DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE



TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

A= Taxpayer

B= Employer Identification Number

C= Person to Contact

D= Identification Number

E= Telephone Number

F= Location 1

G= Date 1

H= Date 2

I= Tax Court

J= Taxpayer Advocate's Office

Number: **200623070** Release Date: 6/9/2006

UIL: 501.03-05

Date: October 24, 2005

Taxpayer Identification Number:

R

Person to Contact:

C

Identification Number:

n

Contact Telephone Number:

 \mathbf{E}

LAST DATE FOR FILING A PLEADING WITH THE TAX COURT, THE CLAIMS COURT, OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT

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Dear Sir or Madam:

This is a Final Adverse Determination Letter as to A exempt status under section 501(c)(3) of the Internal Revenue Code.

Recognition of your exemption from Federal Income Tax as an organization described in Internal Revenue Code section 501(c)(3) is retroactively revoked effective G for the following reasons:

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You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes. You operate for the benefit of private interests and your net earnings inured to the benefit of private shareholders or individuals.

Contributions to your organization are no longer 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 H, 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 file a pleading seeking a declaratory judgment in the United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia before the 91st day after the date this final determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing pleadings for declaratory judgments and refer to the enclosed Publication 892. You may write to these courts at the following addresses:

I

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.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling (615) 250-5000, or writing to:

J

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.

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,

R.C. Johnson Director, EO Examinations

Enclosure: Publication 892



DEPARTMENT OF THE TREASURY

Internal Revenue Service

Taxpayer Identification Number:

Form: 990

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers: Telephone: Fax:

Certified Mail - Return Receipt Requested

Dear Sir or Madam:

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

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. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations 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.

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.

Letter 3618 (04-2002) Catalog Number 34809F 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 revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

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:

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,

R/C. Johnson

Director EO Examinations

Enclosures: Publication 892 Publication 3498 Report of Examination

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Soard. According to the City of attorney no formal documentate dissolution of has been filed with the state of		was the lone Boa	rd member vo	ting against th	e dissolution of the
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purchased assets totaling in as follows:	<u>purchased</u>	<u>Assets totalina</u>	in	ae fallau-	·.
				25 (Alana)	· ·

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or
	Explanation of Items	Exhibit
Name of Tax		Year/Period Ended
		1
•		,
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		1
On	,!,! issued a teller check for	to for the
purchase of a		registration fees of
, Docume	entary fee and trade payoff tax	brought the purchase
price to		nobile was found in the
office listing	g as the purchaser.(workpapers	through . A
	neral ledger showed the purchase price be	——————————————————————————————————————
sales in account	"Materials". (workpaper	
_		
purchased	assets totaling , in as	follows:
On .	issued check number to) for
(workpape		untant to charge the
expense to the		
	lger for showed the cost was entered	
	achinery and Equipment".(workpaper	. The eview of
	a separate investigation by	Chairman of The Board
		t. Title for this boat has
not been located.	•	
On	issued check number to	for had
in their files an in		for , had
the leveling of a i	al of a wood fence, the cutting down and i	
		(workpapers
	The invoice was actually for the purchas	
	the certificate of title, found in offic	
	the (workpaper through	
		g charged to the
property as a cos	it of goods sold in account "Cost – Si	ıbcontract". (workpaper
	•	
On	issued check number fo	r , to
fatho	er. The check was recorded on the genera	al ledger as a loan in
account "Ot	ther Loans". A Car Title was found in the	office showing
	er and the sales price as . (workpa	₩
23). An Applicati		, was also found in the
office. This	title showed the being gifted to	•
	rkpaper .	•
,		
On) issued a check to the	or
. A cashie	r's check was then issued to 🧸 🔻 u	sed the cashiers check to
purchase a	•	review of the general

Form 886A	Department of the Treasury -	Internal Revenue Service	Schedule No. or
1 01111 00022	Explanation	of Items	Exhibit
Name of Taxp			Year/Period Ended
	e purchase of the motoro		
account 4000 "Pure	chases". (workpaper	. A motorcyc	le was found in the
garage area of the			
The application for	ertificate of title	was attached an	d a blank check, signed
	attached to pay the regis	tration. (workpape	er through
The check wa	s . The title is dat	ed '	was listed as the
owner/applicant.	noted that a check	was written to	
on yr	 An application for 	title was file	d out indicating
sold the mot	orcycle to .	signed the title	e. (workpapers
through			
	•		
On .	🔖 a manual check numb		•
for . A	cashler's cheçk copy wa		
to		The cost was ch	
property as a subco	ontract cost in a cost of	goods sold accour	nt
	. A title w	as found in	office for a
Boat, but i	it is open and does not in	dicate the name o	of the purchaser
(workpaper	. Per a disc	ussion between	and a
man named	Van	and	told him that he had
sold his boat to	The boat was or	wned by his wife's	company
. The selic	er's name on the title wa	s	- •
			•
On .	' issued check numbe	r for	, to
	nt of an invoice received		oat (workpaper .
These costs were e	entered into general ledg	er account "	Other Loans".
On	issued check numl	er for	, to ' for
the purchase of a b	oat trailer.		Board of Directors.
	iller purchased from '		works at
-	contacted i	and asked him	n about the trailer.
ı indicated th	at he and i we		se a boat trailer. They
were each to contri	•		o'
idicated th	at the trailer was never		
	and no explanation for the		
		ck amount.	i general ledger
recorded the purch:		chinery and Equip	
_		₩	
On	'issued check	to:	Auto for the
-	153ued Check	£0 ·	wate ior the
	. A revie	w of the general le	edger indicated the
purchase of a purchase price was		w of the general le	

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items		Schedule No. or Exhibit
Name of Taxpa	vyer	•	Year/Period Ended

On the revenue agent for the internal Revenue Service contacted or the City of in an attempt to determine the assets seized from and currently in the control of the City of stated that the City of has in their possession, the following:

Work trailer (could be a boat trailer?)
Bank Account with
Office Equipment such as desks and chairs, etc.

stated that the following assets were currently in lock-down at

Boat called "the vellow boat"

stated that the following assets were in the possession of

LAW, ARGUMENT AND RATIONALE

Section 501(c)(3) of the 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 incres to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the regulations defines a private shareholder or individual as those persons having a personal and private interest in the activities of an organization. In general, a private shareholder or individual is considered an "insider" with respect to the exempt organization.

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Name of Taxnaw		Y	ear/Period Ended
		',	

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in 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.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Any unjust enrichment, whether out of gross or net earnings, may constitute inurement $\underbrace{Section\ 1.501(c)(3)-1(c)(2)}$ of the regulations states 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. Inurement is concerned with the direct transfer of income or provision of services unrelated to exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations, provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. The burden is on the organization to establish that it is not organized and 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 private interests. The organization's activities must be broad enough in scope to confer a public benefit versus serving to benefit only a few.

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, 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.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the promotion of education.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. <u>Better Bus. Bureau v. United States</u>, 326 U.S. 279. 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); <u>Am.</u>

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Campaign Acad. v. Commissioner, 92 T.C. 1053, 1065 (1989); see also Old Dominion Box Co., Inc. v. United States, 477 F2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973) ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. Am. Campaign Acad. v. Commissioner, supra at 1065-1066.

Section 1.501(a)-1(c) of the regulations states that "[t]he words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

In <u>John Marshall Law School v. U.S., 81-2 U.S.T.C. 9514</u> (Ct. Cl. 1981), the Court found that the Commissioner acted properly in revoking exemption under IRC 501(c)(3) on the grounds of increment to the controlling officers and their families. The increment included, but was not limited to, payments to the families as follows: automobile, education and travel expenses, insurance policies, basketball and hockey tickets, membership in a private eating establishment, membership in a health spa, interest-free loans, home repairs, personal household furnishings and appliances, and golfing equipment.

In <u>Founding Church of Scientology v. U.S., 412 F.2d 1197</u> (Ct. Cl. 1969), the facts involved classic across-the-board channeling of an organization's funds to those in control of the organization. In that case, a wide variety of devices were employed, including fees, commissions, excessive rental payments, loans and excessive salaries, to divert the organization's funds to its founder, L. Ron Hubbard, and his immediate family. The principle of increment was neatly summarized when the Court stated, "what emerges from these facts is the inference that the Hubbard family was entitled to make ready personal use of the corporate earnings."

As Stated above, Section 501(c)(3) of the 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 incres to the benefit of any private shareholder or individual.

- purchased assets for the personal use and benefit of the private interest of the then EO President _______, as detailed in the FACTS section of this report.

In addition, Section 1.501(a)-1(c)of the regulations defines a private shareholder or

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		; '	

Individual as those persons having a personal and private interest in the activities of an organization. In the case of ..., the personal and private interests would be those of the then President

Therefore, net earnings inured to the private benefit of the President in the form of asset acquisitions in violation of $\underline{Section}$ $\underline{501(c)(3)}$ of the Code. Thus causing the loss of exempt status.

TAXPAYER'S POSITION

The EO and/or their representatives have not provided any information as to their position at this time.

GOVERNMENT'S POSITION

Based on the facts of the examination, the organization does not qualify for exemption since the purchasing of assets for the private and personal use of the then President or persons controlled, directly or indirectly, by him clearly benefit their private interest. As noted above, an organization that operates for the benefit of private interests, such as designated individuals, by definition does not operate exclusively for exempt purposes.

CONCLUSION

Based on the foregoing reasons, the organization does not qualify for exemption under section 501(c)(3) and its tax exempt status should be revoked, effective