**DEPARTMENT OF THE TREASURY**
**Internal Revenue Service**
**TE/GE EO Examinations**
**1100 Commerce Street, MC 4920 DAL**
**Dallas, TX 75242**

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: Oct 31, 2014

Number: **201514015**
Release Date: 4/3/2015

Person to Contact:

Identification Number:

Contact Telephone Number:
Telephone:
EIN:

UIL: 501.03-00

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a final revocation letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated November 19, 20XX recognizing you as an organization described in section 501(c)(3), is hereby revoked effective January 1, 20XX.

The revocation of your exempt status was made for the following reasons:

Treas. Reg. section 1.501(c)(3)-l(d)(l)(ii) provides that an organization is not operated exclusively for exempt purposes unless it serves a public rather than a private interest. You are operated for the benefit of private interests of a particular and specified individual.

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(d)(1)(ii) in that you have not demonstrated 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 January 1, 20XX.

You are required to file federal income tax returns on Form 1120. Because you are a private foundation as of the effective date of revocation, you are considered to be a taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th day of the fifth month after the end of your annual accounting period.

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 form 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., NW
Washington, DC 20001

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 your tax information and can help you get answers. Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax 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.

You may call 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Local Taxpayer Advocate

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

Sincerely yours,

Regina Hall

for Stephen A. Martin
Director, / EO Examinations

Enclosures:
Publication 892
Envelope

Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
IRS 450 Golden Gate Avenue MS SF 7-4-01
San Francisco, California 94102-3412

Date:
April 1, 2013
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

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:

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,

Nanette Downing
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Addendum to Letter 3618

This letter contains two reports, one of which proposes revocation of your tax exempt status, and the other of which proposes Code section 507(c) termination tax. If you agree to the termination tax, please sign and return Form 870-E. Otherwise see above for instructions for preparing a protest.

| Form **886-A** (Rev. January 1994) | **EXPLANATION OF ITEMS** | Schedule number or exhibit |
|---|---|---|
| Name of taxpayer | Tax Identification Number | Year/Period ended 20XX |

ISSUES:

Should the exempt status of the under section 501(c)(3) be revoked because a more than insubstantial purpose of the foundation is to benefit specific designated individuals?

Does the termination tax of Internal Revenue Code Section 507(c) apply to the ?

FACTS:

In a letter from , CPA, to an unknown recipient, dated June 27, 20XX, requested assistance on behalf of . wanted to create a private foundation "to assist needed children in obtaining educational opportunities in higher education at the college and university level" wanted to contribute at least $ to the foundation which suggested would be named the . In the letter, stated the had identified four needed [sic] children, , and (children of , a longtime friend of ) and two whose identities were not provided.

In a letter from an unknown author to , dated June 30, 20XX, the unknown author stated what was required to establish a private foundation. The seventh paragraph of the letter state: "Your letter indicated that has already identified potential donees of scholarship funds. While this is good and proper, it is to be noted that the purpose of a nonprofit foundation cannot be to inure to the private benefit of any person. As a result, these identified scholars cannot be identified in the applications and their eventual award of a scholarship from tax-exempt funds cannot be promised, guaranteed or assured. The award of scholarships will be according to the purposes and policies as created by and followed by the foundation administrator using them and the provisions of the application and the restrictions of federal and state tax agencies regulating private foundations."

A similar letter dated the same day, and including a similar paragraph was sent to and a copy was annotated "So Agreed", signed and dated by on August 5, 20XX.

In a letter dated July 29, 20XX, from to , stated "I am writing you to express my concern about your decision to abandon the private foundation in favor of educational savings accounts. The private foundation allows you to deduct your contribution against your income taxes. Your proposed $ contribution would have provided you a tax savings of approximately $ . You will not receive any income tax deduction or tax savings for funding educational savings accounts."

On or about September 5, 20XX, the Internal Revenue Service received Form 1023, Application for recognition of exemption under Code section 501(c)(3), for The . The application showed that the organization was a private foundation, established to provide scholarships to children in the , , area and that the application intended to be considered a request for advance approval of its grant making procedures under section 4945(g) of the Internal Revenue Code.

The Internal Revenue Service issued Letter 1076 to the organization, dated November 19, 20XX, recognizing it as exempt under section 501(c)(3) of the Internal Revenue Code. It determined that the organization was a private foundation within the meaning of section 509(a) of the code. It also approved the grant making procedures under section 4945(g)(1) and 4945(g)(3) of the code.

The approved grant making procedures provided that scholarships would be given to exemplary students in the area and would be paid directly to the school the students attended. The amount distributed would be 5-10% of the trust each year, probably a minimum of $ and would consist of one large scholarship of approximately $ , with medium and smaller amounts of $ and $ .

On February 2, 20XX, the directors of voted to amend the bylaws to increase the maximum annual scholarship from $ to $ . It also voted to solicit scholarship applications from a coordinator at .

On April 27, 20XX, the directors of the voted to select applicant #2, (from 24 applicants) to receive a scholarship. The minutes did not state the amount of the scholarship. Applicant #2 was . In their minutes, the board stated "Though some were easy to pass on, they were close and challenging among the top contenders. Each board member had the unidentified applicants' packets in front of them during the discussion. The lengthy discussion finally resulted in one young man being the choice of all the Board members present." , president (and step-daughter of ) went on record as saying " has got to be smiling. To think this deserving young man would receive the Award and be able to go on to College, something was never able to do."

On July 20, 20XX, the directors of the voted to disburse the scholarship award to a college fund account set up for by his parents. They directed that a letter requesting $ be disbursed be sent to the .

On August 27, 20XX, a check was made out for $ from the payable to and signed by . It was endorsed by and cleared on September 15, 20XX. After payment of the check the assets of the were $ .

In a letter to the Internal Revenue Service dated November 16, 20XX, stated:

"It was my step Father's intention to have the initial $ he contributed be invested in deserving youth who showed outstanding leadership, civic involvement, strong core values of being of contribution and top academic achievement. His favorite quotation was from Eric Berne, M. D., founder of the International Transactional Analysis Association: 'There is not much hope for mankind in general; but, for a select few, therein lies the salvation of mankind.'

Shortly before his death he asked that if there were ever a select few that he could make a big impact upon then that is how he wanted the Foundation to operate. He was more interested in getting the monies to deserving youth than having a 100 year old legacy.

We think we identified such a young person and voted to change our parameters accordingly.

Significantly last year we awarded $ in that the pool was not as impressive."

In Information Document Requests dated January 23, 20XX, March 13, 20XX, August 13, 20XX and October 24, 20XX, the Internal Revenue Service asked for documents showing that the organization had followed its approved procedure for awarding scholarships and for copies of the applications.

In a letter dated November 16 20XX, the organization stated that the applications totaled 264 pages and were too voluminous to copy, but that they would be sent by e-mail. On November 27, 20XX, the Internal Revenue Service received a CD and a flash drive that presumably contained these documents; however the file that was supposed to contain the documents was missing from the CD and the flash drive. The Internal Revenue Service notified the organization in an Information Document Request dated January 10, 20XX, that the documents were missing from the CD and the flash drive, but did not receive a response.

LAW:

Internal Revenue Code section 501(c)(3) provides for exemption from tax for 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.

I.T. 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

| Form **886-A** (Rev. January 1994) | **EXPLANATION OF ITEMS** | | Schedule number or exhibit |
|---|---|---|---|
| Name of taxpayer | | Tax Identification Number | Year/Period ended 20XX |

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.

Revenue Ruling 57-449, 1957-2 CB 622 stated that a bequest that provided a benefit to all individuals who were enrolled as students in a particular school as of a particular date, was not deductible by a decedent's estate because the bequest did not benefit a general class.

In Better Business Bureau v. United States, 326 U.S. 279, 283, the court stated that the presence of a single substantial nonexempt purpose precludes exempt status for an organization, regardless of the number or importance of the exempt purposes.

Code section 507(c) provides that there is hereby imposed on each organization which is referred to in subsection (a) a tax equal to the lower of the amount which the private foundation substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from the section 501(c)(3) status of such foundation, or the value of the net assets of such foundation.

Code section 507(a) provides that …the status of any organization as a private foundation shall be terminated only if …with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under chapter 42, and the Secretary notifies such organization that, by reason of subparagraph (A), such organization is liable for the tax imposed by subsection (c), and either such organization pays the tax imposed by subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

Code section 507(g) provides that 'The secretary may abate the unpaid portions of the assessment of any tax imposed by subsection (c), or any liability in respect thereof, if—
(1) the private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months….

GOVERNMENT'S POSITION:

initially intended to benefit four designated individuals, but established the after being advised that the foundation would save $ in taxes.

The application for recognition of exemption for the foundation provided for scholarships to be provided to children in the , , area. The approved grant making process envisioned several scholarships per year in amounts from $ to $ .

It strains credibility to believe that the first winner of the scholarship, chosen from 24 applicants in a process that the board stated was close and challenging and conducted by choosing among unidentified applicants, was precisely the first individual originally designated by as an object of his benevolence.

We note also that instead of distributing 5 to 10 percent of the trust to several recipients, as stated in the organization's application for recognition of exemption, the board chose to distribute approximately a quarter of the trust to a single individual. This individual thus received an amount which was the same as what he would have received under original plan to provide $ to four designated individuals.

stated that it had been her stepfather's intent to be particularly generous to exceptional individuals, even if this would deplete the assets of the foundation. We note that the board of directors voted to increase the maximum amount of the award to $ at the same time they started to solicit scholarship applications, prior to any time they could have determined that an applicant was especially exceptional. statement that "We think we identified such a young person and voted to change our parameters accordingly.' is the reverse of their actual process: they voted to change their parameters prior to having identified such a young person.

The actual course of events shows that a more than insubstantial purpose of the was to benefit one or more designated individuals. Since providing a benefit to designated individuals is not a charitable purpose under

| Form **886-A** (Rev. January 1994) | **EXPLANATION OF ITEMS** | Schedule number or exhibit |
|---|---|---|
| Name of taxpayer | Tax Identification Number | Year/Period ended 20XX |

section 501(c)(3) of the Internal Revenue Code, and the presence a single substantial nonexempt purpose precludes exempt status for an organization, the exempt status of the should be revoked.

TAXPAYER'S POSITIONS:

The organization has indicated that it will agree to revocation of its exempt status and furthermore, will distribute its net assets as described in Code section 507(g)(1).

CONCLUSION:

Since a more that insubstantial purpose of the is to benefit designated individuals, the exempt status of the organization under section 501(c)(3) of the Internal Revenue Code is revoked, effective January 1, 20XX. If the organization provides documentation that it has distributed its net assets as described in Code section 507(g), the tax of section 507(c) will not apply. The organization should file form 1120 for calendar years 20XX and subsequent, with a final return filed for the year in which it distributes its net assets.