State - state President - president DIR-1 - 1st DIR
 CO-1, CO-2 & CO-3 - 1ST, 2ND & 3RD COMPANIES

ISSUES

1. Whether ORG's tax exempt status under Internal Revenue Code (IRC) §501(c)(3) be revoked for failure to operate for exempt purposes described under such section.
2. Whether the sale of the Property owned by ORG's by President, who then retained the proceeds from the sale constitutes inurement.

FACTS

Facts As Stated in Original Report of Examination

ORG (hereinafter ORG) was incorporated during 19XX in City, State. In September 19XX, ORG applied for Federal tax exempt status and was subsequently recognized as an organization exempt from Federal income tax under IRC §501(c)(3) and 509(a)(2).

In its application for Federal tax exempt status, Form 1023 *Application of Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, ORG proposed to engage in activities that would provide for affordable housing to low income individuals.

In November 20XX, ORG's Form 990 for the tax year ended December 31, 20XX, was selected for examination. During the course of the examination, it was discovered that ORG has not conducted any activities since its inception in 19XX. ORG received no income and had no assets or liabilities. The only officer of the organization was President. They incorporated to provide affordable housing to low income individuals. According to President, the organization did not begin any operations nor do they plan on starting any operations to provide affordable housing to low income individuals or any other activities as provided under the requirements of IRS §501(c)(3). President stated that he purchased the exempt organization from the prior owner and initially intended to conduct said activities, but never got around to it.

Based on President's verbal testimony, on May 29, 20XX, the IRS issued a report of examination proposing revocation of ORG's tax exempt status effective January 1, 20XX. President, on behalf of ORG, consented to the proposed revocation and signed Form 6018 Consent to Proposed Action – Section 7428 to memorialize the present intent.

Supplemental Facts Discovered Subsequent to Issuance of Original Report

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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Subsequent to the issuance of the original report dated May 29, 20XX, the IRS discovered the additional facts described below.

Formation of ORG

ORG (hereinafter referred to as ORG) was originally known as ORG and was incorporated on June 13, 19XX, by DIR-1 for the purpose of bringing about civic betterments and social improvements by providing for the preservation, management, maintenance and care of the architecture and appearance of a residential cooperative apartment project known as ORG located in the City of City.

On August 2, 19XX, ORG amended its Articles of Incorporation changing its name to ORG. The amended purpose is to provide for the preservation, ownership, management, maintenance, and care of low-income housing.

In 19XX, ORG applied for Federal tax exempt status and was subsequently recognized as an organization exempt from Federal income tax under IRC §501(c)(3). For the years in question, President served as President and was the sole officer of ORG.

Related Entity

In June 19XX, President formed another business entity with the identical name, ORG. President incorporated the new ORG in the state of State (hereinafter ORG State). ORG State did not apply for Federal tax exempt status and was never recognized as a tax exempt entity. According to the State Secretary of State, ORG State's corporate status was revoked. President and his spouse were listed as sole officers of ORG State. Internet research found no information on the existence of ORG State.

Activities Conducted by ORG

In August 19XX, ORG acquired a 160-unit low-housing apartment complex known as CO-1 (Property) located at Address, City, State. The purchase price is not known. Neither ORG nor President provided the requested information. The purchase was either financed or backed by the Department of Housing and Urban Development.

ORG engaged CO-2 (Management) to lease, manage and rent the Property. President signed the management agreement on behalf of ORG. Management collected rent, paid related operating expenses, maintained the property and provided monthly reports to President. The monthly reports entailed monthly rent collected, related expenses and any requests that President needed to approve. Since 19XX, ORG has not filed a Form 990 to report its financial and non-financial activities.

Based on information obtained from Management, ORG reported the following financial information relating to its rental activities.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer	ORG (EIN)	Years Ended December 31, 20XX Thru December 31, 20XX

	<u>12/31/20XX</u>	<u>12/31/20XX</u>	<u>as of 7/31/20XX</u>
Revenue net of vacancy			
Total expense			
Net income			

Sale of the Property

In July 20XX, President sold the Property to CO-1, a limited partnership located in Portland, Oregon. According to the Special Warranty Deed obtained from the Office of the County Clerk, County of County, President signed the deed in the capacity of president. ORG State was listed as the seller on the deed.

According to information obtained from CO-3, the sale price was \$\$\$. The outstanding mortgage on the Property at the time of the sale was \$\$\$. After selling expenses and loan payoff, the net proceeds from the sale totaled \$\$\$. The net proceeds from the sale of the Property were then diverted to ORG State and President.

LAW

IRC §501(c)(3) exempts from federal income tax corporations, and any community chest, fund, or foundation, 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.

Reg. §1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in IRC §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.

Reg. §1.501(c)(3)-1(c)(2) clarifies that an organization is not operated exclusively for exempt purposes if its net earnings inure to the benefit of private individuals.

Reg. §1.501(a)-1(c) defines "private shareholder or individual" as persons having a personal and private interest in the activities of the organization.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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Reg. §1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In Church By Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), the Court determined that Church By Mail, Inc. was not eligible for tax exempt status under IRC §501(c)(3) because its net earning inured to benefit private persons.

TAXPAYER'S POSITIONS

In its original position, ORG agreed with the Government's position. ORG consented to the proposed revocation and signed Form 6018 Consent to Proposed Action – Section 7428 to memorialize the present intent.

GOVERNMENT'S POSITION

Issue 1

The Government maintains that ORG's Federal tax exempt status under IRC §501(c)(3) should be revoked effective January 1, 20XX for failure to operate for an exempt purpose under such section.

Issue 2

The proceeds from the sale of the Property owned by ORG were retained by President. The sale was not recorded on the organization's 990. The proceeds from the sale that were retained by President constitutes inurement within the meaning of Reg. §1.501(c)(3)-1(c)(2). As such, revocation is warranted.

CONCLUSION

Since ORG was not operated for an exempt purpose under IRC §501(c)(3), its Federal tax exempt status under such section should be revoked effective January 1, 20XX.