



Department of the Treasury  
Internal Revenue Service  
Independent Office of Appeals

Date: FEB 12 2024

Person to contact:  
Name:  
Employee ID Number:  
Phone:  
Fax:  
Hours:  
Employer ID number:

Release Number: 202419018  
Release Date: 5/10/2024

Uniform issue list (UIL): 501.03-30

**Certified Mail**

Dear :

This is a final adverse determination regarding your private foundation classification under Internal Revenue Code (the "Code") Section 509(a). Although you are exempt under Section 501(c)(3) of the Code, you do not qualify as a public charity described under IRC Section 509(a)(2) but, rather, as a private foundation described under Section 509(a) of the Code effective July 1, 2018.

We made the adverse determination for the following reasons:

Organization has not shown that it meets the public support test to qualify under Section 509(a)(2) of the Code.

You're required to file Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions.

You're subject to Chapter 42 excise taxes, unrelated business income taxes, and employment taxes (where applicable) based on your activities. Please see Publication 557, Tax-Exempt Status for Your Organization, for more details.

You can get any forms or publications mentioned in this letter by visiting our website at [www.irs.gov/forms](http://www.irs.gov/forms) or by calling 800-TAX-FORM (800-829-3676).

You've agreed to waive your right to contest this determination under the declaratory judgment provisions of Section 7428 of the Code.

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

Sincerely,

Valeria B. Farr  
Appeals Team Manager

Enclosures:  
IRS Appeals Survey

cc:



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

Date:  
November 16, 2022  
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:  
ID number:  
Telephone:  
Fax:  
Address:

Manager's contact information:

Name:  
ID number:  
Telephone:  
Response due date:  
December 16, 2022

**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](http://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](http://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

Lynn A. Brinkley  
Acting Director, Exempt Organizations  
Examinations

Enclosures:  
Form 886-A  
Form 6018

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended

**Issue:**

Whether \_\_\_\_\_ continues to qualify for tax-exempt status as an organization described in Internal Revenue Code (IRC) § 501(c)(3) or whether it's exempt status should be revoked for failure to meet the operational test under IRC § 501(c)(3)?

**Facts**

\_\_\_\_\_ (hereafter referred to as "\_\_\_\_\_", "\_\_\_\_\_", "\_\_\_\_\_" or "\_\_\_\_\_") is a \_\_\_\_\_ located in \_\_\_\_\_ that was recognized as exempt from federal taxation as an organization described in IRC § 501(c)(3) and classified as a non-private foundation under IRC § 509(a)(2), effective \_\_\_\_\_. It has a fiscal year end of \_\_\_\_\_.

- Articles of In \_\_\_\_\_, dated \_\_\_\_\_, contain the following provisions:
- o To promote the preservation and improvement of critical natural resources throughout the \_\_\_\_\_ states.
  - o To receive and maintain a fund(s) of real or personal property to use and apply exclusively for charitable, religious, scientific, literary, or educational purposes.
  - o The \_\_\_\_\_ shall not conduct or carry on any activities not permitted to be carried out by an organization exempt under IRC § 501(c)(3).
  - o The duration of the \_\_\_\_\_ is perpetual; if the \_\_\_\_\_ dissolves, the assets of the \_\_\_\_\_ are distributed exclusively to charitable, religious, scientific, literary or education organizations which qualify under IRC § 501(c)(3).
  - o The corporate powers shall be exercised by the Board of Directors, except as otherwise provided by statute, the Articles of In \_\_\_\_\_, or by the Bylaws hereafter adopted, and any amendments to the foregoing.
  - o Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting.

The Bylaws of the \_\_\_\_\_, dated \_\_\_\_\_, provide that the \_\_\_\_\_ shall have no members and that the business and affairs of the \_\_\_\_\_ shall be managed by the Board of Directors. The Bylaws also set forth the titles for corporate officers with the President designated as the principal executive officer of the \_\_\_\_\_. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the \_\_\_\_\_ by any contract or engagement. It does not appear that the Bylaws were formally adopted as there have been no meetings of the board of directors since the organization's inception.

It was represented that there have been no amendments to the organizational documents.

According to the \_\_\_\_\_ Secretary of State, \_\_\_\_\_ was registered on \_\_\_\_\_. It listed its domestic address as: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ with a mailing address as c/o \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. The following officers were listed in the registration:

\_\_\_\_\_  
Officer  
Secretary, Director

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Treasurer, Director  
President, Director

The online Form 1023-EZ, its application for tax-exempt status, was completed on \_\_\_\_\_, by \_\_\_\_\_ (Chairman / Director). This application indicated that \_\_\_\_\_ was located at \_\_\_\_\_. The application stated the names and titles of the officers, directors and/or trustees as:

Chairman / Director  
Secretary / Treasurer / Director  
Vice Chairman / Director  
Director  
Director

In its application, \_\_\_\_\_ attested that its organizing documents limited its purposes to one or more exempt purposes under IRC § 501(c)(3), that it is not expressly empowered to engage, other than to an insubstantial degree, in activities that do not further one or more exempt purposes and that it has a proper dissolution clause. It further indicated that it was organized and operated exclusively to further charitable, scientific, and educational purposes.

For the year ended \_\_\_\_\_, the \_\_\_\_\_ filed a \_\_\_\_\_

Memorandum of Understanding (Attachment One):

\_\_\_\_\_ and \_\_\_\_\_ (\_\_\_\_\_), purportedly entered into a Memorandum of Understanding (MOU) (Attachment One) as of \_\_\_\_\_. It was signed by \_\_\_\_\_ (\_\_\_\_\_) Board President) and by \_\_\_\_\_ (CEO of \_\_\_\_\_). The representations made by the parties and the agreement between the parties is summarized below:

- Both organizations are tax exempt organizations under IRC § 501(c)(3).
- Both organizations are "qualified organizations" as defined in IRC § 170(h)(3)
- \_\_\_\_\_ currently serves as the donee organization for \_\_\_\_\_ with respect to land located in the State of \_\_\_\_\_.
- \_\_\_\_\_ has an appropriate level of capacity in the areas of land acquisition, maintenance, enforcement, stewardship and financial management, scientific research, and the ability to provide administrative services called for under the Memorandum of Understanding, and
- \_\_\_\_\_ endeavors to obtain to the same level of capacity as the \_\_\_\_\_;
- Both organizations agreed to the following:
  - \_\_\_\_\_ will continue to hold and administer all stewardship funds provided by previous donors with respect to \_\_\_\_\_ or \_\_\_\_\_ donations as to land located in \_\_\_\_\_.
  - \_\_\_\_\_ will provide \_\_\_\_\_ with initial operating funds in the amount of \$ \_\_\_\_\_. These funds will be reimbursed to the \_\_\_\_\_ in cash or in-kind support after \_\_\_\_\_ has obtained an appropriate level of capacity as determined by the \_\_\_\_\_ Board of Directors. These funds will be used to cover such startup

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- costs as purchasing business equipment, field supplies, and the hiring of employees.
- will periodically fund with additional cash and non-cash resources determined by the Board of Directors and staff as compensation for services under the MOU.
  - recognizes that at some point in time, will attain an appropriate level of financial ability and capacity to also hold in the State of . At that time, may assign certain to commensurate with financial sustainability and may at some future time deed certain land to the
  - will provide financial record keeping services for and assist in administering its approved policies and procedures.
  - will continue to provide an office for to use. At a future time, will assist in establishing office space in
  - will share its staff technical expertise with
  - staff will assist staff, upon request, with annual monitoring activities, projects, communication, and outreach activities.
  - will accept assigned from per the conditions of the Agreement.
  - will begin to accept donations of and lands of its own volition.
  - and shall be mutually responsible for managing lands in the State of and for performing annual monitoring inspections.
  - At some future time, and will take appropriate and timely action to enforce the terms of the
  - All stewardship funds for previous and current projects will be managed by unless and until both and agree to amend this procedure
  - Each landowner of land subject to a will be notified about any assignments of by to in compliance with the terms of each respective deed.
  - will provide periodic updates at board meetings.
  - This agreement will be reviewed annually on its anniversary by the Board of Directors of and and may be amended in writing upon mutual agreement of the parties.

Website

As part of our examination, we reviewed website, claimed that it had “

” and further that it has the

website referenced the some basic information about its website concerning

. Its website also contained in general. Despite representations on and

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acknowledged that it has no correspondence pertaining to these types of matters. When asked about the general public's response to the website did not respond.

Information from                      responses to Information Document Requests:

There have been no board of director or committee meetings; therefore, there were no meeting minutes to review.                      representative stated that the                      has commenced no financial activities as the "                      is currently creating an awareness of its role and activities" in                      and that its formal operations are still in the planning stage. The                      has not engaged any employees. It has no vendor contracts for services, such as those with entities or persons providing baseline reports, monitoring or professional services.

                    claims that it is a "                      " set up by                      , part of a developmental model to reduce chances of failure, achieve financial viability and growth for firms that supports, and that business development is the responsibility of                      . The                      set forth a number of explanations in order to define the term                      . Among other things, the                      described it as "                      , " so that [they] can survive in the market and further it is "                      . " The                      states that it is the recipient of                      services provided by                      .

In response to many questions posed during the examination which are relevant to organizations,                      admitted that it has no operational policies or procedures of any sort. It asserted that "in keeping with the developmental model set forth by                      for its incubated entities," it has a number of proposed policies and procedures, including those for acquisitions, stewardship fees,                      , revenue, personnel,                      enforcement, ownership transfer of assets, records storage and general guidelines for                      . These appear to have been provided to                      by                      but never adopted by                      board. In response to questions about policy or procedures pertaining to a property owner's use of the property or the exercise of reserved rights, as well as for                      management,                      refers to the                      used by                      .

                    noted that                      protects                      acres across                      states which includes approximately                      acres in                      . It stated that                      holds                      (                      ) in the State of                      . According to                      ,                      verifies current property ownership of the protected properties by visiting the respective county tax digest and entering the property parcel number.                      admits that even though there is an MOU between it and                      , the annual monitoring requirements are the responsibility of                      .

Deeds

In its responses,                      acknowledged that it held no                      or                      . It also acknowledged that it had no correspondence with respect to any transactions, including                      rejections. Instead, it submitted the                      deeds held by                      in                      and the related baseline reports for the Service's review during the examination, as listed below:





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law, then shall have the right, subject to the provisions of § 16 herein, to transfer the created by this to any public agency or private nonprofit organization that, at the time of the transfer, is a qualified organization under IRC § 170(h), but only if that organization expressly agrees to assume the responsibility imposed on by the

Despite acknowledging that it held no , alleged that had acted in its stead producing monitoring reports and notification letters using letterhead.

Monitoring Reports and Monitoring Report cover letters (notice letters) were requested with respect to the deeds. The following information was provided to the IRS as listed below:

Monitor	Monitor Date	Notice Letter Date	Monitor Org
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The Monitoring report and Notice Letter for is attached as an example of what was provided (see Attachment Four). The letterhead on that monitoring report and notice letter is . The person signing the report is , in his capacity as CEO of . The same was true for the notice letter and monitoring report for , as well as for the monitoring report for . No documentation was provided substantiating claim that monitoring reports were produced on its letterhead by it or .

The , for , for the years ended and (see Attachment Five) were reviewed. The responses on both returns were virtually identical in most respects. Below is a summary of return for the year ended :

- In Part III, *Statement of Program Service Accomplishments*, Question 4a, stated (in relevant part), "...[ ] conducted the monitoring of its using its professional environmental staff to inspect and document the condition of the properties..."
- On Schedule D, *Supplemental Financial Statements*, Part II, Question 3, asking about the number of modified, transferred, released, extinguished, or terminated by the organization during the year, is blank.
- On Schedule D, Part XIII, *Supplemental Information*, is the statement: [ ] provides a publication entitled, "General Guidelines For Projects" to all

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- Donors which details the responsibility of the \_\_\_\_\_ in providing monitoring of the properties under \_\_\_\_\_ not less than annually.
- On Schedule I, Part II, which lists \_\_\_\_\_ grants and other assistance to domestic organizations, no grants were given to \_\_\_\_\_.
  - The Schedule O, *Supplemental Information to Form 990 or 990-EZ*, states (in relevant part) that [ \_\_\_\_\_ ] conducted monitoring of its \_\_\_\_\_ using its professional environmental staff to inspect and document the condition of properties...to ensure compliance with \_\_\_\_\_ requirements. In total, the \_\_\_\_\_ provides protection for \_\_\_\_\_ properties totaling \_\_\_\_\_ acres in a \_\_\_\_\_ state region of the \_\_\_\_\_.
  - On Schedule R, Related Organizations and Unrelated Partnerships, \_\_\_\_\_ does not mention \_\_\_\_\_ nor does \_\_\_\_\_ mention anywhere in its returns that it was providing " \_\_\_\_\_ services" to \_\_\_\_\_. Similarly, in Part VI.B., answered "no" to the question of whether it had any local chapters, branches or affiliates.

**Law:**

Section 501(c)(3) of the Code exempts from federal income tax organizations that are "organized and operated" exclusively for religious, charitable, scientific, literary, or educational purposes. In addition, no part of the organization's net earnings may inure to the benefit of the private shareholder or individual, no substantial part of its activities may be devoted to lobbying and it may not intervene in political campaigns, directly or indirectly.

Treasury Reg. §1.501(c)(3)-1(a)(1) provides that 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. It is a conjunctive test, each test must be separately satisfied, and if an organization fails to meet either the organizational or operational test, then it is "fatal to qualification and to continued entitlement to exempt status." Columbia Park & Recreation Ass'n., Inc. v. Commissioner, 88 T.C. 1,13 (1987), aff'd. without published opinion, 838 F.2d 465 (4<sup>th</sup> Cir. 1988).

The regulations enumerate the following exempt purposes as including religious, charitable, scientific, testing for public safety, literary, education or prevention of cruelty to children or animals. Treas. Reg. § 1.501(c)(3)-1(d)(i). In Rev. Rul. 76-204, 1976-1 C.B. 152, the Service recognized that land conservancy can be a charitable purpose.

Treasury Reg. §1.501(c)(3)-1(c)(1) provides 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. Finally, an organization must be operated for public, rather than private interests. Treas. Reg. § 1.501(c)(3)-1(d)(1).

Tax exemption is a matter of legislative grace, a privilege, rather than a right. Christian Echoes National Ministry v. U.S., 470 F.2d 849, 857 (10<sup>th</sup> Cir. 1972), *cert. denied* 414 U.S. 864 (1973). The Organization bears the burden to show that it satisfies the operational test. Easter House v. U.S., 12 Cl. Ct. 476 (1987) and cases cited therein.

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In the case of Community Education Foundation v. Commissioner, T.C. Memo. 2016-223, it was determined that petitioner, Community Education Foundation, no longer qualified for exemption from Federal income tax under IRC § 501(a) because it did not meet the operational test requirements for an IRC § 501(c)(3) organization. Specifically, the organization in the case over time did not meaningfully organize or allocate revenue to any of its purported activities for which it had been granted exemption. It admitted to a significant period of inactivity and failed to demonstrate that it engaged in activities furthering exempt purposes described in IRC § 501(c)(3).

**Taxpayer Position:**

intent is to provide services specifically to the State of as specified in the Memorandum of Understanding (MOU) between it and the ( ). Referring to the MOU, states that is to provide business support for

When asked to explain how is operating in stead, replied:

The holds deeds of in the State of . Even though a MOU exists between the ( ) and (start-up organization), it is the ultimate responsibility of the to ensure that the annual monitoring requirements are met. To facilitate the initiation of [ ] the monitoring responsibilities, the has (1) created a website for [ ], and (2) begun to integrate the [ ] logo on all correspondence.

claims that because of the MOU, and that because activities can be attributed to , therefore continues to qualify for exemption under IRC § 501(c)(3). did not respond to the IRS questions asking it to support its arguments for why its receipt of services from or the MOU would permit the activities and purposes of to be attributed to such that continues to qualify for exemption.

**Government Position:**

In order to be exempt under IRC § 501(c)(3), an organization must be organized and must be operating to carry out, or operationally support, an exempt purpose set forth in IRC § 501(c)(3) or the corresponding regulation. Treas. Reg. § 1.501(c)(3)-1(a)(1). An organization will pass the operational test, i.e., be viewed as operating exclusively for one of more exempt purposes, only if it engages primarily in activities which accomplish one or more such exempt purposes specified in IRC § 501(c)(3). Treas. Reg. § 1.501(c)(3)-1(c)(1).

When asked to provide a legal basis for why the activities of the should be attributed to , pointed to the Memorandum of Understanding (MOU) as its legal basis.

Reliance on the MOU is questionable for a number of reasons. Nearly years after receiving its exempt status (during which time it conducted no activities), purportedly entered into a MOU with , stated as being effective as of , which was

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signed by their respective Chief Executive Officers. In contrast to the Bylaw provisions for contracts and agreements, it was never approved by the board of directors, nor was there any authorization from the board to any officer to execute any agreement. Moreover, despite a provision in the MOU requiring annual review by the board of directors, it has never been reviewed. Even assuming that it was entered into properly by the respective organizations, giving it effect, the MOU contemplates future activities at some unknown unstated future date. Until that date, the is responsible for carrying out the required purposes and doing activities with respect to its in has never transferred or assigned any in to

hasn't had a board of directors' meeting ever. There has been no financial activity ever. It has never received funds from has not adopted or put into place any operational policies with respect to functioning as a organization. Of significance, doesn't hold title to any or any land in . It has no contracts with any donors of property. It has not performed any monitoring of any property. Its website lists erroneous and misleading information.

incorporated in and has never conducted any operations or activities. It claims that it is still contemplating activities. Activities contemplated by an organization are not enough for an organization that has received exemption a number of years ago based on its representations that it would conduct activities. still must operationally do—or try to do—something exempt under IRC § 501(c)(3). It is not doing anything and never has.

was granted exemption in its own right by representing that it would engage in activities. It can't shield its failure to engage "primarily in activities that accomplish one or more exempt purposes" by relying on a MOU with another exempt organization with a similar mission, nor through nomenclature as a so called " " which receives some services from another exempt entity. may not attribute activities to itself in an attempt to satisfy the operational test.

**Conclusion:**

As stated in the government position, has failed to demonstrate that it continues to qualify for exempt status under IRC § 501(c)(3). Specifically, it has failed to demonstrate that it meets the operational test of IRC § 501(c)(3) for the year under examination or any prior or subsequent year. has shown no reasonable acts or steps to begin operations resulting in conducting any or other exempt activity. It is similar to the organization in the Community Education Foundation v. Commissioner case wherein the court concluded that revocation was appropriate due to the organization's inactivity. Because has never at any time operated to further any charitable purpose or purposes, the Service proposes to revoke the as of , due to its failure to meet the operational test.