



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
TE/GE: EO Examination
1100 Commerce, MS 4920 DAL
Dallas, Texas 75242-1100

Date: OCT 19 2017

Number: **201809010**
Release Date: 3/2/2018

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice:

Fax:

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:

UIL Code: 501.03-00

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear :

This is a final determination regarding your foundation classification. This modifies our letter dated August 12, 20xx, in which we determined that you were an organization exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code (IRC) as a private operating foundation described in section 4942(j)(3). We have modified your foundation status to that of an organization described in IRC section 509(a) as a private non-operating foundation, effective for tax years beginning January 1, 20xx.

Your tax-exempt status under section 501(c)(3) of the Internal Revenue Code is not affected. Grantors and contributors may rely on this determination, unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

We previously provided you a report of examination explaining the proposed modification of your tax-exempt status. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On July 20, 20xx, you signed Form 6018, *Consent to Proposed Action – Section 7428*, in which you agreed to the modification of your foundation classification to 509(a) organization. This is a final determination letter with regard to your Federal tax-exempt status under section 501(a) of the Code.

You are required to file Form 990 PF, Return of Private Foundation. Form 990 PF must be filed by the 15th day of the fifth month after the end of your annual accounting periods. A penalty of \$20 a day is charged when a return is filed late, unless there is a reasonable cause for the delay; however, the maximum penalty charged cannot exceed \$10,000 or 5

percent of your gross receipts for the year whichever is less. In addition organizations with gross receipts exceeding \$1,000,000 for any year will be charged a penalty of \$100 a day when a return is filed late; however, the maximum penalty charged cannot exceed \$50,000. These penalties may also be charged if a return is not complete, so be sure your return is complete before you file it.

If you are subject to the tax on unrelated business income under section 511 of the Code, you must also file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return.

If you decide to contest this determination in court, you must initiate a suit for a 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 91st day after the date this final determination letter was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

United States Tax Court,
400 Second Street
Washington, D.C. 20217

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your 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 call the contact person at the telephone number shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,

Maria Hooke
Director, Exempt Organizations Examinations



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

Date:
June 28, 2017
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact / ID Number:

Employee ID:
Contact numbers:
Telephone:
Fax:

Certified Mail – Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we propose modifying your foundation status under section 509(a) of the Internal Revenue Code (Code).

Your exempt status under section 501(c)(3) of the Code is still in effect.

If you accept our findings, take no further action. We will issue a final letter modifying your foundation status.

If you do not agree with our proposed modification of your foundation status, you may provide additional information that you would like to have considered, or you may submit a written appeal. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference with Appeals, you must submit a written protest within 30 days from the date of this letter. An Appeals officer will review your case. The Appeals Office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any

proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final letter.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States 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 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

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,

Maria Hooke
Director, EO Examinations

Enclosures:
Publication 3498
Publication 892
Report of Examination

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanation of Items	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (<i>last 4 digits</i>)	Year/Period ended December 31, 20xx

Final Report:

Issues:

Whether continues to qualify as a Section 4942(j)(3) private operating foundation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code (IRC) and should be reclassified as a private non-operating foundation under IRC Section 509(a).

Facts:

filed Form 1023 for exemption on May 13, 20xx and was granted exemption as a 501(c)(3) private operating foundation within the meaning of Section 4942(j)(3) on August 12, 20xx with an reinstatement effective date of May 15, 20xx .

was sent Letter 3606, *EO Examination Appointment and Information Document Request Transmittal*, on August 9, 20xx with a response due date of September 9, 20xx.

provided a response dated October 19, 20xx. The response stated, "Our activities include sending out fundraising letters, fundraising emails, maintaining fundraising website and Facebook pages, and conducting various events where we solicit donations. Typically, fundraising begins in February of each year and continues through September. Each team member conducts fundraising operations on his or her own pace, and they are conducted monthly from February through September."

The response further stated, "The majority of the funds raised by our organization are contributed to the , which directs all of its fund to the in . These funds are given to find a cure for cancer. We also offer a \$x,xxx scholarship annually which is given to a high school student in the name of . Our organization is died from colon cancer in 20xx."

stated on the Form 1023 that they are a private operating foundation.

also stated in their determination application that they would provide individual grants and conduct fundraising activities through email, personal, and phone solicitations and also accept donations on their website.

completed Schedule H of the Form 1023 related to providing grants to individuals.

The attachment to the Form 1023 states will:

- Participate in the fight against cancer. to raise money for the and the

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- Conduct fundraising activities that include direct solicitations, silent auctions, bowling parties, band parties, and other entertainment activities.
- Sell tickets to their events and sells merchandise bearing the organization's logo.
- Donate funds raised to the / .
- Provides a scholarship to a graduating senior at High School in the name of

The Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*, filed for tax year ending December 31, 20xx listed total income of \$x,xxx from contributions, gifts, grants, etc. The form listed total expenses of \$x,xxx. The expenses consisted of \$x,xxx paid to the for cancer research, \$x,xxx for the Memorial Scholarship, and \$xxx of other unclassified expenses.

The Form 990-PF filed for tax year ending December 31, 20xx listed total revenue of \$xx,xxx received from contributions, gifts, grants, etc. with \$xx,xxx contributions paid out.

Law:

IRC Section 501(c)(3) of the Code provides that an organization organized and operated exclusively for charitable or educational purposes is exempt from Federal income tax, provided no part of its net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides "In order to be exempt as an organization described Section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section."

Treasury Regulation Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

IRC Section 4942(j)(3) For purposes of this section, the term "operating foundation" means any organization -

(A) which makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated equal to substantially all of the lesser of -

- (i) its adjusted net income (as defined in subsection (f)), or
- (ii) its minimum investment return; and

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(B)(i) substantially more than half of the assets of which are devoted directly to such activities or to functionally related businesses (as defined in paragraph (4)), or to both, or are stock of a corporation which is controlled by the foundation and substantially all of the assets of which are so devoted.

(ii) which normally makes qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated in an amount not less than two-thirds of its minimum investment return (as defined in subsection (e)), or (iii) substantially all of the support (other than gross investment income as defined in Section 509(e)) of which is normally received from the general public and from 5 or more exempt organizations which are not described in Section 4946(a)(1)(H) with respect to each other or the recipient foundation; not more than 25 percent of the support (other than gross investment income) of which is normally received from any one such exempt organization; and not more than half of the support of which is normally received from gross investment income. Notwithstanding the provisions of subparagraph (A), if the qualifying distributions (within the meaning of paragraph (1) or (2) of subsection (g)) of an organization for the taxable year exceed the minimum investment return for the taxable year, clause (ii) of subparagraph (A) shall not apply unless substantially all of such qualifying distributions are made directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

Treasury Regulation Section 53.4942(b)-1 defines an operating foundation to mean any private foundation which makes qualifying distributions directly for the active conduct of activities constituting its charitable, educational, or other similar purposes for which it is organized and operated.

IRC Section 170(a) provides that the 50 percent limitation applies to (1) all public charities (code PC), (2) all private operating foundations (code POF), (3) certain private foundations that distribute the contributions they receive to public charities and private operating foundations within 2-1/2 months following the year of receipt, and (4) certain private foundations the contributions to which are pooled in a common fund and the income and corpus of which are paid to public charities.

The 30 percent limitation applies to private foundations (code PF), other than those previously mentioned that qualify for a 50 percent limitation.

Organization's Position

The organization stated in their response dated February 6, 20xx, "As long as it does not affect the ability of our donors to take a tax deduction on funds donated to the organization, it should not make a difference on how we are classified."

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Government's Position

It is the government's position that _____ should not be classified as a private operating foundation as they fail to conduct any substantial exempt activities. _____ primarily conducts fundraising activities and distributes the majority of the funds raised to the _____ an IRC Section 501(c)(3) public charity.

_____ fails to qualify as a private operating foundation within the meaning of Section 4942(j)(3) and Treasury Regulation Section 53.4942(b)-1 as it is not directly involved in activities that further Section 501(c)(3) charitable purposes.

Conclusion

Based on the foregoing reasons, _____ fails to qualify for exemption under Section 501(c)(3) as a private operating foundation. _____ foundation effective January 1, 20xx.

_____ fails to qualify for exemption under Section 501(c)(3) as a private non-operating foundation effective January 1, 20xx.