

Internal Revenue Service
Appeals Office
312 Elm Street
Suite 2330
Cincinnati, OH 45202-2763

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Refer Reply to:

AP:FE:OH:CI:FAS

In Re:

EO Determination

EIN Number:

D

Release Number: 201101036

Release Date: 1/7/11

Date: October 12, 2010

UIC Code: 501.32-00

501.32-01

501.33-00

501.30-01

501.35-00

A

B

C

Certified Mail

Legend

A:

This is our final adverse determination as to your request for exempt status under section 501(c)(3) of the Internal Revenue Code ("Code"). Your request for tax-exempt status is denied.

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

You are not organized and operated exclusively for exempt purposes described in section 501(c)(3) of the Code.

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

You are required to file Forms 1120, U.S. Corporation Income Tax Return, for tax periods beginning on and after December 31, 2000 with the Cincinnati Service Center, Cincinnati, OH, 45999-0012.

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

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 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 form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

You also 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 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. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"*, for Taxpayer Advocate telephone numbers and addresses.

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

We have sent a copy of this letter to your authorized representative.

Sincerely,

A. Ann Murphree
Acting Appeals Team Manager

Enclosure: Notice 1214 Helpful Contacts for your "Notice of Deficiency"



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 02/02/2009

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Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:
*

UIL

501.32-00 Income Inures to Private Individual
501.32-01 Distribution of Assets to Private Individual
501.33-00 Private v. Public Interest Served
501.30-01 Closely Controlled Organizations
501.35-00 "Exclusively" Test

Legend

Entity1 – Entity's name
Entity1 aka1 – Entity's name aka
Entity1 aka2 – Entity's name aka
Entity2 – Entity's name
Entity3 – Entity's name
Indiv1 – Individual's name
Indiv1 aka1 – Individual's name aka
Indiv1 aka2 – Individual's name aka
Indiv2 – Individual's name
Indiv3 – Individual's name
Indiv4 – Individual's name
Ttst1 – Individual's name
Trst2 – Individual's name
Trst3 – Individual's name
Trst4 – Individual's name
Trst5 – Individual's name
FscOfficer – Individual's name
R – Individual's name
Date1 – Date
Date2 – Date
Date3 – Date
Date4 – Date
Date5 – Date
Date6 – Date
Address1 – Address
Address2 – Address
Number1 – Number in address

CoName – County name
StName1 – State name
FthName – Faith
BorName – Borough name
AmStudies – Study curriculum name
PmStudies – Study curriculum name
1st letter – Letter
2nd letter – Letter
3rd letter – Letter
5th letter – Letter
Response#1 – Response from applicant
Response#2 – Response from applicant
Response#7 – Response from applicant
Request2 – Request from applicant
Year1 – Year
Year2 – Year
Year3 – Year
Year4 – Year
Year5 – Year
Year6 – Year
Year9 – Year
\$amount1 – Money amount
\$amount2 – Money amount
\$amount3 – Money amount
\$amount4 – Money amount
\$amount5 – Money amount
\$amount6 – Money amount

\$amount7 – Money amount	Loan3 – Loan
\$amount8 – Money amount	Folders – Folder materials
\$amount9 – Money amount	NameList1 – List of names
\$amount10 – Money amount	StmtList1 – List of statements
\$amount11 – Money amount	StmtList2 – List of statements
\$amount12 – Money amount	StmtList3 – List of statements
\$amount13 – Money amount	StmtList4 – List of statements
PublicInfo1 – Public information	CheckList1 – List of checks
PublicInfo2 – Public information	CheckList2 – List of checks
PublicInfo3 – Public information	WithdrawalList1 – List of withdrawals
Loan1 – Loan	MiscDebit1 – List of miscellaneous debits
Loan2 – Loan	

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Application Representations – Organization, Governance, Activities, Programs, and Responses

You filed a Form 1023 application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code (Code) on Date2.

Your organization filed a Certificate of Incorporation on Date1 with the CoName Clerk in the State of StName1 pursuant to Article 10 of the Religious Corporations Law. In this filing the FIFTH article indicates you were formed to conduct and maintain a house of worship and study facilities, to purchase and sell property for the conduct and welfare of the corporation, that you are organized exclusively for charitable, religious, educational, and scientific purposes, and that upon dissolution assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) or distributed to the government for a public purpose. Article SIXTH indicates you have six trustees. Article SEVENTH indicates that the trustees elected at the first meeting are Indiv1, Trst2, Trst4, Trst1, Trst3, and Trst5.

You represent on your application for exemption that you have five officers, directors, and trustees including one Dean and four Trustees. Your Dean uses the name Indiv1, Indiv1 aka1 and is known by Indiv1 aka2. The Trustees of your organization are Trst1, Trst2, Trst3, and Trst4. You aver that "no board member is paid in compensation" and that "all serve as volunteer members of our board." You represent that Trst3 is Indiv1's daughter. In Response#1 regarding Indiv1's responsibilities and duties you state that he "has the final decision in all matters regarding educational and administrative matters. He is the public face of our school to recruit students, interview families and hire staff." In Response#1 regarding a request that you provide a chart showing the responsibilities for your trustees, officers, administration, staff, and faculty, you provided a diagram showing Indiv1 at the top position of authority and control for your organization. Your chart does not place your trustees or your board in a position of authority above Indiv1. You have not provided an explanation regarding why Trst5 or Indiv1 is not listed in your application as a trustee.

You requested classification as a church described in section 170(b)(1)(A)(i) of the Code for purposes of establishing your status as other than a private foundation under section 509(a). Your Certificate of Incorporation indicates that you follow the "traditions of the [FthName] faith" and will "conduct all communal affairs necessary therewith." Information to describe these activities as formally requested on Schedule A from your application was included in your application but aside from your Name and EIN on the Schedule A the form is blank. Despite the absence of the Schedule A information, you provided information about your qualification as a church in your application and in response to several letters that we sent inquiring about this aspect. You represent that you conduct a religious study program and offering prayer service opportunities to students and faculty. You have not described that you have other characteristics that are generally attributed to churches by the IRS and by court decisions including, a definite and distinct ecclesiastical government; formal code of doctrine and discipline; distinct religious history; membership not associated with any other church or denomination; organization of organized ministers; ordained ministers selected after completing prescribed courses of study; literature of your own, established place of worship; regular congregation; regular religious services; Sunday school for the religious instruction of the young; and school for the preparation of your ministers. In your Response#1 in answer to why you are requesting a foundation classification as a church and the basis for meeting church requirements, you state "[t]ogether with providing educational services, we also provided prayer service facilities." In a later Response#7 regarding our assessment that the church description you are requesting is unsupported by the application information you state - "we are a religious organization. In addition to the religious education, that is provided, we have organized prayer sessions, twice daily. Our lunchroom is utilized as a synagogue by both students and staff for morning and afternoon prayers services, everyday." Additionally you state "our discussions and planning for our new building in [BorName], there will be two separate buildings – one for education and one for prayer (Synagogue). The prayer sessions for men are conducted separately because we do not mix the sexes."

You represent that you will operate a school. On Schedule B, Form 1023, you indicate that you have a regular scheduled curriculum, a regular faculty of qualified teachers, a regular enrolled student body, and facilities where your educational activities are regularly carried out. You also represent that the primary function of your school is the presentation of formal instruction. In describing your school activities you state that you are an elementary school, have no elective classes, and your curriculum is 8:45-12:30 Am Studies, 12:30-1:00 lunch, 1:00-4:15 Pm Studies. Your Narrative Description of Activities represents that your school is a "girl's" school, teaches essential life skills and ideas, has daily weekly and once-a-year enrichment activities, a library for research, biweekly trips to the library, a weekly newsletter, debates, spelling bees, science fairs, social study exhibits, reading, and computer programs. Future plans include a science lab and gym. In your Request2, Individ1 refers to your organization as "our school." You indicate that you are not claiming to be excused from filing a Form 990 or 990-EZ as a church.

You represent the primary contact for your organization is Individ1.

You represent that you have no bylaws. In the 1st letter we sent to you, we asked about whether you are operating without bylaws. In your Response#1 you state that "[w]e adopted the general policies, rules and regulations for similar schools in our neighborhood." The guidelines and policies you provided detail behavior and responsibilities that are expected from students as well as parents plus consequences for noncompliance. These guidelines and policies require

the parent's signature and appear targeted for students and their parents. Although this indicates that you have policies and procedures to operate a school, you have not explained how your organization is governed and operated. Also in the 1st letter we sent to you, we asked about board minutes for your organization from the date you formed through the current date of our letter. In your Response#1, you state "[n]o minutes were taken during the [Year1] school year; however, as of September [Year2] we will begin taking minutes at any board meeting."

You represent that you have adopted a Conflict of Interest policy. No copy was provided but you explained that "while no formal conflict of interest policy has been adopted, any board member or official recuses him or herself from any decision concerning the compensation of another family member or from any decision concerning any business deal that may involve a family member." Additionally you represent in the Form 1023 regarding compensation that you would record in writing compensation decisions including who decided or voted on such matters and the basis upon which amounts and terms are based. You show in Part V of the Form 1023 that Individ1 is compensated \$amount1. In the 1st letter we sent you were asked about the records you kept regarding setting this compensation. In Response#1 you stated that "the amount of compensation was set by the board. No one was excluded from this decision and there is not [sic] documentation in support." You have not explained why a written record was not made regarding Individ1's compensation, why Individ1 did not recuse himself from participation in setting his own compensation, or why Trst3 (Individ1's daughter) did not recuse herself from participation.

You represent that you will not compensate individuals through non-fixed payment such as discretionary bonuses or revenue-based payments.

You represent that you will not purchase goods, services, or assets or sell any goods services or assets to any of your officers, directors, trustees or high compensated employees.

You represent that you are not a successor to another organization including the situation where you took over the activities of an organization.

You represent that you do not have a close connection with any other organization.

You represent that you do not support or oppose candidates in political campaigns and do not attempt to influence legislation.

You represent that you do not provide goods, services, or funds to individuals in carrying out your exempt purposes.

You represent that you will not make grants, loans, or other distributions to organizations and that you do not or will not make grants, loans, or other disbursements to foreign organizations.

You represent that you will not operate in a foreign country.

You represent that you will not provide scholarships, fellowships, educational loans, or other educational grants to individuals including grants for travel study or other similar purposes.

In the course of processing your request we reviewed information and materials that showed you are closely related and connected to Entity1, Entity2, and Entity3. Also information was

obtained from public sources that show the nature and extent of these relationships and connections. Following are details showing your relationship and connection with Entity1, Entity2, and Entity3.

- Entity1 – In your Narrative Description of Activities you state “[Entity1 aka1] started out as a collective dream, a vision shared by local parents, a dream for girl’s school that would focus more on the girls than the school. Thirty-seven years later, we are imbuing our students with essential life skills and ideas, enabling them to successfully navigate the challenges of society.” On the application, Schedule B, you noted that you did not publish a non-discrimination notice because you are a “New School.” The newsletter you provided for your school refers to Entity1. In your Response#1 regarding operating under any other names, you represent that you have operated under the name Entity1. You also state in your Response#2 to our 2nd letter about operating under the Entity1 name that this was the case from “[Year5] – through the present”, this “was our original name for 37 years”, and that “[Entity1] existed from [Year5]-[Year1] and sold its building so the money would be distributed at the bankruptcy proceedings. [You] opened to take in the remaining students, both learning disabled and mainstreamed and to mainstream in order to continue their studies.” You have explained that many of your students are former students of Entity1. Additionally, as detailed later in this letter, financial records show you receive checks written to both you and Entity1 an indication that the community you serve regards you both as one in the same. It is therefore clear that you have been operating across a span of several decades, continue to operate as Entity1 and that your operations carry on the existing school known as Entity1. In your Response#2, you further clarify that Entity1 is in bankruptcy and will reopen in about 1 ½ years after the bankruptcy is over. Although you state that Entity1 does not exist “educationally” it nevertheless continues to operate as an entity in bankruptcy. Regarding the governing body members and officers of Entity1, you state in your Response#2 that Trst2 (a governing body members of your organization) and FscOfficer its fiscal officer are the officers and directors of Entity1. You fail to mention in your responses that Indiv1 is a governing body member and officer of Entity1. Information referred to later in this letter shows that Indiv1 is Entity1’s President, Indiv1 executed all of the mortgages for Entity1, and Indiv1 is a signer on Entity1’s accounts.
- Entity2 – Your connection to, relationship with, and use of Entity2, except for using a checking account in its name, has not been explained. Entity2 appears as the named account holder for one of your two checking accounts. This entity was not disclosed until it was found in the materials from your last Response#7. A review of this account’s bank statement and a review of your other checking account statements shows a pattern of usage indicating these accounts are both regularly used in your operations.
- Entity3 – The revenues you have received by check include the name Entity3. This name appears to be a combination of Entity1 aka1 and Indiv1’s last name. Other than as found on the payee line for checks you accepted you have not provided any information regarding this entity. The appearance of Entity3’s name occurs on numerous checks throughout the financial materials you provided. There does not appear to have been any action on your part to correct this with the payers. The usage of Entity3 as a payee and your repeated acceptance indicates that the payment was for Indiv1 as much as it was for your organization indicating that Indiv1 was himself considered the school by a significant segment of the community you serve.

- Public information indicating mismanagement and misappropriations in Entity1 was found during our review of your application. In the 3rd letter we sent you we provided copies of this public information and asked you for your comments. We sent you 1) a public information release PublicInfo1, 2) a complaint PublicInfo2, and 3) a consent PublicInfo3. In 1) regarding the public information release it states Indiv1 was arrested on charges that he misappropriated approximately \$amount2 in federal grant money from a congressional grant administered through the US Department of Housing and Urban Development (HUD). The grant was to pay off a mortgage on a building located on Entity1 aka1 property that housed educational and therapeutic programs for disabled preschool children otherwise referred to as the Entity1 aka2. HUD investigators found that most of the funds were disbursed for purposes other than paying off the mortgage. Indiv1 was found to have diverted funds to an array of individuals and entities who were not entitled to the earmarked funds and wrote checks that either paid for his own personal expenses or were deposited into accounts that he controlled. In 2) PublicInfo2 regarding the complaint further details of mismanagement are described. Before funds were released, HUD required that Indiv1 sign an amendment form specifically confirming that the funds were to be used to refinance a mortgage for Entity1 aka2, the agreement was signed by Indiv1 aka1 as "Project Manager-Dean." During HUD's investigation, Indiv1 refused to allow the HUD auditor to see Entity1 aka1's books. Despite the refusal to cooperate HUD investigators found that dozens of checks signed by Indiv1 were for purely personal items clearly not related to the purpose of the grant. These checks showed funds were used to pay for life insurance, to make credit card payments including meals, clothing, cosmetics, electronics, gasoline, and food items. It was also found that some checks paid for Indiv1's personal federal income taxes. Also the HUD investigators determined that only one check in the amount of \$amount3, less than 1% of the total grant, could be found to have been used to pay down any of the mortgage on the Entity1 aka1 property. HUD had obtained this information from the account where the \$amount2 grant was initially deposited into and completely disbursed from during the period between December Year4 through February Year6. In 3) PublicInfo3 the conditions for settling the charges included that Indiv1 maintain good behavior, could not contact or lobby anyone with the United State Bureau of Prisons, could not seek or cause someone to seek any loan, grant, or other assistance from the United States Government, and that the \$amount2 in grant funds be voluntarily repaid. The PublicInfo3 includes a statement by Indiv1 where he admits that even though he knew that the specific terms of the grant did not permit his use of the funds for anything other than the construction of a facility to house educational and therapeutic programs for disabled children and for mortgage payment he did in fact authorize the use of the grant to pay for general, administrative, and operational expenses of both Entity1 aka1 and Entity1 aka2. The statement does not address the extent to which funds were disbursed to an array of individuals and entities who were not entitled to the earmarked funds or that funds paid for personal expenses. In response to this information that was provided to you for your comments you provided a statement. Following in its entirety is your statement:

"Although [Indiv1] was accused, never-the-less before any trial or indictment even took place, the government walked away and closed the case. The statements that [Indiv1] admitted to were not criminal admissions; it was purely a civil settlement to end the case.

The Board of Directors of [your organization] has conferred and agreed that once the 501c3 status is approved, [Indiv1] will no longer be the chief fiscal officer in addition to being dean.”

Financial Information you provided in your application is discussed below, which includes details of what was requested, what was provided, discrepancies that were found, and other issues regarding financial documentation and materials.

Financial data from the Form 1023 Part IX Schedules -

- The financial data initially provided with the submission of your application Part IX Form 1023 shows revenues for line 1 gift, grants and contributions for three periods. Amounts were listed on line 7 for revenues not otherwise listed for three periods. Although line 7 asked for a detail schedule for these amounts none was provided in your initial submission.
- Expenses items Part IX Form 1023 show amounts for line 17 compensation to officers-directors, line 18 other salaries, line 20 occupancy, line 22 professional fees, line 23 expenses not otherwise classified. Itemized detailed schedules requested for line 23 was not provided in your initial submission. In several letters we sent you we asked for this detailed information. After repeated requests you provided a large volume of records including copies of the front of some of the checks you wrote, cash payment logs, bank statements, etc. However this material was incomplete and more importantly did not fully describe the nature and purpose of all expenditures.
- Balance sheet information provided in Part IX Form 1023 indicated a small cash balance approximately 1% of your reported yearly revenues, and a small amount of depreciable assets approximately 2% of your annual revenues, and a small amount of accounts payable approximately 3% of your yearly revenues. For liabilities, you report a small accounts payable balance of approximately 2% of yearly revenues and a small amount for contributions payable of approximately 3% of yearly revenues.
- Regarding loans, no amounts were listed on the balance sheet Part IX Form 1023 on line 14 for Mortgages and notes payable and no amounts were listed on line 15 for Other liabilities.

Financial clarifications and revisions requested and your responses -

- In the 1st letter we sent, you were asked if you had received any contributions, you stated “No” in your Response#1.
- In the 1st letter we sent, you were asked if you had received any funding through a loan or a credit arrangement, you stated “No” in your Response#1.
- In the 1st letter we sent, you were asked if you had applied for any grant funding, in your Response#1 you provided copies of several grant applications. Also in your Response#2 you indicate that you are expecting one grant and that the grantor is holding about \$amount4 in checks.

- In the 2nd letter we sent, you were asked to disclose the sources of your revenues including the amount, date received, donor's or payer's name and address, purpose of the donation, and a description of any earmarks or restrictions. You responded that "[w]e have not received our 501c3 yet, therefore we have no source of revenues because we don't have a 501c3 yet." Additionally you state that "A- We had to borrow money because we have not received a 501c3 yet. B- We have no date because we have not received a 501c3 yet. C- There are no donors because we have not received a 501c3 yet. D- We have not received any donations or payments because we have nor [sic] received a 501c3 yet."
- In the 5th letter we sent, you were asked about loans you had received based upon your prior statement that you had "no source of revenues" and that "we had to borrow money." In your Response#7 you state that you had borrowed funds from three individuals, Loan1, Loan2, and Loan3. You also stated that "[t]here was no interest on any loan", "[t]he terms on these loans were simply that they would be repaid as soon as we had the funds to do so," and that "[t]here were no written agreements made for any of these loans."
- In the 5th letter we sent, you were told that the financial data you submitted did not accurately reflect your actual operations and that revised financial data was needed. You were asked to submit the revised data on Part IX Form 1023 and to include actual revenues and expenses for Year1, Year2, Year3 current to date, to provide Year9 budgets, and to provide a current balance sheet. In response to this request you did not provide revised financial data either as requested on the Part IX Schedule A and B or in another consolidated form or statement. The information you provided included logs for tuitions, logs for cash payments, and photocopies of checks. The materials were organized in folders but did not contain any summaries, account totals, breakdown into revenues or expenses, or consolidated into financial statements.
- In the 5th letter we sent, you were asked about your cash transactions including receiving cash and other negotiable instruments, paying expenses, and making disbursements. You were asked for a description of your cash handling system, controls, safeguards, and methods to account for cash transactions. You were asked who is authorized and responsible for cash in your organization, and for a copy of the records you kept (journals, ledgers, and accounts) to record and account for cash. We asked for the cash transaction date, amount, person or entity to whom funds were received, paid, or disbursed, and the purpose of the disbursement. In your Response#7 you state "a) if our account was overdrawn and we had to disperse [sic] payment for payroll, or bills, we simply cashed a tuition check and used that cash to pay the bill. The tuition check was photocopied, the check # and amount were logged into the tuition book and the cash payment was logged into our cash log book", "[a]ll members of the administration are authorized to handle cash", "[p]lease see [Folders]."

Findings in the cash payments materials -

- The description of the disbursements in a substantial number of entries lacks sufficient detail to determine what the disbursement was for and to whom the disbursement was

made to. Numerous entries indicate loans were being repaid to a variety of individuals that are different from the individuals and entities (Loan1, Loan2, and Loan3) that you had listed as having borrowed funds from.

- Additional lenders found in the cash payment material entries indicated loans with 6 or more individuals that are not the lenders represented in Loan1, Loan2 or Loan3.
- Descriptions in the cash payment materials lack adequate descriptions. Some examples in the log showed the following - "\$25 Money Order + \$70 – 2 Mets tickets", "Lunch & Munch - \$275 cash", "\$275.00 – cash munch & lunch (+3 postdated cks)," "medical," "transfer," "Roses", "Ipod Prize," "papers," "parking ticket," "senator X – Misc Expens," "Fruit - Senator's Lunch."
- The cash payments materials show numerous instances where funds are disbursed to Indiv1, Indiv1 aka1, Indiv1 aka2. See also the bank statement materials findings below that show checks signed by Indiv1 are paid to himself. In Year1 the cash payment materials shows \$amount5 was disbursed to Indiv1, and in Year2, 20 cash disbursements were made to Indiv1 totaling \$amount6. The cash payment materials do not provide a description for the disbursements to Indiv1. Where a description is provided it is inadequate to clearly describe the purpose or the reason for the disbursements or to establish it furthered a legitimate exempt purpose.
- A \$amount7 disbursement on Date3 to a "Senator" is described with "Misc Exp." It is not clear what this is for nor does this provide any indication this was or was not for a political purpose.
- Numerous disbursements are shown to have been made to other individuals and some disbursements have been made to individuals that are in positions of control for your organization. Names of 10 individuals who received disbursements include NameList1. Disbursements were made to numerous individuals that can not be definitively identified because the description and name associated with the entry is incomplete.
- A number of wire transfers are found in the materials you provided. Your financial materials do not provide a description of the purpose, reason, or destination for the transfers.
- Some entries in the cash payment materials lack an amount.
- There is no indication that the cash payment materials have been reconciled, entered into an accounting system, or that amounts collected have been sufficiently controlled to ensure funds are accounted for.

Findings in the copied check materials -

- The cash payment material shows that much of your organization's transactions are conducted in cash. The photocopied checks have indications that a significant number of checks have been "cashed."

- Numerous checks submitted to your organization are two party checks showing a payee line that is blank, "Cash", show an individual's name, or show entities that are not your organization.
- Numerous checks are third party payroll checks.
- Payers found on numerous checks include a wide array of entities including corporations, partnerships, LLCs, and Ltds.
- A group of checks show that they are from a foreign bank.
- Payee lines in a significant number of instances are made out to Entity1, Entity1 aka1, and Entity3.

Findings in the tuition log materials -

- The tuition log materials are comprised of two sets of information, the 1st set has separate journals for individuals and show in the heading a name, address phone number and \$ amount, below are columns with headings for the date, method, and amount. The methods recorded include "cash", "cks", "assort cks", "ck#", "vouchers", and other notes and comments.
- The second set of tuition log materials includes a significant portion of the copies that are illegible. In this set of materials the top portion of the page appears to not have reproduced correctly and as a result the top part of the page is mostly blank with some smudges to indicate that there is information on the top part of the page.
- The second set of tuition log materials is a journal with columns and shows individual names and an amount in the heading but columns are not labeled. Data recorded shows the date, type of payment "cash" or check #, period, and an amount.

Bank Statements were requested to clarify the discrepancies, inaccuracies, and confusing representations for the financial data submitted in the Form 1023 and in subsequent responses. The additional and revised financial data info was considered necessary due to the lack of forthright, candid, and complete financial information. Findings in the Bank Statement materials are as follows:

- In the 5th letter we sent, you were asked to provide bank statements for your bank accounts for Year1, Year2, and Year3 current to date. In your Response#7 you provided bank statements for two accounts. The first account is for your organization and the second account is for Entity2. The statements you provided contain numerous gaps. There are 13 missing statements and 10 statements that have missing pages. For the first account six statements are missing. The missing statements are for StmtList1. For the second account seven statements are missing. The missing statements are for StmtList2. Prior to the statements that began with a late August Year1 starting date no statements were provided. Ten statements are missing pages. In the first bank account statements missing pages are from StmtList3. In the second bank account statements missing pages are from StmtList4. For the 42 monthly periods, 23 periods are missing or

incomplete, only 19 periods (less than half) have statements that include complete information.

- Check images provided with the bank statements show that all of the checks are signed by Individ1. Also in your Response#2 you state that Individ1 is the signer on the bank accounts, and state that you do not have savings or investment accounts.
- The US check clearing number that is found in the lower right corner for checks cleared in the US bank check clearing system is missing on 92 or more checks from the materials you provided. The back of the checks were not provided. Most all of the checks do not have an entry on the memo line. Where a check does not have a US bank clearing number this indicates that the check was not cleared in the US.
- A significant number of checks show "Cash" on the Payee line.
- Numerous checks show on the payee line a stamped payee with the names PayeeList1.
- Three checks have a blank payee line, see the following checks CheckList1
- The bank statements show that many checks in different periods were refused and indicated "Return Reason – Insufficient Funds." The bank statements also show that in numerous periods the accounts were in a negative balance for multiple days or weeks.
- 10 checks in the first and second account are found that are paid to Individ1. These checks do not show an entry on the memo line. Following are the checks that show they were paid to Individ1, see CheckList2.
- Several cash withdrawal receipts were found showing an authorizing signature for Individ1. The withdrawals are for various amounts including WithdrawlList1.
- Two Miscellaneous Debits are found, MiscDebit1.

Findings in the Staff Earnings materials -

- In Response#7 regarding our 5th letter you provided a list of your employees from your inception to the present including their full name, address, position/job/duties, and the amount paid in Year1 and Year2, you provided "Staff Earnings" statements for Year1 and Year2.
- The Year1 statements show 30 individuals for Year1 with a total "AMOUNT EARNED" of \$amount8.
- The Year2 statements show 42 individuals for Year2 with a total "AMOUNT EARNED" of \$amount9.
- The reports show that Individ1 had no "AMOUNT EARNED" in Year1 and had an "AMOUNT EARNED" of \$amount10 in Year2.

Fiscal year end discrepancies and clarifications -

- You represented initially in your application that your fiscal year end was "12" indicating a December 31 year end. This contradicts the Financial Data representation in Part IX of the application indicating an August 31 year end.
- In your Response#1, you indicated that your fiscal year end is June 30.
- In your Response#7, you state "[o]ur fiscal year ends August 31st" and that "[t]here are no board minutes regarding this issue because ending the fiscal year on August 31st is routinely adopted."

Facility lease issue, discrepancies, and clarifications –

- The copy of the lease you provided for your facility at Address1 is not signed by you or the owner and bears a different address number of Address2.
- In your Response#2 regarding the address discrepancy, you state "[o]n our door it says [Number1]," also in this response regarding the request to provide a copy of the lease that was an enforceable legal document signed by both parties you state that "[w]e are still in the middle of negotiating the terms of the lease." According to your application you had at this point been occupying the facility for 13 months since September Year1.
- In your Response#7 regarding providing a copy of a finalized signed lease, you state "[a] formal lease was never signed. Enclosed please find a one page document, handwritten by the owner. Both the owner and [Indiv1], as representative of the board have signed this document. We have paid our monthly [\$amount11] rent through June 30, [Year3]. Please see enclosed folder marked 'Landlord agreement.'" The copy provided is a one page handwritten document on a form titled PROJECT PLANNING NOTES that outlines rents and security deposits for July, August, Sept Year2-Aug Year3.

There were numerous instances where an authorizing signature and penalties of perjury statement were not provided. The signature and statement deficiencies resulted in numerous delays and additional correspondences to your organization. Although you were asked in each letter we sent you to provide additional information with an authorized individual's signature over a penalties of perjury statement, many of the responses you sent us did not have this. Also you submitted some of your most recent responses without the requested signature and penalties of perjury statement. Although the requests and responses were eventually provided over an authorized signature and a penalties of perjury statement, no explanation was provided to explain why the organization repeatedly did not comply with these requirements.

LAW

Section 501(c)(3) of the Internal Revenue Code provides, in relevant part, exemption from federal income tax for corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to

influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

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

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

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

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that 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.

Section 1.501(c)(3)-1(c)(2) of the regulations provides 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. Section 1.501(a)-1(c) defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(i) of the regulations states that an organization may be exempt as one described in section 501(c)(3) of the Code if it is organized and operated exclusively for one or more purposes, such as religious or charitable purposes, designated in that section.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically 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.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is not limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions.

Section 6001 of the Code, "Notice or regulations requiring records, statements, and special returns," provides that every person liable for any tax imposed by this title (Title 26 of the United States Code, which is the Internal Revenue Code), or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the

Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Section 1.6001-1(a) of the Procedure and Administration Regulations provides, in general, that any person subject to tax under subtitle A of the Code or any person required to file an information return with respect to income shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Section 1.6001-1(c) of the regulations provides that for exempt organizations, in addition to such permanent books and records required by section 1.6001-1(a) with respect to the tax imposed by section 511 on the unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements.

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

Rev. Rul. 56-262, 1956-1 C.B. 131 provides that in order to be recognized as a church under the Code, an organization must have as its principal purpose or function that of a church.

Rev. Proc. 2008-9, 2008-2 I.R.B. 1, superseding Rev. Proc. 90-27, 1990-1 C.B. 514, in Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.03 provides that exempt status may be recognized in advance of the organization's operations if it's proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

Bubbling Well Church of Universal Love, Inc. v. Commissioner of Internal Revenue, 74 T.C. 531 (1980). In an action for declaratory judgment pursuant to section 7428(a), the Tax Court considered an adverse ruling by the IRS on an application for exempt status as a church. The court noted that the only voting members and directors of the organization were a husband and wife and their son, who had no affiliation with any denomination or ecclesiastical body or other

outside influence. The applicant had declined to furnish some information, and made answers to other inquiries that were vague and uninformative. On the basis of the record, the Court held that the applicant had not shown that no part of its net earnings inure to the benefit of the family or that petitioner was not operated for the private benefit of the family.

Western Catholic Church v. Commissioner of Internal Revenue, 73 T.C. 196 (1980). The petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals, while its primary activity was investment of funds. The directors borrowed money in its name, but used some of it for automobiles and to pay off personal loans. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court held that petitioner had not shown it was operated exclusively for exempt purposes or that no part of its earnings inured to the benefit of its officer.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse and thus the need to be open and candid, which the applicant failed to do.

In De La Salle Institute, a membership corporation v. United States of America, 195 F.Supp. 891 D.C.Cal (1961), the court found that the operation of a chapel, although considered very important to the organization's religious purposes, was found to be incidental to the organization's principal activities to operate a school and winery. An incidental worship activity can not make the organization a church with the court stating that the tail cannot be permitted to wag the dog. The chapel in this case was regarded in itself a 'church' and would have been so regarded if they did no more than operate one or two chapels. However in this case the organization did much more than operate a chapel.

Furthermore the religious activities including dogmatic teaching, moral teaching, etc which take place at the school are not sufficient to effect a change turning the school into a church. Anyone talking about the school would refer to the organization as a 'school' rather than a 'church.' An organization will remain a school even though there may be frequent prayer, have individuals that attend chapel for prayer and meditation on a regular schedule, have individuals that seek to convert or enlighten, and have individuals that endeavor to think religious thoughts and live by their religious creed at all times. Furnishing a student with an education, even if it is a religious education, is not a sacerdotal function, nor does it constitute the conduct of religious worship. See also Whealon v. United States, Cust.Ct. 191 F.Supp. 945 where the court held that a seminary for the professional religious education of priests, with an attached chapel, was not a house of worship.

In American Guidance Foundation, Inc. v. United States, 490 F.Supp. 304 (D.D.C. 1980), the court recognized the 14-point test developed by the Internal Revenue Service for determining whether a religious organization was a "church" within the common meaning and usage of the word. Developing the administrative criteria was necessary because the Internal Revenue Code does not provide a definition of the term church. The 14 criteria are identified from historically or judicially recognized objective characteristics of churches. Referring to these 14 points, the court stated, at 306: While some of these are relatively minor, others, e.g. the

existence of an established congregation served by an ordained ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance.

In Rameses School of San Antonio, Texas v. Commissioner of Internal Revenue, T.C. Memo. 2007-85, 2007 WL 1061871 (U.S. Tax Ct. 2007) the court held that IRS properly revoked the exempt status under section 501(c)(3) of the Code of a school on the grounds that its earnings inured to the benefit of its founder, who also served as its executive director, president, and CEO. The record showed that the founder, Ms Fennell, issued numerous organization checks to herself and withdrew cash from organization accounts for which the record showed no documented business purpose. The record also contained thousands of dollars of expenditures directed to retail stores, credit card companies, financial institutions, Ms. Fennell's dentist, and other businesses for which there was no evidence of a business purpose or board authorization. Neither did the organization's records show that there was any documented system for either loans to and repayments by Ms. Fennell or for loans by Ms. Fennell and reimbursements from the school. State officials had revoked the school's charter, after finding that the school was being operated without a functioning board of directors and that Ms Fennell had unfettered discretion to direct and manage the operation of the school and its financial affairs.

The IRS sought financial and governance records in order to verify information and to evaluate the records for possible instances of private benefit and personal inurement. To that end only a limited portion of the requested materials was provided, and often only after repeated inquiries, missed or delayed appointments, and a general lack of cooperation on the part of petitioner. Consequently, additional information was sought and obtained from third-party sources, including public records. The IRS concluded that the school had failed to establish that it was operated exclusively for an exempt purpose, in that it was operated for the benefit of private interests and a part of net earnings inured to the benefit of its founder Ms. Fennell. The court found that revocation on the basis of private benefit and inurement was adequately supported in the record. The facts showed factors indicative of a prohibitive relationship including control by the founder of the entity's funds, assets, and disbursements; use of entity moneys for personal expenses; payment of salary or rent to the founder without any accompanying evidence or analysis of the reasonableness of the amounts; and the purported loans to the founder showing a ready private source of credit. In the face of these factors, the organization had provided no credible information to support an exempt purpose for the expenditures. As it bore the burden of proving that it qualified for exemption, failure to provide to meet its burden caused it to fail to qualify.

In Basic Unit Ministry of Alma Karl Schurig v. Commissioner, 511 F. Supp. 166 (D.D.C. 1981), *aff'd*, 670 F.2d 1210 (D.C. Cir. 1982), the court upheld IRS's denial of exempt status as a religious organization in a declaratory judgment action. The court held that in factual situations where there is evident potential for abuse of the exemption provision, a petitioner must openly disclose all facts bearing on the operation and finances of its organization. Here Plaintiff did not proffer sufficiently detailed evidence of its charitable disbursements, or the extent of its support of its members. Rather, plaintiff continually responded that it had already provided the data, or could not furnish anything further. Therefore, the court found that the applicant did not meet its burden to positively demonstrate that it qualifies for the exemption. The Court of Appeals for the District of Columbia Circuit, in affirming that the organization had not met its burden of establishing that no part of its net earnings inured to any private individual, observed :

"taxpayer confuses a criminal prosecution, in which the government carries the burden of establishing the defendant's guilt, with a suit seeking a declaratory judgment that plaintiff is entitled to tax-exempt status, in which the taxpayer, whether a church or an enterprise of another character, bears the burden of establishing that it qualifies for exemption."

In Church in Boston v. Commissioner of Internal Revenue 71 T.C. 102 (1978) the court found that the organization's officers received amounts of money in the form of "grants." These grants carried with them no legal obligation to repay any interest or principal. Petitioner contended, as it had during the administrative proceeding before the IRS, that the grants were made in furtherance of a charitable purpose: to assist the poor who were in need of food, clothing, shelter, and medical attention. However, petitioner was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant which was specified as either unemployment, moving expenses, school scholarship, or medical expense. This information was insufficient in determining whether the grants were made in an objective and nondiscriminatory manner and whether the distribution of such grants was made in furtherance of an exempt purpose.

The failure to develop criteria for "grant" disbursements or to keep adequate records of each recipient can result in abuse. Accordingly it was found that the organization failed to establish that their disbursements constituted an activity in furtherance of an exempt purpose.

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the court denied a petition for declaratory judgment that the organization qualified for exempt status as a church. In addition to evidence of a pattern of tax-avoidance in its operations, the court noted that the organization had failed to respond completely and candidly to IRS during administrative processing of its application for exemption. An organization may not declare what information or questions are relevant in a determination process. It cited a number of declaratory relief actions that upheld adverse rulings by the Service because of the failure of the applicants to provide full and complete information on which the Service could make an informed decision.

In P.L.L. Scholarship v. Commissioner, 82 T.C. 196 (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The court reasoned that, because the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed that it was independent because there was separate accounting and no payments were going to the bar. The court was not persuaded.

A realistic look at the operations of these two entities, however, shows that the activities of the taxpayer and the Pastime Lounge were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements do not change that fact.

The court went on to conclude that, because the record did not show that the organization was operated for exempt purposes, but rather indicates that it benefited private interests, exemption was properly denied.

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of its application for exempt status. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes. The organization's petition claimed that the founder had resigned and it had changed. However, there was little evidence of change other than replacement of the founder with an acquaintance who had no apparent qualifications. The court resolved these questions against the petitioner, who had the burden of establishing it was qualified for exemption. If the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant," at 802.

RATIONALE

Failure to Establish Operating Exclusively for Exempt Purposes

To be exempt under section 501(c)(3), an organization must be both organized and operated for one or more exempt purposes specified in the section. Although "exclusively" does not mean "solely" or "without exception," the presence of a single nonexempt purpose, if substantial, will preclude exemption regardless of the number or importance of exempt purposes. Better Business Bureau, Easter House, supra. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more purposes specified in section 501(c)(3). Neither is an organization operated exclusively for one or more exempt purposes if its net earnings inure to the benefit of private shareholders or individuals, or its activities further private rather than public interests.

Exemption from federal income taxation is not a right; it is a matter of legislative grace that is strictly construed. New Dynamics, supra. The applicant bears the burden of establishing that it qualifies for exempt status. *Id.* An applicant must prove that it is organized and operated exclusively for exempt purposes and not for the private benefit of its creators, designated individuals or organizations controlled by such private interests. See, section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Exclusively does not mean "solely," but no more than an insubstantial part of an organization's activities may further a non-exempt purpose.

An applicant for exempt status must provide sufficient information for the IRS to make an informed decision. National Ass. of American Churches, supra. It must respond to questions completely and candidly. *Id.* The responses must include details, figures, and documentation. Basic Bible Church, supra. The IRS has statutory and regulatory authority to inquire about an applicant's proposed activities and other subjects material to its determination of whether the applicant meets the standards for exempt status, Rev. Proc. 2008-9. Especially where an organization is dominated by one individual, or has a non-functioning board, which provide potential for abuse of exemption provisions, the applicant must openly and candidly disclose all facts bearing on the finances and operation of its organization. Basic United Ministry of Alma Karl Schuring, supra.

Each application must be signed by an authorized official, under a statement that:

I declare under the penalties of perjury that I am authorized to sign this application on behalf of the above organization and that I have examined this application, including the accompanying schedules and attachments, and to the best of my knowledge it is true, correct, and complete.

Evidence submitted by the applicant must be substantial and conclusive. Rev. Proc. 2008-9, supra. Documentation must be more than superficially responsive.

It is not enough that a corporation believes and declares itself to be a church. Nor is it sufficient that the applicant prepares superficially responsive documentation for each of the established IRS criteria. To hold otherwise would encourage sham representations to the IRS and result in adverse tax consequences to the public at large. American Guidance Foundation, supra.

Vague and inconclusive materials and gaps in the record will be resolved against the applicant. New Dynamics, supra, citing "numerous other §7428 cases in this court and elsewhere to similar effect."

Where, as here, an organization is completely controlled by its creators, without participation by members, the community or even the oversight of a religious denomination, the opportunity for abuse makes vital an open and candid disclosure of all the facts about the organization and its operations, so that the Court can be assured that it is not sanctioning an abuse of the revenue laws. Bubbling Well Church, supra.

The information submitted with your application does not support a conclusion that you will operate exclusively for section 501(c)(3) purposes. Although you provide an educational curriculum for students, qualifying for tax-exemption under section 501(c)(3) of the Code requires meeting all requirements for exemption, as discussed in the line of legal authority cited above, including Rameses School of San Antonio, Texas v. Commissioner of Internal Revenue, supra. Like the organization in Rameses, your operations show factors indicative of prohibited inurement and private benefit: control by your founder over your funds, assets, and disbursements; payments of compensation to the founder or other insiders without any evidence or analysis of reasonableness; and an ability of other officials to make disbursements without apparent financial controls. In the face of your failure to thoroughly explain this pattern of misappropriation and mismanagement, including missing or scanty documentation for many disbursements, especially the numerous unexplained checks or withdrawals for cash, you have not established that you are operated exclusively in furtherance of section 501(c)(3) purposes.

Evidence of a Substantial Non-Exempt Purpose

The information shows that the misappropriation and mismanagement found in Entity1 flow through to you and your programs, activities, and administration. This conclusion is based upon representations and materials in the application file that show you and Entity1 are related and interconnected, have commingled finances and operations, serve the same or similar purposes, and are controlled by the same individual. See P.L.L. Scholarship v. Commissioner, supra, where the court found that activities of the taxpayer and the lounge were so interrelated as to be functionally inseparable. The extent of the misappropriation and mismanagement in your

organization is found to be substantial and is considered to be in furtherance of non-exempt purposes and therefore prevents you from qualifying for exemption under section 501(c)(3) of the Code. See section 1.501(c)(3)-1(c)(1) of the regulations, which provides that if more than an insubstantial part of its activities is not in furtherance of an exempt purpose then the organization will not be regarded as "operated exclusively" for one or more exempt purposes. The basis for these findings are as follows:

- You have former students from Entity1. You have operated under Entity1's name and refer to your 37 year history as Entity1 aka1 in your application. Checks you have received for tuition and other payments have been made payable to you, Entity1, Entity1 aka1, and Entity3. You have cashed or deposited these checks and used these funds for expenditures and disbursements for your organization.
- You state Indiv1 "has the final decision in all... educational and administrative matters." Additionally Indiv1 is in the top organizational position of authority and control for your organization. Your governing board has not adopted bylaws and has not met where it has recorded written minutes. You have not provided evidence that shows your governing board is directing, authorizing, and overseeing your organization. You provided no information showing that your board functioned in any capacity but name. Indiv1 is your fiscal officer and the sole signer on your bank accounts. Entity1 is similarly controlled by Indiv1. He is Entity1's President and Dean, and he signed the \$amount2 HUD grant as Project Manager, and executed the mortgages for Entity1. The file supports a description of Indiv1's position as the dominant individual who is in complete control of Entity1. The information in the file shows that he holds essentially the same position of total authority in your organization that he holds in Entity1. He is a person who is a "private shareholder or individual" within the meaning of section 1.501(c)(3)-1(c)(2) of the regulations, which refers to persons having a personal and private interest in the activities of the organization. .
- You have described that you were formed to take over from Entity1 due to bankruptcy proceedings to allow for the sale of property for \$amount12. You have not shown that the transaction and arrangement with Entity1 was not done to avoid bankruptcy court supervision. Whether this avoidance violates bankruptcy law or constitutes any other contractual breach is not a consideration for this determination. It is only necessary to note that funds paid to Entity1 were received and used to operate your organization and that this constitutes a compelling motivations for the connection between you and Entity1. See Section 1.501(c)(3)-1(d)(1)(ii) which assigns the burden of proof to an applicant organization to show that it serves a public rather than private interests.
- PublicInfo1, PublicInfo2, and PublicInfo3 describes Entity1's misappropriation of a \$amount2 congressional grant paid through HUD. The HUD investigator found a wide array of expenditures to individuals and to entities that paid for personal expenses for Indiv1 and paid for his personal federal income tax liability. HUD also found that funds were deposited into accounts he controlled. Only one payment of \$amount3 was found that was for the intended purpose to pay down the mortgage on the Entity1 property. Additionally Entity1 refused to allow the HUD investigator to see their books. You have not disputed these claims. Where you have commented on these matters you explained that Indiv1 did not admit to any criminal charges.

- Similar to the wide array of expenditures found in Entity1 your financial records and materials show that many of the entries in your Cash payment materials lack sufficient detail to show that funds further your exempt purposes. Disbursements are shown to have been made to governing body members, officers, and staff for your organization, but without adequate descriptions of the purpose for the disbursement. In those instances where descriptions were provided it was still unclear that the disbursements furthered your exempt purposes. For example disbursements descriptions include the following notations - "\$25 Money Order + \$70 – 2 Mets tickets", "Lunch & Munch - \$275 cash", "\$275.00 – cash munch & lunch (+3 postdated cks)," "medical," "transfer," "Roses", "Ipod Prize," "papers," "parking ticket," "senator X – Misc Expens.," "Fruit - Senator's Lunch". Many of the disbursements have no description, list an individuals or entity's name, or simply indicate "cash." As for check images from the bank statements most all have no entry in the memo. A review of the checks shows that payments are made to a wide array of individuals, entities, or to "cash." In three instances checks show no entry in the payee line. You are considered to be operating in a way that is characterized by mismanagement not unlike Entity1 who was found by HUD to be operating in a manner that resulted in the misappropriations of funds.

Your failure to establish that you are operated exclusively for exempt purposes under section 501(c)(3) of the Code is a basis to show that you have substantial nonexempt purposes.

Failure to Establish You Are Not Operating for Impermissible Private Benefit and That No Earnings Inure to Insiders

The missing, discrepant, and insufficient information and records indicates you are not being operated exclusively for section 501(c)(3) exempt purposes and that you have failed to show that no part of your earnings inure to the benefit of the insiders that control your organization. Given that you have failed to provide information to overcome the inferences from what is in the file, despite our repeated requests for you to do so, reinforces the conclusion that you are not operated exclusively for section 501(c)(3) purposes, and that you operate for substantial private interests.

Financial information requested in the application has been found to be incomplete, to contain numerous gaps, and material deficiencies. Your application and financial information shows that your organization lacks adequate accounting and record keeping and lacks adequate cash controls. As discussed in Western Catholic Church v. Commissioner, supra, the failure to keep adequate records, a lack of records that allow funds to be traced completely, instances where funds pass back and forth between parties, caused the organization to be nonexempt. The court held that the organization was not operated exclusively for exempt purposes, as it was not able to show that no part of its earnings inured to the benefit of its officer. As discussed in New Dynamics Foundation v. United States, supra, gaps in the record will be resolved against the applicant. Following are discrepancies and gaps found in your application information that you have failed to fully explain or provide. Additionally the items and issues below show you are similar to the organization in Western Catholic Church v. Commissioner, supra, that was found to not be exempt.

Bank statements provided contained many gaps. Statements were not provided for all the periods requested. These records were requested to clarify discrepancies in financial data submitted and to show that revenues and expenditures reported were complete and supported the activities, programs, and operations you represented you conducted. For the 42 statement periods for the two accounts you provide information for 13 statements were missing. Additionally the bank statements provided were incomplete. Where statements were provided all the pages were not provided. For the statements you provided 10 were found to be missing pages.

You represented that you did not have funding from loans. Then when you did not wish to disclose your actual revenues and corresponding expenditures, you claimed that all your funding was from loans. In your last submission, you represent that three individuals loaned you funds totaling \$amount13. You also stated that these loans had no interest, were not written, and had no terms other than they were to be repaid when you were able. A review of your financial material shows that in addition to the three loans you represented you had, you were borrowing funds from numerous other individuals. Some of these individuals were your officers and employees in addition to individuals and entities that have no apparent connection to you. Your check records and Cash payment materials show that you were repaying these "loans" from cash balances you maintained by cashing tuition checks and from cash tuition receipts. You have not provided any documentation for any of these loans. Your application substantially misrepresents the extent and circumstances for your borrowing and repayment arrangements. You conduct loan transactions similar to Church in Boston v. Commissioner of Internal Revenue, supra, where the organization's officers received amounts of money that carried no legal obligation to repay any interest or principal. In this case the court held this as a factor in their ruling that they were not exempt.

The tuition payments you received included checks made out to you and checks that were paid to Entity1, Entity1 aka1, and Entity3. There are also numerous third party checks that do not show they were paid to you. Nonetheless you accepted all of these checks. Most checks were converted into cash. Your cash payment materials show that you conducted a significant portion of your financial transactions in cash and often failed to keep sufficient balances in your checking accounts. As a consequence you have many instances where your bank accounts are overdrawn and in a negative balance for days and even weeks. Additionally you were incurring large insufficient funds charges for writing bad checks. This pattern to accept checks that are not made out to you, to keep a large portion of your receipts in cash balances, to maintain overdrawn checking account balances, and to continue to write bad checks and incur recurring insufficient fees indicates your operations are incurring excessive and unnecessary expense due to poor business methods and practices. You have not provided an explanation about these practices sufficient to demonstrate that your activities were conducted in a manner that ensured the accomplishment of purposes consistent with the accomplishment of exclusively exempt purposes and did not result in serving impermissible private interests.

Your financial records indicate you have foreign activities and programs. Copies of checks you provided shows that a number of checks are from foreign bank institutions. A number of payees show a "Ltd" indicating they are foreign organizations. There are numerous checks shown in your bank statements that are missing the US check clearing codes normally found in the lower right corner of the check. When this number is missing this indicates that the check was a foreign cleared check. In the application you represent that you will not

conduct foreign activities and programs or make distributions to foreign entities or individuals. The non-disclosure of your foreign activities is considered to be a material misrepresentation.

Governing body members as represented in your application differ from the trustees listed in your Certificate of Incorporation. You have not explained this.

One of the two bank accounts you use for your operations is held by Entity2. You have not explained the nature, purpose, or function of this entity nor have you explained its connection or relationship to your organization. The only information we have is that this is the entity that holds one of the two bank accounts you use to operate with and that Individ1 is the signer on the account.

You represent that you have no activities that further political purposes. Expenditures in your materials were found showing funds were disbursed in connection with persons in a political position. The descriptions for these expenditures are inadequate to determine if the expenditure was or was not for political purposes. Until you show they are not expenditures that further political purposes they will be regarded as expenditures for political purposes.

You were asked to provide responses with an authorized signature over a penalties of perjury statements. In several instances responses were submitted without the required authorized signature over a penalties of perjury statement. Although the responses were eventually submitted with an authorized signature and penalties of perjury statement you did not explain why submissions were repeatedly made without the authorized signature or penalties of perjury statement.

Although you state that no board members are compensated you have provided information showing that Individ1 as well as Trst3 (Indiv1's daughter) are compensated. Both are governing body members.

You represent that your compensation decisions will be recorded and that your documentation will shows the basis you used to justify that terms and amounts are fair and reasonable. Although you indicated this in your application you stated in a response that you did not record compensation decisions and that even though you had a policy for interested individuals to recuse themselves from a decisions related to themselves that this was not followed.

You describe a governing body that has not kept written minutes of meetings and has not established policies and procedures to operate by (no bylaws). Aside for the meeting described in your Certificate of Incorporation it is unclear if your governing body has met at any other time. Therefore your board is considered to be a non functioning board. Furthermore financial data and materials you have provided show that in absence of direction from your board your organization is operated on a discretionary ad hoc basis by Individ1, the Dean of your school. In response to having no bylaws you explained that you have adopted "general policies, rules, and regulations." These were found to be for operating your school not operating or governing your organization.

Accordingly, you have failed to establish that you are operated exclusively for exempt purposes under section 501(c)(3) of the Code.

You Have Failed to Establish You Are Operated Exclusively for Exempt Purposes, You Are Operated for the Benefit of Private Interests, and You Permit Your Net Earnings to Inure to Insiders

The materials in your application show numerous disbursements to Indiv1. The descriptions for these disbursements do not document they are for a purpose that furthers your exempt purpose. Also the disbursements are non-fixed and contradict your representation you made in your application that you would not make non-fixed disbursements. Additionally you state you will pay Indiv1 \$amount1 a year in compensation, yet you show in the Earning Reports that he has an Earned Amount for Year2 of \$amount10, an amount significantly less than you reported. Although there would be no problem if an organization re-determined an official's compensation based on objective criteria, including its financial condition, you did not provide any records showing that there was ever any objective consideration of Indiv1's compensation, nor do the records you have provided show that these funds were in fact paid or disbursed. Also the fact that funds were disbursed to Indiv1 but were not described as compensation, did not appear to be a fixed type of payment, were not described as reimbursements or repayments supports that Indiv1 was enriching himself not based upon work performed but at his sole discretion. Section 501(c)(3) of the Code provides a basic qualification - that no part of the net earnings may inure to the benefit of any private shareholder or individual.

The structure and control of your organization as detailed in the application shows that Indiv1 has near absolute control and discretion regarding the operation of your organization, is the sole person who is authorized to sign for your checking accounts, and has control and authority of all of the financial matters of your organization. Furthermore the financial materials you have provided show that Indiv1 has issued checks to himself, signed numerous checks for cash, made cash withdrawals all which your records reflects no documented and established exempt purpose. As was discussed in Rameses School of San Antonio, Texas v. Commissioner of Internal Revenue, *supra*, the situation where the founder of the school enriched herself by issuing checks to herself as payee and making cash withdrawals constituted inurement. Also in this case there was no documentation system for loans, state officials found that the school was being operated without a functioning board of directors, and the founder had unfettered discretion to direct and manage the operation of the school. Likewise your organization has a person in control that has unfettered control and discretion of your finances, your loan transactions have no discernable system or documentation, and you operate with a nonfunctioning board. In addition your records show that Indiv1 received disbursements directly from your organization's cash funds, by check, and by withdrawals. The records you have provided for these disbursements do not show they were for legitimate exempt purposes. As found in the *Rameses* case your disbursements to Indiv1 are considered to be similar and constitute inurement. Therefore you are similarly regarded as not operated exclusively for exempt purposes because you are operated for private interests that constitute inurement.

You Failed to Maintain Sufficient Records to Establish Your Operations are Exclusively in Furtherance of Exempt Purposes

The records and financial materials you have provided show that you do not maintain sufficient records to detail your activities and, therefore, are unable to show that you exclusively further 501(c)(3) exempt activities. Section 6001 of the Code and applicable regulations require that an organization maintain records sufficient to establish whether it is liable for income tax. The

deficiencies as noted above include inadequate descriptions of expenditures, gaps in your revenue and expenditure records, missing and incomplete bank statement, journal and logs that are not reconciled, cash handling policies and procedures that lack adequate controls to prevent theft, loss, and embezzlement.

In repeated requests for you to provide financial data with corresponding detailed schedules you have not provided the data as requested. When you were asked to explain the financial data in your initial application you responded that you had "no revenues" and "no expenses" because you were "not yet 501c3". Later when you were told this was inadequate and were asked to submit organized and consolidated financial data you submitted source documents and provided unconsolidated data that was not thoroughly organized. For the financial data you provided there are significant and materials gaps. Where you have been unable or as the case may be unwilling to provide the requested financial information we reach the same conclusion that you lack sufficient records to detail your exempt function activities to show that you exclusively further exempt status and therefore cannot be recognized as tax exempt. As discussed in Rev. Proc. 2008-9 the IRS has statutory and regulatory authority to inquire about an applicant's proposed activities and other subjects material to its determination of whether the applicant meets the standards for exempt status. Where the applicant fails to provide the information and there are gaps, or vague and inconclusive materials in the record these will be resolved against the applicant, see New Dynamics, supra, citing "numerous other §7428 cases."

Alternate Issues

Regarding your request to be described as other than a private foundation under section 509(a) of the Code because you are a church described in section 170(b)(1)(A)(i), we find that you do not meet the requirements to be classified as a church. As held in De La Salle Institute, supra, an incidental worship activity can not make an organization that otherwise conducts non-worship activities a church. Rev. Rul. 56-262, supra, provides that a church must have as its principal purpose or function that of a church. You describe activities where you conduct prayer services twice daily. The prayers are considered a worship activity and are not disputed. Your prayer activities are however conducted as an incidental part of your school activities. You state that the staff and students are the individuals that attend your services; you have not indicated you have any members who consider themselves to be members of your congregation. In this respect, you have not demonstrated that you satisfy the 14-point test developed by the Internal Revenue Service and applied in American Guidance Foundation, Inc. v. United States, supra,. Most importantly, you do not have a regular congregation where individuals choose to gather together; rather the individuals that attend your services do so as an incidental function of their attendance or employment at your school. You also indicate that prayer services will in the future be in a separate facility and that this arrangement when it is in place will further qualify you as a church. In Whealon v. United States, supra, the court held that a seminary for the professional religious education of priests, with an attached chapel, was not a house of worship. Therefore even if you were to attach a separate facility for your worship activity and your school was purely of a religious nature that this would not be sufficient for you to be described as a church.

We also considered whether you would qualify to be classified as other than a private foundation under section 509(a) of the Code because you would be a school described in section 170(b)(1)(A)(ii) if you qualified for exemption. You represent that you operate a school and have a regular scheduled curriculum, a regular faculty of qualified teachers, a regular

enrolled student body, and facilities where your educational activities are regularly carried out. You also refer to yourself as a school. Your operation of a school is not disputed and if you could show that you exclusively further exempt purposes, and that you served a public purpose and not private interests, and that you did not have inurement you would meet the foundation description to be classified as a school.

Your Requests, Protests, Positions and the IRS's Response

You sent several correspondences to us regarding this proposed denial determination. In these correspondences you made several requests, stated your position regarding some of our findings, and have made a formal request to protest this denial determination.

- a. You have asked that we reconsider our proposed denial determination.
- b. You have asked for a transfer of your determination case to Internal Revenue Service's (IRS) "District" office in the city in which you are located.
- c. You have asked that if your determination case is not reconsidered that you wish to file a protest because you believe a denial determination is incorrect.
- d. You have asked that in the event the case is transferred to Appeals that the case be assigned to an office in the city in which you are located.

You state that "the IRS did not follow the instruction of item 7 of the Power of Attorney form and did not transmit copies of the correspondence to the Organization's representative." A valid Form 2848 to authorize R as a representative Power of Attorney for you regarding this determination was not received by our office until Date5 and bore a date one day earlier. Although an invalid Form 2848 dated Date6 was sent to us you have not provided evidence that an earlier Power of Attorney existed, was valid, or had been submitted to the IRS. Based upon the date indicated on the valid Form 2848 the IRS received we did not ignore R's status as an authorized representative and have sent R all correspondences since the valid Form 2848 was provided. In addition we have answered R's questions and have accommodated his requests for dialogue with our office. You also state that R's Power of Attorney was mentioned by other IRS employees but you have not provided any corroborating facts, documentation, or filings to support this claim.

You state that "innocent responses have led the IRS to an incorrect result." You describe the organization's cash handling as one example. The application contains your representation that "all members of the administration are authorized to handle cash." You do not dispute or contradict this but explain that the IRS incorrectly surmised that there were no controls over the handling of cash. You state that the "cash logs" show there were controls. You also state that the IRS considered the response incomplete and also misinterpreted the words of the response. We do not assert that you lack cash control but that your cash controls are inadequate. The materials you provided shows that your policies, procedures, and operational implementation regarding handling cash did not provide adequate controls to account for all cash. Your cash handling policies and procedures lack a check and balance system, lack regular reconciliations, does not show you use separation of duties, cash log entries are incomplete, transaction descriptions do not have sufficient information to describe all entries, bank and book records do not match, there is no indication that you review your cash controls, there is no indication your

records have been audited, certified, or reviewed. Even though the financial data you provided is missing statements, contains gaps, has blended receipts and disbursements, and may have been gathered by untrained staff it is clearly evident that your cash handling controls are inadequate. Furthermore we did not rely solely on how you described your cash handling and accounting methods but considered your operations and implementations and therefore disagree with your assertion that the "words of the response were misinterpreted."

You state that you wish to "identify alleged shortcomings in documentation" but you have not addressed the many shortcomings identified in this letter. You acknowledge that you have provided "extensive documentation" and we reviewed these materials and considered them in making this determination. You state regarding gaps in documentation that "it was during this assembly process that was conducted by staff untrained in tax matters, which led to the within dispute." Your argument to blame your staff for this dispute instead of addressing the specific items identified in this letter is unpersuasive.

You state regarding the transfer request, missing items, and gaps in documentation "that any missing items, such as pages of bank statements may be promptly remedied." You state that the IRS "is basing it's determination upon these gaps in documentation." You also imply that the missing items and gaps result from your use of "staff untrained in tax matters" and an inadequate "level of supervision." You state that once the case is transferred that the "materials requested may be gathered and inspected by local IRS agents." Other than to blame your staff and despite promising to provide missing documents you have yet to provide missing items or to adequately explain gaps in documentation.

You have requested a "hearing on this matter." The determination process affords you an opportunity to present to the IRS on the Form 1023 application how you are organized and how you operate. The application process does not provide for a "hearing" as the determination process requires the administrative record document in writing. The administrative record constitutes the basis for the determination. See Rev. Proc. 2008-9 Section 4.02 for requirements the IRS must follow. The administrative record of the application must include all written correspondence between the IRS and the applicant regarding the application before issuance of a final determination. Likewise, the IRS determination can only be based on information that has been provided by the applicant to the IRS with the application or during the application process over the signature of a principal officer or by the IRS to the applicant during the application process. Despite not having a hearing you have been afforded numerous opportunities to clarify, amplify, correct, and explain how you operate and are organized. Additionally when an adverse determination is made and you disagree you have appeals rights, see the information below near the end of this letter and Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

You have made references regarding this matter as an examination, on-site audit, and investigation. This is not an examination, audit, or an investigation. This matter is a determination of your request to be recognized as exempt under Code section 501(c)(3). The procedures under which IRS issues rulings and determinations on applications for recognition of exemption are provided in Rev. Proc. 2008-9, 2008-2 I.R.B. 1, superseding Rev. Proc. 90-27, 1990-1 C.B. 514. Section 4.01, of Rev. Proc. 2008-9 provides that the IRS will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. An organization's failure to meet its burden of establishing that it meets

the requirements for exemption will result in denial of exempt status. As we noted above, the IRS determination must be based on written information contained in the administrative record of the application. Where requested information is missing from the administrative record this will be considered against you based upon numerous court cases including New Dynamics Foundation v. United States, supra, where gaps in the record were resolved against the applicant.

Your protest does not provide a basis for us to reconsider our adverse determination. The adverse determination listed myriad reasons for denial that the protest does not address. Rather, it asserts that the determination was "erroneously based upon statements" of "untrained personnel who, ...were otherwise preoccupied" and based on materials that "may not have been organized or indexed or summarized to the best degree possible." This ignores the fact that we made five attempts to obtain information, some of which clarified earlier requests, and that conclusions were based on documents as much as statements of personnel.

Additionally the adverse determination was not based on mere "gaps in documentation." Although failure to provide requested information is a basis sufficient in itself to support denial of exemption, it is not the only reason for denial. Further, as noted in the denial letter, the failure to provide information extended beyond requested records. The denial was also based on your failure to provide appropriate explanations to overcome inferences that you had not operated for exclusively exempt purposes.

The information we requested from you during the application process concerned your day-to-day operations rather than complex tax matters that would have required particular training to answer. If an organization is to operate exclusively for section 501(c)(3) purposes, it must have sufficient financial controls and keep adequate records to document that its financial resources are applied exclusively in furtherance of its exempt purposes. Your statement that "[w]ithout there being a level of supervision as to the assembly of the requested documentation, the good intentions of those assembling the documentation was not good enough to satisfy the examiner's requirements," serves as an acknowledgment that the organization lacks the operational controls required to insure it operates exclusively for section 501(c)(3) purposes.

Regarding your requests, protests, and positions

- a. The proposed denial determination has been reviewed including your request we reconsider our determination. Based upon the application file and the most recent information you have provided the denial determination remains as proposed.
- b. Your request for this application currently being processed in the Cincinnati Exempt Organization Determination office to be transferred to another Exempt Organization Determination office in your city has been considered. Additional development is not required to make our determination therefore case processing is being concluded in the Cincinnati Exempt Organization Determination office and no transfer is warranted.
- c. Your request to file a protest is noted and acknowledged.
- d. Your case transfer to Appeals will include your request for assignment to an office in the city in which you are located.

Conclusion and Summary

Based upon the administrative record including the application, submitted materials, correspondences, representations, clarifications, explanations, contradictions, missing information, and your rebuttal and protest we conclude that you have not established that you have operated, are operating now, or will operate exclusively for exempt purposes. Furthermore the application information and the record of your management and operations show that you serve your founders' private interests. The administrative record shows that you are operated to further non-exempt purposes in more than an insubstantial amount and your disbursements have resulted in inurement of net earnings. Additionally as found in New Dynamics Foundation v. United States, *supra*, the failure to be candid, forthright, and complete during the administrative process of a determination provides a legal basis to resolve missing information and gaps in the record against exemption and further show that you are operated for non-exempt purposes, including providing impermissible benefits to insiders. In summary -

- Expenditures have been made to a wide range of individuals and entities both foreign and domestic that have not been shown to further your exempt purposes. Operating in this manner constitute more than an insubstantial non-exempt purpose.
- You operate with a significant portion of your transactions in cash and you do not have adequate policies and procedures to control and account for all cash receipts and disbursements. Without adequate cash controls and accounting you are unable to show that you meet the operational requirements for exemption under Code section 501(c)(3).
- Financial records provided lack sufficient details to adequately describe your exempt activities and programs or to show that you exclusively further Code section 501(c)(3) exempt purposes.
- Disbursements that have not been shown to further your exempt purposes have been made to individuals that are insiders of your organization and you are controlled by an individual that directs funds to himself and related parties. Disbursements to insiders for nonexempt purposes is inurement a prohibited expenditure under Code section 501(c)(3) and shows that you have nonexempt purposes.
- You have failed to show as required for exemption under Code section 501(c)(3) that you serve public rather than private interests.
- You have not been candid, forthright, and complete in all matters. Many of your representations for your activities, programs, and operations have been found to be inaccurate. Information you have provided has in numerous instances been found to be incomplete, unclear, or vague.
- Some requested information has not been provided but the missing information is only one of numerous issues that are a basis jeopardizing tax exempt status under Code section 501(c)(3). The missing information issue even if it was the only issue, and it is not, would constitute a sufficient legal basis to prevent exempt recognition.

Therefore in conclusion we find that you do not qualify as exempt under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Group 7830
Room 4504
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Group 7830
550 Main Street, Room 4504
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements