



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, TX 75242

501.03-00

October 29, 2010

Release Number: 201103056

Release Date: 1/21/11

LEGEND

ORG = Organization name

Address = address XX = Date

ORG.

ADDRESS

Taxpayer Identification Number:

Person to Contact

Employee Identification Number:

Employee Telephone Number

Phone)

Fax)

CERTIFIED MAIL

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated January 23, 19XX, is hereby revoked and you are no longer exempt under section 501(a) of the Code effective July 1, 20XX.

Our adverse determination was made for the following reasons:

You have failed to operate exclusively for one or more exempt purposes as required by I.R.C. §501(c)(3). You have not demonstrated that you engage primarily in activities that further an exempt purpose. You have failed to demonstrate that you serve a public rather than a private interest. Your net earnings inure in whole or in part to the benefit of private individuals and/or shareholders.

Contributions to your organization are no longer deductible.

You are required to file income tax returns on Form 1120. If you have not already filed these returns and the examiner has not provided you instructions for converting your previously filed Forms 990 to Forms 1120, you should file these income tax returns with the appropriate Service Center for the tax years ending June 30, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

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

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United

States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

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 cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

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

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:

Publication 892
Form 6018, *Consent to Proposed Adverse Action*
Envelope



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
400 North Eighth Street, Room 480, Box 74
Richmond, Virginia 23219

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

January 22, 2010

ORG
ADDRESS

Taxpayer Identification Number:
Form:
Tax Year Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our finding, please sign and return the enclosed Form 6018, Consent to proposed Actions – Section 7428. If you have already given us a signed Form 6018, you need not repeat this process. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, The Examination Process, and Publication 892, Exempt Organizations Appeal Procedures for Unagreed Issues, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that

was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination
Form 6018

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 06/30/20XX

LEGEND

ORG = Organization name XX = Date Address = address City = city
State = state County = county Motto = motto Cemetery = cemetery
BM-1 & BM-2 = 1st & 2nd BM RA-1 & RA-2 = 1st & 2nd RA CO-1 THROUGH TO-8
= 1ST THROUGH 8TH COMPANIES

ISSUE

Whether ORG, formerly CO-1, qualifies for exemption under Section 501(c)(3) of the Internal Revenue Code.

FACTS

The Articles of Incorporation for CO-1 were filed February 24, 19XX. The Articles of Incorporation were amended on August 12, 19XX, to change the name of the Corporation to ORG (ORG). The principal officer of the Corporation was identified as BM-1, post office Address, City, State in County. The corporation is a State, non-stock corporation.

Letter 1048 was issued to the organization on October 18, 19XX. The organization failed to provide the requested support information and was therefore "presumed to be a private foundation as of the 91st day after the end of (the) advance ruling period" of June 30, 19XX. Determination letter 1078, was issued January 23, 19XX, granting ORG exemption under section 501(c)(3) of the Internal Revenue Code (IRC). The letter also states that ORG is classified as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in section(s) 509(a)(1) and 170(b)(1)(A)(vi).

The Articles of Incorporation state that the purposes for which the Corporation is formed are as follows:

- a. To provide and care for injured wild birds with the intent of returning them to the wild when they are well.
- b. To provide care and protections and suitable habitat for wild birds who are unable to be returned to the wild.
- c. To provide and encourage education in matters pertaining to preservation and rehabilitation of wild birds.
- d. Said corporation is organized exclusively for humane, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law.)

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

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended
ORG		06/30/20XX

ORG is required to file Form 990, Return of Organization Exempt from Income Tax and Form 941, Employer's Quarterly Federal Tax Return. Form 990 for tax year ending June 30, 20XX was filed by ORG on March 23, 20XX. Forms 990 have not been filed by ORG for tax years ending June 30, 20XX forward. Forms 941 for the quarters ending March 31, 20XX through March 31, 20XX, were filed by ORG on March 30, 20XX. ORG has failed to file Forms 941 for all quarters of the 20XX, 20XX, and 20XX tax years.

During the years 19XX through May, 20XX, ORG was located at Address, City, State. The property is also known as Cemetery. On April 9, 20XX, Judge, Circuit Court of County, State, issued Memorandum Opinion and Order on Case No. # involving , BM-1, and ORG. The following information is an extract from the Memorandum Opinion and Order and gives a brief history and description of the property and the organization:

ORG (ORG) was formed for the purpose of Motto rehabilitation, education, and training programs. ORG is operated and managed by BM-1, the President of the Board of Directors, and BM-2, the Vice President of the Board of Directors. On October 22, 20XX, the Circuit Court of County, State, revoked the charitable status of ORG and barred the organization from soliciting donations. Currently, the State of State Charitable Division does not recognize ORG as a non-profit organization.

BM-1 lost her Motto rehabilitation license in year 20XX, though she continues to operate ORG; she has been diagnosed with post traumatic stress disorder and undergoes twice weekly treatment in State. BM-1 lives on the pet cemetery property . . . and has been traveling and living with Defendant BM-2 in State since October 20XX.

Defendant, BM-2, is the Vice President of ORG. In 20XX, he pursued a romantic relationship with BM-1, then he became employed by ORG, and eventually he was elevated to Vice President. When BM-2 worked for ORG he mostly cared for the property as a laborer and handyman. He has no formal training in Motto rehabilitation. . . . In December 20XX he moved to State for employment with CO-2. He currently lives in State four days per week and on the pet cemetery property during the remainder.

(The property) commonly referred to as " , " was founded as such in 19XX and is considered the second oldest pet cemetery in the United States. In fact, the State of State has designated it a "historic resource." The property has been improved with a house, a barn, a chapel, and various sheds. At one point there was an aviary, which is an enclosure for confining birds. The rest of the land is used for grave sites or as a memorial park.

In 19XX, RA-1 donated \$\$ to purchase the property for CO-3 (CO-3). In doing so, she saved it from the likely fate of being rezoned for commercial use. At the time of transfer, (RA-1) and CO-3 agreed that the property would be forever restricted to use benefiting animals. To accomplish this goal, an agreement and a Declaration of Covenants and Restrictions were executed. In 19XX, the property was successfully transferred to CO-3 subject to covenants and restrictions.

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ORG		06/30/20XX

CO-3 used the property as its headquarters until 19XX, at which time it moved to another location. ORG, seeing an opportunity to relocate its executive offices there, contacted (RA-1) inquiring about the future of the property. To finalize matters and secure (RA-1's) consent, ORG announced its intent to reconfigure the property for Motto rehabilitation. With (RA-1's) consent, the property was transferred to ORG.

In 19XX, (RA-1), CO-3 and ORG entered into several agreements. The agreements effectuated the property's transfer to ORG and also recognized and reiterated ORG obligation to use and maintain the property in accordance with the covenants and restrictions established in 19XX.

The property was very well maintained during the time CO-3 used it as a headquarters. All the while, CO-3 operated the pet cemetery and obeyed the covenants and restrictions set out in the agreements and declarations.

CO-3 kept the house and other structural improvements on the property in immaculate condition. The chapel had an altar and seating so that owners could bring their deceased pets and take pictures before burial. The cemetery grounds were well manicured and trash-free. However, everything changed after CO-3 moved.

Since ORG took over the property, the aesthetics worsened. Today the grounds are poorly maintained. There are boxes and various items strewn about. The aviary has been removed. Some areas are overgrown and littered with rubbish. Only a few areas are regularly mowed. Several of the graveyard headstones are broken, sunken, or tipped over.

The house is unkempt. Outside, it's littered with trash. Inside, boxes and junk are strewn about. The hallways appear to be converted to storage and are practically impassable. If the Defendant BM-1 lives in the house, as she claims to, she sleeps on a mattress on the floor.

The chapel's entire floor disintegrated and cannot be walked on. The barn, which was slated for use as the starting point for building an educational center, is in an advanced state of deterioration. Inside there are small animals about. Freezers hold dozens of unmarked dead pets. The area is heavily littered and smells strongly of urine.

Burials gradually slowed, and nearly stopped entirely, after ORG took over the pet cemetery operations. They dropped from an estimated high of five pets buried per week in 19XX to one pet buried per week in 20XX. In fact, even one pet buried per week seems unlikely in light of the fact that the new burial section of the cemetery appears scarcely used.

Despite the obvious decline in the property and the organization, ORG was successful in soliciting funds. ORG received at least \$\$ in donations since 19XX.

One of ORG's fundraising efforts was to solicit donations of . People would donate their used and and ORG would then store the on the property. BM-1 would

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ORG		06/30/20XX

ultimately sell the _____ on the internet or through an auction house. This method grossed a minimum of \$\$ until the State of State ordered the _____ to be removed. Despite this order, a _____ is visible on the property.

BM-1 testified that she solicited funds to build a Motto educational center and that (RA-1) donated cash for that purpose. She also claims to have started construction on the education center with preliminary layouts and purchase of a boundary survey. However, neither products of alleged labor were produced at trial; currently there is no educational center on the property.

ORG has its own difficulties. On the years 19XX, 20XX, 20XX, 20XX, 20XX, 20XX, 20XX, and 20XX Defendants did not file the required annual reports with the state of State. On the years 20XX, 20XX, 20XX, 20XX, 20XX, 20XX, and 20XX Defendants did not file federal tax returns. On the years 20XX, 20XX, 20XX, 20XX, 20XX, and 20XX, Defendants did not file Federal Form 990, the return of organization exempt from income tax form. As a result ORG's charter was forfeited by the State of State in 19XX and 20XX. In 20XX, the Circuit Court of County, State, effectively revoked ORG's charitable status and barred BM-1 from soliciting funds in State. In 20XX, the Circuit Court for County, State, found ORG in breach of its contract with this State wherein it accepted land and money to synthesize wetlands on the donated property. BM-1 was enjoined from selling the property or reaping further benefit from it.

BM-1 admits that she was responsible for maintaining the records of ORG. Moreover, she takes responsibility for not filing ORG's returns and admits that she is culpable for the forfeiture of its charter. Currently, ORG has not filed the required returns.

The defendants BM-1 and BM-2 have been commingling personal funds with ORG's. There were payments for rent, utilities, cash, insurance, and general expenditures made by ORG that appear to personally benefit BM-1 and BM-2. Over a six year period, \$\$ of ORG's assets are thought to have been converted into personal benefits. During the same period, BM-1's personal bank records reveal a conspicuous absence of payments such as rents, car payments, insurance, mortgages, utilities, credit card payments, and the like.

... In this case, the Plaintiff (RA-1) donated the property and \$\$ to the charitable donee, ORG. The donation of the property was frustrated by ORG's inability to care for the property, failure to obey the restrictive covenants, failure to maintain charitable status, and general failure as an organization. The donation of the \$\$ was frustrated by ORG's failure to build a Motto educational center, failure to maintain its charitable status and purpose, and general failure as an organization.

ORG's above listed failures, forfeited charters, and revoked charitable status likely renders the organization dissolved or, at the very least, about to be dissolved. In addition, this Court finds that, for the above reasons, it is impracticable and inexpedient for ORG to continue its activities. Plaintiff's donated property, therefore, can be redistributed by this Court to another charitable organization in order to fulfill her intended use of it.

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The Plaintiff has authorized this Court to transfer the property to the CO-4, of State, who agrees to accept the transfer. Pursuant to State Code Annotated, Corporations and Associations, Section 5-209, this Court will honor Plaintiff's request and order that any and all of the Defendants' interest in the property be transferred to the CO-4

Additionally, the Court ordered BM-1 and ORG to be jointly and severally liable to RA-1 for compensatory damages of \$\$ and punitive damages of \$\$.

On March 7, 20XX, an appointment letter and Form 4564, Information Document Request, were sent to ORG by Internal Revenue Service scheduling an appointment for Monday, March , 20XX, to review books and records for tax year ending June 30, 20XX. The letter also informed the organization of its filing requirements and of its failure to file Forms 990 and Forms 941 for tax year 20XX through the present. The organization was also requested to confirm the appointment set for March th. No response was received by the organization.

A telephone call was made on March 21, 20XX, to BM-1 to confirm the March appointment. BM-1 requested to reschedule the appointment due to medical issues. A new appointment was rescheduled as per BM-1's request for April 20XX, at 1 p.m.

A telephone call was placed to BM-1 on April , 20XX, to confirm the appointment for the next day. BM-1 requested to reschedule the appointment due to illness. Appointment date was rescheduled as per BM-1's request for April 17, 20XX at 1 p.m.

A telephone call was placed to BM-1 on April , 20XX, to confirm the next day's appointment. Revenue Agent left a voice mail at both the organization's office and on BM-1's cell phone requesting that she return the call to confirm the scheduled appointment for April , 20XX, at 1 p.m. There was no response from BM-1; several additional attempts were made to contact her to confirm the next day's appointment. BM-1 returned the call on April , 20XX, at 8:30 a.m. stating that once again she was unable to make the appointment due to being ill and also being physically located in State. The appointment was again rescheduled to a later date of May , 20XX, at 1 p.m.

A telephone call was placed to BM-1 on April , 20XX, to confirm the appointment set for the next day. BM-1 said she would be unable to attend the meeting due to the fact the organization had been involved in a court battle and was being forced to vacate the premises. She said the organization was moving back to Bowie, State. She would be in contact the next week or the week following in order to set up an appointment. She also stated she "had set aside the records that need to be reviewed so a meeting should not be a problem." As of this date, BM-1 has failed to reschedule the appointment.

On February 5, 20XX, bank records for ORG were summonsed via Form 2039 from CO-5, Address, City, State and CO-6, Office of Corporate Counsel, Address, City, State. Parts D of Form 2039 issued to CO-5 and to CO-6 were sent via certified mail on February 5, 20XX to ORG, BM-1, President, Address, City, State. The "received by" section of Post office PS Form 3811, Domestic Return Receipt, was signed by MB-2, VP on February 16, 20XX.

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On June 10, 20XX, Form 2039 was reissued to CO-5, Address, City, State. Part D of Form 2039 issued to CO-5 was sent via certified mail to ORG, BM-1, President, Address, City, State. Certified mailing addressed to ORG was returned on July 7, 20XX "unclaimed, unable to forward".

On March 13, 20XX, a letter was sent to ORG informing the organization of its filing requirements under IRC 6033. A deadline of March 27, 20XX was set for filing Form 990 for tax years ending June 30, 20XX to present and Form 941 for all quarters from January 1, 20XX through the present. The letter also informed the organization if it failed, without reasonable cause, to file the required returns, its exempt status would be revoked because its failure to establish its observance of the conditions required for continuation of its exempt status. The letter also described the applicable penalties under IRC 6652(c)(1)(A).

On March 30, 20XX, a 25-page fax was received from BM-1. The fax included a cover letter and completed Form 941 for quarters ending March 31, 20XX through March 31, 20XX. BM-1 stated in the letter that an accountant would "be working on preparing the 990's starting with the 20XX return and coming forward." BM-1 said she would "be preparing the 941's starting with the present and working back in time." BM-1 also stated that she had "been suffering from severe dissociative disorder for some time now." She requested an extension of the deadline for one month from the date of the letter.

On April 2, 20XX, a letter was sent to ORG granting the extension of the time to respond until April 30, 20XX. The letter also acknowledged the receipt of the completed Forms 941 for the 20XX tax year through the first quarter of 20XX. In addition, the letter referenced the enclosure of records which were being sent to the organization along with the letter. Records sent to the organization under the April 2, 20XX cover letter included the bank records secured from CO-5, select pages of the information received from Charles Schwab, and numerous newspaper articles written about the organization. The letter asked the organization to review the records and provide any comments or feedback by April 30, 20XX. As of this date the organization has failed to respond to the correspondence and to file any additional returns.

On June 22, 20XX, a letter was sent to ORG along with copies of various court orders which involved the organization. The organization was asked to review the documents and provide any comments or feedback in reference to the records. No response has been received.

Obtainable records show the organization's previous filing history as follows:

Form	Tax Year	Due Date of Return	Date Filed
990	19XX06	November 15, 19XX	February 25, 19XX
990	19XX06	November 15, 19XX	November 24, 19XX
990	19XX06	November 15, 19XX	October 22, 20XX
990	19XX06	November 15, 19XX	October 31, 20XX
990	19XX06	November 15, 19XX	February 22, 20XX
990	20XX06	November 15, 20XX	March 23, 20XX
941	19XX03	April 30, 19XX	February 04, 19XX
941	19XX06	July 31, 19XX	January 04, 19XX
941	19XX09	October 31, 19XX	February 04, 20XX

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer		Year/Period Ended
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941	19XX12	January 31, 19XX	February 04, 20XX
941	19XX03	April 30, 19XX	February 02, 20XX
941	19XX06	July 31, 19XX	February 04, 20XX
941	19XX09	October 31, 19XX	October 31, 20XX
941	19XX12	January 31, 20XX	October 31, 20XX
941	20XX03	April 30, 20XX	October 31, 20XX
941	20XX06	July 31, 20XX	July 31, 20XX
941	20XX09	October 31, 20XX	October 31, 20XX
941	20XX12	January 31, 20XX	January 31, 20XX

Form 990 has not been filed for tax years 20XX06 through 20XX06. Form 941 has not been filed for the period 20XX03 through 20XX12. Form 941 for tax periods 20XX03 through 20XX03 were filed on March 30, 20XX.

Bank records provided from Chevy Chase included account information from four (4) different accounts as follows:

1. Account # - ORG - information provided included copies of bank statements, cancelled checks, deposits slips, withdrawal slips, and limited deposited items. Signature card was signed by BM-1.
2. Account # - ORG CO-7 - information provided included bank statements and deposit slips. Signature card was signed by BM-1.
3. Account # - CO-7 - information provided included bank statements only. Signature card was signed by BM-1.
4. Account # _____ - ORG - information provided included bank statements only. Signature card was signed by BM-1.

The following chart shows total deposits into the four accounts listed above. The deposits shown are net of any transfers between accounts to the extent transfer items can be identified based on bank records only.

	Income per Year					
	20XX06	20XX06	20XX06	20XX06	20XX06	20XX06
Acct #						
Acct # 6						
Acct #						
Acct #						
Total income per year						

LAW

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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IRC, 20XX-CODE-VOL, SEC. 501.

(c)(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures 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.

IRC, 20XX-CODE-VOL, SEC. 6033.

6033(a)(1) IN GENERAL. —Except as provided in paragraph (3), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

FINAL-REG, TAX-REGS, §1.501(c)(3)-1.

(a) *Organizational and Operational tests*

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

FINAL-REG, TAX-REGS, §1.501(c)(3)-1.

(c) *Operational test*

(1) *Primary activities.* —An organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

FINAL-REG, TAX-REGS, §1.501(c)(3)-1.

(c)(2) *Distribution of earnings.* —An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words “private shareholder or individual”, see paragraph (c) of §1.501(a)-1.

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FINAL-REG, TAX-REGS, §1.501(c)(3)-1.

(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

FINAL-REG, TAX-REGS, §1.501(a)-1.

(c) "*Private shareholder or individual*" defined. The words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

FINAL-REG, TAX-REGS, §1.6033-2.

(a) (1) Except as provided in section 6033(a)(2) and paragraph (g) of this section, every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions issued with respect to the return. Except as provided in paragraph (d) of this section, such return shall be filed annually regardless of whether such organization is chartered by, or affiliated or associated with, any central, parent, or other organization.

(2)(i) Except as otherwise provided in this paragraph and paragraph (g) of this section, every organization exempt from taxation under section 501(a), and required to file a return under section 6033 and this section (including, for taxable years ending before December 31, 1972, private foundations, as defined in section 509(a)), other than an organization described in section 401(a) or 501(d), shall file its annual return on Form 990.

FINAL-REG, TAX-REGS, §1.6001-1

(a) *In general.* —Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information 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.

(c) *Exempt organizations.* —In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on 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. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033.

(d) *Notice by district director requiring returns, statements, or the keeping of records.* —The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under subtitle A of the Code, including qualified State individual

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income taxes, which are treated pursuant to section 6361(a) as if they were imposed by chapter 1 of subtitle A.

(e) *Retention of records.* —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 so long as the contents thereof may become material in the administration of any internal revenue law [Reg. §1.6001-1.]

Revenue Ruling 59-95, 1959-1 CB 627 -

An organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year. However, its records were so incomplete that it was unable to furnish such statements. Section 6033 of the Internal Revenue Code of 1954 provides that every organization, except as provided therein, exempt from taxation under section 501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and shall keep such records, render under oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe. *Held*, failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

The Founding Church of Scientology v. United States, 412 F.2d 1197 (Ct. Cl. 1969).

“In sum, the total value of the overt benefits received by the [founder and family]... in living expenses and from salaries and royalties was several hundred thousand dollars. These payments are substantial. When viewed in light of the [inurement] that transpired, they prove conclusively that [the church] was operated for the... benefit of [the founder] and his family.”

IRS Announcement 94-111, I.R.B. 1994-37, (Aug. 25, 1994)

An organization exempt under section 501(c)(3) is prohibited from engaging in activities that result in inurement of the organization’s net earnings. In its simplest terms, the prohibition against inurement means that the persons who created or who now control an exempt organization, including its members, (“insiders”) may not use their control to acquire any of its funds or assets (other than for the payment of reasonable compensation for services rendered or in return for the payment of fair market value). Examples of inurement include the payment of dividends or unreasonable compensation. The prohibition against inurement is absolute; therefore, any amount of inurement is grounds for loss of exempt status.

GOVERNMENT POSITION

ORG does not qualify as exempt under IRC §501(c)(3) due to its failure to comply with the filing requirements of IRC §6033 and its failure to meet the operational test as described in Treas. Reg. §1.501(c)(3)-1.

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IRC §6033(a)(1) provides, except as provided in paragraph 3, every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

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

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

In accordance with the above cited provisions of the Code and regulations under IRC §§6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

Much like the organization described in *Rev. Rul. 59-95*, ORG failed to furnish the requested books and records for tax year ending June 30, 20XX. There were numerous attempts made by the Revenue Agent to schedule mutually agreed upon appointment dates and time to review books and records. When calls were made to confirm the appointments a couple of days prior to the actual date, BM-1 was always unavailable for each appointment set. BM-1 has made no attempt to schedule a meeting to provide the requested material; Form 990s have not been received. Based on summonsed bank records, ORG' gross receipts were sufficient to establish Form 990 filing requirements for tax years 20XX06 through 20XX06. The bank records also show that ORG had Form 941 filing requirements for tax years 20XX through 20XX based on cancelled checks showing salaries paid to employees. Records also show the Form 990 and Form 941 returns that were previously filed have consistently been filed late.

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In the April 9, 20XX Memorandum Opinion and Order, the Court found "BM-1 admits that she was responsible for maintaining the records of ORG. Moreover, she takes responsibility for not filing ORG's returns and admits that she is culpable for the forfeiture of its charter. Currently, ORG has not filed the required returns." In failing to comply with the provisions of IRC § 6033, ORG has not established that it is observing the conditions required for the continuation of exempt status.

ORG has also failed to meet the operational test as required in Treas. Reg. §1.501(c)(3)-1. In order to satisfy the "operational test" an organization must meet the following requirements:

1. Engage primarily in activities which accomplish one or more of the exempt purposes specified in IRC §501(c)(3) (Treas. Reg. §1.501(c)(3)-1(c)(1)),
2. Not allow its net earnings to inure to the benefit of private shareholders or individuals (Treas. Reg. §1.501(c)(3)-1(c)(2)),
3. Not engage in substantial lobbying activity (Treas. Reg. §1.501(c)(3)-1(c)(3)) and
4. Not engage in any political activity (Treas. Reg. §1.501(c)(3)-1(c)(3)).

Treas. Reg. §1.501(c)(3)-1(c)(1) 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 the exempt purposes specified in IRC §501(c)(3). Treas. Reg. §1.501(c)(3)-1(c)(1) further provides that an organization will not meet the operational test if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. In *Better Business Bureau of Washington, D.C. v. United States*, 326 U.S. 279, 283 (1945), the Court stated that "the presence of a single . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes." Although the inurement proscription and exclusive operation for public benefit are two separately stated exempt status requirements, they do overlap. The courts have commented that private inurement is incompatible with being organized and operated *exclusively* for charitable purposes. *Lowry Hospital Association v. Commissioner* 66 T.C. 850 (1976). U.S. Tax Ct.

Due to ORG' failure to provide books and records as requested, summonsed bank records and public record information is being relied on to glean information about the activities of ORG. Based on the bank records reviewed, ORG incurred expenses in the earlier years (20XX – 20XX) which appear to be related to its stated exempt purpose. Cancelled checks show payments for payroll, vet bills, duck food, advertising, etc. This category of expenses however starts to dwindle toward the end of 20XX. The number of employees is reduced to BM-1, Mr. BM-2, and the groundskeeper, James Thompson. By 20XX there are no identifiable exempt purpose expenses incurred other than payroll. The obvious lack of animal-related expenses is an indicator that the organization was not actively involved in its purported exempt purpose of rehabilitating Motto. Also worthy of note is the fact that BM-1, the President of the organization lost her state licensing to rehabilitate Motto in 20XX and never had it renewed. Mr. BM-2, Vice President of the organization, was never licensed to rehabilitate Motto.

While there is an obvious lack of exempt purpose expenses being incurred by 20XX, there are easily identifiable personal expenses being paid from the organization's bank account from 20XX forward. Checks that appear personal in nature include those written to RA-2 for rent, CO-8, utility companies, numerous attorneys, doctors and various credit cards. Judge wrote in his Memorandum Opinion and

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Order (Case No. #), “During the same period, BM-1’s personal bank records reveal a conspicuous absence of payments such as rents, car payments, insurance, mortgages, utilities, credit card payments, and the like.” There are numerous checks written to BM-1 for petty cash from the organization’s bank account. Additionally, thousands of dollars were transferred from the organization’s account to BM-1’s personal account. BM-1 had signature authority on all ORG bank accounts. Salary paid to BM-1, personal expenses paid and transfers of monies to BM-1’s account for the seven years total over \$\$\$. Business expenses for the same period total \$\$\$. As in *The Founding Church of Scientology v. United States*, the “total value of the overt benefits received by [BM-1] . . . in living expenses and from salaries . . . was several hundred thousand dollars. These payments are substantial. When viewed in light of the [inurement] that transpired, they prove conclusively that [ORG] was operated for the . . . benefit of [BM-1] . . .”

In the April 9, 20XX, Memorandum Opinion and Order, (Case No. #) Judge states:

The future relationship of ORG and Cemetery is uncertain. Defendant BM-1 testified that she plans to continue using the property as a headquarters for ORG. However, she further testified that ORG’s new purpose is to “increase individual self esteem.” She now intends to pursue ORG’s goals by working as a “life coach” or a “clutter consultant” on a full time basis. These goals are tangential to animal welfare in that they focus upon human psychology and mental illness.

ORG’ Articles of Incorporation state “No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers or other private persons. . .” As in *The Founding Church of Scientology v. United States*, 412 F.2d 1197 (Ct. Cl. 1969), BM-1 was a private individual, an insider. She exercised control over the ORG’ activities and finances. She benefited improperly from ORG’ net earnings. Based on the information obtained, it is concluded that the degree to which the activities of ORG served to benefit the private interests of BM-1, was more than insubstantial. As a result, prohibited private inurement has occurred and ORG has failed to meet the operational test as required in Treas. Regs. 1.501(c)(3)-1(c)(1).

TAXPAYER POSITION

The taxpayer has been repeatedly asked to provide requested information and has failed to do so. Therefore, their position is unknown. This report provides 30 days for the taxpayer to formally state a position.

CONCLUSION

Due to the failure to file the required returns and the presence of inurement, the Government concludes ORG does not qualify as exempt under IRC §501(c)(3). Therefore, the exempt status of ORG should be revoked effective July 1, 20XX.

Form 1120 returns should be filed for the tax periods ending on or after July 1, 20XX.