



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

Date: April 17, 2017

Number: **201749012**
Release Date: 12/8/2017

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

UIL: 501.03-00

CERTIFIED MAIL – RETURN RECEIPT

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated December 19xx is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20xx.

The revocation of your exempt status was made for the following reason(s):

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 demonstrate that you are operating for charitable, educational or other exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You have not implemented the controls as described within your application for tax exempt status, the Form 1023, as stated within your bylaws, as amended on September 18, 19xx, and as advised within our determination letter, dated December 12, 19xx.

You were not able to produce contemporaneous records to substantiate solicitation of grant funds, the intended use of the funds solicited and the approval process. Additionally, you were not able to demonstrate an exempt purpose use of funds drawn from your bank accounts or for debit and credit card purchases made by your controlling officer and his spouse.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20xx.

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

Processing of income tax returns and assessments 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 under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

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

You also have the right to contact the Office of the Taxpayer Advocate. 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 taxpayeradvocate.irs.gov or call 1-877-777-4778. If you prefer, you may contact your local Taxpayer Advocate at:

**Internal Revenue Service
Office of the 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,

**Maria Hooke
Director, EO Examinations**

**Enclosures:
Publication 892**

**Internal Revenue Service
Tax Exempt and Government Entities Division**

Department of the Treasury

Date: May 23, 2016

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

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 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,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A	Department of the Treasury Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer		Year/Period Ended
		12/31/20xx
		12/31/20xx
		12/31/20xx

Issue:

Should the tax exempt status of _____ under Internal Revenue Code (IRC) Section 501(c)(3) be revoked because:

- 1) It is not operating in the manner as described within its application for recognition of tax exempt status failure to exercise expenditure responsibility over grant disbursements;
- 2) Its funds inure to the benefit of its controlling officer and spouse.

Facts:

_____ was incorporated under the Not-For-Profit Corporation Law of the State of _____ on February 6, 19xx. The organization was granted tax exempt status under IRC section 501(c)(3), as a public charity described in sections 509(a)(1) & 170(b)(1)(A)(vi) of Code, by our letter dated December 12, 19xx.

The organization's purposes, as stated within its certificate of incorporation, are to award grants to 501(c)(3) type of institutions and to help the poor, needy, sick and disabled.

Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, was received on May 22, 19xx. The application was submitted by _____ founder and current officer, _____. The 1023 application bears his signature as the organization's President, and includes his name as the contact person during the application process. The organization describes its activities within Part II of the application, as follows:

- The organization would award grants and or loans to _____ educational institutions, upon receipt of an application or request for funds for a specific purpose.
- Control will be exercised by requiring a report of the use of the award or loan from the institution. Reports concerning use of past grants or loans will be considered when evaluating future requests.
- The organization would award grants and or loans to the sick, needy and disabled people, and to such organizations that support and help such. Proof from individuals will be required as to the use of funds and or loans, and if they qualify, will be examined and approved by the board of directors.

During the application process, the bylaws were amended on September 18, 19xx, to include the following language: "The Board of Directors shall review all requests for funds from other organizations. The Board shall require that such requests specify the use to which the funds will be put, and if the Board approves the request, it shall authorize payment of such funds to the approved grantee. The Board of Directors shall require that the grantees furnish a periodic accounting to show that the funds were expended for the purposes which were approved by the

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		12/31/20xx

Board" The article of amendment to the bylaws was signed by , as the organization's President.

Our examination determined that failed to implement the grant making controls it described within Part II of the application Form 1023, as stated within its amended bylaws and as advised within our determination letter, dated December 12, 19xx.

Form 990 returns filed for periods ending December 31, 20xx through December 31, 20xx, report total support revenue from contributions of \$xxx,xxx, \$xxx,xxx and xxx,xxx, respectively. Total grant distributions during these same years are reported as \$xxx,xxx, \$xxx,xxx, and \$xxx,xxx, respectively. was not able to produce records to substantiate grants it made to individuals and organizations were used for exempt purposes. The amounts involved are substantial: \$xxx,xxx in 20xx, \$xxx,xxx in 20xx and \$xxx,xxx in 20xx, representing xx%, xx% and xx% of total grant distributions reported in each of the years under examination (see attached Schedule 1).

Although the application for tax exempt status, Form 1023, and the bylaws indicate that there shall be three board officers, President, Secretary and Treasurer. is the sole controlling officer of the organization. He is the signing official of the filed Forms 990 and is listed as the organization's only officer. It was noted that the organization filed an amended Form 990 for calendar year ending 20xx, adding two trustees. and his spouse, , draw employee compensation. During the years under examination, executed substantially all of the checks on behalf of the organization. Those not executed by were executed by . Their combined salaries as reported on the 990 returns for the calendar years ending 20xx through 20xx are \$xx,xxx, \$xx,xxx and \$xx,xxx, respectively.

Our examination also determined that total grant distributions, as reported in return years 20xx through 20xx and as referenced in the paragraph above, included the following transactions executed by and : checks written to cash totaling \$xx,xxx, ATM/debit/teller cash withdrawals totaling \$xx,xxx, and debit/credit card purchases totaling \$xx,xxx. The sum total of these transactions is \$xxx,xxx (see attached Schedule 2). and were unable to provide records in order to substantiate an exempt purpose for these transactions.

Law:

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or operational test, it is not exempt (Regs.1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the

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purposes stated in its articles of organization. The operational test relates to the organization's activities.

Treasury Regulation 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treasury Regulation 1.501(c)(3)-1(d)(1)(ii) provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit 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." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court upheld the denial of exemption on an organization that made grants to individuals. The organization asserted that its grants were made in furtherance of a charitable purpose: to assist the poor. The organization was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The court held that this information was insufficient in determining whether the grants were made in furtherance of an exempt purpose.

Revenue Ruling 56-304, 1956-2 C.B. 306, provides that an organization is not precluded from Section 501(c)(3) exemption when it makes grants to individuals, provided the distributions are made on a true charitable basis and in furtherance of its exempt purposes. Such organizations should keep adequate records and case histories to show:

- 1) The name and address of the recipients;
- 2) The amount distributed to each;
- 3) The purpose for which the aid was given;
- 4) The manner in which the recipient was selected: and,
- 5) The relationship, if any, between the recipient and
 - (i) Members, officers, or trustees of the organization;
 - (ii) A grantor or substantial contributor to the organization or a member of the family of either; and
 - (iii) A corporation controlled by a grantor or substantial contributor

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		12/31/20xx

Rev. Rul. 68-489, 1968-2 C.B. 210 states that an organization will not jeopardize its exemption under Code section 501(c)(3), even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes.

Government's Position:

has failed to demonstrate that it is operating for charitable, educational or other exempt purposes. It has not implemented the controls as described within its application for tax exempt status, the Form 1023, as stated within its bylaws, as amended on September 18, 19xx, and as advised within our determination letter, dated December 12, 19xx.

A review of the Form 1023 application, submitted by and signed by founder and controlling officer, , indicate, within Part II of the application, that he had knowledge and was aware of the recordkeeping requirements of organizations having grant making programs. This knowledge is further indicated by an amendment to the bylaws, effected on September 19, 19xx and signed by , incorporating specific procedures that will be followed by the organization in considering, reviewing and approving grants.

was not able to produce contemporaneous records to substantiate solicitation of grant funds, the intended use of the funds solicited and the approval process. Additionally, the organization was not able to demonstrate an exempt purpose use of funds drawn from its bank accounts or for debit and credit card purchases made by its controlling officer and his spouse.

Similar to Church in Boston v. Commissioner, where the court upheld the denial of exemption of an organization that made grants to individuals, was unable to furnish documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The court held that this information was insufficient in determining whether the grants were made in furtherance of an exempt purpose.

failed to put into place recordkeeping requirements similar to the ones described in Revenue Rulings 56-304 and 68-489, with respect to grant distributions to individuals and nonexempt organizations, as it stated it would do within its application for tax exempt status, as stated within its amended bylaws, and as was specifically advised within our determination letter granting tax exempt status.

Conclusion:

is not operating as an organization described in Section 501(c)(3) of the Internal Revenue Code. Accordingly, we propose to revoke the organization's exempt status effective as of January 1, 20xx.

As an organization that is no longer tax exempt, you are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center beginning with the tax year ending December 31, 20xx, and for all tax years thereafter in accordance with the instructions of the return.

Grant Payments

To individuals

	Amount
12/31/20xx	\$xx,xxx.xx
12/31/20xx	xx,xxx.xx
12/31/20xx	xx,xxx.xx
Total to individuals	\$xx,xxx.xx

To organizations

	Amount
12/31/20xx	\$xxx,xxx.xx
12/31/20xx	xxx,xxx.xx
12/31/20xx	xxx,xxx.xx
Total to organizations	\$xxx,xxx.xx

Total to individuals & organizations

	Amount
12/31/20xx	\$xxx,xxx.xx
12/31/20xx	xxx,xxx.xx
12/31/20xx	xxx,xxx.xx
Total disbursements	\$xxx,xxx.xx

Transactions by Principal Officer and Spouse

Calendar Years Ending

Transactions	12/31/20xx	12/31/20xx	12/31/20xx	Total
Debit Card ATM Withdrawals	\$xx,xxx.xx	\$xx,xxx.xx	\$xx,xxx.xx	\$xx,xxx.xx
Cash Teller Withdrawals	xx,xxx.xx	x,xxx.xx		xx,xxx.xx
Checks Drawn to Cash	xx,xxx.xx	xx,xxx.xx	x,xxx.xx	xx,xxx.xx
Debit/Credit & Check Purchases	xx,xxx.xx	xx,xxx.xx	xx,xxx.xx	xx,xxx.xx
Total	\$xx,xxx.xx	\$xx,xxx.xx	\$xx,xxx.xx	\$xxx,xxx.xx

\$xx,xxx.xx