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DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date:

Person to Contact:

Badge Number:

Contact Telephone Number:

Contact Address:

EIN:

CERTIFIED MAIL

Last Day to Petition Tax Court:

Dear

This is a final revocation letter regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. The revocation of your exempt status was made for the following reason(s):

fails to meet the requirement for exemption under I.R.C. Section 501(c)(3). Section 1.501(c)(3)-1(c)(2) of the regulations state that an organization is not operated exclusively for one or more purposes, if its net earnings inure in whole or in part to the benefit of private shareholder or individual.

It has been determined that \_\_\_\_\_ was not operated exclusively for charitable purposes. Examination findings have determined that \_\_\_\_\_ has been involved in repeated excess benefit transactions, which resulted in private benefit and inurement to your former President and Executive Director, \_\_\_\_\_ his family members and to your current President and Auctioneer \_\_\_\_\_ Both individuals were in a position to exercise substantial influence over the affairs of \_\_\_\_\_

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Based upon the above, we are revoking your organization's exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code, effective

Contributions to your organization are no longer deductible under Code section 170 after; you are required to file income tax returns on Form 1120 for all years beginning on and after . 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 91<sup>st</sup> 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:

Since your exempt status has been revoked, you are required to file Form 1120, U.S. Corporation Income Tax Return, for all years beginning after income tax returns for subsequent years are to be filed with the appropriate Service Center identified in the instructions for those returns.

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 you tax information and can help you get answers. You can call 1-877-777-4778, and ask for the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able

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to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in 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 Code section 6104(c).

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

Sincerely,

A handwritten signature in black ink, appearing to read "R. C. Johnson". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

R.C. Johnson,  
Director, EO Examinations

**Enclosures:**  
Publication 892

**CC:**



DEPARTMENT OF THE TREASURY  
Internal Revenue Service

File Copy

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

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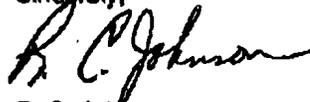
If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to 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

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No. 1
Name of Taxpayer		Years Ended

**ISSUES:**

- (1) Whether ) repayments of undocumented loans by were a private benefit and inurement to
- (2) Whether payments to in excess of the fair market value constitute a private benefit to
- (3) a. Whether the value of the auto furnished by was a private benefit and inurement to
  - b. Whether the value of autos furnished to and was a private benefit and inurement to
  - c. Whether the value of the auto furnished to was a private benefit to her.
- (4) Whether the value of the auto furnished to was a private benefit to him.
- (5) Whether s payment of \$ to constitute a private benefit and inurement to
- (6) Whether s payment of \$ to Investors constitutes a private benefit and inurement to
- (7) Whether payment of rent for property used by inurement to them constitutes a private benefit and inurement to
- (8) Whether any part of the \$ salary paid to constitutes a private benefit and inurement to him.
- (9) Whether payment of \$ (back pay from and severance pay) to in constitutes a private benefit and inurement to him.
- (10) Whether s payment of \$ to s constitutes a private benefit to him.
- (11) Whether s payment to Insurance Company for medical insurance constitutes a private benefit to him.
- (12) Whether certain transactions between and current President and Auctioneer were a private benefit and inurement to
- (13) Whether s ruling recognizing it as exempt under section 501(c)(3) be revoked as of the date of Incorporation.
- (14) Whether section 7805(b) relief be granted.

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No. 1
Name of Taxpayer		Years Ended

**STATEMENT OF FACTS:**

(hereinafter referred to as ) is a tax exempt entity that is exempt under Internal Revenue Code section 501(c)(3). It received exempt status from the Internal Revenue Service on . who was a used car salesman, founded this organization. His son , owned , a used car lot on . The purpose of was to allow individuals to donate their used vehicles for a tax deduction and at the same time choose the nonprofit charity they wanted the proceeds to be sent to. If the donors do not designate a charity, the proceeds go into a general fund. The general funds are then distributed to various charities and social service organizations within their community.

used two car lots, one on . The lot on was used to sell its donated vehicles to the public and the good used vehicles are put on the lot on . it started its auction on .

an original Board of Directors consisted of: Trustee ( ), Trustee (father-in-law of ); and , a trustee (CPA). Three directors-trustees are family members. The only non-family member resigned on . Agent secured a copy of ' resignation, which stated that the thirteen checks he reviewed were enough to cause loss of 501(c)(3) status. Even after he explained to that no part of any of 's revenues may inure to any private shareholder or individual as this will cause the loss of exemption, continued with the private benefit and inurement.

Approximately two months before the agent did his on site examination, relinquished his position as Director of , and "completely and commensurately" disbanded the old Board of Directors.

The examination findings respecting disclosed that individual donors took charitable deductions greater than the fair market value of the donors' vehicles. In ; then Executive Director only cited to donors the retail N.A.D.A. (blue book) value, not the loan or trade-in value, even though some of the vehicles were not able to driven and were sold for scrap.

's then Executive Director claimed that he loaned \$ for start up costs. Neither ( ) nor provided the agent with a copy of this loan agreement. admitted that there is no written loan agreement for this loan of \$ from . stated there were four or five Board of Directors' meetings. They met in person in 's office. Directors also discussed things over the phone. According to , they kept minutes and he left them with . But according to the new officers of , they do not have copies of the minutes for .

was an officer and director of ( ) and in a position to exercise substantial influence over the affairs of the organization at any time during the five-year period ending on the date of the transaction listed below, but not before .

The organization did not indicate transactions with any officers or trustees on their returns, with the exception of the \$ salary to . In Articles of Incorporation dated it stated .

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer		1 Years Ended

"No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in this Article."

The following is a list of transactions between [redacted] and its then President & Executive Director, [redacted] and his family:

1. [redacted] claimed that he loaned \$ [redacted] at % interest. However, there is no written documentation. Based on their loan payback schedule, [redacted] received 18 vehicles and payments of \$ [redacted] to pay out this loan. The fair market value of these vehicles is \$ [redacted]. This means that the alleged loan to [redacted] was overpaid by [redacted] by \$ [redacted].
2. [redacted] paid [redacted] a Towing Service Company - \$ [redacted] in [redacted] and \$ [redacted] in [redacted]. The difference was that in [redacted], their car donation auction was operated for twelve months, compared to only two months in [redacted].  
The new trustees, do not use [redacted] Towing Services, anymore, because it is too expensive. [redacted] never did towing until his father operated [redacted]. The new trustees' towing services are approximately % less than [redacted] ) towing fees. The new trustees used three different towing companies and companies put bids in for their services. [redacted] the former President/Executive Director never requested any written bids for towing services, he just assigned the towing service to his son [redacted]. Audit findings disclosed that when [redacted] first began its [redacted] in September & October of [redacted] it used [redacted] which charged \$35 for a tow in the [redacted] area, compared to \$50 [redacted] charged for the same towing services in the [redacted] area.  
In [redacted] Towing Services received various advances on towing from [redacted], which outside towing services would not have received. When [redacted] relinquished his position of Executive Director & President of [redacted], [redacted] no longer operated his Towing Service.
3. According to the new trustees, [redacted] provided a leased Lexus at a cost of \$ [redacted] per month to [redacted] (founder). There was no accountability for the use of this vehicle and the personal use of this vehicle was not reported on either a Form W-2 or 1099 as a fringe benefit.  
According to the new trustees, a Lexus car (1991) was donated to [redacted] which [redacted] drove. [redacted] (daughter of [redacted] and [redacted] part-time employee) drove a donated 1991 Toyota Camry DX. ( [redacted] spent money to fix these donated cars that were used by family members of [redacted] the officer manager of [redacted] in [redacted] & [redacted] stated that there was no accountability was ever given verbally or in writing. [redacted] also did not know if [redacted] s [redacted] or [redacted] Board of Directors approved the personal use of the autos. She did not attend any meetings nor did she see any minutes indicating any board directive or approval for use of these vehicles. This Board included [redacted] his wife, and his father-in-law. As far as the current officers know these were simply unaccountable benefits, given by [redacted] to his family.
4. [redacted] drove a 1982 Mercedes Benz that was donated to [redacted]. There was no accountability for the use of this vehicle and the personal use of this vehicle was not reported on either a Form W-2 or 1099 as a fringe benefit.
5. Checks drawn on [redacted] bank account and issued to [redacted] Used Car Dealership) that totaled [redacted] for [redacted]. [redacted] executed these checks. These payments were recorded as a Loan Payable. The organization failed to provide the Service with any written documentation for this alleged loan.

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No. 1
Name of Taxpayer		Years Ended

One of these payments was a check written for Cash for \$ [redacted] The new trustees believe that [redacted] had land in [redacted] which [redacted] bought for his personal use with these funds.

6. [redacted] executed two checks drawn on [redacted] bank account and issued them to [redacted]. These checks totaled \$ [redacted] and were not evidenced by a written loan agreement. [redacted] was wholly-owned by [redacted] Floor Plan Company and was used to loan money to Used Car Dealerships for their line of credit, so that they can buy their cars (their inventory).

7. Examination findings disclosed that [redacted] paid [redacted] \$ [redacted] in [redacted] and \$ [redacted] in [redacted] for rent on the property on [redacted] and ending on [redacted]. [redacted] was with [redacted] not with [redacted]. Used Car Lot) was operating out of this same location prior to July [redacted] when [redacted] came into existence. Also [redacted] Towing ( [redacted] towing company) was located at the same property ( [redacted] ) during [redacted] and did not reimburse [redacted] for use of its property. [redacted] ; stated there was no written sub-lease agreement between [redacted].

The charity paid all the rent for a contract that was not in its name, but only used part of the property for its vehicles. There was no written agreement to document any sublease of the lot to [redacted] was using the lot for his towing business. It is estimated that [redacted] % of the property was used by [redacted] and/or [redacted].

8. Examination of [redacted] for the year ended on December 31, [redacted] disclosed the following:

There were no minutes kept by [redacted] their former President & Executive Director for [redacted] When the new Board of Directors took over in February of [redacted] they had monthly meetings and minutes were kept.

The new Board of Directors were:

Name	Title	Date
[redacted]	President (Also their Auctioneer)	[redacted]
[redacted]	Vice-President	[redacted]
[redacted]	Secy.-Treasurer	[redacted]
[redacted]	Trustee	[redacted]
[redacted]	Trustee	[redacted]

[redacted] was [redacted]'s office manager and [redacted] was an employee of [redacted] when [redacted] was the President and Executive Director ( [redacted] ).

In February of [redacted] when [redacted] resigned [redacted] along with [redacted] were appointed to the Board of Directors and officers of [redacted] also formed a Partnership known as [redacted], while they were Secy.-Treasurer and Vice-President of [redacted]. The purpose of [redacted] was to consult with charities in the car donation program. There was no documentation to support an agreement between [redacted] and [redacted] in [redacted] & [redacted] & [redacted] did receive Forms W-2 for their compensation from [redacted]. But in [redacted] Forms 1099 were issued to [redacted] for \$ [redacted] & [redacted] for \$ [redacted]. Examination findings confirmed that [redacted] as the Secy.-Treasurer and [redacted] s, Vice-President were involved in the everyday activities of [redacted] signed the organization's checks in [redacted].

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No: 1
Name of Taxpayer		Years Ended

There was an agreement between ( ) and ( ) to relinquish his position of Director of ( ). It was dated ( ) and executed it as president of ( ). The new Board of Directors did approve this resignation agreement. This agreement was designed to take control away from ( ) and ( ) and stated that whatever measures were needed to acquire ( ) out of the hands of ( ) would be the prudent thing to do. This would allegedly allow the new Board of Directors to do what ( ) was originally supposed to do.

This agreement stated that ( ) would immediately relinquish his position of Director of ( ) and "completely and commensurately" disband the current Board of Directors. In turn ( ) will honor the agreement made with ( ) for salary not received for seven months in ( ), plus two months severance salary, and therefore pay ( ) a total of \$ ( ) in regular bi-weekly payments, beginning February 22, ( ) did receive a W-2 for \$ ( ) from ( ) for the year ending on ( ).

9. There was also an agreement with ( ) Towing Company dated February 8, ( ). This agreement stated the following:

1. ( ) will pay ( ) to purchase the ( ) IH "Rollback" Truck for \$ ( ) will pay ( ) this amount in monthly payments, at 10% interest of \$ ( ) beginning with a first payment on March 15, ( ) will be shown as a lien holder until the balance is paid in full.
2. ( ) will pay ( ) to purchase the ( ) IH "Four Car Carrier" for \$ ( ) To do so, ( ) will pay ( ) on a total of \$ ( ) (the total payoff, to be paid within 10 days). ( ) will pay ( ) the balance of \$ ( ) in 18 monthly payments, at 10% interest, of \$ ( ) beginning with the first payment on March 15, ( ) will be shown as a lien holder until the balance is paid in full.
3. ( ) will pay ( ) \$ ( ) on each of the following Fridays to include February 11, February 25, March 3 and March 10, ( ) Thereafter, ( ) will pay ( ) \$ ( ) per week for 32 consecutive weeks, and \$ ( ) for a final week (calculated to include 10% interest throughout these 33 weeks).
4. ( ) may leave an Automobile Dealer License "housed" at a ( ) location at his discretion, for his own purposes.

This agreement was signed by ( ) for ( ) Towing Company and by ( ) the President for ( ). From February 11 to October 27, ( ) there were ( ) checks totaling \$ ( ) from ( ) to ( ) Towing Company, owned & operated by ( ). The 10% interest rate was determined by ( ) not ( ) as a fair interest rate. These checks to ( ) Towing Company were marked loan payable, but ( ) did not provide any supporting documentation for this claimed loan, except for the agreement mentioned above.

For the year ended on December 31, ( ), the new Board of Directors used three different independent towing companies and these companies put bids in for their services. Unlike their former President/Executive Director, who never requested any bids for towing services, he just assigned the towing service to his son.

Under the current officers in ( ) no longer quotes only the Kelley Blue Book Retail value over the phone. They provide the donor with the retail & wholesale values to use as a guide in determining the book value of their vehicle. They also send along IRS Form 8283 and they were quick to point out to those donors that are donating a vehicle in need of major mechanical repairs that the wholesale value would not be an accurate figure to go by with regards to their vehicles. This practice was not part of the policy of ( ) former Executive Director & President.

It is no longer the policy of ( ) to sell retail vehicles or wholesale vehicles to any retail customer or dealer. All cars are sold at the auction no exceptions. The current officers believe that this practice is fair and affords everybody the same opportunity to buy vehicles at whatever the last bid brings. Employees and officers of ( ) are allowed to bid on any vehicle at their auctions. These auctions are open to public.

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Name of Taxpayer		Years Ended

In [redacted] has expanded from the [redacted] area into the [redacted] area. It is currently operating two auctions a week, one in [redacted] and one in [redacted]. The expansion was possible through their partnerships with other charities. [redacted] formally of [redacted] was brought on as Director of Development. His sole purpose was to develop partnerships with charities enabling those charities to generate monies not normally available to them. In [redacted] splits all partnership donations and designated charities by donor on a 50/50 split with [redacted] absorbing all the costs for towing, reconditioning, auction fees, advertising, detailing and all costs of pamphlets or any other written material that would help them in their car donation program. Since [redacted] departure, [redacted] was partnered with the [redacted]

10. [redacted] for the year ending on December 31. [redacted] was paying insurance to [redacted]. Employees of [redacted] were [redacted] also worked for [redacted] for the year ended on December 31, [redacted] was not an employee for [redacted] in the year ended on December 31, [redacted]. The total amount paid for [redacted] insurance by [redacted] was \$ [redacted]. According to the current officers, there is no relationship between [redacted] and [redacted] other than at one time or another they were both owned or operated by the son of [redacted] former Executive Director & President. The current management [redacted] was not employed at that time so they could not explain why this insurance premium was paid out of accounts.

The following is a list of transactions between [redacted] and its current officers and employees after their former President & Executive Director, [redacted] resigned in February [redacted]

[redacted] became president of [redacted] in February [redacted] while continuing to provide auctioneer services for [redacted] Auctions in [redacted] and [redacted]. The parties entered into a written agreement dated July 1, [redacted] "Contract for Sale of Personal Property at Auction" that was signed by the office manager for [redacted] and [redacted]. Under this agreement, [redacted] does not have the right to control [redacted] and he is able to offer his auctioneer services to the general public because he is licensed by the Division of Licensing, [redacted] Department of Commerce and is operating a corporation. The current officers [redacted] of [redacted] stated that they do not know whether [redacted] Auctioneer services were approved by the Old Board of Directors or whether [redacted] considered any outside bids from other auctioneers.

The contract between the parties provided that [redacted] would pay the following to [redacted]: [redacted]% of the gross proceeds from its auctions, advertisement (approx. \$ [redacted] per week), supplies, towing of the vehicles, security, insurance, detailing as needed, repairs as needed, tax & title as needed, and title runner as needed. The contract further provided that the auctions would be conducted at the facility owned by [redacted] and that [redacted] had to pay the clerking, cashier, and ring man services.

Exam findings disclosed that [redacted] paid advertising expenses of \$ [redacted] directly to various newspapers and publications during [redacted]. That [redacted] also paid \$ [redacted] for advertising services during this same period. The current officers do not know whether the advertising expenses incurred by [redacted] and paid by [redacted] were approved because there are no supporting documentation. The advertising done by [redacted] has the organization's name in it, while the advertising done by [redacted] doesn't, it has [redacted] name and telephone number, the time, and place of the Car Auction.

[redacted] as the Auctioneer and President of [redacted] received a commission from the sale of nine Non-Auctioned Vehicles that totaled to \$ [redacted]. After two new officers, [redacted] and [redacted] were added to the Board of Directors this practice was stopped. However, [redacted] is still the current President of [redacted] and still serves as its Auctioneer.

Examination findings for the year ending on December 31, [redacted] disclosed that an independent appraiser, [redacted] Appraisers, charged only \$ [redacted] to appraise a car while [redacted] their Auctioneer and President charged [redacted] per car. The decision to use [redacted] for appraisal purposes was made by [redacted] because they believed that [redacted]



Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No. 1
Name of Taxpayer		Years Ended

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.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945), the Court stated that "the presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes." In Church of Scientology of California v. Commissioner, 823 F.2d 1310, 1316 (1987) the Court also stated that "The term 'no part' is absolute. The organization loses tax exempt status if even a small percentage of income inures to a private individual." (quoting Founding Church of Scientology v. United States, 412 F.2d 1197, 1200).

Greg R. Vinikoor v. Commissioner, T.C. Memo. 1998-152, held that whether a loan exists depends on all the facts and circumstances, including whether:

- (1) There was a promissory note or other evidence of indebtedness;
- (2) Interest was charged;
- (3) There was security or collateral;
- (4) There was a fixed maturity date;
- (5) A demand for repayment was made;
- (6) Any actual repayment was made;
- (7) The transferee had the ability to repay;
- (8) Any records maintained by the transferor and/or the transferee reflected the transaction as a loan; and
- (9) The manner in which the transaction was reported for Federal tax purposes is consistent with a loan.

In The Founding Church of Scientology v. United States, 412 F.2d 1197, a corporation organized to act as a parent church for the propagation and worship of a religious faith known as "Scientology" did not qualify for tax-exempt status because it failed to prove that no part of the corporation's net earnings inured to the benefit of private individuals. It was unnecessary to find whether the corporation was a religious or educational organization, or whether its operations were exclusively for religious or educational purposes.

Also in Founding Church of Scientology v. United States, 412 F.2d 1197 (Ct. Cl. 1969), cert. den., 397 U.S. 1009 (1970), an organization argued that the Court should not find that the organization's earnings have inured to its founders since it had made some payments to him as repayments on a loan. The organization could not, however, produce any documents evidencing indebtedness. The Court concluded that the plaintiff had failed to meet its burden of proof that a part of the corporate net earnings was not a source of benefit to private individuals.

In John Marshall Law School v. United States, 228 Ct. Cl. 902 (1981), The law school and the college paid for the founding family's automobiles, education, 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. The court determined that the expenditures for the founding family were not ordinary and necessary expenses in the course of the law school's and the college's operations. The court also found that the payment of college expenses for the founder's children by the law school provided direct and substantial benefits to the founder of the law school and his brother. The payment of the college expenses helped to defray the costs of their children's education, a cost which they otherwise would have had to satisfy from other resources. The court found these payments to constitute prohibited inurement of the law school's earnings to the founder and his brother, parents of the students.

In Church of Gospel Ministry, Inc., (CGM) v. United States of America, 640 F. Supp. 96, the court found:

"...In order to establish that it is qualified for tax-exempt status, CGM has the burden of proving three elements contested by the IRS: (1) that CGM is a corporation operated primarily for religious and/or charitable purposes, 26

Form 886-A	EXPLANATION OF ITEMS	Schedule or Exhibit No. 1
Name of Taxpayer		Years Ended

U.S.C. @ 170 (c)(2)(B), 501(c)(3); 26 C.F.R. @ 1.501(c)(3)-1(c)(1); (2) that no part of CGM's net earnings inure to the benefit of any private shareholder or individual, 26 U.S.C. @ 170(c)(2)(C), 501(c)(3); 26 C.F.R. @ 1.501(c)(3)-1.(c)(2), and (3) that CGM maintains records sufficient to demonstrate that it is entitled to tax-exempt status, 26 U.S.C. @ 001; 26 C.F.R. @@ 1.6001-1(c), 31.6001-1..."

"...However, CGM has failed to keep records adequate to determine the full nature of its operations and failed to show that its operations do not inure in part to the private benefit of its officers..."

"...There is no accurate record of CGM's expenses. There is no record showing whether these funds were expended for operating costs, given to the orphanage or used for other purposes..."

Section 1.501(a)-1(2) provides in pertinent part:

"...An organization... is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form as set forth... Subject only to the Commissioner's inherent power to revoke rulings because of a change in the law or regulations or for other good cause, an organization that has been determined by the Commissioner or district director to be exempt under section 501(a) or the corresponding provision of prior law may rely on such determination so long as there are no substantial changes in the organization's character, purposes, or methods of operation."

Section 4958 was added to the Internal Revenue Code by section 1311 of the Taxpayer Bill of Rights 2, P.L. 104-168, 110 Stat. 1452, enacted July 30, 1996. The section 4958 excise taxes generally apply to excess benefit transactions occurring on or after September 14, 1995. The Report from the Committee on Ways and Means on the Taxpayer Bill of Rights 2, H.R. 2337, was submitted March 28, 1996. H. Rep. No. 506, 104<sup>th</sup> Cong., 2d Sess. (1996) 53. Proposed regulations were published in the Federal Register August 4, 1998; 63 F.R. 41486. The proposed regulations were replaced by temporary regulations that were published in the Federal Register January 10, 2001, 66 F.R. 2173. The temporary regulations were replaced by final regulations that were published in the Federal Register January 23, 2002, 67 F.R. 3076. The final regulations, which apply as of January 23, 2002, represent a fair and reasonable interpretation of section 4958, based on the intent of Congress as expressed in the Report from the Ways and Means Committee submitted March 30, 1996. None of the section 4958 regulations cited below are more unfavorable to the taxpayer than the comparable provisions in the proposed regulations or the temporary regulations.

Section 4958(a)(1) of the Internal Revenue Code imposes on the participation of any organization manager, a tax equal to 25 percent of the excess benefit (the "first tier tax"). This tax must be paid by any disqualified person with respect to such transaction.

Section 4958(a)(2) of the Code imposes on each excess benefit transaction a tax equal to 10 percent of the excess benefit unless the participation is not willful and is due to reasonable cause.

Section 4958(b) of the Code provides that where an initial tax is imposed, but the excess benefit involved in such transaction is not corrected within the taxable period, a tax equal to 200 percent of the excess benefit involved is imposed and must be paid by any disqualified person with respect to such transaction (the "second tier tax").

Section 4958(c) of the Code, in part, defines "excess benefit transaction" as any transaction in which an economic benefit is provided by an "applicable tax-exempt organization" directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

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Section 4958(c) of the Code defines "applicable tax-exempt organization" as an organization described in either section 501(c)(3) or section 501(c)(4) of the Code or an organization, which was so described at any time during the five-year period ending on the date of the excess benefit transaction.

Section 4958(f)(1) of the Code defines "disqualified person" as (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, and (C) a 35-percent controlled entity.

Section 4958(g)(2) of the Code defines "organization manager" as any officer, director, or trustee of an exempt organization or any individual having powers or responsibilities similar to those of an officer, director, or trustee.

Section 4958(d)(1) of the Code provides that with respect to any excess benefit transaction, if more than one person is liable for any IRC 4958 tax, all such persons are jointly and severally liable for that tax.

Section 53.4958-1(e)(1) of the regulations provides that except as otherwise provided, an excess benefit transaction occurs on the date on which the disqualified person receives the economic benefit for federal income tax purposes.

Section 53.4958-6(a) of the regulations provides that payments under a compensation arrangement are presumed to be reasonable, and a transfer of property, or the right to use property, is presumed to be at fair market value, if the following conditions are satisfied:

- (1) The compensation arrangement or the terms of the property transfer are approved in advance by an authorized body of the applicable tax-exempt organization (or an entity controlled by the organization with the meaning of regulation 53.4958-4(a)(2)(ii)(B)) composed entirely of individuals who do not have a conflict of interest (within the meaning of paragraph (c)(1)(iii) of this section) with respect to the compensation arrangement or property transfer, as described in paragraph (c)(1) of this section.
- (2) The authorized body obtained and relied upon appropriate data as to comparability prior to making its determination, as described in paragraph (c)(2) of this section; and
- (3) The authorized body adequately documented the basis for its determination concurrently with making that determination, as described in paragraph (c)(3) of this section.

Section 6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the treasury or his delegate may from time to time prescribe.

Section 6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 1.6001-1(a) of the Procedure and Administration Regulations in conjunction with section 1.6001-1(c) provides that every organization exempt from tax under section 501(a) of the Code and subject to the tax imposed by section 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by section 6033.

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Section 1.6001-1(e) of the regulations states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Section 7805 of the Internal Revenue Code stated that the Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

Rev. Proc. 2001-5 Section 18.06 in part states the following:

.06 Generally, a technical advice memorandum that modifies or revokes a letter ruling or another technical advice memorandum or a determination letter is not applied retroactively either to the taxpayer to whom or for whom the letter ruling or technical advice memorandum or determination letter was originally issued, or to a taxpayer whose tax liability was directly involved in such letter ruling or technical advice memorandum or determination letter if—

- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling or technical advice memorandum or determination letter was based;

**TAXPAYER'S POSITION:**

See attachment for \_\_\_\_\_'s position and response to the Statement of Facts.

**GOVERNMENT'S POSITION ON ISSUE #1:**

\_\_\_\_\_ is a "private shareholder or individual" as that term is defined in section 1.501(a)-(1)(c) of the Treas. Reg. \_\_\_\_\_ is also a disqualified person and foundation manager with respect to \_\_\_\_\_ is the founder of \_\_\_\_\_ and served as the President and Executive Director from August \_\_\_\_\_ until February \_\_\_\_\_. \_\_\_\_\_ was in a position to exercise substantial influence over the affairs of \_\_\_\_\_. He received economic benefits when \_\_\_\_\_ made repayment of alleged loans he claims to have made to \_\_\_\_\_ even though he was unable to provide the Service with any written documentation that the loans were ever made.

The response submitted by the \_\_\_\_\_ fails to address the issue of whether repayments of alleged loans by \_\_\_\_\_ constituted a private benefit to him. Therefore, the government maintains its position that \_\_\_\_\_ is a "private shareholder or individual" who received an economic benefit from \_\_\_\_\_.

**GOVERNMENT'S POSITION ON ISSUE #2:**

\_\_\_\_\_ paid \_\_\_\_\_ Towing Company for picking up donated vehicles. The amounts paid were in excess of the fair market value and constituted a private benefit to \_\_\_\_\_, the sole owner of \_\_\_\_\_ is the father of \_\_\_\_\_ and never requested any written bids for towing services, he just assigned the towing service to his son. The new Board of Directors for the year \_\_\_\_\_ stated that \_\_\_\_\_ Towing Company was created for the sole purpose of providing towing services for \_\_\_\_\_. The board further stated that when \_\_\_\_\_ relinquished his position of Executive Director & President, his son ceased operation of \_\_\_\_\_ Towing Company. The stream of revenues \_\_\_\_\_ paid to \_\_\_\_\_ resulted in an economic benefit to \_\_\_\_\_.

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The Board of Directors for the year found the rates from were too expensive and uses three different towing companies, which put bids in for their services. The example the new Board gave the agent was that was charging \$100 per unit for any run to the area in while the new Board pays \$65 per unit to the area in

The EO's response that [redacted] was a certified notary, which allowed for the proper execution of forms required by [redacted] contradicts the audit findings by the Service Exam findings disclosed that paid \$ during [redacted] \$ during [redacted] and [redacted] during [redacted] to perform "Title Services" - transfer titles of donated vehicles from the donor to [redacted]. In response to the Information Document Request submitted to the Board of Trustees on November 11, the trustees provided a written statement that [redacted] Towing Company was created for the sole purpose of towing for [redacted]. The government also does not agree with the EO's response that because there is no documentation to support or deny [redacted] process for hiring tow drivers, the assumption should be deleted. Treas. Reg. Section 1.6001-1(c) provides in relevant part that, the organization exempt from tax under section 501(a) shall keep such books and records as are required to substantiate the information required by section 6033.

**GOVERNMENT'S POSITION ON ISSUE #3:**

The value of the auto furnished by [redacted] to [redacted] is a private benefit and inurement to [redacted] because he received an economic benefit when he used an auto (Lexus) as the President and Executive Director which [redacted] paid for. There was no written documentation to show that the Board of Directors actually approved [redacted] use of the vehicle for his personal use. There was also no accountability for the use of this vehicle, as the personal use was not reported as a fringe benefit on either Form W-2 or 1099-MISC.

The value of autos furnished to [redacted] (wife of [redacted]) and [redacted] (daughter of [redacted]) are a private benefit and inurement to [redacted] and [redacted] as officers of [redacted]. The use of the auto by [redacted] constitutes a private benefit only because she was an employee of [redacted]. These individuals received an economic benefit from the personal use of these vehicles that were donated to [redacted] also received an indirect economic benefit from the personal use of the autos furnished to his wife and daughter by [redacted] and on repairs to these autos. If [redacted] had not provided these vehicles to his wife and daughter or paid for the repairs, he would have had to pay for the autos and the repairs, himself.

The EO's position is not consistent with the facts. Examination of the disbursements journal and cancelled checks are evidence that [redacted] made monthly payments to Lexus Financial Services that totaled \$ [redacted] during [redacted] \$ [redacted] during [redacted] for [redacted] Lexus Lease Payment". Whether the vehicle was titled to [redacted] is irrelevant. In addition, two officers for the EO, [redacted] and [redacted], provided a written response to our Information Document Request dated November 14 [redacted] which states that: (1) [redacted] drove a 1991 Lexus ES250 that was donated to [redacted] on December 4, [redacted] which was sold on April 20, [redacted] Company that was owned by [redacted] and [redacted] (2) [redacted] drove a 1991 Toyota Camry DX that was donated to [redacted] on October 21, [redacted] which was sold on April 20, [redacted]. These officers also stated, "to the best of our knowledge, no accountability verbally or in writing was ever given. As far as we know these were simply unaccountable benefits, given by [redacted] to his family".

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**GOVERNMENT'S POSITION ON ISSUE #4:**

The value of the auto furnished by to is a private benefit because he received an economic benefit from the personal use of a Mercedes Benz that was donated to . There was no written documentation to show that the Board of Directors actually approved his use of the car. Nor was there any accountability for the use of this vehicle and the personal use was not reported as a fringe benefit on either Form W-2 or 1099-MISC.

The EO's position is not consistent with the facts. Two officers for the EO, and provided a written response to our Information Document Request dated November 14 which states that, drove a 1982 Mercedes 240D that was donated to on December 28. This vehicle was sold after a new directorship took over in March 2. These officers also stated, "to the best of our knowledge, no accountability verbally or in writing was ever given. As far as we know these were simply unaccountable benefits, given by to his family".

**GOVERNMENT'S POSITION ON ISSUE #5:**

's payment of \$ to their former President and Executive Director, does constitute a private benefit and imurement because he received an economic benefit on payments recorded (on cancelled checks) as Loan Payable for which no written documentation has been provided for the alleged loans. prepared and executed all checks.

is incorrect in its argument that there is no documentation to support transactions or monies paid to . Documentation obtained by the Service during the audit shows that maintained a checking account with in . From this account prepared check number dated November 16, made payable to cash in the amount of \$ which he also endorsed. On this same date, a cashier's check was purchased in the same amount and made payable to . In addition, who was a trustee and during this time stated in his letter of resignation that "the \$ check to cash so that you could make your loan payment on this is another grave problem".

**GOVERNMENT'S POSITION ON ISSUE #6:**

's payment of \$ to their former President and Executive Director, constitutes a private benefit and imurement because he received economic benefit from the two checks drawn on 's bank account and issued to his Floor Plan Company. and failed to provide the Service with any written documentation for this alleged loan.

The EO's statement is contrary to the March 26, response provided by their former trustee and CPA, who stated that Phil owned and controlled . Therefore, the government maintains its position that, received an economic benefit from

**GOVERNMENT'S POSITION ON ISSUE #7:**

's payment of rent for the property on which is also used by constitutes a private benefit and imurement because he received an economic benefit because the rental agreement was with which was owned by, not with . In addition, operated from this same location prior to, when came into existence. did not compensate for use of its property.

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The lease payments were ultimately for the personal benefit of \_\_\_\_\_ to the extent they paid for space not occupied by \_\_\_\_\_. See John Marshall Law School v. United States. The lease payments were not substantiated as compensation, and thus constitute a private benefit and inurement to \_\_\_\_\_.

\_\_\_\_\_ also received private benefit because he received an economic benefit when his company Towing was located at \_\_\_\_\_ and it did not compensate \_\_\_\_\_ for use of its property. There was no written sub-lease agreement between \_\_\_\_\_ and \_\_\_\_\_.  
\_\_\_\_\_ did not provide a position on this issue.

#### GOVERNMENT'S POSITION ON ISSUE #8:

The \$ \_\_\_\_\_ salary paid to \_\_\_\_\_ constitutes an economic benefit to him because there is no evidence of the services he performed, the days or hours he worked, that the boards authorized these payments, or that the payments were based on comparable salaries for similar services.

Moreover, the record indicates that it was the custom and practice of \_\_\_\_\_ and \_\_\_\_\_ to provide each donor, in writing, with only the retail Kelley Blue Book value of the donated vehicle, together with an IRS Form 8283. This was done for all vehicles, regardless of the condition of the vehicle. In many cases the vehicles were inoperable and had to be resold by \_\_\_\_\_ as salvage or scrap. It is the government position that \_\_\_\_\_, through \_\_\_\_\_, aided and abetted understatement of the tax liabilities of donors to \_\_\_\_\_.

Given these circumstances -- the failure of \_\_\_\_\_ to carry their burden of proving what if any salary to \_\_\_\_\_ was reasonable, and his activities to aid and abet understatement of tax liabilities -- it is the government position that all of the \$ \_\_\_\_\_ must presumptively be treated as a private benefit/inurement to \_\_\_\_\_.

\_\_\_\_\_ did not provide a position on this issue.

#### GOVERNMENT'S POSITION ON ISSUE #9:

As part of the reorganization of \_\_\_\_\_ under new directors in \_\_\_\_\_ agreed to pay a total of \$ \_\_\_\_\_ to \_\_\_\_\_ as alleged back pay for part of \_\_\_\_\_ and as severance pay. Similar to the situation described in Issue 8 above, there is no evidence of the number of hours worked by \_\_\_\_\_ during \_\_\_\_\_ the period of his services, or comparable salary for similar services. There is also no evidence of any severance agreement between \_\_\_\_\_ is and \_\_\_\_\_, apart from the ad hoc agreement reached by the new Board of Directors in \_\_\_\_\_. Moreover, the new Board of Directors had actual knowledge of the improper payments made by \_\_\_\_\_ to himself during his tenure as an officer of \_\_\_\_\_, and yet they made no effort to obtain repayment of these amounts. Instead, they agreed to pay \_\_\_\_\_ an additional \$ \_\_\_\_\_. In these circumstances, this payment constituted a private benefit and inurement to \_\_\_\_\_.

Moreover, the record indicates that it was the custom and practice of \_\_\_\_\_ and \_\_\_\_\_ to provide each donor, in writing, with only the retail Kelley Blue Book value of the donated vehicle, together with an IRS Form 8283. This was done for all vehicles, regardless of the condition of the vehicle. In many cases, the vehicles were inoperable and had to be resold by \_\_\_\_\_ as salvage or scrap. It is also the government's position that \_\_\_\_\_, through \_\_\_\_\_, aided and abetted understatement of the tax liabilities of donors to \_\_\_\_\_.

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Given these circumstances -- the failure of [redacted] to carry their burden of proving what if any salary to [redacted] was reasonable; his activities to aid and abet understatement of tax liabilities; and [redacted]'s new Board of Directors failure to consider his improper operation of [redacted] -- it is the government's position that all of the \$ [redacted] must presumptively be treated as a private benefit and inurement to [redacted].

[redacted] did not provide a position on this issue.

**GOVERNMENT'S POSITION ON ISSUE #10:**

[redacted]'s payment of \$ [redacted] to [redacted]'s Towing Company does constitute a private benefit to him because he did receive an economic benefit when checks were made payable to [redacted] Towing Company and marked loan payable. [redacted] did not provide any supporting documentation for this alleged loan.

[redacted] does not agree on this issue, because it is their understanding that the [redacted] checks totaling \$ [redacted] were payments for past invoices. The government maintains its position that [redacted] did not provide supporting documentation that the payments were for past invoices.

**GOVERNMENT'S POSITION ON ISSUE #11:**

[redacted]'s payment to [redacted] for [redacted]'s medical insurance constitutes a private benefit and inurement to [redacted] because he did receive economic benefit from this transaction. The current management [redacted] was not employed at that time so they could not explain why this insurance premium was paid out of [redacted] accounts.

[redacted]'s position on this issue misses the point. It is not the government's position that [redacted] should not pay insurance for its employees. The government's position is that insurance was paid for [redacted] who was not an employee of [redacted]. Therefore, the amounts paid for insurance by [redacted] for [redacted] constitutes a private benefit and inurement to [redacted]. Amounts paid for other people who were employees of [redacted] were not included in the calculation for inurement and private benefit.

**GOVERNMENT'S POSITION ON ISSUE #12:**

[redacted] is a "private shareholder or individual" as that term is defined in section 1.501(a)-(1)(c) of the Treas. Reg. [redacted] is also a disqualified person and foundation manager with respect to [redacted] because [redacted] became President in February [redacted], when [redacted] resigned. As of February [redacted], [redacted] was in a position to exercise substantial influence over the affairs of [redacted]. He received private benefit and inurement from [redacted] from the following transactions: (1) Commission from the sales of nine Non-Auctioned Vehicles that totaled \$ [redacted]; (2) Excess advertising expenses charged to [redacted] by [redacted], who was the [redacted]'s auctioneer at the same time he was [redacted]'s president - a conflict of interest; (3) He drove a 1985 Mercedes-Benz 5600 from Feb. 28 to December 31, [redacted] which was donated to [redacted]. There was no accountability for this vehicle and repairs were made to this vehicle and paid by [redacted]; and (4) [redacted] as their auctioneer charged extra for appraisals, when an outside independent appraiser was charging only \$75 compared to \$125 charged by [redacted].

[redacted] did not provide a position on this issue.

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**GOVERNMENT'S POSITION ON ISSUE #13:**

It is the government's position \_\_\_\_\_ should be revoked retroactively, effective August 31, \_\_\_\_\_ because the former President and Executive Director, \_\_\_\_\_ and his wife each received private benefit and inurement in violation of the proscription against inurement in section 1.501(c)(3)-1(e)(2) of the regulations and in violation of the proscription against impermissible private benefit in section 1.501(c)(3)-1(d)(1)(ii). See John Marshall Law School and John Marshall University v. U.S., *supra*.

It is also the government's position that \_\_\_\_\_ as the former President and Executive Director of \_\_\_\_\_ receive private benefits from the above mentioned excess benefit transactions with \_\_\_\_\_

In determining whether to revoke the tax-exempt status of \_\_\_\_\_, the applicable tax-exempt organization which has been a party to an excess benefit transaction, the following facts and circumstances were considered by the Service:

**A) Whether the organization has been involved in repeated excess benefit transactions.**

Certified Public Accountant and former director explained to the founder and former President and Executive Director, \_\_\_\_\_ that no part of any of \_\_\_\_\_'s revenues may inure to the benefit of any private shareholder or individual, as this will cause loss of exemption. After being counseled by their CPA/co-director, \_\_\_\_\_ continued to engage in the activities that caused excess benefit transactions, which resulted in private benefit and inurement.

Even after the current President and auctioneer, \_\_\_\_\_ took over for \_\_\_\_\_, who resigned in February \_\_\_\_\_, private benefits and inurement transactions continued. \_\_\_\_\_ is also a disqualified person and foundation manager with respect to \_\_\_\_\_ As of February of \_\_\_\_\_, \_\_\_\_\_ was in a position to exercise substantial influence over the affairs of \_\_\_\_\_. He received private benefit and inurement from \_\_\_\_\_ from the following transactions: (1) Commission from the sales of nine Non-Auctioned Vehicles totaled which to \$\_\_\_\_\_; (2) Extra advertising fees charged to \_\_\_\_\_, who was the \_\_\_\_\_ auctioneer at the time he was \_\_\_\_\_'s president - a conflict of interest; (3) He drove a 1985 Mercedes-Benz 5600 from Feb. 28 to December 31, \_\_\_\_\_, which was donated to \_\_\_\_\_. There was no accountability for this vehicle and repairs were made to this vehicle and paid by \_\_\_\_\_; and (4) \_\_\_\_\_ as their auctioneer charged extra for appraisals, when an outside independent appraiser was charging only \$75 compared to \$125 charged by \_\_\_\_\_.

Therefore the organization has been involved in repeated excess benefit transactions with their founder and former President/Executive Director, \_\_\_\_\_ and his family members and with their current President/Auctioneer, \_\_\_\_\_.

There were no independent Board Members on \_\_\_\_\_'s Board of Directors for the years ending on December 31, \_\_\_\_\_. All Board Members of \_\_\_\_\_ were either employees of \_\_\_\_\_ or had a financial relationship with \_\_\_\_\_.

**B) The size and scope of the excess benefit transactions in relation to the size and scope of the organization's activities.**

The excess benefit transactions that resulted in private benefit and inurement represents \_\_\_\_\_%, \_\_\_\_\_%, and \_\_\_\_\_% of the organization's total expenses for \_\_\_\_\_ respectively.

**C) The actions of the organization upon determining that it have been a party to an excess benefit transaction.**

As explained in section (a) above, even after being counseled by their CPA/co-director, \_\_\_\_\_ continued to engage in the activities that caused excess benefit transactions.

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D) Whether, after concluding that it has been a party to an excess benefit transaction, the organization has implemented safeguards to prevent future recurrence.

There were no safeguards, were put in place by their founder and former President/ Executive Director, or their current President and Auctioneer. Some of the safeguards should have been an independent Board of Trustees, with no economic relationship with the organization and a conflict of interest policy.

E. The impact of the excess benefit transactions on the charitable purpose of the organization.

The impact of these excess benefit transactions on the charitable purpose of the organization is that funds that should have gone to the charitable purpose of organization, instead went to the private benefit of their former President / Executive Director and current President/Auctioneer, which resulted in inurement and private benefits.

was President, Executive Director and day-to-day manager of an organization whose principal purpose was to solicit donations of automobiles to. The major thrust of the promotional literature prepared by under supervision was that donors would obtain a substantial section 170 charitable deduction for the value of the donated vehicle. was an experienced used car dealer, and knew well the approximate value of used automobiles. Ignoring this knowledge, instead sent to each donor the Kelly Blue Book retail value of the donor's automobile, together with a copy of the IRS Form 8283 used by donors to claim charitable contributions for the value of donated automobiles. He made no attempt to provide donors with the more relevant, and much lower, Kelly wholesale or salvage value of the donated automobile. He provided this information even though he knew that many of the donated vehicles could only be sold for salvage or scrap.

As a direct result of this misleading information, several donors claimed greatly overstated valuations in taking section 170 deductions for their vehicle donation.

F. Whether the organization availed itself of the rebuttable presumption under Regs. 53.4958-6(a).

The organization did not avail itself of the rebuttable presumption under Regs. 53.4958-6(a) because of the following:

1. repayments of alleged loans by payments to Towline Company; the value of the auto's furnished by to and his family; s payment of \$ to s payment of rent for property used by l and his son ; the \$ salary paid to payment of \$ to s in ; and s payment of \$ were not approved in advance by an authorized body of the applicable tax-exempt organization who are composed entirely of individuals who do not have a conflict of interest with respect to these transactions.

original Board of Directors consisted of: President/Executive Director and founder, s; - Trustee (wife of), Trustee (father-in-law of s); and s, Trustee (CPA). Three directors-trustees are family members. The only non-family member resigned on November 11, Agent secured a copy of resignation, which stated that the thirteen checks he reviewed were enough to cause loss of s 501(c)(3) status. Even after he explained to that no part of any of s revenues may inure to any private shareholder or individual as this will cause the loss of exemption, continued with the private benefit and inurement. There were no independent Board Members on board of Directors for the years ending on December 31. Board Members of were either employees of or had a financial relationship with, therefore having a conflict of interest with respect to the above transactions.

2. s Board of Directors has not provided adequate documentation to support that the transactions it entered into with its founder, officers, employees, and other interested parties was reasonable. The audit evidence does not support a finding that

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I obtained or relied upon appropriate data to comparability prior to setting \_\_\_\_\_'s salary; accepting towing services from \_\_\_\_\_, entering into a auctioneer contract with \_\_\_\_\_ or providing use of donated vehicles to officers and employees free of charge. The audit evidence instead shows that the boards of directors never kept minutes to establish the policy and procedures it used in making a determination with respect to compensation, towing and auctioneer services, and personal use of donated vehicles. Information on comparable towing and auctioneer services were readily available to \_\_\_\_\_ but was never considered.

3. \_\_\_\_\_'s Board of Directors did not provide the Service with any documentation to determine that these transactions with their former President and Executive Director, \_\_\_\_\_ and their current President and Auctioneer \_\_\_\_\_ were fair market values.

G. The extent of any adverse impact on the community if the organization's tax-exempt status is revoked.

There is no adverse impact on the community if \_\_\_\_\_'s tax-exempt status is revoked because the Salvation Army and International Foundation Corporation are located in the same geographical area as \_\_\_\_\_ and have a program whereby the general public can donate their vehicles. Both organizations are exempt from federal income tax under section 501(c)(3) of the Code and are generally known by the local community.

H. Whether there was compliance with other applicable laws.

Audit findings disclosed that \_\_\_\_\_ failed to properly classify its officers as employees when such workers are expressly included in the definition of employee under section 3121(d) of the Code. \_\_\_\_\_ issued Form 1099-MISC to its officers. In addition, \_\_\_\_\_ is subject to additional employment taxes for failing to include the fair market value of donated cars to officers and employees for personal use. Based on audit findings, \_\_\_\_\_ is also subject to additional employment tax for Backup Withholding on their car auction security & sign work and extra auction labor that was omitted from its payroll records. A separate audit report was prepared to reflect this tax and reclassify its officers from independent contractors back to employees.

#### TAXPAYER'S POSITION ON ISSUE #13:

\_\_\_\_\_ position on this issue, is that the Service should not propose revocation of the organization's exempt status but pursue intermediate sanctions against their founder and former President and Executive Director, \_\_\_\_\_ or these excess benefit transactions with \_\_\_\_\_

#### GOVERNMENT'S POSITION ON ISSUE #14:

It is the government's position that revocation be made retroactive to August 31, \_\_\_\_\_. Revocation is applied retroactively, unless the Commissioner, Tax Exempt and Government Entities Division, exercise discretionary authority under regulation 7805(b) to limit the retroactive effect of the holding.

Their First Amended Articles of Incorporation dated July 21, \_\_\_\_\_ stated in part: "No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons. . . ." Because private benefit and inurement issues do exist, the facts in this situation are materially different from those shown on the organization's exemption application. As a result, 7805(b) relief should not be granted.

\_\_\_\_\_ did not provide a position on this issue.

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**CONCLUSION ON ISSUE #1:**

1. Repayments of undocumented loans by [redacted] were a private benefit and inurement to [redacted].

The clearest evidence of the existence of a loan is a written agreement between the parties. Neither [redacted] nor [redacted] provided a loan agreement evidencing any loan between [redacted] and [redacted]. Without an agreement we are left to determine its existence based upon the facts and circumstances. The burden of proof is on [redacted] to show enough facts and circumstances to determine the existence of a loan.

There is insufficient detail to determine the existence of a borrower/lender relationship between [redacted] and [redacted]. There is no record of a resolution of the Board of Directors respecting any loan from [redacted]. There is no evidence of any other [redacted] taken by [redacted]'s Board of Directors. The failure to document any financial relationship between [redacted] and [redacted] is especially troublesome given the fact that [redacted] was the founder, director, president, and the person in control of [redacted].

Repayments of alleged loans to an organization's founder constitute a classic form of prohibited inurement. E.g., Founding Church of Scientology v. United States, supra. This same type of transaction also constitutes an excess benefit transaction. The burden of proving the existence of a loan rests on [redacted]. Vinkoor v. Commissioner, supra. The burden has not been met, and the alleged repayments to [redacted] thus constitute prohibited inurement.

**CONCLUSION ON ISSUE #2:**

2. Payments to [redacted] Towing Company in excess of the fair market value do constitute a private benefit to [redacted].

The relationship between [redacted] and [redacted] Towing Company provided a private benefit to [redacted] u Towing Company and [redacted] for several reasons. [redacted] is the son of [redacted] and was the exclusive towing service provider of [redacted]. The fees charges by [redacted] u Towing Company were greater than fees normally charged by tow service providers in the area. The agreement entered into on February 8, [redacted], compensate [redacted] Towing Company unreasonably and without proper documentation.

[redacted] created [redacted] u Towing Company in October [redacted] 3, several months after his father created [redacted] Towing Company immediately became the [redacted] provider of towing services to [redacted]. However, [redacted] is not in possession of any service agreement between [redacted] and [redacted]. [redacted] has no board meeting minutes to indicate that discussions concerning towing companies were being evaluated or that a bidding process was used. [redacted] has no notes or other writing to help determine why its previous tow company was replaced by [redacted]. It is unknown what the terms and conditions of this relationship was, who negotiated it, reviewed it, or signed off on it.

[redacted]'s Director) indicated that [redacted] Towing Company was created for the sole purpose of towing for [redacted]. Prior to [redacted] Towing Company's creation, [redacted] used an unrelated towing company at a fee which was less than that charged by [redacted]. After [redacted] relinquished control of [redacted] Towing Company ceased providing towing services to [redacted]. Towing Company sold its tow trucks to [redacted] and got out of the business.

The amounts paid to [redacted] Towing Company varied but evidence indicates that they were in excess of the fair market value. After [redacted] Towing Company ceased providing towing services, [redacted] used three different towing services, each charging substantially less than what [redacted] Towing Company charged. For example, [redacted]

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Towing Company charged \$100.00 for a tow in the City3 area, however, currently pays \$65.00 (or less) for a tow in the City3 area. In the City1 area, Towing Company charged \$50.00 per tow and currently pays \$40.00.

's payments to Towing Company resulted in private benefits to Towing Company and to the extent 's payments to Towing Company and were in excess to the fair market value or reasonable compensation. Towing Company received these excessive payments from solely by reason of the fact that it was the wholly owned company of the son of the president of

**CONCLUSION ON ISSUE #3:**

3 (a) The value of the auto furnished by was a private benefit and inurement to

3 (b) The value of the auto furnished by was a private benefit and inurement to

3 (c) The value of the auto furnished by to was a private benefit to her.

does not have written documentation to show that the Board of Directors approved payments for leased vehicle either for purposes or for his personal use. has not adopted any policy concerning the payment or use of vehicles for purposes or procedures for tracking their use. There is no accountability for the use of this vehicle through the use of a logbook or other form of documentation. Additionally, payment for personal use of the vehicle was not reported as income on either Form W-2 or 1099 to. bid no accountable plan under Treas. Reg. 1.62-2(c). Accordingly, the total amount of the lease payments constitutes a private benefit and inurement to

The value of the autos furnished to wife, and daughter, constitutes private benefits. These individuals received an economic benefit from personal use of these vehicles that were donated to. The value of the auto furnished to would also be an inurement to her, because she was a member of Board of Directors.

does not have written documentation to show that the Board of Directors actually approved wife's, and daughter's use of vehicles either for purposes or for their personal use. has not adopted any policy concerning the use of vehicles or procedures for tracking their use. There is no accountability for the use of this vehicle through the use of logbooks or other forms of documentation. Additionally, personal use of the vehicles was not reported as income on either Form W-2 or 1099 to the individuals.

Use of 's cars must be documented to show that their use is in furtherance of 's exempt purpose. Without documentation, it is impossible to show that a vehicle's use furthers an organization's exempt purpose. The value of these benefits was not substantiated as compensation, and thus constituted a private benefit.

**CONCLUSION ON ISSUE #4:**

4. The value of the auto furnished to was a private benefit to him.

The value of the auto furnished by to is a private benefit to because he received an economic benefit from the personal use of a Mercedes Benz that was donated to. There was no written documentation to show that the Board of Directors actually approved his use of the car, nor was there any accountability for the use of this vehicle and the personal use was not reported as a fringe benefit on either Form W-2 or 1099-MISC.

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**CONCLUSION ON ISSUE #5:**

5. payment of \$ [redacted] to [redacted] does constitute a private benefit and inurement to [redacted].

[redacted]'s payment of \$ [redacted] to [redacted] does constitute a private benefit and inurement because [redacted] received economic benefit on payments recorded as Loan Payable for which no written documentation has been provided for the alleged loans. [redacted] prepared and executed all checks.

Because the payments were not in furtherance of [redacted] exempt purpose, the checks issued to or endorsed by [redacted] constitutes a private benefit and inurement to [redacted].

**CONCLUSION ON ISSUE #6:**

6. [redacted]'s payment of \$ [redacted] to [redacted] does constitute a private benefit and inurement to [redacted].

[redacted] payment of \$ [redacted] to [redacted] constitutes a private benefit and inurement, because [redacted] received economic benefit on payments recorded as "Loan Payable," for which no written documentation has been provided for the alleged loans.

As discussed in Issue 1 above, [redacted] has shown no evidence that would indicate that any loan exists between [redacted] and [redacted]. [redacted] has not articulated any other reasons for the payment to [redacted].

Without documentation, [redacted] has not shown that payment to [redacted] was payment for [redacted] services rendered by [redacted]. Because the payments were for the personal benefit of [redacted] and not for products or services rendered by [redacted], the \$ [redacted] constitutes a private benefit and inurement to [redacted].

**CONCLUSION ON ISSUE #7:**

7. Payment of rent for property used by [redacted] does constitute private benefit and inurement to them.

[redacted]'s payment of rent for property also used by [redacted]'s founder, [redacted] and/or [redacted] and/or [redacted] constituted a section 4958 excess benefit, which resulted in private benefit to them. [redacted] founder and [redacted] received an economic benefit when [redacted] made the full payment for rental property that [redacted]'s founder, [redacted] and [redacted] were obligated to make, and by allowing [redacted] use of the property.

Without Board approval or obligation to do so, [redacted] began making payments to the lessor of the property located at [redacted]. There is no evidence of a sub-lease executed by [redacted]. [redacted] continued to utilize the property after [redacted] began making lease payments. In addition, [redacted] allowed [redacted] a Towing Company to utilize space on the property without charge.

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The lease payments were ultimately for the personal benefit of [redacted]'s founder & [redacted] the extent they paid for space not occupied by [redacted]. See John Marshall Law School v. United States, supra. The lease payments were not substantiated as compensation, and thus constitute private benefits.

**CONCLUSION ON ISSUE #8:**

8. Any part of the \$ [redacted] salary paid to [redacted] in [redacted] does constitute a private benefit and inurement to him. [redacted] paid [redacted] \$ [redacted] in "salary" in [redacted]. Neither [redacted] nor [redacted] has provided any evidence of the number of hours [redacted] worked. [redacted] has not documented or described the services that he provided. [redacted] has provided no evidence of comparable salaries for similar services. There were no Board minutes authorizing the payment of his salary.

Moreover, the record indicates that it was the custom and practice of [redacted] and [redacted] to provide each donor, in writing, with only the retail Kelley Blue Book value of the donated vehicle, together with an IRS Form 8283. This was done for all vehicles, regardless of the condition of the vehicle. In many cases, the vehicles were inoperable and had to be resold by as salvage or scrap.

Given these circumstances -- the failure of [redacted] to carry their burden of proving what if any salary was reasonable, and [redacted] activities to aid and abet understatement of tax liabilities -- we conclude that all of the \$ [redacted] must presumptively be treated as a private benefit and inurement to [redacted].

**CONCLUSION ON ISSUE #9:**

9. [redacted]'s payment of \$ [redacted] (back pay from 1998 and severance pay) to [redacted] does constitute a private benefit and inurement to him.

As part of the reorganization of [redacted] under new directors in [redacted] agreed to pay a total of \$ [redacted] to [redacted] as alleged back pay for part of [redacted] and as severance pay. Similar to the situation described in Issue 8 above, there is no evidence of the number of hours worked by [redacted] during [redacted] the nature of his services, or comparable salary for similar services. There is also no evidence of any severance agreement between [redacted] apart from the ad hoc agreement reached by the new Board of Directors in [redacted]. Moreover, the new Board of Directors had actual knowledge of the improper payments made by [redacted] to himself during his tenure as an officer of [redacted], and yet they made no effort to obtain repayment of these amounts. Instead, they agreed to pay [redacted] an additional \$ [redacted]. In these circumstances, this payment constituted a private benefit and inurement to [redacted].

**CONCLUSION ON ISSUE #10:**

10. [redacted]'s payment of \$ [redacted] to [redacted] does constitute a private benefit to him.

The alleged loan repayments by [redacted], a 501(c)(3) organization to [redacted] Towing Company, that is wholly owned by [redacted] qualifies as a private benefit to him.

From February 11 to October 27, [redacted] issued checks totaling \$ [redacted] to [redacted] towing company. These checks were marked loan payable. [redacted] cannot provide any documentation or an explanation of the consideration for these payments. The clearest evidence of the existence of a loan is a written agreement between the parties.

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Neither [redacted] nor [redacted] provided a loan agreement evidencing any loan between [redacted] and [redacted]. Without an agreement we are left to determine its existence based upon the facts and circumstances. The burden of proof is on [redacted] to show enough facts and circumstances to determine the existence of a loan.

There is insufficient detail to determine the existence of a borrower/lender relationship between [redacted] and [redacted]. There is no record of a resolution of the Board of Directors respecting any loan from [redacted]. There is no evidence of any other action taken by [redacted] Board of Directors. The failure to document any financial relationship between [redacted] and [redacted] is especially troublesome given the fact that [redacted] father [redacted] was the founder, director, president, and the person in control of [redacted].

The burden of proving the existence of a loan rests on [redacted] and [redacted]. Credible and probative evidence was not provided by [redacted] or [redacted] to explain the many inconsistencies in the current information. Thus, the burden has not been met, and the alleged repayments to [redacted] do constitute private benefit to him. *Vinikoor v. Commissioner, supra.*

**CONCLUSION ON ISSUE #11:**

11. Whether the [redacted]'s payment to [redacted] for [redacted] medical insurance constitutes a private benefit to him.

This issue addresses payments made by [redacted] to the [redacted]. It appears from the record that [redacted] were employees of [redacted]. At [redacted] an employee of [redacted] were also employees of [redacted]. Neither [redacted] nor [redacted] have provided any documentation or other evidence to indicate that these payments were made for insurance coverage of [redacted] employees. [redacted]'s new board members could not explain why these insurance premiums were paid out of [redacted]'s accounts. Given these circumstances, the full amount of the payments constitutes a private benefit to [redacted], and therefore [redacted].

Moreover, [redacted] was not an employee of [redacted] and [redacted] payment of insurance premiums for the benefit of [redacted] is an excess benefit payment. Ultimately, even [redacted] realized they were paying [redacted]'s premiums in error; however, no attempt was made to remedy this erroneous payment. Therefore, any payment by [redacted] for [redacted] insurance on behalf of [redacted] is a private benefit to [redacted]. Additionally, the amounts in payment of [redacted] insurance coverage for [redacted] constitute a private benefit to [redacted]. [redacted] is jointly and severally liable with his son - the natural object of his bounty.

Additionally, [redacted] made payment of invoices that clearly do not list [redacted] as the vendee. Payment for invoices that are the obligation of other entities is a benefit to the party whose obligation it was to make payment.

**CONCLUSION ON ISSUE #12:**

12. Certain transactions between [redacted] and [redacted] current President and Auctioneer were a private benefit and inurement.

[redacted] received substantial economic benefit as a private shareholder, disqualified person and foundation manager of [redacted] when he received commissions on nine non-auctioned vehicles, excess advertising expenses, unlimited personal use of a 1985 Mercedes-Benz 5600 that was donated to [redacted], and excess appraisal fees.

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**CONCLUSION ON ISSUE #13:**

13. The Service's ruling recognizing it as exempt under 501(c)(3) should be revoked as of the date of Incorporation.

The Service did consider the following facts and circumstances, and concluded that the ruling should be revoked retroactively, effective August 31,

- a. The [redacted] has been involved in repeated excess benefit transactions, which resulted in private benefit and inurement to their former President and Executive Director and his family members and to their current President and Auctioneer
- b. The size and scope of the excess benefit transactions which resulted in private benefits and inurement were not de minimus to the size and scope of the [redacted] activities.
- c. Even after being counseled by their CPA, [redacted] continued to engage in the activities that caused excess benefit transactions, which resulted in private benefit and inurement. Thus the organization did not take actions upon determining that it has been a party to an excess benefit transaction.
- d. After concluding that it has been a party to an excess benefit transaction, [redacted] did not implement safeguards to prevent future recurrences such as an Independent Board of Trustees, with no economic relationship with [redacted] and a conflict of interest policy.
- e. The impact of these excess benefit transactions on the charitable purpose of the organization is that funds that should have went to the charitable purpose of organization, instead went to the private benefit of their former President / Executive Director and current President/Auctioneer, which resulted in inurement and private benefits.
- f. [redacted] does not avail itself of the rebuttable presumption under Regs. 53.4958-6(a).
- g. There is no adverse impact on the community if [redacted] tax-exempt is revoked because there are numerous charitable car donation organizations located within the same city and state as [redacted]
- h. [redacted] was not in compliance with other applicable law. It was the custom and practice of [redacted] and [redacted] in [redacted] to provide each donor, in writing, with only the retail Kelley Blue Book value of the donated vehicle, together with an IRS Form 8283. This was done for all vehicles, regardless of the condition of the vehicle. In many cases, the vehicles were inoperable and had to be resold by [redacted] as salvage or scrap.

Based on these facts and circumstances [redacted] should be revoked retroactively, effective August 31, [redacted] because the former President and Executive Director, [redacted] and his wife each received private benefit and inurement as did their current President, [redacted] in the [redacted] in violation of the proscription against inurement in section 1.501(c)(3)-1(c)(2) of the regulations and in violation of the proscription against impermissible private benefit in section 1.501(c)(3)-1(d)(1)(ii). See John Marshall Law School and John Marshall University v. U.S., supra.

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**CONCLUSION ON ISSUE #14:**

14. Section 7805(b) relief should not be granted.

Relief under section 7805(b) should be prohibited in this case, because the facts at the time of transactions are materially different from the facts as reported in their Articles of Incorporation, which was submitted, with their Application for Exemption upon which their determination letter was based.

A technical advice was requested on these excess benefit transaction issues involving their founder and former President and Executive Director and his family members. These excess benefit transactions were deemed to be inurement and private benefits in a related private letter ruling. Instead of responding to the Technical Advice request, it was determined by TE/GE Technical that a closing agreement would be in the best interest for both the organization and the government. TE/GE Technical did leave numerous phone messages and correspondence with the organization's representative who did not respond to them.

In the Service's letter dated December 10, to the organization and its representative, they were informed that if a settlement cannot be reached by and TE/GE Technical by January 31, the Service will issue a report proposing revocation of 's exempt status and issue a 30-day letter. On January 15, the Service did receive a signed Consent to extend the time to assess tax for Federal Income for the periods ended on December 31, December 31, Enclosed was a written promise that they will forward, some time next week. (week of January 19, a letter describing their intent to get this all wrapped up by the end of this month (January 31. Their attorney also promised a modified in-house memorandum setting forth current status and recent changes. As of January 31, neither TE/GE Technical nor TE/GE Revenue Agent has received anything from or its representative. The organization and its representative failed to meet their last deadline to negotiate a closing agreement with TE/GE Technical, therefore the Service issued a report proposing revocation of exempt status and issued a 30-day letter.