

Department of Treasury
Internal Revenue Service

Release Number: 200801040

Release Date: 1/4/08

LEGEND:

ORG = Name of Organization

NUM = Employer ID Number

Date1 = Effective Date

Date2 = Year End of Effective Date

UIL: 501.03-01

OCT 2, 2007

ORG

Person to Contact:

Identification Number:

Contact Telephone Number:

In Reply Refer to: TE/GE Review Staff

EIN: NUM

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT:

Dear

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

Our adverse determination was made for the following reasons:

ORG. has not been operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). You are not a charitable organization within the meaning of Treasury Regulations 1.501(c)(3)-1(d). You have a substantial nonexempt purpose, you are operated for private benefit, and your earnings inure to the benefit of private individuals.

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 retroactively to Date1.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending Date2, and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by writing to: Internal Revenue Service, Taxpayer Advocates Office, Local Office

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

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

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

Sincerely yours,

Marsha A. Ramirez
Director, EO Examinations

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

LEGEND:

ORG = Name of Organization

Founder = Name of Founder

Date1 = Effective Date

ISSUES

Whether ORG. should continue to maintain its exempt status under Section 501(c)(3) of the Internal Revenue Code.

Whether inurement exists in payments made to or for the benefit of FOUNDER of ORG.

FACTS

Background:

ORG. filed original articles of incorporation with the State. The articles of incorporation provided that its purpose was, in part, "to promote and sponsor the appreciation, study, production and showing in the U.S.A. films.

ORG. filed articles of amendment with the State amending its articles of incorporation to change its purpose to "exclusively religious, charitable, scientific, literary, and educational within the meaning of section 501(c)(3)." Subsequently, ORG. filed articles of amendment with the State amending its articles of incorporation to change its name to ORG.

ORG. filed a Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code, with the Internal Revenue Service (herein referred to as "IRS" or the "Service. As indicated above, ORG. would later become ORG.

The Corporate Bylaws of the organization set forth the following:

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

Article 2: Section 2 Qualifications and Duties of Officers

1. President – Generally and actively manage the business and affairs of corporation subject to the direction of the board of directors. Preside at all meetings
2. Vice President – Will become acting president of the organization in the absence or inability of the president to exercise his office
3. Secretary – Will have custody of and maintain all of the corporate records except financial records; record meeting minutes; responsible for authenticating records for the corporation
4. Treasurer – Retain custody of all corporate funds and financial records, maintain full and accurate accounts of receipts and disbursements and render accounts thereof at the annual meetings of the board of directors and whenever else required by the board of directors or the president.

Article 2: Section 4 Compensation

The Officers of the Corporation shall not receive any compensation from the corporation for serving as officers.

Article 3: Section 2 Function

All corporate powers, business, and affairs will be exercised, managed and directed under the authority of the board of directors.

Article 3: Section 4

The members of the board of directors shall not receive any compensation from the corporation for serving on the board of directors.

In a letter, ORG. was recognized by the Service as exempt from Federal income tax as an organization described in section 501(c)(3) of the Code.

Correspondence with Service:

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

In a letter dated March 31, the Service conducted a compliance check in regard to \$ of receivables from officers, directors, trustees, and key employees reported on line 50, column B, Part IV of Form 990 which did not have the required schedule attached. The organization was required to submit the following information for each loan or other receivables:

1. Borrower's name and title
2. Original amount
3. Balance due
4. Date of note
5. Maturity date
6. Repayment terms
7. Interest rate
8. Security provided by the borrower
9. Purpose of the loan
10. Description and fair market value of the consideration furnished by the lender

In a response letter from the organization to the Service, dated May 8, the organization's CPA classified the loans referred to in the notice as "temporary advances". The letter further stated, "As these transfers were made solely for convenience, there were no formal terms, drafted. The funds are to be utilized as the expenses are incurred, with no time limit or interest involved."

In a letter, ORG was notified that its Form 990, Return of an Organization Exempt From Federal Income Tax, had been selected for examination to ensure compliance with section 4958 of the Internal Revenue Code (IRC), relating to taxes on excess benefit transactions.

Exempt Activities:

ORG holds a ten day film festival each year promoting films in Spanish, Portuguese, Italian, Rumanian, and French. There are also academic conferences related to cinematographic industry and Latin culture in the in the US during the festival. ORG also serves as an intermediary for the launching of Latin productions in the U.S. between production and massive distribution. There is a complete library of movies being presented in the festival that are available for viewing by buyers and/or distributors in the U.S. was started by ORG.

Transactions between ORG and Founder

Mr. FOUNDER and his wife founded ORG. Founder operates and controls ORG as president/director/founder. Mr.FOUNDER stated he started the film festival with a loan of \$ from , his taxable entity. As the organization began to

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

obtain sponsorship, funds were repaid to Mr.FOUNDER. There were subsequent money transfers between ORG and Mr.FOUNDER as evidenced by cancelled checks and bank statements provided by ORG. **Exhibit A**

Below is a summary of all transactions between ORG and Mr.FOUNDER:

Date	Transaction	Source	Amount
10/14	Deposit	Publishing - FOUNDER's for-profit entity	
4/5	Deposit	FOUNDER's and wife for-profit entity	
7/12	Check to		
7/27	Check to		
4/23	Check to		
4/17	Transfer from	FOUNDER's personal joint account	
5/31	Transfer to	FOUNDER's personal account	
6/30	Transfer from	FOUNDER's personal account	
5/31	Transfer to	FOUNDER's personal account	
12/31	Transfer from	FOUNDER's personal account	
11/7	Transfer from	FOUNDER's personal account	

There were no formal agreements between the organization and Mr.FOUNDER, nor were any amounts paid to Mr.FOUNDER reported on the Form 990 as compensation. However, the Form 990, Line 50, Receivables from officers, directors, trustees, and key employees, disclosed the following end of year amounts for years one through six:

YEAR	AMOUNT
one	\$
two	\$
three	\$
four	\$
five	\$
six	\$

When questioned about the origin of the receivables, ORG's CPA responded with, "Mr.FOUNDER was advised that if the payments were for compensation, that compensation would be taxable to him on his personal income tax return; if these payments represented loans, then these loans – if temporary – would not be considered compensation and therefore not taxable as long as they were repaid within a reasonable amount of time." **See Exhibit B for complete response.**

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

Travel Expenses:

During the years under examination, ORG incurred travel expenses on Mr.FOUNDER's behalf. Mr.FOUNDER traveled to several cities in the United States, Spain, and Canada to attend film festivals and meet with various producers and directors to secure films for ORG. Mr.FOUNDER used ORG's bank card and credit card to pay his expenses, as they occurred.

In order to substantiate that the expenses incurred in the years under examination were related to operation of the organization, the examiner issued IDR#4 to ORG requesting documentation (receipts, bill statements, etc.) and an explanation (purpose, people present, etc.). ORG responded with "Individual receipts were not provided or retained for restaurants or hotels but an itemized list of the vendors and date that match the explanation above is attached." ORG also provided schedules of events from the

internet for three festivals Mr.FOUNDER attended. The examiner also questioned in IDR#4 if ORG had an accountable plan in place and if the board of directors had to approve travel for the years under examination. ORG responded with, "No" to both questions.

Personal Expenses:

ORG paid personal expenses on behalf of Mr.FOUNDER. The board of directors never authorized Mr.FOUNDER to cause ORG to pay his personal expenses from ORG's funds. Mr.FOUNDER used the organization's check card and credit card to pay for meals and other miscellaneous expenses. During the examination, Mr.FOUNDER documented all personal expenses that were paid on his behalf in the response to IDR#4. The total amount for personal expenses paid by ORG were \$ and \$, respectively. See **Exhibit C** for list of transactions.

Board of Directors/Meeting Minutes:

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

ORG's Form 990 discloses that ORG had four members on the Board of Directors. During the years under examination, these board members include: FOUNDER, WIFE OF FOUNDER, and two directors.

The examiner requested meetings minutes for the years under examination to determine the board of director's level of involvement with ORG's operations and finances. ORG provided meeting minutes of the executive committee. Neither board directors was listed as attendees in any of the meeting minutes provided. The meeting minutes of the ORG mainly discussed films confirmed, sponsors secured, potential sponsorship, activities of the festival.

There was a discussion of the Mr.FOUNDER traveling to Spain to look into possible sponsor, but it did not pan out. The committee did not approve any travel conducted by the Executive Director, nor was it informed of a majority of trips. Furthermore, the finances of the organization were not discussed or reviewed by any member of the committee to insure funds were being used for the organization's purposes.

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

LAW

In General:

Section 501(c)(3) of the Internal Revenue Code provides that Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, ...no part of the net earnings of which inures to the benefit of any private shareholder or individual...are exempt from Federal income tax under this section.

Federal Income Tax Regulation (Regulation) Section 1.501(c)(3)-1(a)(1) states: "In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such Code section. If an organization fails to meet either the organizational test or the operational test, it is not exempt." (emphasis added)

Regulation Section 1.501(c)(3)-1(c) provides, "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 of such 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." (emphasis added)

Regulation Section 1.501(c)(3)-1(c)(2) provides, "An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words 'private shareholder or individual', see paragraph (c) of Section 1.501(a)-1."

Regulation Section 1.501(a)-1(c) provides, "The words 'private shareholder or individual' in Section 501 refer to persons having a personal and private interest in the activities of the organization."

Regulation Section 1.501(c)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes "...unless it serves a public rather than a private interest. Thus ...it is *necessary for an organization to establish* that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders or the organization, or persons controlled, directly or indirectly, by such private interests." (emphasis added)

Primary Purpose: Substantial Nonexempt Purpose:

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

In *Better Business Bureau of Washington, D.C. v. United States*, 326 U.S. 279, 283 (1945), the United States Supreme Court stated that "the presence of a single...[non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly...[exempt] purposes."

In *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1065-1066 (1989), the court stated that when an organization operates for the benefit of private interest...the organization by definition does not operate exclusively for exempt purposes. Prohibited private benefits may include an "advantage; profit, fruit; privilege; gain; [or] interest." Occasional economic benefits flowing to persona as an incidental consequence of an organization pursuing exempt charitable purposes will not generally constitute prohibited private benefits. Thus, should [the organization] be shown to benefit private interests, it will be *deemed* to further a nonexempt purpose under section 1.501(c)(3)-1(d)(1)(ii). This nonexempt purpose will prevent [the organization] from operating primarily for exempt purposes absent showing that no more than an insubstantial part of its activities further private interests or any other nonexempt purposes.

Inurement and Private Benefit:

In *American Campaign Academy v. Commissioner*, 92 T.C. 1053, (1989), the Court addressed the operational test and illuminates the difference between private benefit, derived by private interests where such private benefit is adverse to exemption under Section 501(c)(3), from inurement, derived by insiders, which also is adverse to exemption under Section 501(c)(3). It states:

...To establish that it operates primarily in activities which accomplish exempt purposes, petitioner must establish that no more than an insubstantial part of its activities does not further an exempt purpose. Sec. 1.501(c)(3)-1(c)(1), Income Tax Regs. The presence of a single substantial nonexempt purpose destroys the exemption regardless of the number or importance of the exempt purposes. *Better Business Bureau v. United States*, 326 U.S. 279, 283 (1945); *Copyright Clearance Center v. Commissioner*, 79 T.C. 793, 804 (1982).

...We have consistently recognized that while the prohibitions against private inurement and private benefits share common and often overlapping element, *Church of Ethereal Joy v. Commissioner*, 83 T.C. 20, 21 (1984), *Goldsboro Art League, Inc. v. Commissioner*, 75 T.C. 337, 345 n. 10 (1980), the two are distinct requirements which must independently be satisfied. *Canada v. Commissioner*, 82 T.C. 973, 981 (1984); *Aid to Artisans, Inc. v. Commissioner*, 71 T.C. at 215. Nonetheless, we have often observed that the prohibition against private inurement of net earnings appears redundant, since the inurement of earnings to

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

an interested person or insider would constitute the conferral of a benefit inconsistent with operating exclusively for an exempt purpose. Western Catholic Church v. Commissioner, 73 T.C. 196, 209 n. 27 (1979), *affd.* In an unpublished opinion 631 F.2d 736 (7th Cir. 1980). See also sec. 1.501(c)(3)-1(c)(2), *Income Tax Regs.* In other words, when an organization permits its net earnings to inure to the benefit of a private shareholder or individual, it transgresses the private inurement prohibition and operates for a non exempt private purpose.

...The absence of private inurement of earnings to the benefit of a private shareholder or individual does not, however, establish that the organization is operated exclusively for exempt purposes. Therefore, while the private inurement prohibition may arguably be subsumed within the private benefit analysis of the operational test, the reverse is not true. Accordingly, when the Court concludes that no prohibited inurement of earnings exists, it cannot stop there but must inquire further and determine whether a prohibited private benefit is conferred. See Aid to Artisans, Inc. v. Commissioner, 71 T.C. at 215; Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 287 (1982).

In People of God Community v. Commissioner, 75 T.C. 127 (1980) the Court, in examining the compensation arrangement of an insider, noted that it is an established principle that the organization is entitled to pay reasonable compensation to an insider but the burden of establishing the reasonableness of the compensation fell upon the organization.

In Founding Church of Scientology v. United States, 412 F. 2d 1197 (Ct. Cl. 1969). Cert. den., 397 U.S. 1009 (1970). The Court determined that the different arrangements between the organization and its founder, such as payment of ten percent of gross revenues, lending of money to him and his family, payment of expenses on their behalf, rental of property at inflated prices, resulted in inurement. The Court rejected the reasonable compensation defense. It stated: If in fact a loan or other payment in addition to salary is a disguised distribution or benefit from the net earnings, the character of the payment is not changed by the fact that the recipient's salary, if increased by the amount of the distribution or benefit, would still have been reasonable.

Section 4958 of the Code, effective September 14, 1995, was added to the Internal Revenue Code by the Taxpayer Bill of Rights 2 bill in 1996 (P.L. 104-168, enacted July 30, 1996). In Caracci v. Commissioner, 118 T.C. No. 25 (2002), the Court noted: "With the enactment of section 4958, however, the issues whether the tax-exempt status ...tax-exempt entities should be revoked now must be considered in the context of the 'intermediate sanction' provisions. ...the intermediate sanction regime was enacted in order to provide a less drastic deterrent to the misuse of a charity than revocation of that charity's exempt status. The legislative history explains that "the intermediate

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

sanctions for 'excess benefit transactions' may be imposed by the IRS in lieu of (or in addition to) revocation of an organization's tax-exempt status." *H. Rept. 104-506, supra at 59, 1996-3 C.B. at 107*. A footnote to this statement explains: "In general, the intermediate sanctions are the sole sanction imposed in those cases in which the excess benefit does not rise to a level where it calls into question whether, on the whole, the organization functions as a charitable or other tax exempt organization." *Id. N. 15, 1996-3 C.B. at 107*. Although the imposition of section 4958 excise taxes as a result of an excess benefit transaction does not preclude revocation of the organization's tax-exempt status, the legislative history indicates that both a revocation and the imposition of intermediate sanctions will be an unusual case." (emphasis added)

Net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. *General Contractors' Ass'n v. United States, 2002 F. 2d 633 (7th Cir. 1953)* – reports and surveys furnished to members; *Chattanooga Auto. Club v. Commissioner, 182 F. 2d 551 (6th Cir. 1950)* – service to members; *Underwriters' Laboratories, Inc. v. Commissioner, 135 F. 2d 371 (7th Cir.), cert. denied, 320 U.S. 756 (1943)* – reports and studies furnished; *Spokane Motorcycle Club v. United States, 222 F. Supp. 151 (E.D. Wash. 1963)* – goods, services, and refreshments given. That the benefit conveyed may be relatively small does not change the basic fact of inurement. *Spokane Motorcycle Club v. United States, supra*.

In *est of Hawaii v. Commissioner, 71 T.C. 1067 (1979)*, aff'd in unpublished opinion 647 F. 2d 170 (9th Cir. 1981) ("*est of Hawaii*"), several for-profit est organizations exerted significant indirect control over est of Hawaii, a non-profit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the non-profit as an "instrument" to further their for-profit purposes. The fact that amounts paid to the for-profit organizations under the contracts were reasonable did not affect the court's conclusion. Consequently, est of Hawaii did not qualify as an organization described in section 501(c)(3).

Insider:

In defining who is an insider, the court in *United Cancer Council, Inc. v. Commissioner, 165 F. 3d 1173, 1176 (7th Cir. 1999)*, stated: "The term "any private shareholder or individual" in the inurement clause of Section 501(c)(3) of the Internal Revenue Code has been interpreted to mean an insider of the charity. *Orange County Agricultural Society, Inc. v. Commissioner, 893 F.2d 529, 534 (2d Cir. 1990)*; *Church of Scientology v. Commissioner, supra, 823 F.2d at 1316-19*; *Church by Mail, Inc. v. Commissioner, 765 F.2d 1387, 1392 (9th Cir. 1985)*; *American Campaign Academy v. Commissioner, 92 T.C. 1053, 1066 (1989)*. A charity is not to siphon its earnings to its founder, or the

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

members of its board, or their families, or anyone else fairly to be described as an insider, that is, as the equivalent of an owner or manager. The test is functional. It looks to the reality of control rather than to the insider's place in a formal table of organization. The insider could be a "mere" employee-- or even a nominal outsider, such as a physician with hospital privileges in a charitable hospital, Harding Hospital, Inc. v. United States, 505 F. 2d 1068, 1078 (6th Cir. 1974)..."

Books and Records:

Internal Revenue Code (Code) Section 7602(a) provides the authority "to examine any books, papers, records, or other data which may be relevant or material" for the purpose of ascertaining the correctness of any return....

Regulation Section 1.6033-2(i)(2) provides that, "Every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of subchapter F (Section 501 and following), chapter 1 of subtitle A of the Code, Section 6033, and chapter 42 of subtitle D of the code."

Section 6001 of the code provides, "Notice or Regulation Requiring Records, Statements, and Special Returns" provides, in part: "Every person...shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe."

Regs. 1.501(c)(3)-1(d)(1)(ii) provides that the burden of proof is upon the organization to establish that it is not organized or operated for the benefit of private interests.

Income Tax Regulation (Regulation) Section 1.274-5 addresses the substantiation requirements with respect to the business purpose of an expense. If the substantiation requirements are not met no deduction is allowed with respect to that expense.

Regulation Section 1.274-5T(b) identifies the elements that the taxpayer must substantiate with respect to the expenditure: (i) amount, (ii) time and place of travel, entertainment, amusement, recreation, or use of the facility or property, (iii) business purpose, and (iv) the business relationship to the taxpayer of each person entertained, using the facility or property, or receiving the gift. Section 1.274-5T(c) notes that a taxpayer must substantiate each element of an expenditure by adequate records or by sufficient evidence corroborating taxpayer's own statement. Section 274(d) contemplates that a taxpayer will maintain and produce such substantiation as will constitute clear proof of an expenditure referred to in Section 274. It states that a record of the elements of an expenditure made at or near the time of expenditure, supported by sufficient documentary evidence, has a high degree of credibility not present with

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

respect to a statement prepared subsequent thereto when generally there is a lack of accurate recall. It states that the corroborative evidence required to support a statement not made at or near the time of the expenditure "must have a high degree of probative value to elevate such statement and evidence to the level of credibility reflected by a record made at or near the time of the expenditure supported by sufficient documentary evidence". It states that to obtain a deduction for travel, etc., a taxpayer must substantiate each element of the expenditure.

GOVERNMENT'S POSITION

Based on the examination conducted, it has been concluded that ORG does not continue to qualify for tax-exempt status as an organization described in Section 501(c)(3) of the Code. Although ORG has engaged in regular and ongoing activities that further exempt further exempt purposes, it has engaged in a number of excess benefit transactions therefore jeopardizing its exemption.

Mr.FOUNDER controls ORG's operation and financial affairs. He founded the organization, and he makes decisions for ORG. He also exerts substantial influence over the organization for purposes of the excess benefits under section 4958 of the Code.

Over the course of several years, Mr.FOUNDER made a number of money transfers between his personal bank accounts and ORG's bank account. Mr.FOUNDER claimed these transfers represented loans of ORG payable to him and vice versa. However, no contemporaneous loan documentation exists, and Mr.FOUNDER never made any payments of principal or interest. Additionally, there were no records verifying the character of the receipts from Mr.FOUNDER to ORG or to Mr.FOUNDER from ORG.

The examination also determined that ORG paid travel expenses on Mr.FOUNDER's behalf. ORG did not maintain any airline tickets, receipts, or correspondence confirming the business purpose of travel. Additionally, ORG acknowledged that they do not have an accountable plan in place and travel did not have to be approved by the board of directors. Without evidence that the travel serves any kind of a charitable purpose, or that it was ordinary and necessary to carry out a charitable program, we can only conclude that any expense ORG incurs for the travel is inurement.

During the years under examination, Mr.FOUNDER paid a series of expenses that were personal in nature using ORG's funds. Theses payments were not included as compensation on Mr.FOUNDER's 1040 nor were they reported on ORG's Form 990. In addition, there was no documented approval of the expenses in the meeting minutes. The diversions of ORG's funds to pay Mr.FOUNDER's personal expenses constituted excess benefit transactions between an applicable tax-exempt organization and a disqualified person under section 4958.

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

To summarize inurement, Mr.FOUNDER benefited as follows:

Year 1	Unsubstantiated Loans	\$
Year 1	Personal expenses paid by ORG	\$
	TOTAL INUREMENT Year 1	\$
Year 2	Personal expenses paid by ORG	\$
	TOTAL INUREMENT Year 2	\$

Since inurement and private benefit issues are highly fact

dependent, the courts do not look with favor on an organization's failure to provide relevant facts and they are not hesitant to find that an organization has failed to carry its burden. See Gondia Corporation v. Commissioner, T.C. Memo. 1982-422; Schooger Foundation v. Commissioner, 76 T.C. 380 (1981); The Basic United Ministry of Alma Karl Schurig v. Commissioner, 670 F.2d 1210 (1982); First Libertarian Church v. Commissioner, 74 T.C. 396 (1980); Church of Gospel Ministry, Inc. v. U.S., 58 AFTR 2d 86-5232 (D.C. 1986); Universal Bible Church, Inc. v. Commissioner, T.C. Memo. 1986-170.

The Service has sufficient information to establish a pattern of control on the part of insiders has resulted in continuing inurement to the insiders. We believe that a correction under IRC §4958 would not be sufficient to allow ORG to retain its exempt status. Furthermore, it is expected that ORG will continue to be controlled by the same person.

The government does not contend that family control is a statutory or regulatory cause for revocation. Many good organizations are family controlled. However, family control does offer unique opportunities for abuse. This is evident from case law cited in this report. In this case, as in all cases, family control is always a relevant factor when other facts and circumstances indicate issues of private benefit and inurement. See Regs. Sec. 1.501(c)-1(d)(1)(ii); P.L.L Scholarship Fund, supra.

ORG has engaged in regular and ongoing activities that further exempt purposes both before and after the excess benefit transactions occurred. However, the size and scope of the excess benefit transactions engaged in by ORG collectively, are significant in relation to the size and scope of ORG's activities that further exempt purposes. Moreover, ORG has been involved in repeated excess benefit transactions. ORG has not implemented any safeguards that are reasonably calculated to prevent future diversions. The excess benefit transactions have not been corrected, nor has ORG made good faith effort to seek correction from Mr.FOUNDER, the disqualified person who benefited from the excess benefit transactions. Based on the application of the factors to these facts, ORG is no longer described in section 501(c)(3) effective Date1.

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

CONCLUSION

Based on the above, we propose to revoke ORG's tax-exempt status. This proposed revocation would become effective Date1. Any contributions to ORG are no longer deductible as charitable contributions. Any contributions to this organization by those who were in part responsible for , or were aware of, the activities or deficiencies on the part of the organization that gave rise to loss of exempt status will not be allowed as a deduction effective the date of revocation.

ORG will be required to file Form 1120 for the tax periods ending Date1.

If this proposed revocation becomes final, appropriate State officials will be advised of the action in accordance in Internal Revenue Code Section 6104(c) and applicable regulations.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE, Group 7954
7850 SW 6th Court
Plantation, FL 33324

ORG

Taxpayer Identification Number:

Form:

990

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

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.

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:

Local Office

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,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination