

Internal Revenue Service
Appeals Office
1375 E. Ninth Street
Cleveland, OH 44114-1739

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Refer Reply to:

Date: **NOV 30 2009**

Number: **201008050**

Release Date: **2/26/2010**

In Re:

EO Revocation

Tax Period(s) Ended:

Form Required to be Filed:

1120

Employer Identification Number

CERTIFIED MAIL

UIL: 501.03-05

Dear :

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code. It is determined that you are no longer recognized as exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code, effective October 1, 2008.

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

You have failed to demonstrate that you have operated exclusively for charitable or other exempt purposes as required by Treas. Reg. section 1.501(c)(3)-1(c). One of your primary activities is the promotion and sales of dietary products in a commercial manner. More than an insubstantial part of your activities were in furtherance of this non-exempt, commercial purpose.

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

You are required to file Federal income tax returns on the form indicated above.

By executing Form 906-c, Closing Agreement on Final Determination Covering Specific Matters, you have waived your right to contest this determination under the declaratory judgment provisions of section 7428 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.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, formal appeals process, etc. The Taxpayer Advocate is not able to reverse legally correct tax determinations, 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. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"*, for Taxpayer Advocate telephone numbers and addresses.

Thank you for your cooperation.

Sincerely,



KAREN SKINDER
TEAM MANAGER



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
55 S. Market St. HQ-7600
San Jose, CA 95113

MAR 21 2006

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.

Letter 3618 (04-2002)
Catalog Number 34803F

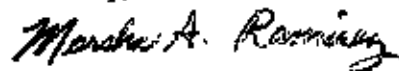
If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to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



Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

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ISSUES:

1: Is XXXXXXXXXXXX operating exclusively for charitable and public purposes with no part of its net earnings inuring to the benefit of private persons and in compliance with the organizational and operational tests of Internal Revenue Code (IRC) Section 501(c)(3)?

2: If XXXX qualifies for exemption under 501(c)(3) is it subject to unrelated business income tax and to filing of FORM 990-T for years ending September 30, , and September 30, as it received more than \$1000 of unrelated business income during these years?

3: If XXXX qualifies for exemption under 501(c)(3) should it be assessed a delinquent filing penalty for a delinquent filing of the 990-T?

FACTS:

XXXX Organization and Hierarchy

XXXXXX was incorporated in XXXX under the Not-for-Profit Act on Jan. 6, 1970. It received IRS ruling as public charity under 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iv) effective May 25, 1970.

XXXXXX has been the XXXXXX founder and has held the President, Executive Director and Treasurer positions continuously.

XXXXXX's articles list eighteen (18) different social and educational purposes for which the corporation was formed, such as: a) "to design, develop, test, implement and evaluate emerging patterns and models of community life and be consultants to communities and organizations." Other purposes include improving communities' life, integrating minorities, helping individuals to better cope with changes in life and community, helping drug users, helping parents and their children to better communicate, and improving the quality of educational programs in communities. The articles include no clauses limiting legislation, prohibiting political activities or limiting non 501(c)(3) activities.

XXXXXX bylaws state that the organization will be an educational social service corporation. The bylaws provide that XXXXXX officers are:

A President- who shall preside over the meetings and also maintain general supervision of the conduct and affairs of all aspects of the corporation. He can sign disbursements.

A Secretary -who shall keep a record of the proceedings of the trustees and keep the correspondence for the corporation and perform other duties that will be assigned by the Board.

A Treasurer-who shall perform all duties as are assigned by the Board, will sign all the disbursements; examine all financial transactions and sign financial reports on a monthly basis.

In years ending Sept. 30, 20 to the present the offices of President and Treasurer were held by XXXXXX while the office of Secretary was held by XXXXXX- his spouse.

XXXXXX Web Site Presentations

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XXXXXX website¹ states that XXXXXX under XXXXXX enables visionaries to create and direct the variety of XXXXXX's divisions.

The pictures on the left are of the following "Divisions"- which are accessible by clicking on their respective "links" on the XXXXXX's homepage; information that was presented on the web includes:

XXXXXX² Director XXXXXX. "XXXXXX is XXXXXX's new book that provides the blueprint for living and new hope".

There is an image of XXXXXX and upon clicking on it one visits the site: XXXXXX³ That states: "XXXXXX is a 501(c)(3) not for profit foundation. It is currently under the umbrella of another outstanding non-profit organization, XXXXXX". Also: "should you want to support the work of XXXXXX, donations are, of course tax deductible... checks should be sent to XXXXXXXXXXXX. All donors will promptly receive an acknowledgement for tax purposes."⁴

The web has a link called: "XXXXXX"⁵ that takes the reader to the web site of XXXXXX website. It states that the company (XXXXXX) exists solely for funding XXXXXX.

Web site: X states that these products are produced by X and advocates the products for home business and for people seeking business opportunity. It mentions a company called X and repeats the following words:

X, X, X, X

X⁶ Director: X
 "X Composed, Founded and Directed by X sponsored by the X and now it is a Division of X, a 501(c)(3) educational non-profit organization." Also: "© Words and music by X All rights reserved."
 The web site includes text of the song, which is dedicated to peace around the world, part of which is:

To order CD mail the order form to "X". "Proceeds from this CD/DVD will be utilized to cover program and production costs; to facilitate future X program and global youth gatherings; and to promote

* * * *
¹ Web page X C-5(10)1-2
² Web page X C-5(50)1- X webpage
³ w/p X C-5(50)2
⁴ w/p X C-5(50)4
⁵ X C-5(50)2- w/p C(50)7
⁶ X C-5(40)1-2

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the integration of peace curricula and initiatives in communities around the world."⁷... "Your tax deductible donation in support of this project can be mailed to: X"⁸.

X⁹- directors: X. There is an image "X". Clicking on the image takes you to X¹⁰ the website of X. "X "X" " AIRING ON PBS!!!.

"X" is an ongoing series of half-hour programs focusing on the burgeoning interest in alternative and integrative healing" also: "Interested? Please contact us". .. "Available for licensing "X@" " " .

X- Director X¹¹. Clicking on the picture of a sick person in hospital bed leads to X that states: "X Project is a non-profit organization. All donations are tax-deductible, I X administer the services."... "

"..."

"X" - about X who through the consumption of X has strengthened his immune system."¹²

X- this program has been discontinued past Sept. 30,

X's Staff:

X is a licensed family and marriage therapist. He is a Presbyterian minister and has the following educational background: B.A. Communications from , B.A. and M.A. in Divinity from , organizational development training at , and sexuality therapy training from . He has been X's President, Treasurer, executive director, and family and marriage/life coaching and training counselor since 1970 to the present.

X Admitting Additional Programs & Conferring 501(c)(3) Status upon Them

In recent years X Board reviewed and approved adding programs to X for a fee.¹³

On 10/2/2000 X's board decided to accept two programs, these were described as:

-The X Project- to see if giving children diagnosed with ADD and ADHD nutritional supplements will improve their relationships with their friends and family, improve their self esteem and improve their grades at school. X would direct it.

-The X Program: designated to help those that are critically or terminally ill by providing them with nutritional supplements that have been scientifically proven to support the body's natural ability to heal itself. This program was an outgrowth of X "training program designed to train people to work with non-

* * * *

⁷ X web pages C-5(40)5a

⁸ X web pages C-5(40)5b

⁹ X C-5(30)1

¹⁰ X C-5(30)2

¹¹ X and X w/p C-5(20)1-2

¹² X C-5 (20) 4-9

¹³ ref: X minutes

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profits to show them how to increase the income of the non-profits."

The program would recruit volunteers to identify people who are terminally/critically ill and would be sponsors of the sick. Those sponsors would be responsible for raising funds to purchase the products to be given to the sick people. X would become X's director and X will sign an agreement and 5% of the income generated by X be donated to the X's general fund.

On Dec. 18, 200 X accepted X as a new program and accepted X as a Director. "X is a novel by X that embeds a blue print for building an interdependent spiritual community in the inner city."

On June 15, 200 X accepted two programs and accepted X and X and X respectively as the permanent directors of X and X. These programs were further described in the minutes:

-X- is a X Based organization. Its mission is to educate the world. Their donations will be used to fund educational programs that will be aired on public TV. The officers also have a commercial company X that produces movies for TV and is a for profit entity.

-X. During the past year X worked with older teenagers who wanted to educate the parents and the high school system to change the education to be more appropriate to their needs. After the year's work they formed an organization that will have a place where they can make the changes on the community.

On Nov. 12, 200 X discussed a request of a media program called X; it is based in and focuses on capturing the beauty of and promoting healthy, positive activities. It does this by filming activities that promote healthy living. They have sponsors for funding their programs and a variety of markets for testing public interest in their products. They request to conditionally accept them as one of X programs. After discussion it was resolved that X will be conditionally accepted as new program of X and that X be the director of the program.

On April 9, 200 X accepted X; X met with X and he agreed that her mission and purpose are compatible with X's. X's mission is "

X then became the permanent director of X.

None of said programs have applied to IRS to make a determination of their qualifications for exemption under 501(c)(3). These divisions were told they obtained 501(c)(3) status by becoming X's programs.

X was to receive 5% of the gross receipts of said programs in return for administrative and accounting services it was to provide, which also included the required reporting to IRS. Some of these divisions gave X more control over their bank and X was to disburse funds from their bank account; such was the case with X and X. However, X was the one who authorized disbursements checks on that account.

None of X's divisions is an association, a corporation or a trust. These projects were operated by individuals. IRS's IDR 10(a) asked for documentation that establishes what entity X is. This information has not been available per X's reply to IRS that was provided on 3/14/06.

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X Divisions Operations:

X's programs as reported on Form 990 and to IRS are summarized in TABLE A:

TABLE A: X's main activities from FYE ending Sept. 30, through the present¹⁴

FORM 990 PART III PROGRAMS	FYE 9/30/ Income	FYE 9/30/ Income % of total	FYE 9/30/ expense % of total	FYE 9/30/ Income	FYE 9/30/ Income % of total	FYE 9/30/ Expense % of total	FYE 9/30/ First 9mo % of total Income	FYE 9/30/ First 9mo % of total Expense
X-Life Counseling	\$	%	%	\$	%	%	\$ %	%
X	\$	%	%	\$	%	%	\$ %	%
X	\$	%	%	\$	%	%	0	0
X	\$	%	%					
X				\$	%	%	\$ (%)	%
TOTAL	\$69,179	%	%	\$	%	%	\$	%

X Larger Divisions (based on % of revenue generated):

* * * *

¹⁴ F. 990 and X Reply dated 9/2/2005 (COR-10)

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X is X; X programs have as their focus the education, training, counseling and consulting of individuals and groups that want to improve their relationships, maximize their health, move from survival to success and support positive changes in their communities.¹⁵

The Client Information Regarding Counseling form states that the clients make their donation for each session at the beginning of each session; checks are to be made out to X not to X. X charged \$75/hr for the "X" Life Coaching program.

X income included rental fee paid by sub-lessors of its offices. X received \$ for work X did to help X's real estate business. The income that was deposited to X bank included grants of other divisions- the larger ones were \$ and \$ respectively from X and X. These were obtained for X and X programs respectively. \$7,730 was retransferred to X bank account subsequently.

X's operating expenses included: personnel, facilities, and utilities. For fiscal year ending 9/30/20 (FYE 20 09) these expenses included: \$ consultant fees to X, \$ office rental at X, X, CA X, PG&E- 1 and Telephone- \$

TABLE B: X's Bank Account -Deposits Made During FYE 9/30/ ;

per G/L	X INCOME PER TALLY OF RECEIPTS						
	X counseling	rent	divisions income	Foundations Grants	books & tapes	consulting Leslie	total
\$	\$	\$	\$	\$	\$	\$	\$

X-X signed an application and became a Charity Program of X on 10/20/2000. Under the agreement X supplies X Inc. products at reduced cost. (X is a 501(c)(3) entity whose officers are X and X -X President and his spouse).

X sells the products at cost plus 5% for administration. Xr gets emails from X associates that they met someone with terminal illness and they want X to help. X then directs them to the web where they need to fill the following forms:

1st form- asks for the participant's profile: name, address, diagnosis and the required X.

2nd form: consent form- where the participant allows Xto share the person's medical records and disclose the person's progress (but only disclose first name).

3rd form: progress report: requests information about the person's response to X.

After getting the person's order, X then sends back a quote for the cost of the order and adds 5% extra. Then X collects full payment from the participant (or the participant's sponsor). She then deposits the money to X account and she faxes the orders to X. When the product is shipped X charges X's AMEX account no more than the agreed amount. When the monthly AMEX statement is received, X transfers

* * * *

¹⁵Agreement between X and X C-11(10)

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the needed sum from X bank account to X bank account. AMEX account is paid from X bank account.

X' orders and all the copies of the checks showing who paid for these orders were requested by IRS. It took approximately nine months to get them (beginning with IRS' IDR 4 dated 3/25/2005, then: IDR 4(a) dated 6/21/05, IDR 4(b) dated 8/8/05, IDR 4(b)(1) dated 9/8/05 and IDR 18 dated 11/14/2005). On 1/17/2006 IRS received most of the copies of checks deposited to Xs' bank- -not all the corresponding orders were provided. These checks were compared with the corresponding orders. If any of the orders were missing these were not included in the analysis. The analysis shows that the majority of the orders (10) were paid for by persons purchasing their own X. Sponsors included family or friends of the persons who purchased the X.

TABLE C. Analysis: X Orders and Who paid for them

Sample #	Order Date	Ship to	Who needed to pay	Copy of Check Provided?	who sponsored the person
1	10/20/20	X	X	yes	self sponsored
2	10/18/20	X	Parents	Yes	X's parents paid
3	10/20/20	X	X	deposit cash	was sponsored by friends
4	10/20/20	X	X	Yes	self sponsored
5	10/20/20	X	sponsors from the church	ledger	was sponsored by members of the church
6	10/22/20	X		deposit cash	X was a personal friend of X
7	11/26/20	X	X	Yes	self sponsored
8	12/4/20	X	Check of \$291.90	Yes	self sponsored
9	1/8/20	X	ok-\$50 X	yes	X was the mother of his girlfriend
10	3/19/20	X	X	Yes.	self sponsored
11	4/10/21	X	Ledger	M. Card	self sponsored
12	4/24/20	XX	Visa	visa	self sponsored
13	4/30/21	X	VISA	visa	self sponsored
14	5/27/20	X	Money order by	Yes	self sponsored
15	6/11/20	X	VISA	visa	self sponsored

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X (X)- X signed an agreement¹⁶ with X's Director X in April 2003; it describes the purpose of the program: to raise funds for the programs and productions which have as their focus bringing oneness to all people on the planet through songs and music.

The copyright for the music, lyrics and logo design of "X" remains the property of X, who will have the USA copyright ownership of future CDs and video production. In the attachment to the agreement, X described X as a sole proprietorship.¹⁷ "Travel, production equipment, website development and maintenance, as well as her commitment of time have been predominately self-funded. Some private donations have been received that were applied towards travel or production expenses."

X's financial report to X¹⁸ for the period 5/8/ - 12/31/

Donations-cash:	In kind donations
\$ various	Accommodations and travel in Australia- no \$ specified
EXPENSES:	
\$ travel	
\$ supplies	
\$ professional services by X	
Balance Due to X when funds are available	
\$	

X's Smaller Divisions:

X¹⁹: The grants that the X obtained under X's name were deposited to its bank account and were subsequently paid over to X. The total funds deposited was \$ of which \$ were paid to X to produce "X"²⁰ Episode Synopses and VHS sample tapes that were sent to an agency that arranged for the screening of the TV series at prospective TV stations. PBS-public stations were offered viewing rights for this series at no charge. Additionally, X used \$ to pay health benefits for its staff.

The following quote describes the content of the Episode Synopses:

Episode One's synopsis:

"

place

* * * *

¹⁶ Agreement between X & X w/p c-11(40) a-b

¹⁷ X Overview w/p c-11(40)6-7

¹⁸ w/p D-3(40)

¹⁹ w/p C-11(35) 1-4; see X reply dated Nov. 7, 2005 (COR 17) and Xreply dated Nov. 3, 2005 (COR 16)

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TABLE D: The X:

Deposits Received: ²⁰	Income source:	Grant purpose:	Check made/sent to:
11/4/ - \$	Grant-X	To pay grant writer; And/or inform PBS stations about X TV series	X
11/25/ - \$	Grant- X	For "X" TV	X
Total: \$			
Use of Funds:	Paid to:	Use/Purpose of Funds:	Check was signed by:
11/12/ (\$) ck 401	X	Administration services	X
11/22/ (\$) ck 403	X	12/21/05 letter states \$1,200 were used to pay health benefits for X personnel	X
9/23/ (\$) ck 407	X	5/30/05 letter states: for grant writer X 8/17/05 letter states: for cost of VHS samples and show catalogues sent to	X

X: The documentation for the program includes X's board minutes of Nov. 12, 2002 and minutes dated June 5, 2003 (those two minutes were provided to IRS later than the bulk of the minutes for the period 10/2/20 - 12/20/20 that were provided on initial appointment date of 6/6/2005). Other information is from X's bank and G/L records and is summarized below²¹.

TABLE E: X Financial Activities as reflected on X's Bank Account

Deposits Received	Income source	Where deposited	Documentation TECW provided
1/16/ - \$	X	X bank account	Board minutes
Use of Funds:	Paid to:	Use/Purpose of Funds:	

* * * *

²⁰ w/p D-3 (300-303) D-4(304-308)

²¹ X G/L D(10)1-11; Workpaper D-3(11)-List B of expenses as verified on 7/25/05.

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1/16/	-\$	ck 2925	X expenses	Expenses- undocumented	
1/21/	-\$	ck 2924	X-positive media	Unclear - what was the use of the funds	Board minutes

X: X has not received contemporaneous records of X's financial and other activities, or how many X books were sold. It has not opened a bank account for this division. In reply to IRS IDR 10(a) of 2/28/06, X notified X that it is no longer under X's 501(c)(3); it has incorporated in Jan. 2006 and has applied for its own 501(c)(3) status.²²

X and X Divisions:

X, X and X are X Associates. X Inc. is a publicly traded company. It manufactures and sells nutritional supplements called "X" (also called X). X are nutritional supplements but have not been approved by the FDA as to their abilities to cure diseases. X uses Multi-level-marketing (M-L-M) to distribute its products. Under the MLM, each of the distributors (called "X Associates") receives a commission based on X products the distributor sells and also receives commission for sales by the additional distributors the distributor recruits as well as the distributors they recruit.

X and X wanted to build a project comparable to the X that X conducted in . The X was a study that X conducted where children suffering from ADD- (Attention Deficit Disorder) were given X to see if their condition will improve. X believed that once the study is over either the childrens' parents will continue to buy the X or they will stop buying them²³. Those who would want to continue buying X will then become X Associates and will help attract more donations for X.

X's X hired X to train X Associates to partner with Non-Profit organizations. When X went to conferences he would conduct workshops and bring his training books that he wrote with him.²⁴

X Books for Training X Associates

X²⁵- an Alternative Way to Fund Your Favorite Non-profit Organization, Preserving Self Reliance and Generating On-going Residual Income. - by X and X (copyright January 1998).

Pg.1: "A Major income producing strategy for non-profit organizations using network marketing and X Products"

The "Executive Summary" explains that raising funds for Non-profits in traditional ways is very difficult and frustrating.

* * * *

²² X letter as received by IRS on 3/14/06 w/p COR (25)5

²³ X's email dated 3/30/2001 to X [w/p c-11(25)]

²⁴ Interviews 6/6/05 and 8/10/05[w/p c-1(10) , c-1(20)]

²⁵ c-5(20)

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Pg. 2 states that X said "One of the best ways to raise money for non-profits is to put them in your network marketing organization; the more product that is distributed through that portion of your organization that supports the non-profit organization, the more income will be generated that will flow up to support that non-profit organization".

Also on pg. 2: "Here's an example of how it works: The Reverend X is a minister at X Church in X. In 1993 Shelly and his wife X, were not able to adequately finance themselves in their ministry and took up 'tent making', which for X meant carpentry work. Six months after becoming involved with X, as an independent distributor, X was making \$10,000 a month. By Christmas of 1995, he was making \$20,000 a month and in May of 1996 he was making over \$50,000 a month. The amount keeps going up. He receives \$100 a month from the church in salary and has donated back to the church enough money through income from X to enlarge their ministry several fold, which includes adding two new ministers."

pg. 7: "How to Get Started: what follows is a simple way that X can be used to help provide the funds necessary for supporting your non-profit organization. Because many non-profit corporations with 501(c)(3) status are concerned about being involved, we have come up with a plan that by-passes this concern. Instead of enrolling the non-profit corporation in X, a small group of 2-6 people who are most concerned about your organization, can create a sole proprietorship or partnership for the purpose of donating its income to the non-profit corporation. This entity would exist to donate its profits to a non-profit and would be taxed accordingly. Most activities of this group will be tax deductible, so that income would in fact be able to go to the non-profit."

"First Steps to Take to Begin this Funding Program:

1. Sign up the entity under whoever introduced you to X.
2. Establish the entity as a separate organization from the non-profit.
3. Sign up 2-6 people who are deeply committed to the non-profit.
4. Decide which of the 2-6 will be responsible for fundraising for the non-profit.
5. Each person will then become a X Distributor and will make extra income.
6. Funds received by the entity will be distributed according to the agreements made by the members of the Entity."

The book X a workshop by X to facilitate movement from survival to personal & business success²⁶ was published by X in January 1998.

The following excerpts were taken from the book:

Pg. 1: "Where I am Starting From" has questions, the first question is:

"1. I have been a X Associate since _____". Other questions are about the person's level of income from X, about their X distributor ranking etc.

* * * *

²⁶ wfp c-5(22)

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Fig. 9: "Presenting the X Business Basics:

Explain and enroll people in the business of network marketing: "the opportunity to be your own boss and make as much money as you want."

"X will be in business for many, many years because of growing demand for these products." ... "We can all grow prosperous with this leading company in this new X Industry."

Also on Pg. 9: "The Four Things you do in this business are: Expose, Involve, Upgrade, Duplicate".

LAW:

Eligibility Requirements for 501(c)(3) exempt status:

FINAL-REG §1.501(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals

(a) Organizational and operational tests. (1) 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 section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

(2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

FINAL-REG §1.501(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals

(d) *Exempt purposes*—(1) *In general.* (i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (a) Religious,
- (b) Charitable,
- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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What is the meaning of "Organizational Test" under 501(c)(3)

Internal Revenue Manual (IRM) 7.25.3.2 1, IRC 501(c)(3) covers only corporations, community chests, funds, and foundations. This means that some kinds of groupings can qualify and some cannot. Evidently, an individual cannot be exempt. Neither can a partnership. By the same token, a formless aggregation of individuals cannot be exempt.

In Trippe v. Commissioner, 9 TCM (CCH) 622 (1950), the Tax Court clarified a formless aggregation of individuals without some organizing instrument, governing rules, and regularly chosen officers would not be a "corporation, community chest, fund, or foundation" for purposes of IRC 501(c)(3).

Reg. 1.501(c)(3)-1(b)(1)(i) provide that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- Limit the purposes of such organization to one or more exempt purposes; and
- Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

The term "articles" includes "the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created". Reg. 1.501(c)(3)-1(b)(2).

IRM, Section 7.25.3, Express Powers that Cause Failure of Organizational Test

1. An organization does not meet the organizational test if its articles expressly empower it:
 - a. To devote more than an insubstantial part of its activities to influence legislation by propaganda or otherwise (Reg. 1.501(c)(3)-1(b)(3)(i));
 - b. Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office (Reg. 1.501(c)(3)-1 (b)(3)(ii));
 - c. To have objectives and to engage in activities which characterize it as an "action" organization (Reg. 1.501(c)(3)-1 (b)(3)(iii));
 - d. To carry on any other activities (unless they are insubstantial) which are not in furtherance of one or more exempt purposes (Reg. 1.501(c)(3)-1(b)(1)(i)(a)).

Cases- Exemption Denied Due to Organizations Failing to Operate Exclusively for Charitable Purposes and for Serving Substantial Non-Exempt Purposes:

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

When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private

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interests, the organization by definition does not operate exclusively for exempt purposes. American Campaign Academy v. Commissioner, *supra* at 1065-66.

TC, [CCH Dec. 45,704], American Campaign Academy v. Commissioner, TC, [Exempt organizations: Educational and charitable organizations: Inurement of benefits to private interests: "Private interests" defined.], (May 16, 1989)
 "P is organized to pursue educational and charitable activities. As its primary activity, P operates a school to train individuals to fill responsible positions in political campaigns. P's training program is an "outgrowth" of similar training programs previously sponsored by the National Republican Congressional Committee. Graduates of P's training program are prepared to function in such strategic campaign positions as communications director, finance director, or campaign manager. Approximately 80 percent of P's graduates participated in at least 98 campaigns of Congressional and Senatorial candidates during 1986. P has failed to establish that such participation was on a nonpartisan basis. Other graduates participated in gubernatorial or other statewide or local campaigns, or were employed by various Republican organizations. No graduate is known to have affiliated with any domestic political party other than the Republican party. R determined that P's activities benefited the private interests of Republican entities and candidates more than incidentally, a substantial nonexempt purpose. Consequently, R denied P's application for exempt status. *Held*, the requirement that P not be operated for the benefit of private interests, section 1.501(c)(3)1(d)(1)(ii), Income Tax Regs., is applicable notwithstanding R's concession that no portion of P's net earnings inured to the benefit of private shareholders or individuals. *Held further*, prohibited private interests include those of unrelated third parties. ... *Held further*, R's determination that P operated for the substantial nonexempt purpose of benefiting private interests is affirmed."

In Federation Pharmacy Services, Inc. v. Commissioner, 625 F.2d 804 (8th Cir. 1980), *aff'g* 72 T.C. 687 (1979), the appellate court held that a nonprofit pharmaceutical service was not exempt as a charitable organization because it was operated for the substantial commercial purpose of providing pharmacy services to the general public. Although it provided special discount rates for handicapped and senior citizens in its area, it was not committed to providing any drugs below cost or free to indigent persons. Therefore, although its services did improve health in the area, it was primarily a commercial venture operated in competition with other area pharmacies.

In University Medical Resident Services, P. C. and University Dental Resident Services, P. C. v. Commissioner, T.C. Memo 1996-251 (1996), the Tax Court upheld the Service's denial of charitable status for the petitioners, UMRS and UDRS, which were nonprofit professional corporations established to aid certain medical and dental residency programs in upstate New York. A charitable organization administered the residency programs, the teaching hospitals handled the training, and medical schools supervised the quality of the teaching program. The petitioners, which had no administrative staff, paid the residents' compensation and had nominal power to hire and fire the residents.

The petitioners argued they were charitable because they (1) advanced education; (2) lessened the burdens of the local government; and (3) were educational under the integral part theory. The court ruled that the petitioners' advancement of education was minimal; that the petitioners had failed to establish that either

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the medical schools or the teaching hospitals were governmental entities or that the petitioners reduced the cost of the training in any event; and that petitioners were merely shell corporations providing the conduit through which compensation might be made to the medical and dental residents. Thus, the petitioners could not be conducting the integral functions of any charitable organizations.

Revenue Ruling 76-206, 1976-1 CB 154, (Jan. 01, 1976), Promotion of classical music radio programs. A nonprofit organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station by seeking program sponsors, encouraging continuation of contracts by existing sponsors, urging the public to patronize the sponsors, soliciting subscriptions to the station's program guide, and distributing materials promoting the classical music programs, all of which activities tend to increase the station's revenues, does not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 55-231, 1955-1 CB, 72, holds that an organization whose primary purpose is to promote the circulation of the books of one of its incorporators and whose activities consist of purchasing such works and making them available for public use is not organized and operated exclusively for educational purposes

Cases Dealing with Earmarked Contributions:

S.E. Thomason v. Commissioner, 2 T.C. 441 (1943), the taxpayer paid an educational institution the tuition and maintenance of a particular individual, who was the ward of a public charity, and claimed a charitable deduction. The court held that the taxpayer was not entitled to the deduction because the contributions were for the benefit of a particular individual.

Tripp v. Commissioner, 337 F.2d 432 (7th Cir. 1964), the court held that payments made to an educational institution and earmarked for the educational expenses of a particular individual were not deductible because they were neither made to the college for use as it saw fit nor made for the benefit of an indefinite number of persons, as, for example, a scholarship fund.

Who Has Authority to Issue Determination of Exemption under IRC 501?

Internal Revenue Service: Rulings and determination letters: Applications for recognition of exemption: Revenue Procedure 90-27, 1990-1

SEC. 4. FILING AND PROCESSING APPLICATIONS FOR RECOGNITION OF EXEMPTION:
An organization seeking recognition of exempt status under section 501 or 521 of the Code is required to file an application with the key District Director for the Internal Revenue District in which its principal place of business is located.

TAXPAYER'S POSITION:

This issue is being raised as part of the Revenue Agent Report. The taxpayer has yet to provide its position.

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GOVERNMENT'S POSITION:

The government contends that X is not an organization that is described in IRC 501(c)(3) because it failed the dual tests under 501(c)(3):

X failed the organizational test: Its articles do not include the required clauses under 501(c)(3), because the purposes that are described in its articles are not limited to those that are enumerated in Treasury Regs §1.501(c)(3)-1(d)(1); for example: the purpose: "a: To design, develop, test, implement and evaluate emerging patterns and models of community life and be consultants to communities and organizations" is not one of the eight purposes in said regulation; further, X's articles do not have language restricting the purposes to 501(c)(3) purposes only, and X's articles do not limit propaganda or prohibit political activities as required by 501(c)(3).

Additionally, X failed the operational test: X operations are not exclusively charitable, because it operated for substantial commercial purposes and conferred substantial private benefit on private interests. X provided X to persons and charged them above cost- which is not a charitable activity described in 501(c)(3) - as provided in Federation Pharmacy Services, Inc. V. Commissioner. The persons who paid for the supplements' purchases earmarked their checks to pay for orders of designated persons. Under the guidance of S.E. Thomason v. Commissioner, these payments are not charitable and are not tax deductible.

Similar to University Medical Resident Services, P. C. and University Dental Resident Services, P. C. v. Commissioner, X serve minimal if any charitable purpose of its own and functions as a conduit or an agent of X Ministries who is the entity that provides the X at a discount.

The government contends that X failed the operational test on the additional grounds that they provided private benefit to X Inc., which is prohibited under 501(c)(3). As explained in Rev. Rul. 76-206 and American Campaign Academy v. Commissioner, organizations that provide private benefits to private interests are not qualified for exemption under 501(c)(3). The promotion of X Inc.'s X by X, the training manuals that X published advocating using non-profits to market X Inc. products and the publicity of X Inc. supplements on Xn's web pages served the private interests of X Inc.

As explained in Better Business Bureau v. United States, the presence of a single substantial nonexempt purpose can destroy exemption regardless of the number or importance of exempt purposes. The commercial sale of X and the marketing services X provides to X Inc. confers private benefit on X Inc. and do not serve exempt purpose. These are substantial activities in scope and preclude X's operations from being exclusively charitable.

X admitted X and X and conferred 501(c)(3) status upon them. Both X and the Xa failed the organizational test because they were formless aggregation of individuals and their purposes were not exclusively charitable. X's purpose: "bringing oneness to all people on the planet" is not one of the purposes listed in Regs. §1.501(c)(3)-1(d)(1).

These divisions also failed the operational test under 501(c)(3) because their operations promote their

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founders' products: the CD of X's founder X and the TV program produced by X and founders X and X. All of these persons hold copy rights and licensing rights of products that are promoted by X.

Additionally, the government contends that X is operating the business of providing exemption under 501(c)(3) for hire to anyone it deems fit. This privilege is reserved to the government, specifically to IRS' TE/GE Division- as described in Rev. Procedure 90-27.

TFCW admitted new divisions in exchange for them paying X 5% of their gross receipts; regardless of the qualifications of these divisions under 501(c)(3). IRS' audit of X's divisions showed that these entities were not qualified for exemption under 501(c)(3). Further, X admitted X conditionally but did not obtain and did not retain any records of X for 501(c)(3) exempt status.

CONCLUSION:

Based on the foregoing reasons, the organization does not qualify for exemption under section 501(c)(3) and its tax exempt status should be revoked effective October 1, 2002.

ALTERNATIVE ISSUE 2:

If X qualifies for exemption under 501(c)(3) is it subject to unrelated business income tax and to filing of FORM 990-T for years ending September 30, , as it received more than \$1000 of unrelated business income during the year?

LAW:

Unrelated Business Income Tax Applicable Code Sections:

511(a)(2) Organizations subject to tax:-

511(a)(2)(A). The tax imposed by paragraph (1) shall apply in the case of any organization... described in section 501(c)(1) which is exempt.

512(a)(1) General rule.- Except as otherwise provided in this subsection, the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

512(b) Modifications.-

The modifications referred to in subsection (a) are the following:

512(b)(12) Except for purposes of computing the net operating loss under section 172 and paragraph (6), there shall be allowed a specific deduction of \$1,000.

SEC. 513. UNRELATED TRADE OR BUSINESS: 513(a) General Rule.- The term

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"unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section ... , except that such term does not include any trade or business--513(a)(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation.

TAXPAYERS' POSITION:

This issue is being raised as part of the Revenue Agent Report. The taxpayer has yet to provide its position.

GOVERNMENT POSITION ISSUE 2:

The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501

According to the audit the X received income from unrelated business income: It received \$ from X for the help it extended to her for-profit real-estate business. Thus, it was not a charitable activity that is related to the X's educational purpose. Additionally, the \$ of Divisions Income X received was for providing those divisions administration, accounting and tax reporting services. These services were not related to X's educational purposes, and the preparation of accounting records and reporting to IRS is indistinguishable from services that for profit accounting and filing entities such as H&R block provide for a fee. These activities serve necessary business purposes but not exclusively charitable purposes.

CONCLUSION:

Based on the above, X's income from these sources should be reported on Form 990-T for the year ending Sept. 30, 20 as its unrelated business income was greater than \$1000.

ALTERNATIVE ISSUE 3:

If X qualifies for exemption under 501(c)(3) should it be assessed a delinquent filing penalty for a delinquent filing of the 990-T?

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LAW:

§ 6651. Failure to file tax return or to pay tax.

(a) Addition to the tax. In case of failure--

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

TAXPAYER'S POSITION ISSUE 3:

This issue is being raised as part of the Revenue Agent Report and the taxpayer has yet to provide its position.

GOVERNMENT'S POSITION:

X was found to receive unrelated business income during the year ending Sept. 30, Thus, it was required to file Form 990-T to report this income and pay the income tax. It failed to do so timely and it should be subject to penalties under Section 6651(a)(1) and 6651(a)(2), Failure to file a tax return (penalty of 25%) and Failure to pay the tax due (penalty is 19.5%- payment was due 2/15/2004).

CONCLUSION:

X should pay penalties in addition to the tax for its failure to file the form 990-T timely and its failure to pay the required tax timely.