

Internal Revenue Service
Appeals Office

Department of the Treasury

Release Number: 201037039
Release Date: 9/17/10

Person to Contact:
Employee ID Number:
Tel:
Fax:
Refer Reply to:

Date: **APR - 6 2010**

In Re:
EO Revocation
Form Required to be Filed:
1120
Tax Period(s) Ended:

UIL: 501.03-03

- A
- B
- C

**Last Date for Filing a Petition with
the United States Tax Court:**

Certified Mail

LEGEND:

- A =
- B =
- C =

Dear :

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). Recognition of your exemption under IRC Section 501(c)(3) revoked effective January 1, 2004.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the Clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

Our adverse determination was made for the following reason:

Your organization is not operated exclusively for exempt purposes. Under Treasury Reg. § 1.501(c)(3)-1(d)(1)(ii), an organization is not operated exclusively for exempt purposes unless it serves a public rather than a private interest. In addition, under Treasury Reg. § 1.501(c)(3)-1(c)(1), 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 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. You did not serve a public, rather than a private, interest, [and/or] a substantial part of your activities were not in furtherance of an exempt purpose. Accordingly, you are not an organization described in section 501(c)(3).

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on form 1120 for any years which are still open under the statute of limitations. Based on the information you furnished, it appears that returns should be filed beginning with the year ending December 31, 2002. You should file any returns due for these years or later years with the Internal Revenue Service Center, Cincinnati, OH 45999-0012 (as applicable for 1120). Processing of income tax returns will not be delayed because you have filed a petition for a declaratory judgment under Code section 7428.

If you have questions about this letter, you may write to or call the contact person whose name, telephone number, and IRS address are shown on the first page of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you prefer to call and the telephone number is outside your local calling area, there will be a long distance charge to you.

You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance, or you can contact the nearest Taxpayer Advocate office by calling (405) 297-4055 or writing to Local Taxpayer Advocate, 55 N. Robinson, Stop 1005 OKC, Oklahoma City, OK 73102. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. 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 the U.S. 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 IRC section 6104(c). You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

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

Sincerely,

Appeals Team Manager



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
Attn: TEGE:EO-as; MC 4900-OKC
55 N. Robinson
Oklahoma City, OK 73102

AUG 1 2 2008

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear PRESIDENT

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:

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,

Vicki L. Hansen
Acting, Director EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

	EXPLANATIONS OF ITEMS	Attachment A Page 1 of 32
Name of Taxpayer ORG		Year Ended 12-31-20XX

Report of Examination of Form 990

LEGEND

ORG = Organization name State = state Address = address City = city
County = County XX = Date Attorney = attorney TRST-1, 2 & 3 = 1st, 2nd &
3rd TRST IND-1 = 1st IND Notary = notary EMP-1, 2 & 3 = 1st, 2nd & 3rd EMP
Chairwoman = chairwoman INT-1, 2 & 3 = 1st, 2nd & 3rd INT BENE-1, 2, 3, 4 & 5
= 1st, 2nd, 3rd, 4th & 5th BENE CO-1 thru CO-21 = 1st thru 21st Companies

The examination reviewed the activity and financial transactions of ORG (hereafter ‘**ORG**’) of the year ended 12-31-20XX. ORG had not filed information return Form 990, Return of Organization Exempt from Income Tax, for the year ended 12-31-20XX. ORG did file Form 990 for the year ended 12-31-20XX.

The examination reviewed records provided by ORG and discussed with ORG’s trustee TRST-1 (‘**TRST-1**’) the organization’s activities, its financial transactions and the persons and entities involved in those activities and transactions. The following is a detail of ORG’s activities, reported assets, 20XX financial transactions and the entities with which it had some relationship to the extent disclosed by TRST-1 or the documentation ORG provided the examination.

For reference, the following is a topical index:

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Facts:

(A) ORG and Application for Exemption:

ORG was established by a Declaration of Trust dated May 16, 20XX. The declaration of trust states:
the ORG, and the CO-3, who hereby declare and agree that they have received this day from CO-1, as
Donor, the sum of (\$) and that they will hold and manage the same, and any additions to it, in trust, ...

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(see related sections that follow for additional information on CO-1 and ORG).

The declaration of trust provides ORG is to be “governed in all respects by the laws of the State of State and the CO-3.”

Neither ORG nor the CO-3 signed the declaration of trust.

The declaration of trust does not name trustees but was signed by TRST-1 and TRST-2 (hereafter ‘**TRST-2**’) as trustees. ORG represented to the examination that TRST-2 was an employee of the related entity ORG but that he had, at various times in 20XX, been paid by ORG for services he had provided ORG. In a statement ORG provided the examination, in February 20XX TRST-1 “terminated” TRST-2 as a ORG trustee. With TRST-2’s “termination” TRST-1 became ORG’s sole trustee.

Though the declaration of trust states it was made May 16, 20XX, it was not until November 12, 20XX, 18 months later, that the declaration of trust was signed by the two trustees TRST-1 and TRST-2. In fact, the declaration was signed after ORG had applied to the Internal Revenue Service in July 20XX seeking determination that it is an organization described in section 501(c)(3) of the Internal Revenue Code (‘IRC’).

In July 20XX ORG submitted to the Internal Revenue Service (‘IRS’) Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, for determination that it is an organization described in IRC section 501(c)(3). Its application ORG stated it was not a corporation or a trust but an association.

The application when initially submitted did not include ORG’s declaration of trust but instead included the Articles of Incorporation and Charter of ORG (ORG) ORG (hereafter ‘ORG’). These articles state that they had been executed May 11, 20XX. As is subsequently noted, ORG is a separate entity controlled by TRST-1 and the CO-1.

As the organizing documents submitted with the application for exemption were not ORG’s, on November 12, 20XX, the IRS informed ORG by letter that a copy of its organizing documents would have to be provided before a determination could be made whether the organization was an organization exempt under IRC section 501(c)(3). In response ORG provided the described declaration of trust (the declaration of trust document is described in greater detail in section (B)).

The information and documents that are part of the submitted Form 1023 were:

In its completion of the Form 1023, ORG stated its activities would be:

Acquire suitable land and quality buffalo for the establishment of self-sustaining buffalo, elk, moose, antelope and deer herds and related flora and fauna to prosper and for the purpose of providing food for Native American people from the harvest of bulls, barren heifers and disabled animals.

Enrolled members of subscribing Tribes and their spouses are eligible for entry with special regard given for conduct of ceremonies, powwows, Indian rodeos, and traditional observances and rituals.

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General Public will be charged a fee admission for camping, wildlife observation, photography, hiking, fishing, etc. Indian conducted-fee based hunts for surplus animals, which meat to be distributed to ORG subscribing Tribes.

So far as possible, CO-4 lands will be located near subscribing Tribe's reservations or near cities in which subscribing Tribes' members reside. Every attempt will be made to put the land in Trust with the United States for the benefit of the Tribes.

Supervised by ORG Board subject to rules and regulations jointly agreed to by the ORG Board and ORG Board of Governors, subject to the laws of the Tribes and the United States.

Activity will be initiated as soon as ORG begins making an income, 25% of such income is designated for the CO-4 and/or donations and contributions made to the CO-4.

ORG stated its financial support would be:

1. Principal source of support is to be 25% of all CO-5s, principal and interest which will be invested in the CO-4. May increase or decrease depending upon income of the ORG
2. Support from donations and contributions.

It stated its fundraising program would be:

CO-4 is dependent upon the CO-5 for a portion of its support. Contributions will be accepted by the CO-4 and a fee for admission to the CO-4 lands wi (sp) be charged to the general public. General Public will also pay to bring down a buffalo with (sp) all but 20 lbs. of meat going to the subscribing Tribes.

In response to the question "Does the organization control or is controlled by any other organization?" ORG responded 'yes' and stated:

CO-4 is established as a part of the CO-5. CO-4 will be regulated by the ORG Board pursuant to rules established with the ORG Board of Governors. CO-4 staff will be supervised by the ORG Board.

In response to the question "is the organization financially accountable to any other organization?" ORG stated:

CO-4 shall be managed subject to the authority of the ORG Board jointly subject to approval of ORG Board of Governors in a financially safe and sound manner.

ORG's response to Item 8, Part I, that ask whether the organization is required to file Form 990 is "No". Its explanation is:

No. Tribal government organized under the power and authority of the inherent and aboriginal sovereignty of the Tribe's; the United States Constitution and Federal Charter of the Tribe's; Tribe's Constitution; United Nations Charter; United Nations Declaration of Human Rights; The State Indian Welfare Act, 25 U.S.C.A. 501-509 (1936); The Indian Reorganization Act, 25 U.S.C.A. 461-466, 470-476, 478-479 (1936); The Indian Financing Act of 1974, 25 U.S.C.A. 1451-1453, 1461-1469, 1481-1498, 1511, 1512, 1521-1524, 1541-1543, (1974) and; Indian Tribal Governments Treated as States for

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Certain Purposes, Requirement for Tax-Exempt Bonds, Section 7871 Subsection C Internal Revenue Code of 1986, 26 U.S.C.A. 7871.

The Articles of Incorporation and Charter of ORG stated ORG’s object and purpose to be: to carry on and conduct a federal Native American credit program pursuant to the Indian Reorganization Act, 25 U.S.C.A. 461-466, 470-476, 478-479 (1934); State Indian Welfare Act, 25 U.S.C.A. 503-509; Indian Financing Act of 1974, 25 U.S.C.A. 1451-1453, 1461-1469, 1481-1498, 151, 1512, 1521-1524, 1541-1543; and Indian Tribal Governments Treated as States for Certain Purposes, Requirements for Tax-Exempt Bonds, Sec. 7871 subsection C of Internal Revenue Code of 1986, 26 U.S.C.A. 7871; and the subscribing Tribe(s’) Federal corporate charters and the U.S. and Tribal Constitutions. The credit program will include the host-country, U.S. and Tribal regulated international investment depositories, wholesale federal bond banking, savings, safe deposit and trust business and branches thereof, as is now or may hereafter be authorized by law...

Subsequent to the IRS’s November 12, 20XX letter requesting ORG’s organizing document and the receipt of the declaration of trust, the IRS issued a determination letter dated November 14, 20XX, stating ORG was determined to be an organization described in IRC section 501(c)(3). As a newly created organization exempt under section 501(c)(3), based upon the public support information submitted in the application, ORG was determined not to be a private foundation but a publicly supported organization for the duration of the advance ruling period, November 12, 20XX through December 31, 20XX. ORG was also informed that at the end of the advance ruling period ORG would be required to provide financial information so that it could be determined whether it met the support requirements as a publicly supported organization during the advance ruling period or whether it would be classified as a private foundation from the beginning date.

The November 14, 20XX letter also informed ORG that it was not required to file Form 990, Return of Organization Exempt From Income Tax, if its gross receipts each year are normally \$ or less. If its gross receipts exceeded the \$ filing threshold it should file Form 990 for each year in the advance ruling period and the return is required to be filed by the 15th day of the 5th month after the end of the annual accounting period.

(B) Declaration of Trust of The ORG:

The declaration of trust, consisting of ten parts, is the document ORG belatedly presented as its organizing document. It states: Stating the declaration was made on May 16, 20XX, the declaration of trust further states:

Declaration of Trust made as of the 16th day of May, 20XX, by the ORG, and the CO-3, who hereby declare and agree that they have received this day from CO-1, as Donor, the sum of \$ and that they will hold and manage same, and any additions to it, in trust, ...

Of note, as previously noted, neither ORG nor the CO-3 signed the declaration of trust¹ but was instead signed by TRST-1 and TRST-2 on November 12, 20XX, as trustees.

¹ In interviews of Chairwoman, Chairwoman of the CO-6 of State, on May 7, 20XX and May 21, 20XX, on the issue of the CO-6’s dealings with TRST-1, ORG and ORG, Chairwoman had no recollection of the CO-6 having executed such a declaration of trust or of such declaration having received official tribal sanction through a vote in the tribe’s Tribal Council (its executive and legislative function). The examination’s review of resolutions and related documents of the CO-6 and of the tribe’s Economic Development Committee that pertained to or referenced

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In its second part the declaration of trust provides:

The trustees may receive and accept property, whether real, personal, or mixed, by way of gift, bequest, or devise, from any person, firm, trust, or corporation, to be held, administered, and disposed of in accordance with and pursuant to the provisions of this Declaration of Trust; but no gift, bequest or devise of any such property shall be received and accepted if it is conditioned or limited in such manner as to require the disposition of the income or its principal to any person or organization other than a "charitable organization" or for other than "charitable purposes" within the meaning of such terms as defined in Article Third of this Declaration of Trust, or as shall in the opinion of the trustees, jeopardize the federal income tax exemption of this trust pursuant to section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

The third part of the declaration of trust, part A provides:

A. The principal and income of all property received and accepted by the trustees to be administered under this Declaration of Trust shall be held in trust by them, and the trustees may make payments or distributions from income or principal, or both, to or for the use of such charitable organizations, within the meaning of that term as defined in paragraph C, in such aCO-18nts and for such charitable purposes of the trust as the trustees shall from time to time select and determine, and the trustees may make payments or distributions from income or principal, or both, directly for such charitable purposes, within the meaning of that term as defined in paragraph D, in such aCO-18nts as the trustees shall from time to time select and determine without making use of any other charitable organization. . . . No part of the net earnings of this trust shall inure or be payable to or for the benefit of any private shareholder or individual. . . .

Part C of part three provides:

In this Declaration of Trust and in any amendments to it, references to "charitable organizations" or "charitable organization" mean corporations, trusts, funds, foundations, or community chests created or organized in the United States or any of its possessions, . . . organized and operated exclusively for charitable purposes, no part of the net earnings of which inures or is payable to or for the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation , . . .

Part D of part three provides:

[T]he term "charitable purposes" shall be limited to and shall include only religious, charitable, scientific, literary, or educational purposes within the meaning of those terms as used in section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, but only such purposes as also constitute public charitable purposes under the laws of trust of the **State of State and the CO-3.**

Part five provides, in part:

ORG, ORG or TRST-1 noted there is no documentation of any action or any vote for the CO-6's participation in the declaration of trust of ORG.

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The trustees serving under this Declaration of Trust are authorized to pay to themselves aCO-18nts for reasonable expenses incurred and reasonable compensation for services rendered in the administration of this trust, but in no event shall any trustee who has made a contribution to this trust ever receive any compensation thereafter.

Part six outlines the discretionary powers provides the trustees, and provides, in part:

To invest and reinvest the principal income of the trust in such property, real, personal, or mixed, and in such manner as they shall deem proper...No principal or income, however, shall be loaned, directly or indirectly, to any trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to this trust, nor to anyone except on the basis of an adequate interest charge and with adequate security...

Part ten provides that the declaration of trust is to be governed in all respects by the laws of the State of State and the CO-3. ORG has provided no indication that the CO-6 participated in the declaration of trust or that the trust was an entity recorded to or registered with the appropriate functions within the CO-6. Additionally, the examination found no record of the CO-6's participation in ORG's declaration of trust when the examination interviewed CO-6 tribal chairperson Chairwoman and reviewed official documents of the CO-6 (CO-6 Tribal Resolution or other official or unofficial records).

(C) CO-1:

The CO-1, when it was amended April 25, 20XX, was renamed the CO-1.

The CO-1 was established on January 1, 19XX, as a revocable trust during the life of TRST-1 (also known as TRST-1) and thereafter, following his death, it was to become an irrevocable trust. TRST-1 was settlor of the trust, TRST-3 was named as trustee and CO-7 as successor trustee. The beneficiaries of the trust are TRST-1's three children and his companion and his children's mother, BENE-1. While TRST-1 is living, the trustee is directed to distribute:

to or for the benefit of Settlor and for the benefit of his children and himself so much of the trust income and corpus as Settlor shall from time to time direct in writing for necessary living expenses, exclusive of judgments or liens of any kind. Initially and until further written notice from Settlor to the Trustee, the trustee shall distribute to Settlor the net trust income.

Following the settlor's death, the CO-1 divides into three separate trusts:

- Trust A
- Trust M (which may be further divided into two trusts, M-1 and M-2)
- Trust B

Trust A authorizes the trustee to pay the trust's net income to TRST-1's named beneficiaries (TRST-1's three children and his companion and his children's mother, BENE-1). Trust B appears to be similar to Trust A and Trust M with its sub-trusts were designed with the generation skipping transfer tax in mind.

The following property was contributed to the trust and formed the trust corpus:

- (1) Office equipment

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- (2) Veteran’s Administration monthly payments for TRST-1’s disability.
- (3) A 1968 Airstream travel trailer.
- (4) A 1955 GMC truck.
- (5) Two quarter horses, \ and and one thoroughbred,
- (6) County property described as: The ADDRESS and the ADDRESS of ADDRESS, ADDRESS, County, State [with a physical address of ADDRESS, CITY STATE].
- (7) Other assets as they are determined.

The examination determined that the structure located at Address City, State, was used by TRST-1 as his residence as well as for the offices of ORG and the entity ORG (ORG) ORG.

On April 25, 20XX, the CO-1 was amended. Pertinent amendments are as follows:

- (1) The trust was renamed the CO-1 (hereafter ‘CO-1’).
- (2) The trusts were to be “deemed an association of Indians pursuant to the State Indian Welfare Act” and TRST-1 specified that the choice of law governing substantive issues to be the laws of the State of State, the “ORG ORG Act of 20XX” and the “Model Tribal Business Corporation Act”.
- (3) TRST-1 created as a sub-trust of the CO-1 two other trusts:
 - i. the CO-8, and
 - ii. the ORG.

These sub-trusts were to be created from property of the CO-1 as determined by TRST-1.
- (4) TRST-3 was removed as trustee and TRST-1 was named as trustee, with BENE-1 named as successor trustee.
- (5) The trust was amended to become an irrevocable trust with TRST-1, BENE-1 and four children named as beneficiaries (the fourth child, BENE-2 Mae TRST-1, is from an earlier marriage of TRST-1).
- (6) TRST-1 became restricted in that he could not sell the County “home-place” without the written consent of BENE-1.

On June 28, 20XX, a “Memorandum of Trust” was signed by both TRST-1 and BENE-1, as trustees. In it TRST-1 names BENE-1 as co-trustee and retains the right to revoke the trust at anytime, with the written consent of BENE-1. The Memorandum of Trust was filed with the County, State Clerk’s Office on July 16, 20XX.

TRST-1 has stated CO-1 is, for federal tax purposes, not a separate taxable entity and its transactions are reportable on his personal federal income tax return. CO-1 has not filed a federal information or income tax return.

(D) Relationship between ORG and CO-1:

During the examination of ORG TRST-1 provided four documents that were represented as setting out the terms of the relationship between ORG and CO-1. These documents are:

- (1) Memorandum of Understanding: dated January 1, 20XX and signed by TRST-1 and BENE-1, in which CO-1 provides
 - a. 20 acres County pasturage, with holding pen and vehicle storage area,
 - b. 4 room business space/law office with law library, office equipment, office furniture, bathroom,

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Name of Taxpayer ORG		Year Ended 12-31-20XX

Report of Examination of Form 990

- c. kitchen facility with cold storage,
- d. assorted tools, utensils, equipment,
- e. upstairs offices and bathroom,
- f. other property as indicated.

As consideration for the property listed above, ORG agreed to pay CO-1 and its co-trustees TRST-1 and BENE-1 \$ per month for the support of the CO-1's beneficiaries. It also provides that ORG is to pay CO-1 'a reasonable fee' for any additional property CO-1 make available for its use, to pay vehicle mileage at the government rate, defray the expense of insurance, fuel and vehicle maintenance. ORG was to pay for utilities and, as "(t)he CO-1 has the purpose of providing income and housing for the BENE-1-TRST-1 Family.." ORG could be evicted or be required "to reduce space in order to accommodate family needs of the home" if unable to pay \$ per month.²

- (2) First Addendum: dated July 31, 20XX is signed by TRST-1 and BENE-1 (TRST-1's signature is dated July 31, 20XX; BENE-1's signature is not dated). It states, in part, CO-1 and TRST-1 "... expect from time to time to transfer funds , as a loan without interest, for the use and benefit of ..." ORG. This addendum memorializes the following transfers:
- a. The net proceeds, interest free, from the 7-14-20XX sale of an office building in City, State of \$,
 - b. The transfer of an award of attorney's fee paid to TRST-1 in the case of Attorney v. Attorney, County, State, in the aCO-18nt of \$
 - c. A Veterans Administration check 'loaned' in December 20XX and recaptured in December 20XX
 - d. An acknowledgement that TRST-1 and CO-1 "will from time to time add or take away loan monies from..." ORG's accounts.
- (3) A resolution, dated 7-01-20XX. It is signed by TRST-1 as ORG CEO (not ORG) and by BENE-1, as "Trustee, ORG Chief CO-4 Officer". The Resolution states that the ORG CO-4 had various plans and offers to establish investments that had not materialized; that the Family Trust and its trustees had provided the CO-4 with most of its human, financial and physical resources; that the Family Trust had an opportunity to perform search and recovery operations in contract with CO-2 that "coincides with the purpose and function of the ORG to perform buffalo habitat, Indian, land and landowner surveys"; and, the CO-4 agreed to "participate and direct the survey along with search and recovery operations with CO-1 in accordance with the CO-2 contract and the CO-18 addendum attached hereto." This addendum is the Second Addendum below.

The provision of services under the contract with CO-2 was for the location, recovery and return of electronic equipment borne aloft by a balloon-craft released by the third party. The services and the revenues from these services are described in additional detail later in this document.

² ORG states this facility is that which is addressed at Address City, State. The 20 acres are the lands surrounding the home at this address. The examination, in a telephone interview of TRST-2, determined that during 20XX this home had been used by TRST-1, BENE-1 (the person who was TRST-1's wife) and their family as their residence. This structure has, at this same time, served as the offices of ORG, CO-9 and multiple entities that were established under the ORG umbrella (a detail of which follows in this report), as well as ORG.

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- (4) Second Addendum: dated July 1, 20XX (dated prior to the First Addendum; no explanation provided) and signed by TRST-1 and BENE-1, as trustees. The subject is stated as “Use of CO-2 Search and Recovery Contract Proceeds to Provide the Means to Perform Buffalo and Indian Lands Survey.” The addendum provides:
- a. That CO-1 assigns the CO-2 Search and Recovery contract to ORG “to provide a transportation system throughout State to identify persons and land suitable for raising buffalo and/or participation in ORG activity (volunteers, donors, meat distribution participants). TRST-1 and BENE-1 will be provided expenses for fuel, food and lodging in connection with the performance of the CO-2 contract.”
 - b. ORG will pay CO-1 \$ per month lease and rental compensation from the CO-2 Contract proceeds as outlined in the CO-18 of January 1, 20XX. It further provides payment as compensation of additional aCO-18nts available to TRST-1 and BENE-1 or others for expenses and to compensate them for their labors in performing search and recovery operations of the CO-2 contract.
 - c. ORG is to pay to, or on behalf of, TRST-1 and BENE-1 so much of the \$ aCO-18nts due and owing for the performance of the CO-2 contract and “Buffalo Land Survey”, so as to support CO-1 and its beneficiaries as a lease money consideration for the use of CO-1 resources, assets and opportunities. It provides that may be expended to reimburse or to compensate TRST-1 and BENE-1 for their services rendered on the CO-2 contract.

(E) ORG (ORG) ORG:

The entity ORG (‘ORG’) ORG, also known as ORG or ORG (hereafter ‘ORG’) was purportedly created on May 16, 20XX through a document styled as statute by TRST-1, the Indigenous Nations Federal Credit Program (FCP) ORG Act (also referred to as the ORG Act of 20XX, hereafter ‘ORG Act of 20XX’) and the Caddo Business Corporation Act.

The tribal ‘reserve’ is intended to be a “financial intermediary institution for Indian Country which promotes social and economic development for Indian Nations by providing or facilitating the provision of long-term investment capital and capital credit for the development of tribal economies. ORG will serve as a principal purchaser of tribal tax-exempt public and private activity bonds, providing Tribes with a ready market for their debt instruments.” ORG Act of 20XX, Section 3.

The distribution of ORG ownership interest, not stated in the ORG Act of 20XX, is set out in the Articles of Incorporation and Charter of ORG (ORG) ORG.

These Articles of Incorporation were signed by TRST-1 as CEO, ORG, TRST-3, Secretary, ORG, Chairwoman, Chairwoman, CO-6 of State, and EMP-1, Secretary, CO-6 of State, and are dated May 11, 20XX. The Certificate of Incorporation, CO-3, is signed by EMP-1, Secretary, CO-6 of State and Notary, and was filed May 16, 20XX..

These articles provide that the ORG’s capitalization shall be 100,000,000 shares, with a par value of \$ per share. Ownership is designated to be:

- 44% (or 44,000,000 shares) tribal ownership, with these shares to be owned by the subscribing tribes,
- 12% (or \$ shares) to be owned by the Native Founders Charitable Remainder Trust representing individual Indian ownership, and

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- the remaining 44% (44,000,000 shares) to be owned by investors (either Native American individuals, non-Indian individuals or Tribal ownership).

Of the 44,000,000 shares available for tribal subscription, 1000,000 shares are owned by the CO-3 who received those shares in return for 49% of their Reservation Branch Credit Program. No other Indian Tribe has acquired shares.

Of the \$ allocated to the CO-8, CO-1 has provided documents indicating that 2,750,000 shares are attributed to individuals who have worked in the activities of ORG and ORG. The remaining shares available to tribal subscription (43,000,000), to the CO-8 (9,250,000 shares) and the 44,000,000 available to investors are owned and controlled by CO-1. TRST-1 states that CO-1 received the 44,000,000 “investor” shares as compensation for TRST-1’s services in preparing TRA, establishing ORG and the relationships with Indian Tribes.

ORG’s business plan, according to the Business Operations Plan, is to:

1. Serve as tribal credit program trustee, escrow agent and financial intermediary for Tribes.
2. Issue tax exempt bonds and underwrite tribal bond issues on behalf of Tribes for domestic investors seeking tax-exempt bonds tied to Tribe’s essential government functions.
3. Establish a reserve sinking fund and bond pool to collateralize tribal bond issues.
4. Establish corresponding and cooperative relationships with National Banks and other foreign jurisdiction depositories and attract foreign capital investors to purchase tribal bonds.
5. Obtain U.S. guarantees and oversee development projects adherence to authorized budget and pertinent U.S. and Tribal Laws, create economies of scale in the credit program with audits and project oversight for federal and tribal compliance.
6. Investigate and assess contractors, sources of capital investment, and prospective bond purchasers for financial credibility so as to adhere to State, U.S., and Tribal Anti-Money Laundering, U.S. Bank Secrecy and Internal Revenue laws and regulations.
7. Coordinate bond issues and underwriting.
8. Provide uniform tribal regulation of financial agencies and coordinate tribal credit programs operations with federal agencies of the United States Departments of Treasury, Interior and BENE-4 in the context of the present government-to-government policy of the United States vis-à-vis Tribes.
9. Provide an intertribal investment pool and source of revenue for tribal shareholders and intertribal business and cooperative associations to govern the same.
10. Establish CO-4 to acquire lands through purchase and donations to provide suitable locations for wind power generators, buffalo grazing, and Native American Indian communities built around ecological and economic sustainability.

ORG Act of 20XX consists of one Act and various “sub-acts”. Section 1 states that for tribes who subscribe to shares “... the power and authority to establish the Indigenous Nations Federal Credit Program ORG Act (TRA) and Indigenous Federal Charter Association (ORG) ORG proceed from ...” the following:

- inherent and aboriginal sovereignty of the tribes
- the U.S. Constitution, the federal charter of the tribes and their tribal constitutions,
- the U.N. Charter and U.N. Declaration of Human Rights
- the State Indian Welfare Act. 25 U.S.C.A. (1936)

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- the Indian Reorganization Act, 25 U.S.C.A. (1936)
- the Indian Financing Act of 1974, 25 U.S.C.A. (1974)
- Internal Revenue Code section 7871

Section 2, ORG Act of 20XX, states that the ORG is established as “the sovereign financial entity of the subscribing Tribe(s)” and “shall operate as a bond-based financial entity in which financial transactions shall be underwritten through the purchase, sale or redemption of bills, notes, bonds or other instruments of indenture of the Tribe(s) or the Tribes’ political subdivisions.” Operated under the name of the ORG (‘ORG’) ORG, its purpose is to “maintain a system of ORG Credit Programs and Tribal Reservation Branch Credit Programs owned, controlled, and operated” by the tribe “in conjunction with other member tribes or federally recognized native corporations”, it “shall be a body corporate and political, and an essential government agency, of the Tribe(s).”

Section 47 provides for the ORG’s profit distributions with 44% to be paid to the holders of the ORG’s capital stock according to the number of shares they hold, 44% to be paid to the subscribing Indian Tribes or to designated treasury shares (for the benefit of the CO-5 and the CO-4 Fund, and the remaining 12% to be paid to the Native Founders Trust.

ORG has not filed any federal income tax or information returns.

(F) ORG and entity CO-4:

The ORG Act of 20XX authorized an entity named the CO-4.

Item 3, Section 22, “ORG May Make Certain Limited Loans and Uses of ORG Fund Proceeds, CO-4 Fund Created”, ORG Act of 20XX, states:
CO-4 Fund Created.

Section 311, CO-4, Chapter Three, ORG Bond Act, states, in part:

Whereas, many Indians suffer from dietary diseases, their traditional dietary sources having been destroyed.

That the purpose of this subsection is to bring Native American Bison back to the Native American Indian people and to restore a health diet and traditional food sources for Indians and to make a profit by reserving lands upon which Buffalo graze and prosper.

There is established as part of the CO-5, a CO-4. 25% of all CO-5, principal and interest will be invested in the CO-4 for the purpose of acquiring suitable land and quality buffalo for the establishment of self-sustaining buffalo, elk, moose, antelope and deer herds and related indigenous flora and fauna, and for the further purpose of providing food for Native American people from the harvest of bulls, barren heifers and disabled animals, which harvest will be divided equally between the members of the subscribing Tribes, who will be required to bear the cost of slaughter and transport from their account with the ORG.

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The CO-4 will serve valuable cultural, scientific, ecological purposes and will be regulated by the ORG Board pursuant to rules joint established with the ORG Board of Governors, with coordination with the Secretary of the U.S. Department of the Interior, and interested state agencies.

Admission to ORG CO-4 Property:

1. Enrolled members of subscribing Tribes and their spouses are eligible for entry subject to rules established by ORG with the approval of the ORG Board of Governors, with special regard given for conduct of ceremonies, powwows, Indian rodeos, and traditional observances and rituals.
2. General Public: Fee admission for camping, wildlife observation, photography, hiking, fishing, etc. Indian conducted – fee based hunts for surplus animals, which meat to be distributed to ORG subscribing Tribes. Non-Indians pay an amount (e.g. \$) to bring down a buffalo with bow, powder (no lead bullets or slugs) or rifle (no hand guns). The hunter is eligible for no more than 20 pounds of meat...

The CO-4 staff will be supervised by the ORG Board subject to rules and regulations jointly agreed to by the ORG Board and the ORG Board of Governors, subject to the laws of the Tribes and the United States.

Section 312 of the ORG Act of 20XX CO-4, Powers of the ORG Board over ORG Trust and CO-4, provides, in part, that the CO-4 is under the authority of the ORG Board and ORG Board of Governors.

To distinguish the CO-4 from ORG:

- ORG’s activity limited to exclusively IRC 501(c)(3) charitable activity; the CO-4’s activities are not limited to exclusively IRC 501(c)(3) purposes
- ORG is managed and controlled by its trustees; the CO-4 is controlled by the ORG Board.
- ORG applied for IRC 501(c)(3) exemption; the CO-4 has not applied for IRC 501(c)(3) exemption.

(G) ORG’s Claim of Sovereign Immunity:

In documents provided the examination ORG asserted it is tribal entity and has derived sovereign immunity by virtue of that status. ORG’s Business Operations Plan states:

ORG is both federally and tribally chartered, and is a 99% Indian-owned sovereign immune entity, which services as an inter-tribal financial intermediary vehicle for the issuance and placement of IRS-authorized non-exempt and tax-exempt tribal bonds. ORG is eligible to receive U.S. Guaranteed loans from a variety of programs to secure the Tribe’s’ bond issues. Donations of money and property to the ORG CO-4 and ORG return lucrative tax benefits to the donor. ORG controls and coordinates these activities, through our qualified lawyers and accountants and based upon our government-to-government relationship with the IRS Office of Tribal Governments.

The claim of sovereign immunity is also stated the ORG Act of 20XX, Section 2, subsection 101 “ORG (ORG) ORG” that notes this act “establishes the ORG (ORG) ORG as the sovereign financial entity of the subscribing Tribe(s).”

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ORG has, in court documents filed in Case No. _____, repeated this claim of sovereign immunity. In this case's documents ORG's claimed sovereign immunity is said to be derived through the ORG's relationship to or involvement with the Indian tribe, the CO-3.

ORG's claim of sovereign immunity is derived from the CO-6 of State, a recognized Indian Tribe, and ORG's relationship with that tribe as has been established by following (some of these documents have already been mentioned):

- The CO-6 of State, sometimes referred to as the CO-3, is a Federal corporation that has received its corporate charter under the State Indian Welfare Act of 1936, 49 Stat. 1967. It is, in other words, officially recognized by the federal government as an Indian tribe. The tribe's Constitution and By-laws were ratified on January 17, 19XX and its corporate charter was ratified on November 15, 19XX. The Constitution and By-laws were amended in 19XX, and again in 20XX.
- In or around May 20XX TRST-1 presented the CO-6 with a proposal to improve the economic situation of the CO-6 of State. The proposal included:
 - : a Caddo Business Corporation Act that would provide tribe the statutory and regulatory framework for the establishment of Caddo Indian tribally chartered corporations. Prior to this, CO-6 of State did not have a Business or Corporation Act.
 - : the Indigenous Nations Federal Credit Program ORG Act (the ORG Act of 20XX) to establish "a financial intermediary institution for Indian Country which promotes social and economic development for Indian Nations by providing or facilitating the provision of long-term investment capital and capital credit for the development of tribal economies. ORG will serve as a principal purchaser of tribal tax-exempt public and private activity bonds, providing Tribes with a ready market for their debt instruments." ORG Act, Section 3.
 - : a Share Exchange and Merger Agreement wherein the CO-6 of State exchanged 49% of its Reservation Branch Credit Program for 1% (1,000,000 shares) in ORG from ORG.
 - : a Management Agreement in which essentially all Tribal Credit Program management positions are assigned to ORG, or its assigns.
- CO-3 Resolution 05-20XX-04, dated May 16, 20XX, signed by Chairwoman as Chairwoman and EMP-1 as Secretary of CO-6 of State, in which the CO-6 of State resolved and enacted the following:
 - (i) Enacted the Share Exchange and Merger Agreement
 - (ii) Enacted the Management Agreement
 - (iii) Enacted the ORG ORG Act of 20XX and the Business Corporation Act
 - (iv) Authorized ORG and the ORG Reservation Branch Credit Program to use the 'Great Seal of the tribe'.
 - (v) Ratified and agreed to the Articles of Incorporation of ORG

ORG's status as a sovereign immune entity is unrelated to ORG's IRC 501(c)(3) exemption as ORG's status as a sovereign immune entity was not a factor in the determination that ORG was, when the determination was made, an organization described in IRC section 501(c)(3).³

³ In its literature, available on the Internet, and in its letterhead, ORG claims to be a "Native American cooperative association." This claim is echoed by TRST-1 in a court document filed in Case No. _____ entitled "Plaintiffs' Chairman TRST-1 and ORG's Joint Motion to Dismiss Defendants' _____"

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(H) Assets reported on Form 990 for year ended 12-31-20XX; Subtrusts:

For the year ended 12-31-20XX ORG did not file the annual information return Form 990, Return of Organization Exempt From Income Tax, required for an organization exempt from federal income tax under IRC section 501(a) as it represents that it did not have gross receipts of more than \$ in the year ended 12-31-20XX.

ORG did file Form 990 for the year ended 12-31-20XX, reporting Gross Receipts of \$ Total Expenses of \$ and Total Assets at 12-31-20XX of \$\$. Its reports these assets as comprised of the following:

- Land (130 acres County)	\$	\$
- Uncut rubies assigned irrevocably (CO-10)	\$\$	
- State land assigned to trust (CO-11)	\$ \$	
- Proven gold deposits (CO-12)	\$\$	

The examination of ORG for the year ended 12-31-20XX determined:

(1) the land is stated to be that land purchased in 20XX for \$\$ and is shown as being jointly owned by three entities:

- a. ORG,
- b. ORG Credit Program, and
- c. CO-9 a State Limited Liability Company. TRST-1 states ORG is the only member of CO-9 .

The examination was provided documentation by ORG that established:

- The purchase of the land was financed with a promissory note of \$\$; the reported \$\$ aCO-18nt, in excess of the purchase price and not representing the property's fair market value, is unsupported by documentation and ORG is unable to reconcile to the reported aCO-18nt.
- In March 20XX, \$ that on 12-17-20XX had been deposited to an account entitled ORG CO-4 C-Trust, CO-13, was applied in part to principal payment and in part to interest payment.
- A new promissory note of \$ was entered into by these three entities on 7-20-20XX, reflecting the inclusion of accrued interest in the principal .

TRST-1 stated that these 130 acres were to be used for the various exempt projects of ORG, to include:

- serving as the area in which a buffalo herd was to be developed (the area being referred to as the 'CO-4'),
- to serve as the site at which fee paying customers would hunt buffalo so as to provide buffalo meat for distribution,
- habitat conservation, serving as a conservation area for indigenous species,
- to sell or lease portions for use in commercial tourism development, to serve a tourist destination and a vacation resort with camping, hiking, horseback riding, fishing and thereby to further foster the expansion of commercial tourism in this region and promote Native American business development,
- and to serve as the site for youth day camps with emphasis on urban and minority youth that would include those youths from the Boys and Girls Clubs. TRST-1 states ORG, through himself as ORG

Counterclaim and Third Party Claim and Brief in Support," filed with the District Court of County, State on October 11, 20XX. In that pleading, TRST-1 states that "ORG was created pursuant to the State Indian Welfare Act 25 USC Sec. 501-507." Communications with the Bureau of Indian Affairs office, however, reveal that before a group of Indians or tribes can be certified as an Indian cooperative, application with the BIA must first be made. No such application has been made by or on behalf of the CO-6 and/or ORG, nor has certification as a Native American Cooperative Association been granted.

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trustee and other individuals who were part of ORG’s operations, were involved in and had worked towards establishing Boys and Girls Clubs in State communities.⁴

The examination determined that no development had been made to the 130 acres. Though TRST-1 states that ORG had begun training counselors that were to conduct the youth camps, TRST-1 disclosed that no youth camps were conducted.

TRST-1 did note that ORG had, in a later year, conducted a buffalo hunt that it had paid to have the filmed with the intent of using the film in a promotional and marketing effort. He noted that the dead animal had been butchered with some of the meat being used to prepare chili at ORG events, at an Absentee Shawnee voter registration drive and at other events that he, BENE-1 or others had attended as representatives of ORG or events for which ORG was a sponsoring organization. TRST-1 further noted that some of the buffalo meat had been distributed to promote ORG’s goal of developing a buffalo herd that would be used to reintroduce buffalo into the Native American diet.

- (2) ORG did not own or control \$\$ uncut rubies, \$\$ of State land nor \$\$ of gold deposits. TRST-1 provided the examination documents represented as creating entities, referred to as a ‘subtrust’ of ORG, which are said to have controlled assets or had been assigned an interest in assets that are stated to have such values. TRST-1 stated that the other ORG trustee TRST-2 who had prepared the Form 990 information return for the year ended 12-31-20XX had incorrectly included as ORG’s assets the uncut rubies, the State land and the gold deposits but had no explanation why he had signed the return with these substantial assets if it was incorrectly prepared.

TRST-1 noted that each ‘subtrust’ had two trustees and that he had served as the trustee from ORG. The other trustee was appointed by a third party who is supposed to have provided the asset or the interest in such asset being placed in the subtrust.

TRST-1 explained that, in general, the subtrusts used the interest in these assets as collateral to solicit funds from investors for a number of projects, such as the construction of a power plant or construction of a ski and summer resort. These projects appear to have been championed by ORG or, as TRST-1 termed them, individuals who had served as agents for ORG. ORG’s involvement often was as the entity that would secure tax-exempt bond funding, given its IRC 501(c)(3) exemption, for the projects. The projects, represented as enhancing the economies of the rural communities and Indian tribes in the project’s vicinity, were to have involved non-exempt entities and private investors who would plan, manage, construct, and operate the project if and when it was completed.

- a. Uncut Rubies- ORG-CO-14 (also referred to as CO-10 or the CO-14): In a trust arrangement in which ORG and an individual EMP-2 were trustees, ORG stated the entity ORG-CO-14 had been ‘assigned’ by ‘CO-14’ (CO-14s) rubies that had a retail replacement value of not less than \$\$\$. No gemologist appraisal of \$\$\$ was available to the examination. No title, deed, invoice or any other

⁴ As evidence of that involvement, TRST-1 has pointed to the formation of the Boys and Girls Club of America that had been formed in City State and reported in the February 7, 20XX edition of City newspaper, The Express-Star. That formation predates ORG’s application for exemption and ORG’s declaration of trust.

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document establishing the existence of 2,846,290 carats of ruby/sapphire crystals listed in the subtrust’s schedule or the ownership of these stones was presented to the examination. In addition no documentation was presented to the examination to support the stated value or support any ORG interest in these gemstones.

TRST-1 stated to the examination that these stones would be used to secure financing for investment the subtrust would make. One investment, disclosed in an Engagement Agreement, was that these gemstones would be used as collateral in arranging the financing for the construction of the ‘ORG’ (an explanation of this project follows below). The agreement provided that “in consideration for the gemstones assets used as collateral, to include a UCC-1 filing on the assets, for the financing by bond issuance of CO-15 CO-14 will receive \$ at closing and a 25% net profit/cost bearing interest in the CO-15. Moreover, in the event that investments are made in fuel production, distribution or fuel purchase to create equitable ownership, in that event CO-16, will have a pro-rata share based upon the agreement or the 25% ownership strategy contained within this provision in relation to other vertical energy integration strategies...” The subtrust documents did not specify the manner in which any of the other funds obtained through this agreement were to be invested.

TRST-1 noted that the solicitation for the investor to this subtrust not been carried out by ORG but had been carried out by others. In a letter to EMP-2, representing CO-16, reciting the terms of Arena Enterprise’s compensation, TRST-1 signed the letter as Chairman and CEO of ORG and as trustee for ORG.

According to the documents of the ‘subtrust’ entity, ORG would establish a bank account to hold the assets of the subtrust and execute a power of attorney to that account appointing TRST-1 and EMP-2 as the power of attorneys, with TRST-1 having final approval for all transactions and agreements. For its involvement ORG “may charge a reasonable and customary fee for establishing and managing a support trust” though TRST-1 stated that ORG received no compensation or funds from the subtrust.

ORG disclosed to the examination that rubies, with a represented value of \$\$, were part of the collateral used to secure a loan of \$\$ from by a State bank to IND-1 (‘IND-1’), an individual connected with ORG, in December 20XX. Though the loan proceeds were to pay certain up-front costs for the construction of a power plant, IND-1 is the borrower on the promissory note. ORG pledged as collateral for this loan a performance guarantee bond of \$\$ issued by Underwriters Reinsurance Co., Ltd. In addition, to collateralize the loan’s \$\$ interest required by the bank, ORG pledged two lots of rubies of total weight of 14.74 kilograms that, in some of the correspondence between the parties, are represented as having a value of \$\$.

Though TRST-1 has stated that ORG received these gemstones through the CO-10 arrangement, ORG provided no documentation as to how it gained an interest in these rubies sufficient to have presented them to the bank as collateral.

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The power plant whose up-front costs were to be paid with these loan proceeds (as was represented to the bank) is a 20 (revised from an earlier 30) megawatt electricity generating power plant construction project to be located near City, State (site for the 30 megawatt facility was net City, State)⁵. One of the project’s financing scenario was that ORG would issue tax-exempt bond to finance the project (this project is sometimes referred to as the CO-9 Power Project)⁶. Project documentation indicates a project cost of \$\$ for the 20 megawatt facility (\$\$ for the 30 megawatt facility). Beyond this \$\$ loan to IND-1 there is no indication that any other financing was secured.

When IND-1 defaulted on the loan, the lending bank sought to recover the funds and eventually brought suit against IND-1, ORG, ORG and the insurance company that had provided the performance guarantee bond. During the litigation ORG, in an Agreed Journal Entry filed March 28, 20XX, in the case CO-17; ORG; and TRST-1 as Principal Officer for the ORG, plaintiff, vs IND-1, ORG, ORG CO-4, Underwriters Reinsurance Co., Ltd., and EMP-2, Case No. District Court of County, State of State, ORG, through its counsel TRST-1, agreed to the court’s order awarding all interest ORG had in these rubies to the plaintiffs.

- b. State lands- ORG CO-4 CO-18 (also referred to as the ORG-CO-18 Subtrust and the CO-11): In this trust arrangement ORG and a for profit enterprise, CO-18, ('CO-18') each appointed a trustee that would have joint power and authority with respect to the trust’s estate. The declaration of trust indicates that CO-18 convey, assign, transfer and deliver certain property to this subtrust (though requested by the examination, the schedule listing the property was not part of the documentation provided the examination by ORG). The engagement agreement between ORG and CO-18 states CO-18 “engages ORG as its consultant to assist CO-18 in establishing an investment loan fund using ORG subtrust ...” for which, as compensation, “ORG will be paid 2% of the total principal sum at the time the funds are placed in the ORG-CO-18 subtrust...”

In general, \$ of tax-exempt funding to be secured by ORG would be used to finance the development of 1,400 acres of privately owned land within the Fish Lake National Forest into a ski and summer resort development involving lifts, 2,300 condominium units, 692 hotel and motel rooms, a 130,000 sq. ft. of retail-commercial area and 240 residential lots. The documents provided to the examination by ORG did not establish who would develop, operate and manage the project had the project been realized. TRST-1 represented to the examination that no financing was ever secured, the development was not started, and that ORG received no funds from the subtrust.

⁵ In a documents provided by ORG, 'City Power Project Preliminary Offering Terms', the stated project cost is \$ and "ORG will permit, relocate, construct and install a twenty (20) megawatt power generating facility on two (2) acres in City, State with the intent of selling power to Rural Electric Power Retail Customers as wee as the Department of Energy... ORG and its partners will own the power plant and CO-15 will operate and manage it." The project's correspondence states that, in order that the bonds qualify for tax exempt status, the power plant would be owned by ORG and, once constructed, managed and operated by CO-9.

⁶ The entity CO-9 a State limited liability company managed by TRST-1, was involved in the project planning to construct and operate the 20 (or 30) megawatt power plant. From documents TRST-1 provided the exam, ownership of CO-9 was variously 51% ORG, 49% Inside the Fence LLC (an State LLC) or 51% ORG, 44% Inside the Fence LLC, 5% Town of City, State. Other documents indicate TRST-1, TRST-2 and others within ORG would be paid hourly rates from a \$ month retainer that would be increased to \$ month after 'bond capitalization'. TRST-1 states neither he, CO-1, ORG or ORG had any interest Inside the Fence LLC.

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ORG provided no documentation indicating it had received title to this real property or that the real property involved in this venture had a value of \$\$.

- c. Proven gold deposits - CO-12: In this trust arrangement, also known as ORG-CO-12, ORG and CO-12 Group LLC served as trustees. In the engagement agreement with CO-12 Group LLC ('CO-12'), CO-12 is to "identify and acquire various assets and place in trust with ORG to include precious stones worth approximately \$300Million, (sp) precious metals valued at \$ and other assets from time to time which will be identified ... and engages ORG as its consultant to assist CO-12 in establishing an investment loan fund using ORG Subtrust, and which Subtrust account will be controlled by an agent appointed by CO-12 pursuant to the attached 'Special Power of Attorney' agreement..."

The engagement agreement provision for compensation, it states "... CO-12 agrees that ORG will be paid 10% of any ORG-CO-12 returns on investments to be paid at quarterly intervals and/or at the termination of this agreement. CO-12 Group, LLC will be paid 90% at quarterly intervals on all ORG-CO-12 return on investment ..."

TRST-1 stated that the strategy was to secure loans, using the assets that would be placed in this subtrust as collateral, and use those funds to finance investments and projects. He noted that he was uncertain whether this entity was ever formalized and that ORG received no funds from the subtrust.

ORG provided no documentation indicating it had received any interest in mineral deposits or any gold holdings and TRST-1 stated that ORG had not received any such interest.

(I) ORG Financial Transactions in 20XX:

ORG's 20XX revenues and disbursements were reviewed through the analysis of the deposits to and disbursements from ORG's single bank account, account, CO-19, City State. Stated below is information as to the sources of the deposited funds and the nature of the disbursements.

(1) Funds Deposited to ORG's Bank Account in 20XX

ORG represents these deposits of \$\$ are substantially all of ORG's receipts in 20XX.

Table Deleted

ORG's identification or explanation as to the source of the funds:

- (1) ORG states funds are a transfer of funds to ORG from CO-1 through ORG/ORG Credit Program. ORG provided no documentation as to source of funds.
- (2) Funds received from TRST-1 as an interest free loan. ACO-18nt is \$ payment received by TRST-1, an State Attorney, as full satisfaction of his attorney's lien of \$ for his legal services to 3rd party.
- (3) TRST-1 states this is a rent payment for 3rd party's use of CO-1's travel trailer. ORG provided no documentation as to source of funds.
- (4) Funds received from CO-1 as an interest free loan. CO-1, as seller, receives \$ as net proceeds from the sale of its real property located in City, State.

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(5) and (6): Payment from CO-2 for retrieval and return of skysite electronic package to CO-2.

(7) Funds received from TRST-1. TRST-1 states these funds are from a disability payment made to him by the Veterans Administration. The following day ORG disbursed \$ to TRST-1 Attorney Trust. ORG states the disbursement made the day after the deposit was made was ORG’s repayment of TRST-1’s loan to ORG.

The aCO-18nts in (2) and (4) are specifically identified in the First Addendum to the CO-1/CO-4 Memorandum of Understanding, dated January 1, 20XX previously described above in (D).

(2) Funds from Services to CO-2

In October 20XX ORG entered into a ‘Skysite Recovery Contractor Agreement’ with an unrelated corporation, CO-2 (hereafter ‘CO-2’). TRST-1 signed the agreement for ORG as “Chairman”. In the agreement CO-2 is described as providing “wireless communications services and products operating over the CO-2 Network” that utilizes a balloon-craft to transport an electronic package of ‘ReFLEX transmitters and receivers’ (referred to as a ‘skysite’ in the agreement). CO-2 engaged ORG to locate, based on an approximate location provided ORG by CO-2, retrieve and return to CO-2 the skysite electronic package (i.e. the transmitter/receiver package) for which ORG is paid a fee. The agreement provides that ORG will be paid \$ for each skysite delivered to CO-2 within one week of CO-2 providing the retrieval instructions, \$ if the skysite is returned between one and two weeks of ORG receiving the retrieval instructions and \$ if after two weeks. If the skysite is collected from a 3rd party, the fee paid is \$.

The expenses of travel, equipment, etc., incurred in providing CO-2 these services is, per the agreement, the sole responsibility of the ‘contractor’, ORG. The agreement also states that the ‘contractor’ will take those steps necessary to protect the environment, the safety of himself and of third parties and the rights of third parties when performing these services. Acknowledging that the services necessarily includes hiking, backpacking, climbing, scavenger hunting and other outdoor activities, the ‘contractor’ represents that it has the special skills, expertise and experience to be able to provide the services covered by the agreement.

TRST-1 stated that he and BENE-1 performed these services. Per the Second Addendum to the CO-1 - CO-4 Memorandum of Understanding, dated July 1, 20XX (previously described above in (D)) CO-1 ‘assigned’ the contract to ORG for which TRST-1 and BENE-1 would be provided expenses for fuel, food, lodging in connection with their performance of this contract’s services. ORG stated “TRST-1 and BENE-1 volunteered to perform the CO-2 contract and did not receive compensation for those volunteer services.”

In 20XX, CO-2 paid ORG \$ for these services. ORG deposited \$ of CO-2’s payments to its bank account (November 20XX: a net deposit of \$; payment was \$ and \$ returned to TRST-1 as cash; December 20XX: \$). TRST-1 notes the remaining payment of \$ not deposited to ORG’s account was cashed and used to cover the expenses incurred in carrying out the search and recovery services.

ORG has stated the CO-2 revenue is income from an activity related to its exempt status and not income from an unrelated business activity. It states it is related as the “business of ORG-ORG is to go upon lands throughout State to survey for land, buffalo and volunteers to further the Trust’s land-related functions” and as the “CO-2 Search and Recovery Contract performance involves the same related transportation network, and it has served to facilitate in identifying land and buffalo for the ORG central mandated purpose, which is to establish CO-4s.” It states “ In the CO-4 and CO-2 contract business activities, both businesses operated through the activities, which

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include: mapping, transportation, surveying and entry on the land, identifying land owners according to interest in the program and Indian landowner status, identifying flora and fauna, identifying availability of lands or individuals for ORG projects.”

ORG’s statement did not address how the retrieval and return of the skysite package, which is the service for which CO-2 paid, were directly and substantially in furtherance of ORG’s charitable objectives.

(3) Funds Disbursed From ORG’s Bank Account in 20XX

The disbursements from ORG’s bank account totaled \$ in 20XX. Of this amount, the examination determined that the following amounts were disbursed directly to TRST-1 and to BENE-1, for utilities to the house provided by the CO-1 from which ORG, ORG and ORG’s related entities and activities operated, for expenses related to automobile(s) used by TRST-1 or BENE-1, for food and for personal type expenses:

Table Deleted

(a detail of these payments follows)

(1) ORG’s payments made directly to TRST-1 or for TRST-1’s benefit:

Table Deleted

(see below for ORG’s response as to the reason for these disbursements)

(2) Payments made directly to BENE-1:

Table Deleted

(3) Payments made by ORG for utilities to the house leased to it by CO-1:

Table Deleted

(4) Automobile related payments:

Table Deleted

(5) Payments for food and other personal type expenses:

Table Deleted

The examination asked ORG to provide documentation for a sample of ORG’s payments so as to establish the disbursements were consistent with the organization’s exempt activities. The expenditures included payments to TRST-1, to BENE-1, to a gasoline company, to three different utility companies and to the State State Department of Human Services. ORG, in response to this request, stated:

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- (a) The payments to TRST-1 and BENE-1 were "... payments to TRST-1 as trustee for the CO-1 lease compensation due or as expense monies for ORG-ORG operations and CO-2 contract operations", or were aCO-18nts paid them "...for CO-2 Contract support and fulfillment, and to repair F-35 engine Ford Truck used in Search and Recovery and ORG-ORG survey operations" or were "utility payments related to CO-18 and resolutions". The CO-18 and resolutions are those discussed in (D) above in which CO-1 would provide real and personal property to ORG for which ORG would 'make available' \$ to CO-1's trustees TRST-1 and BENE-1 for the support of CO-1's beneficiaries (i.e. TRST-1, BENE-1 and his family members), that vehicle mileage would be determined at the US government rate so that ORG would "defray" the expense of insurance, fuel, and maintenance, and pay the cost of utilities .

The examination noted that aCO-18nts paid TRST-1 and BENE-1 were not entered into any accounting that indicated whether the payments made to TRST-1 or BENE-1 were rent payments under the terms of the CO-18 and resolutions, or reimbursements of expenses on a mileage rate or repayments of aCO-18nts that had been received from TRST-1 or CO-1 as loans. In fact, ORG's documentation included no accounting of the total of CO-1's loans to ORG nor of the outstanding loan balance. ORG's documentation did not include an accounting for the accrual of rent expenses due CO-1, the total of such rent due or for the application of any of the payments made as a reduction of that rent expense.

The examination did determine that no Form 1099 had been issued to TRST-1, BENE-1 or CO-1 to report any part of these payments and that no Form W-2 issued to TRST-1 or BENE-1.

ORG did not provide any documentation or accounting to substantiate any of the payment as reimbursement of ORG's expenses. For ORG's payment of \$ to the State of State Department of Human Services, TRST-1 provided documentation establishing the payment as payment of a child support payment he is required to make.

- (b) With respect to the automobile expenses, ORG 's documentation consisted of service station invoices for services to two vehicles. Though ORG stated the payments were for vehicles used in the search and recovery services to CO-2 it provided no documentation to substantiate the business use of these vehicles.
- (c) The documentation for the utility payments did not establish the periods of service, the property or location of service, nor that the service was entirely ORG's expense. The documentation provided contained no accounting to substantiate the utility payments as payments of ORG's expenses.

The examination determined that ORG issue no Form 1099 to TRST-1, BENE-1 or CO-1 and none of these payments to TRST-1 or BENE-1 were reported on Form W-2 as compensation paid these individuals.

(J) ORG's Activities in 20XX:

ORG's operations were officed in the structure located at Address City, State, the same structure CO-1 is represented as having leased, along with furnishing, to ORG. This structure, located on surrounding acreage that is referred to as pasturage, is a two story building containing several rooms on two levels. The first floor's rooms

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include a kitchen, bathroom, a number of smaller rooms and a large room that contains a large table, bookshelves and desks. The upstairs rooms include a bathroom, a loft, a storage room and a bedroom. Notably, TRST-1 also used this house as his residence. The examination also determined that this location had also served as the offices for ORG, the various activities and enterprises of ORG such CO-9, and the various subtrusters that operated in 20XX and that all these operations had used the same space and equipment of CO-1.⁷

In 20XX ORG represented that its activities included the following:

(a) working towards the establishment of youth day-camps on the 130 acres in County, State described above. The planned youth camps and the other outdoor and nature programs were to be conducted on this land that is often referred to as ‘CO-4’ and was to include swimming, horseback riding, equestrian education, canoeing, yoga, hiking, rock climbing, fishing, and wildlife education. Though TRST-1 stated ORG had no horses, horseback and equestrian activities would have used horses provided by the horseback riding venture referred to as CO-20.⁸

TRST-1 stated that he had started training individuals who would serve as counselors/trainers but that no youth camps were actually conducted.

(b) Among the documentation presented by ORG as establishing that it had conducted activities in furtherance of its exempt objectives were the following applications for funds. These applications were dated subsequent to 20XX but which were presented as representing the continuation of the activities of 20XX:

(1) ORG CO-4 Proposal to the Land and Water Conservation Fund, State Tourism and Recreation Department, dated January 31, 20XX, for the project named CO-4. The submitted funding application requested \$\$, and with the total project cost being estimated as \$\$ the application stated that the remaining project funding would be from the ORG, in the form of the donation of land (40.525 acres) valued at \$\$ and from its donation of labor and equipment valued at \$\$\$. The purpose of the requested grant was to “(p)rovide outdoor and indigenous cultural education to minority and disadvantaged youths, preserve indigenous keystone species, maintain pow-wow grounds, camping facilities, nature tourism information, fishing, wildlife viewing, native seed nursery, and bison raising facilities.”

(2) ORG CO-4 Application for funding, to Administration for Native Americans (ANA) FY 20XX for New Community Based Projects. The funding title: Social and Economic Development Strategies for Native Americans, with the application due date of April 4, 20XX. ORG stated the submitted application was intended to secure funds for a project entitled ‘Operation Noah’ that had a budget of \$\$ in federal funds and \$\$ in non-federal funds, for a total project budget of \$\$\$. The non-federal fund sources were to be, in part, revenue from guided buffalo hunt fees conducted on the land located in City State, providing food services to State Indian cultural events, and the sale of buffalo meat, fees from camping and eco-tourism activity.

⁷ Listed by ORG as “twenty acres, four rooms, four personal computers, copy equipment, office furniture, law office with library, bedrooms, kitchen facility, with cold storage, assorted tools, utensils, equipment, several vehicles and storage area for vehicles, and animals”

⁸ CO-20 was, per TRST-1, not officially formed because the necessary paperwork was never filed with the state of State. Nevertheless, the venture was an activity between ORG and individual EMP-3. EMP-3 would operate the horseback riding concessions at two sites, Park and CO-21 (both in the area of the 130 acres in City State), per its Concessionaire Lease Agreements. Financing for the venture, while it operated for a short time in 20XX, was in part from funds from a line of credit secured by the 130 acres in City State. TRST-1 stated the concessions operated only for a short time, were mismanaged by EMP-3 and were not profitable. Though it had been intended that the youth camps horseback riding and equestrian activities would have been led by EMP-3 using the horses of CO-20, no youth camps, horseback riding or equestrian activities were ever held.

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The project’s stated objectives were wide-ranging and included to “identify and establish networks for charitable and commercial buffalo and production distribution (sp)... (w)iden the donative and volunteer base for Operation Noah and get more participation in First Peoples’ Coalition ... (s)tart-up one Boys and Girls Club with South State City community partners... and send 100 children to nature-based and traditional cultural day-camps or a lesser a CO-18nt on overnight outings... distribute 25,000 pounds of buffalo meat to Central State Indians and to sell 25,000 pounds for profit to sustain charitable meat distribution network and youth programs... CO-4s for Nature Education and guided hunts ... primitive camping facility... partnerships with hunting and bison grower communities... (c)onduct education programs at CO-4 to service community youth...(a)quire three year leases on two suitable Central State Indian allotments to be used as a pilot program to bring buffalo to Central State Indian land-owner families.”

It is noted that ORG did not receive any funding from either of these programs.

The examination’s review of the ORG-provided documentation also determined that ORG had not established the educational or cultural activities described in either of these applications at the 130 acres in City State where the activities described in these applications were to be conducted.

(c) assisting in the establishment of Boys and Girls Club in State City. ORG’s literature stated “The CO-4 has individuals and corporate partners in establishing Boys and Girls Clubs in South State City and rural communities afflicted with gang violence.” From other literature presented to the examination, TRST-1 and BENE-1 in 20XX participated, as representatives of ORG, in meetings for the purpose of establishing a Boys and Girls Club in south State City. Two other individuals, listed as members of ORG’s Board of Directors, TRST-3 and John Edwards, also participated in this effort. Documentation of this effort for the formation of this youth group included an application for funds to the State City Foundation on ORG letter-headed stationery, the submission of a letter of inquiry for a grant application to Samuel BENE-3s Noble Foundation, also on ORG letter-headed stationery, in which ORG’s support for the Boys and Girls Club was presented as one of its activity warranting grant support, and a proposal for grant support to the Farm Aid organization to assist ORG in establishing Boys and Girls Clubs for “rural Indian Country youth”. According to the documents ORG provided, these efforts for the formation of a Boys and Girls Club continued into 20XX after which date there is no further indication the effort continued. Had this Boys and Girls Club been formed it would have been an entity separate from ORG. ORG itself did not conduct any educational or recreational program for youth.

(c) ORG states that it had provided internship to three students from the University of State. Two of these students, INT-1 (‘INT-1’) and INT-2 (‘INT-2’) in the university’s Native American Studies program, received no compensation. The third student, INT-3 (‘INT-3’) , an engineering major, received a small stipend each semester.

ORG stated that the interns “assisted with the intertribal government sponsored group, American Indian Exposition”. In a document titled Goals and purposes with the ORG INT-1’s goals were listed as: expand on the knowledge of how to create economic development, create funding for tribes to perform economic funding, investigate the legal issues of economic development, break the legal issues down to level grounds of understanding, philosophical knowledge of tribal government. INT-2’s focus of internship stated on his application for internship to the university’s Native American Studies Program was “Tribal Economic Development” with the objective for the internship being “Exposure and familiarity to economic development”.

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ORG states that INT-3’s internship was not formalized with the university and there is no similar statement of focus or objective.

ORG stated INT-1’s internship culminated in his design of a youth camp and CO-4 for his tribe and that the activities of the Native American Studies interns INT-1 and INT-2 were “conducted for them to understand and assist their tribal government in economic development planning, land use, Boys and Girls Clubs, CO-4s, youth camps and The American Indian Expo.” It further noted that INT-3 and INT-2 had prepared and served buffalo products for the Expo board.

The documentation ORG provided did not establish that the interns were provided a formalized training program or that their internship was with ORG. The documents indicated that their services were to ORG and not ORG.

(d) The activities ORG stated it had participated in for the purpose of preserving Indian culture were the following:

- Voter registration event at Absentee Shawnee Community Center where it was promoted that ORG would provide free buffalo chili.
- A cooperative pecan harvest at the 130 acres site in City State (i.e. the CO-4) where it was advertised that participants would share 50/50 in the pecans harvested with ORG. The promotional material stated that buffalo chili and cornbread could be purchased for \$.
- ORG’s statement that two of the university interns had prepared and served, at some unspecified date, ‘buffalo products’ to the American Indian Exposition board.

ORG stated that it had distributed information on the Boys and Girls Club, on a related after school program it had participated in trying to establish, on its planned youth camps at the 130 acres site located in City State at these events. At all these events and at others TRST-1, BENE-1 and others involved in ORG’s mission, ORG stated that it continued to promote its programs for economic development in the area it referred to ‘Indian country’, for the restoration of buffalo and traditional foods to the Native American diet, for the establishment of a reserve to hold a buffalo herd and for the preservation of indigenous flora and fauna.

In the printed materials provided as supporting ORG’s exempt operations, the proposed activities are activities that had they been carried out would have been carried out by entities other than ORG. These planned activities, promoting “sustainable economic, cultural development, and land preservation” and the bringing of “Wall Street to the Indian Country Main Street”, involved non-exempt entities that included ORG, ORG Credit Program, CO-9 the non-exempt entities created under the ORG umbrella such as ORG Credit Program, ORG - Liberty Cooperative Association, ORG- Warrior Cooperative Association, ORG – Spirit Cooperative Association and ORG – Blue Eagle Cooperative Association (non-exempt entities that had each applied to the Department of the Treasury for certification as having met the eligibility requirements as community development entities (CDEs) with a primary mission of serving, or providing investment capital for, low income communities or low income persons) and the various ‘sub-trusts’ that had been represented as holding rubies, land, proven gold mining reserves. Despite the fact that ORG may have been involved in some way in the planned project or the promotional materials referred to ORG’s charitable objectives, the development and promotion of these projects were not activities were not activities carried out in furtherance of ORG’s exempt objectives.

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Law:

Internal Revenue Code (Code) section 501(c)(3) provides that organizations are determined to be exempt under this subsection where the organization is "... organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes" and where "... no part of the net earnings of which inures to the benefit of any private shareholder or individual...".

These requirements, that the organization be (1) organized and (2) operated for exclusively charitable purposes is repeated in the Federal Income Tax Regulation (Reg.) at section 1.501(c)(3)-1(a)(1) which 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."

The operational aspect, often referred to as the operational test, is defined in Reg. 1.501(c)(3)-1(c). Under the heading "Primary activities" the 'exclusively charitable' aspect is further defined by the following: "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."

The non-exempt activity that would disqualify an organization from IRC 501(c)(3) exemption is defined in Reg. 1.501(c)(3)-1(c)(2) "Distribution of earnings". There the regulations provide that "An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals." A 'private shareholder or individual' is defined in Reg. 1.501(a)-1(c) as a "persons having a personal and private interest in the activities of the organization."

The 'operational test' that an organization be 'operated exclusively' for charitable purposes is further defined in Reg. 1.501(c)-1(d)(1)(ii). There the regulations provide that an organization is not organized or operated exclusively for one or more exempt purposes "...unless it serves a public rather than a private interest. Thus ... it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

In the determination whether the organization was operated exclusively for one or more exempt purposes specified in IRC 501(c)(3), the court in Basic Bible Church, 74 T.C. 846 (1980), noted that the organization's founder, having total control over the management of the organization's affairs, controlled all its financial decisions. The founder and his wife, having executed vows of poverty, had transferred all their possessions and income to the organization. The court noted that over 96 percent of the contributions the organization received (mostly from the founder and his wife) had been spent on the founder's and his wife's subsistence, their unsubstantiated travel, and upkeep and utilities of their home. Less than one percent of the contributions were spent on direct church related expenses. The court found that despite also serving religious and charitable purposes, a substantial purpose of the organization was to serve the private interests of the founder and his wife and the organization failed the operational test and did not qualify as an organization under IRC 501(c)(3).

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In American Campaign Academy v. Commissioner, 92 T.C. 1053, (1989), the court addressed another aspect of the of the operational test, whether the organization operated for the benefit of private interests. It notes that not only must the organization not be operated for the benefit of private shareholders or individuals, it must also not provide a benefit to private interests more than incidentally. As the organization provided such private benefit more than incidentally, the court determined it had a substantial nonexempt purpose and the organization was not primarily engaged in the exempt activity. The court states:

“The Treasury Regulations specify three conditions which must be satisfied for an organization to meet the operational test. *Church by Mail, Inc. v. Commissioner*, 765 F.2d 1387, 1391 (9th Cir. 1985), affg. *T.C. Memo. 1984-349*. First, the organization must be primarily engaged in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3). *Sec. 1.501(c)(3)-1(c)(1), Income Tax Regs.* Second, the organization's net earnings must not be distributed in whole or in part to the benefit of private shareholders or individuals. *Sec. 1.501(c)(3)-1(c)(2), Income Tax Regs.* Third, the organization must not be an "action" organization...”

In defining ‘operated primarily for exempt purposes’ the court notes: “...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).”

The court first notes that if the organization’s net earnings inure to private shareholders or individuals it will have failed the operational test and not have operated exclusively for exempt purposes:

“When an organization operates 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, the organization by definition does not operate exclusively for exempt purposes. ... Prohibited private benefits may include an ‘advantage; profit; fruit; privilege; gain; [or] interest.’ *Retired Teachers Legal Fund v. Commissioner*, 78 T.C. 280, 286 (1982).”

It notes that the determination whether the organization operates primarily for exempt purposes must go beyond the determination whether there the organization’s earnings inured to private shareholders. It notes:

“Occasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes will not generally constitute prohibited private benefits. *Kentucky Bar Foundation v. Commissioner*, 78 T.C. at 926. Thus, should petitioner 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), Income Tax Regs.* This nonexempt purpose will prevent petitioner from operating primarily for exempt purposes absent a showing that no more than an insubstantial part of its activities further the private interests or any other nonexempt purposes. *Sec. 1.501(c)(3)-1(c)(1), Income Tax Regs.*”

The court then analyzes whether the organization transgressed the ‘public rather than private interest’ mandate of Reg. 1.501(c)(3)-1(d)(1)(ii) by conferring benefits on persons not having a personal and private benefit in the activities of the organization. It notes that while there are overlapping characteristics of the prohibitions against

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private inurement and private benefit, they are two distinct requirements that must be independently satisfied. The absence of private inurement of earning (to the benefit of a private shareholder or individual) does not, in of itself, establish that the organization is operated exclusively for exempt purposes. It notes “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... (A)n organization’s conferral of benefits on disinterested persons may cause it to serve ‘a private interest’ within the meaning of section 1.501(c)(3)-1(d)(1)(ii)...”

In *Church by Mail v. Commissioner*, 765 F.2d 1387 (9th Cir. 1985) aff’g TCM 1984-349 (1984), the Court noted that Church by Mail, Inc. (‘Church’) paid Twentieth Century Advertising Agency (‘Twentieth’) for services provided. Twentieth was owned and controlled by the two individuals who ran Church. The Tax Court had found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. In addressing whether Church operated for a substantial non-exempt purpose the 9th Circuit Court of Appeals, in affirming the Tax Court’s decision, stated: “... The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church. *est of Hawaii v. Commissioner*, 71 T.C. at 1080-81; *see also Presbyterian & Reformed Publishing Co. v. Commissioner*, 743 F.2d 148, 155 (3d Cir. 1984) (courts must look to all objective indicia from which a corporate actor's intent may be discerned); *United States v. Dykema*, 666 F.2d 1096, 1100 (7th Cir. 1981), *cert. denied*, 456 U.S. 983, 72 L. Ed. 2d 861, 102 S. Ct. 2257 (1982) (it is necessary and proper for the I.R.S. to survey all of the activities of an organization to determine whether a non-exempt purpose is furthered). “

Position of the Internal Revenue Service:

(a) Private benefit to TRST-1 and to private individuals- ORG’s business ventures:

TRST-1, as ORG’s co-trustee, controlled all ORG’s financial decisions. From that position of control TRST-1 had directed ORG to participate in a number of projects that were intended to benefit ORG or CO-9., and in turn, either directly or through CO-1, himself and his family. As the principal shareholder of ORG and the majority shareholder of CO-9, through his trust CO-1, the benefit would accrued to him with the success of the projects or through the compensation he would receive.

In these transactions ORG, as an organization exempt under IRC 501(c)(3), was to be used to issue tax exempt bonds or arrange other tax-exempt financing so as to capitalize the projects he had entered ORG in. These projects included:

- the construction of a 20 megawatt electricity generating plant in State for which ORG was to secure \$\$ in tax exempt financing. The plant would be managed and operated by CO-9, 51% of which was owned by ORG and at least 44% of which was owned by another private for-profit enterprise, Inside The Fence LLC.
- As part of this venture, ORG was used as a guarantor to place gemstones in which it represented it had an interest as security for a \$\$ loan to an individual. Though ORG stated it received none of the loan proceeds, it appears that \$ of these proceeds was used to pay interest and principal on the mortgage on the 130 acres in City State it held in joint interest with ORG and CO-9.
- the development of a ski and resort development in State for which ORG was to secure \$ in tax exempt.

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TRST-1 also involved ORG in a trust arrangement where the plan was for the trust, representing an interest in \$\$ in gold reserves, would secure investments or loans ‘collateralized’ by these reserves. These funds were to be used for investments of an unspecified nature.

Though ORG has indicated that ORG secured no financing or funds for investments through any of these arrangements, the examination’s determination is that in each of these ventures a substantial benefit would have been provided to the participating party.

ORG’s involvement in these arrangements was intended to take advantage of its anticipated ability as an IRC 501(c)(3) organization to issue tax exempt bonds and use its status as an organization with an IRS letter stating its is an IRC 501(c)(3) exempt organization to impart credibility to the venture. In participating in these transactions ORG operated for a substantial non-exempt purpose, provide substantial private benefit to TRST-1, a ‘private shareholder’, and to the other private interests who participated in these arrangements. Operating for a substantial non-exempt purpose, ORG failed the operational test and does not qualify for exemption under IRC 501(c)(3).

It is the position of the Internal Revenue Service that ORG’s exemption under IRC 501(c)(3) be revoked, effective January 1, 20XX.

(b) Private benefit to TRST-1 – TRST-1’s business and personal expenses paid through ORG:

In control of all ORG’s financial transactions, TRST-1 has used ORG as the depository of funds that, in whole or in part, would have been his taxable income had he reported the income. These funds included attorney fees he had earned, proceeds from the sale of his real property, or income received from the services he provided CO-2 for the search and recovery operation he performed. In total, roughly 99% of ORG’s revenues were received from TRST-1 or from the CO-2’s payments.

It is the examination’s position that TRST-1 used the funds he deposited into ORG and has characterized as loans for his personal benefit. Representing that ORG had leased both real and personal property from his trust CO-1, he states that some unspecified portion of the ORG’s payments to him were lease payments though ORG has no accounting of its total rent expense, of the aCO-18nt of the rent expense paid or of which payments represented lease payment. The examination also determined that at the time ORG is represented as having leased the real property that is addressed as Address, City, State, for its operations TRST-1 and his family were living in the same house, using it as their personal residence. In addition, this property leased to ORG was also being used by ORG, CO-9, and the other entities and activities operating under the ORG umbrella as their offices, all of which he controlled and which he was the substantial shareholder or the majority shareholder.

In addition to whatever aCO-18nt is to be classified as lease payments, ORG’s disbursements included \$ for payment of utility services (including cable television services) to this house, with that aCO-18nt representing 12% of ORG’s total expenditures of \$.

ORG represents that ORG had entered into an arrangement into with TRST-1 and his trust agreeing that it would pay the expenses TRST-1 and BENE-1 had incurred in providing the search and recovery operations to CO-2. The examination determined \$ of ORG’s 20XX disbursements (approximately 7% of total disbursements) were

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for automobile related expenditures. Though ORG represented the expenses were incurred in conducting the search and recovery services there was no accounting to establish that the expenses were in fact business expenses of ORG. The proffered documentation of these disbursements were service stations repair or parts invoices and established no relationship between the service or part paid for and ORG's activity. In addition, there was no accounting or other documentation that could be used to establish the business (and personal) use of the automobiles these disbursements were said to be for.

In 20XX ORG's disbursements included \$ in payments to food stores, convenience stores and miscellaneous other payments for which, absent documentation to establish the expenditure as related to ORG's exempt operations, are deemed expenditures for TRST-1 and his family's personal benefit. The sum of ORG's disbursements directly to More, BENE-1, for automobile expenses, utilities, food and other miscellaneous purchases is \$ 81% of all of ORG's expenditures and 96% of the funds received from TRST-1. None of the money expended, either paid for TRST-1's benefit or paid directly to TRST-1 and BENE-1 were reported as compensation on either Form 1099 as rent or other compensation or on Form W-2 as wages.

The examination determines that, as ORG has not established these expenditures as being ORG exempt activity related expenses, these expenditures were made for TRST-1's personal benefit. Using his control of ORG's finances, TRST-1 did not report his receipt of the funds as income but deposited the funds into ORG's bank account. He characterized the transaction as a loan enabling any subsequent payment ORG would make to him as a loan repayment. In conducting ORG's business from his home, he had ORG enter into a lease arrangement with a \$ monthly lease obligation that also enabled him to characterize payments ORG made to him as lease payments while he and his family continued to live in the house.

ORG has incorrectly asserted that CO-1 is, by virtue of the fact that BENE-1 and their children that are beneficiaries of the trust claim status as Indians, the CO-1 enjoys some sort of exemption from the definition of private benefit.

It is the position of the Internal Revenue Service that TRST-1, through CO-1, is both creator and grantor of ORG, and is control of all ORG's financial decisions, has used ORG for his substantial private benefit. ORG, in so used, was operated for a substantial non-exempt purpose and provided TRST-1 substantial private benefit. Having been operated for a substantial non-exempt purpose, ORG failed the operational test and does not qualify for exemption under IRC 501(c)(3).

It is the position of the Internal Revenue Service that ORG's exemption under IRC 501(c)(3) be revoked, effective January 1, 20XX.

(c) ORG was not primarily engaged in activities which accomplished one or more exempt purposes:

In addition to the ventures and their arrangements discussed above involving the development of the City electric generating power plant, the development of the ski and vacation resort in State, the plans to involve ORG in the investment scheme involving gold reserves, the examination's analysis of ORG's activities determined that its remaining activities consisted in large part of activities that promoted the development of the 130 acres in City State ORG held with the two non-exempt entities, ORG and CO-9. This included the involvement in the CO-20 venture that sought to develop a horseback riding concession enterprise that would use these 130 acres. This

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development is also reflected in the grant application submitted in January 20XX to the State Tourism and Recreation Department.

One of the activities ORG indicated had been conducted in furtherance of its exempt objectives was TRST-1's and BENE-1's involvement in the planning and promotion for the formation of a Boys and Girls Club. Though no such entity was organized, they represented they had participated as representatives of ORG.

Another activity conducted in furtherance of its exempt objective was the attendance at Native American cultural events or other events involving issues relevant to Native Americans, such as the voter registration drive. Though TRST-1 or BENE-1 participated or appeared at these events, the documentation does not establish that their involvement was as representatives of ORG or of ORG. They were often identified as associated with both entities and therefore this activity cannot be established as an exempt activity of ORG.

A similar conclusion is made with regards to the characterization that the involvement of interns is an exempt activity of ORG. In the case of each of the three interns, the documentation established that they worked for ORG and may have also done work for ORG. If they had worked for ORG there was no indication that this work possessed sufficient educational attributes to establish their work at ORG as an exempt activity. The fact is that ORG's participation in using these interns is not an exempt activity.

Having reviewed ORG's activities, the examination determined that ORG was not primarily engaged in activities to accomplish one or more exempt purposes specified in IRC 501(c)(3) and therefore failed the operational test for an organization described in IRC 501(c)(3).

The position of the Internal Revenue Service is that ORG's exemption under IRC section 501(c)(3) be revoked, effective January 1, 20XX.

(d) ORG status under other IRC 501(c)(3):

Exemption under IRC 501(c)(3) is provided to "(c)orporations, and any community chest, fund, or foundation, organized and operated exclusively for..." for the purposes stated in IRC 501(c)(3). The organizational requirements, expressed in Reg. 1.501(c)(3)-1(b) as the 'Organizational test', does not impart any exemption to the operational test requirement expressed in Reg. 1.501(c)(3)-1(c). For an organization to be determined to be described in IRC 501(c)(3) it must meet both the organization and the operational test. The examination has determined that, regardless of ORG's genesis, it must meet both tests and ORG failed the operational test.

Summary Position of Internal Revenue Service:

The position of the Internal Revenue Service is that, for the reasons discussed in (a), (b) and (c) above, ORG failed the operational test as it was not primarily engaged in activities that accomplish one or more exempt purposes, that it had operated for private benefit and had thereby been involved in a substantial non-exempt activity, and that ORG's exemption under IRC section 501(c)(3) be revoked, effective January 1, 20XX.

ORG is advised that if its exemption is revoked effective January 1, 20XX, it will be required to file Form 1041, U.S. Income Tax Return for Estates and Trusts, for 20XX and subsequent years, if it meets the requirements for filing this return.

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If ORG accepts this determination it need take no further action. It may indicate its acceptance of this determination by completing the enclosed Form 6018 (filling in the name of the organization, an authorized person signing, completing the title section, dating the form) and returning it to:

If ORG does not agree with the proposed revocation, it must submit to us (at the address given above) within 30 days from the date of this letter a written request for Appeals Office consideration to protest our decision. Your protest is to include a statement of facts, the applicable law, and arguments in support of your position. If we do not hear from you within 30 days from the date of this letter, we will process this case based on this determination that ORG’s exemption under IRC 501(c)(3) is revoked effective January 1, 20XX.

Position of ORG:

ORG, in response to the IRS’s presentation of a preliminary statement proposing that ORG’s exemption be revoked disagreed. In its response ORG stated:

- “TRST-1 and BENE-1 volunteered to perform the CO-2 Contract and did not receive compensation for those volunteer services. These voluntary activities constitute inurement to the public and not private benefit. The CO-2 contract allowed the enhancement and fulfillment of State Indian communications technology, buffalo lands survey, and income production in support of the charitable activity.”

The examination’s position is that TRST-1 and BENE-1 performance of services for CO-2 was (i) the performance of services by TRST-1 and BENE-1, (ii) for which CO-2 paid compensation, (iii) such compensation controlled by TRST-1 and disbursed for TRST-1’s and BENE-1’s benefit without either reporting such as taxable income. ORG incorrectly characterizes such services as ‘volunteer’ as there was always an expectation that CO-2 would pay for the services and that TRST-1, controlling ORG, would make those funds available for their personal benefit, either to make cash payment or to pay their personal expenses.

- “Private benefit was not received exclusively by an individual, rather CO-1 (CO-1) is an OIWA (25 USC 501-507) and NABDA (25 USC 4301-4307) cooperative association of Indians. Any benefits were received not by an individual, but by the State Indian Cooperative association beneficiaries of the CO-1: BENE-2, BENE-3, BENE-4, BENE-5, TRST-1 and BENE-1.

The examination’s position is that CO-1 and CO-1’s beneficiaries are a “private shareholder and individual” with regards to ORG, that neither CO-1 or its beneficiaries who are TRST-1’s direct family members constitute a charitable class, and that ORG must meet IRC 501(c)(3) requirement that “no part of the net earnings ... inures to the benefit of any private shareholder or individual” to be exempt under that subsection.

- “During 20XX, ORG-ORG performed extensive public trust functions in State Indian energy, education, child and animal rights advocacy, and cultural and ecological preservation programs, food distribution and Indian rights advocacy. All of these charitable activities are chronicled in the grant applications and various other documents previously provided or made available ...”

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ORG's claim that it had "performed extensive public trust functions" is not supported by documentation establishing that it had engaged primarily in activities that accomplish one or more exempt purposes specified in IRC 501(c)(3) and that no more than an insubstantial part of its activities was not in furtherance of an exempt purpose. The examination determined ORG's activities included activities that promoted the benefit of private interest and that this non-exempt activity was a substantial part of ORG's activity.

- "CO-1 property was used to support the public trust functions of ORG-ORG."
- "The relationship between CO-1 and ORG-ORG involved reasonable terms with adequate consideration."

The examination determined that the property CO-1 is said to have leased to ORG was used by TRST-1 for his personal benefit. During 20XX TRST-1 and his family continued to use the house and its furnishing as their home, TRST-1 continued to use this same property as his law office and as the offices for ORG, CO-9, and for all the other enterprises he had established under the ORG umbrella (such other enterprises previously listed).

- "The legal and equitable relationships between CO-1 and ORG-ORG were created and are controlled pursuant to USC 401-407 and 43-1-4307 and the CO-6s Resolutions and law and particularly, the subject Caddo Business Corporation Act, Federal Corporate Charter, Indigenous Nations Federal Credit Program Act and the ORG Charter and Articles of Incorporation are controlling."

The examination determination is that ORG's exemption under IRC 501(c)(3) is not established by the relationship ORG asserts existed between CO-1 and ORG. As a trust established by TRST-1 for the benefit of his family members, CO-1 is a "private shareholder or individual" as such term is used in IRC 501(c)(3) and in Reg. 1.501(c)(3)-1(c)(2). Where ORG operations provided benefit to TRST-1, to CO-1, to ORG, to CO-9, to any other non-exempt entity or private interest, it operated for a private interest and not for a public interest. It therein did not operate for exclusively exempt purposes, failed the operational test and will not be regarded as an organization exempt under IRC 501(c)(3).