



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: January 30, 2019

Release Number: 201922036
Release Date: 5/31/2019
UIL Code: 501.03-00

Person to Contact:
Identification Number:
Telephone Number:
In Reply Refer to:

**LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:**

CERTIFIED MAIL – Return Receipt Requested

Dear :

This is a Final Adverse Determination Letter regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). Our favorable determination letter to you dated July 29, 20XX, is hereby revoked and you are no longer exempt under section 501(a), as an organization described in section 501 (c)(3) of the IRC, effective January 1, 20XX.

Our adverse determination was made for the following reason(s):

You have not established that you are operated exclusively for an exempt purpose or that you have been engaged primarily in activities that accomplish one or more exempt purposes within the meaning of IRC section 501(c)(3).

You have not established that no part of your net earnings inure to the benefit of any private shareholder or individual.

Contributions to your organization are not deductible under section 170 of the Internal Revenue Code.

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 December 31, 20XX and for all years thereafter.

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

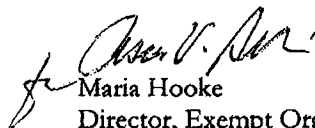
determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

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 or call 1-877-777-4778.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

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

Sincerely yours,

A handwritten signature in black ink, appearing to read "Maria Hooke", is written over the typed name.

Maria Hooke
Director, Exempt Organizations Examinations

Enclosure:

Publication 892



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

Date:
August 9, 2018
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact:

Employee ID:

Telephone:

Fax:

Manager's Contact Information:

Employee ID:

Telephone:

Response Due Date:

CERTIFIED MAIL – Return Receipt Requested

Dear :

Why you're receiving this letter

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

If you agree

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

After we issue the final adverse determination letter, we'll announce that your organization is no longer eligible to receive tax deductible contributions under IRC Section 170.

If you disagree

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

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 adverse determination letter.

Contacting the Taxpayer Advocate Office is a taxpayer right

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 www.taxpayeradvocate.irs.gov or call 877-777-4778.

For additional information

You can get any of the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact the person shown at the top of this letter.

Sincerely,



For Maria Hooke
Director, Exempt Organizations
Examinations

Enclosures:
Form 886-A
Form 6018

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer	EIN:	Periods Ending: December 31, 20XX December 31, 20XX

Issue

Whether the (Organization) meets the operational test of Treasury Regulations Section 1.501(c)(3)-1 and should retain its tax-exempt status under Internal Revenue Code (IRC) Section (Sec.) 501(c)(3)?

Facts

Background

The Internal Revenue Service received the Organization's Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on January 21, 20XX. The Form 1023 was signed by (CEO) as chief executive officer. The Organization received its determination letter from the Internal Revenue Service granting it exempt status under IRC Sec. 501(c)(3), effective January 15, 20XX.

The CEO had previously operated a foster family agency in . This organization was called the . The CEO filed a certificate of dissolution with the State of on October 31, 20XX for this foster family agency.

The Organization's Articles of Incorporation and Bylaws state the Organization's purpose is:

"recruit and certify foster parents in the area, place foster children in the certified foster homes, and provide case management services to the children"

On November 30, 20XX the CEO was asked how she recruits foster parents, she stated, "by posting flyers in to recruit foster parents and the Organization's website."

The Organization as a foster family agency receives most of its revenue from (), and must undergo periodic financial audits. The last financial audit conducted was for period ending December 31, 20XX. The financial auditor stated the following about the Organization's ability to continue as a going concern,

"As shown in the accompanying financial statements, the Organization has incurred a loss in 20XX, has negative net assets, and has deficiencies related to cash management, resulting in an inconsistent ability to maintain cash and cash equivalents sufficient to appropriately support operations. "These factors raise substantial doubt about the Organization's ability to continue as a going concern. The accompanying financial statements do not include any adjustments that might be necessary if the Organization is unable to continue as a going concern."

Compensation

At the time of this writing the Organization has unpaid employment taxes, penalties and interest totaling \$0.

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On page 4, part V of the 20XX Form 1023 it asks how the Organization would ensure there would be no conflict of interest when determining their own compensation, there is a hand-written response which states, "use of outside experts".

Form 1023, Page 3, Part V, Line 1b; it states: "List the names, titles, and mailing addresses of each of your five highest compensated employees who receive or will receive compensation of more than \$0 per year. Hand written in the margin it states, "N/A – none will receive that much compensation."

Form 1023, Page two, Part V, Line 1a it states: "List the names, titles, and mailing address of all your officers, directors, and trustees. For each person listed, state their total annual compensation, or proposed compensation, for all services to the organization, whether as an officer, employee of other position." The hand-written response for " " is "est = \$0/mo." " " signature date on this form is January 18, 20XX.

A Board resolution dated May 11, 20XX that states, "Whereas, the initial position with will be fulfilled by to serve as a paid employee at the rate of \$0/month as Administrator and Foster Care Social Worker".

The Agent asked why the Form 1023 estimates compensation as \$0 (less than \$0) per year, the Board Resolution states her compensation at \$0 per year, and why her compensation for the audit years is over \$0 per year? The CEO explained she just could not live on \$0 a year.

The table that follows show that in 20XX and 20XX total employment tax due was \$0 per year. In 20XX, the CEO paid \$0 of employment taxes and \$0 of employment taxes in 20XX. The table reflects payments made through January 31, 20XX.

Employment Tax Analysis as of January 31, 20XX							
Employment Tax Period	EO's SSA/Med	CEO's - FIT	CEO's-SSA/Med	CEO's Total	Total due per quarter	Payments	Underpayment
20XX Q1	0	0	0	0	0	0	0
20XX Q2	0	0	0	0	0	0	0
20XX Q3	0	0	0	0	0	0	(0)
20XX Q4	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0
Employment Tax Period	EO's SSA/Med	CEO's - FIT	CEO's-SSA/Med	CEO's Total	Total due per quarter	Payments	Underpayment
20XX Q1	0	0	0	0	0	0	0
20XX Q2	0	0	0	0	0	-	0
20XX Q3	0	0	0	0	0		0
20XX Q4	0	0	0	0	0		0
Total	0	0	0	0	0	0	0

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The CEO reported on her 20XX and 20XX Forms 1040, *U.S. Individual Income Tax Return*, that she had \$0 of Federal Income Tax withholding and \$0 of Federal Income Tax withholding in 20XX. Both these withholding amounts reduced her income tax in 20XX and 20XX.

Executive Directors Reimbursements

The 20XX and 20XX Forms 990 show an expense "Reimburse Exec Director". For 20XX the total is \$0 and 20XX the amount is \$0. The largest reimbursement is for vehicle mileage.

The Agent asked for the mileage log the CEO used to keep track of mileage. The CEO said she did not keep a mileage log. The Agent asked how she keeps track of her mileage. The CEO said she uses her calendar.

The Agent reviewed the calendar and found on most days there was a number circled, the CEO said these were the miles she drove that day and at the end of the week, there is a total for the miles. The CEO explained the mileage was for home visits she was required to do by

To verify these home visits the Agent requested the "Home Visit Forms" these forms are the reports the CEO completes at each home visit. The CEO did not provide the "Home Visit Forms", but provided a quarterly report that summarizes her home visits. This quarterly report appears to match her calendar. The Agent asked where the home visit forms were, these forms are created each time there is visit a home. The CEO said there is no such form, and only requires a quarterly report. The Agent requested contact information (name and direct phone number) for someone in who could verify this statement.

On May 2, 20XX, during a conference call with the CEO at the POA's office the CEO said she had the home visitation reports, but still needed two more weeks to get them. The CEO provided some home visit forms.

The Agent's review of the Home Visit Forms shows the following:

1. They are hand written and extremely difficult to read
 2. None of the forms state which foster home the CEO went to.
 3. None of the forms state who completed the form.
 4. Many form did not state who else was present.
 5. The CEO provided 111 pages of home visit forms, only 26 had completed dates.
- Some of the home visit forms:
- a. have no dates
 - b. some have incomplete dates
 - c. some have dates from a year not requested

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- d. some have dates that appear to be from a non-audit year but made to look like they are from an audit year.
6. There were at least 3 duplicate reports.
 7. There were five blank pages.
 8. The CEO provided 111 pages of documents related to the home visitations. If the 3 duplicates are removed, and the 5 blank pages are removed this brings total home visit forms to 103 for 20XX and 20XX, for the months of January, November and December. The CEO's calendar for 20XX shows 0 home visits for January, November and December. In 20XX the CEO's reimbursements on the Form 990 increased from 0 to 0 in 20XX, thus meaning the CEO should have at least as many Home Visit Forms for 20XX as 20XX, if not more. There should be an approximate total of 0 home visit forms. The CEO provided 0 in the condition explained in item five.

Payments to the CFO

(CFO and the CEO's Father) received payments in 20XX totaling \$0 and in 20XX \$0. Numerous explanations have been provided for these payments. They have been explained as director's fees on the 20XX Form 990, loans made by the CFO to the Organization, reimbursements to the CFO on May 2, 20XX during meeting with the Agent, and compensation for work completed in the office. Substantiation was requested but it was not adequate to verify the Organization statements.

Article III, paragraph 1 of the Organization's bylaws state, "Membership in this organization shall be open to the Board of Directors, **who shall serve without pay** and consist of at least members."

In 20XX, the Organization had a financial audit conducted. The financial statements show a loan payable to of \$0 and one for \$0 payable to , an immediate family member. Note five in Organization's Independent Auditor's Report and Financial Statements states, "Both stated loans payable balances lack supporting documentation, and are unaudited." The Agent asked for documentation showing these funds were received by the Organization. However, adequate documentation was not provided. The CFO says he has no documentation prior to 20XX.

Law:

Internal Revenue Code (IRC)

IRC Sec. 274(d)(4) provides that no deduction or credit shall be allowed for any expenses relating to travel, gifts or listed property unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of the person receiving the benefit.

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IRC Sec. 501(c)(3) provides for exemption from income 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.

IRC Sec. 6001 provides every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Treasury (Treas.) Regulations (Regs.)

Treas. Regs. Sec. 1.274-5T(b)(6) Listed property. The elements to be proved with respect to any listed property are -

(i) Amount -

- (A) Expenditures. The amount of each separate expenditure with respect to an item of listed property, such as the cost of acquisition, the cost of capital improvements, lease payments, the cost of maintenance and repairs, or other expenditures, and
- (B) Uses. The amount of each business/investment use (as defined in § 1.280F-6T (d)(3) and (e)), based on the appropriate measure (i.e., mileage for automobiles and other means of transportation and time for other listed property, unless the Commissioner approves an alternative method), and the total use of the listed property for the taxable period.

(ii) Time. Date of the expenditure or use with respect to listed property, and

- (iii) Business or investment purpose. The business purpose for an expenditure or use with respect to any listed property (see § 1.274-5T(c)(6)(i) (B) and (C) for special rules for the aggregation of expenditures and business use and § 1.280F-6T(d)(2) for the distinction between qualified business use and business/investment use).

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

Treas. Regs. Sec. 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

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Treas. Regs. Sec. 1.501(a)-1(c) defines the words private shareholder or individual in *section 501* as persons having a personal and private interest in the activities of the organization.

Treas. Regs. Sec. 1.501(c)(3)-1(f)(2)(i) states that, regardless of whether a particular transaction is subject to excise taxes under § 4958, the substantive requirements for tax exemption under § 501(c)(3) still apply to an applicable tax-exempt organization described in § 501(c)(3) whose disqualified persons or organization managers are subject to excise taxes under § 4958. Accordingly, an organization will no longer meet the requirements for tax-exempt status under § 501(c)(3) if it fails to satisfy the requirements of paragraph (b), (c) or (d) of this section.

Revenue Procedure (Rev. Proc.)

Rev. Proc. 2002-26 - If additional taxes, penalty, and interest for one or more taxable periods have been assessed against a taxpayer (or have been mutually agreed to as to the amount and liability but are unassessed) at the time the taxpayer voluntarily tenders a partial payment that is accepted by the Service and the taxpayer does not provide specific written directions as to the application of payment, the Service will apply the payment to periods in the order of priority that the Service determines will serve its best interest.

The Revenue Procedure further states the Service will apply the payments to periods in order of priority that will serve its best interest.

Organization's Position

The Chief Financial Officer, Chief Executive Officer, and the Organization's Representative have indicated agreement with the Government's position.

Government's Position

It is the Government's Position the (Organization) should not retain its tax-exempt status under Internal Revenue Code (IRC) Section (Sec.) 501(c)(3)?

Organizational Documents

According to the Articles of Incorporation and Bylaws of the Organization the purpose of the Organization is, "recruit and certify foster parents in the _____ area, place foster children in the certified foster homes, and provide case management services to the children"

Currently the Organization has _____ children it is providing services for and the CEO has stated three are in the adoption process. Upon completion of the adoption process for the children she plans to discontinue the Organization.

The CEO stated her primary method of recruiting foster parents was, "by posting flyers in to recruit foster parents and the Organization's website." Currently the CEO is employed as full-time school social worker/counselor, and is not actively looking for new foster parents.

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Inurement

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

Treas. Regs. Sec. 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Here the concerns with inurement are related to the CEO's Compensation, the CEO's reimbursements, and payments made to the CFO.

Compensation

The CEO has taken more than the approved amount compensation. There are various amounts (\$0 or \$0) of compensations reflected in the Organization's documents however in 20XX and 20XX the CEO received \$0 in compensation. This is \$0 in excess of the approved by the board, and there was no "use of outside experts" as stated there would be on the Form 1023.

Because of the CEO's compensation (she was the sole employee and administrator) the Organization has an employment tax debt (currently \$0). In 20XX, the Organization, operated by the CEO did not pay \$0 of employment taxes.

Revenue Procedure 2002-26 allows the Internal Revenue Service to apply partial payments in its best interest. This being the case, for 20XX, the unpaid \$0 can be allocated to the CEO 20XX Federal Income Tax withholding. In 20XX, the CEO deducted \$0 from her individual income tax debt, of which \$0 was not paid.

This applies to 20XX as well. The Organization, run by the CEO did not pay \$0 of Employment Taxes. From the table above, no payments were made for the last three quarters of 20XX. The last three quarters of Federal Income Tax withholding totals \$0. This unpaid amount is included in the CEO 20XX Federal Income Tax withholding deduction of \$0, on her 20XX Form 1040, *U.S. Individual Income Tax Return*.

Moreover, in 20XX there are three unpaid quarters of the CEO's Social Security and Medicare which will benefit the CEO during her retirement of if she becomes disabled. This unpaid amount totals \$0

Here, the CEO compensation exceeds the approved amount of \$0 per year and the Employment Tax debt incurred by the Organization to pay the CEO's income tax, Social Security and Medicare are inurement.

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CEO's Reimbursements

Here, the CEO was paid for reimbursements in 20XX (\$0) and 20XX (\$0) for mileage and entertainment (i.e. meals). In 20XX, the CEO's submitted expenses reimbursements for mileage totaling 0 miles. The CEO was reimbursed at 59 cents (standard mileage rate for 20XX was 57.5 cents). The total reimbursement form mileage was \$0.

Under Treas. Reg. 1.274-5T(b)(6) The elements that must be substantiated to deduct the business use of an automobile are: (i) the amount of the expenditure; (ii) the mileage for each business use of the automobile and the total mileage for all uses of the automobile during the taxable period; (iii) the date of the business use; and (iv) the business purpose of the use of the automobile.

For 20XX the CEO provided a Quarterly report and a Calendar, which when compared to her contemporaneous home visitation reports, would not reconcile. The total mileage for all uses of the vehicle was not provided, and the dates of the business use on the home visit reports were only completed 0 time, and none of the home visit forms said where the visit was conducted. Further the required number of home visitation reports that should have been provided for both 20XX and 20XX is approximately 0 and only 0 partially completed, illegible reports were provided.

Because the CEO could not verify she drove the mileage she was reimbursed for in 20XX and 20XX this is inurement.

Payments to the CFO

(CFO and the CEO's Father) received payments in 20XX totaling \$0 and in 20XX \$0. However, the required verification showing these are loan repayments, reimbursements, or compensation has not been provided during this audit or during the financial audit. Thus, these payments are inurement.

Conclusion

It is the Government's position; the _____ does not meet the operational test of Treasury Regulations Section 1.501(c)(3)-1 and should not retain its tax-exempt status under Internal Revenue Code Section 501(c)(3), and the revocation of the exempt status should be effective January 1, 20XX.