

Internal Revenue Service
Appeals Office
3310 El Camino Avenue
Suite 170
Sacramento, CA 95821-6318

Department of the Treasury

Person to Contact:

Employee ID Number:

Tel:

Fax:

Contact Hours:

Refer Reply to:

AP:FE:SAC:DFF

In Re:

Form Required to be Filed:

EIN:

Tax Period(s) Ended:

FORM NUMBER

Date: DEC 17 2010

Number: 201110020
Release Date: 3/11/2011

A

B

UIL - 0501 .03-00

CERTIFIED MAIL

Dear :

This is a final adverse determination as to your exempt status under section 501(c) (3) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under IRC 501(c)(3) of the Internal Revenue Code, effective January 1, 2003. You did not 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). More than an insubstantial part of your activities was in furtherance of a non-exempt purpose. You also operated for the benefit of private interests. Treas. Reg. 1.501(c) (3)-1(d) (1) (ii). You also failed to meet the recordkeeping and reporting requirements under IRC 6001 and 6033. Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, an appropriate 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 for 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 notice of deficiency. 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.

Sincerely,



CHARLES FISHER
TEAM MANAGER

Enclosures:

Notice 1214 *Helpful Contacts for your 'Deficiency Notice'*

Internal Revenue Service

Department of the Treasury
TE/GE EO Examinations Division
1100 Commerce St., MC 4980
Dallas, TX 75242

Date: **JAN 27 2009**

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

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

If you accept our findings, take no further action. We will issue a final revocation letter.

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

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

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

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

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

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

Thank you for your cooperation.

Sincerely,

Renee B. Wells
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG	EIN	Tax identification number
		Year/Period Ended 12/31/20XX - 12/31/20XX

LEGEND

ORG = Organization name XX = Date Address = address City = city
State = state Island = Island County = county President =
president CIR-1, DIR-2 & DIR-3 = 1ST, 2ND & 3RD DIR RA-1, RA-2 & RA-3 -
1ST, 2ND & 3RD RA CO-1, CO-2 & CO-3 = 1ST 2ND & 3RD COMPANIES DESC-1 THRU
DESC-7 = 1ST THRU 7TH DESCRIPTION DI-1 THRU DN-25 = 1ST THRU 25TH DONORS

ISSUES

Issue 1. Whether ORG ("ORG") failed to operate exclusively for exempt purposes as required by Internal Revenue Code § 501(c)(3) during the years under examination.

Issue 2. Whether ORG operated primarily for private benefit during the years under examination.

Issue 3. Whether the net income of ORG inured to the benefit of its founder during the years under examination.

Issue 4. Whether ORG violated the provisions of Internal Revenue Code § 501(c)(3) by engaging in political intervention.

Issue 5. Whether ORG's tax exempt status under Internal Revenue Code § 501(c)(3) should be revoked.

FACTS

Background Information

According to the State Secretary of State's website, ORG was incorporated as a nonprofit corporation in the state of State on April 20, 19XX. According to the State's records, ORG changed its name to the ORG in the year 20XX.

On November 29, 19XX, the Internal Revenue Service ("IRS") issued Letter 947 notifying ORG of its exemption under I.R.C. § 501(c)(3). The determination letter also notified ORG of its foundation status under I.R.C. § 509(a)(1) and § 170(b)(1)(A)(ii). Per current IRS records, the organization is recognized as an educational organization as described in I.R.C. §§ 509(a)(1) and 170(b)(1)(A)(ii). The organization does not have a copy of any subsequent determination letters, nor does the IRS show any subsequent ruling dates since November of 19XX.

Beginning January 1, 20XX, an examination was conducted of the organization's books and records for the period ending December 31, 20XX. On February 26, 20XX, the examination was expanded to cover the taxable periods ending December 31, 20XX through December 31, 20XX. As a result of the aforementioned examination, a delinquent Form 990, *Return of Organization Exempt from Income Tax*, was secured on June 26, 20XX (the "Form 990") for taxable year ending December 31, 20XX. According to Part III of the Form 990, the organization's primary exempt purpose is "Land Preservation & Education." The organization described its achievements as a "[b]road range of conservation related issues including land conservation and an educational component of land conservation." The organization was unable to provide a copy of its Articles of Incorporation, Bylaws or its Application for

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Recognition of Exemption (Form 1023). The assigned agent was advised by the IRS' internal record keepers that the administrative file which normally contains copies of these documents is not available.

Conservation Easements

According to the organization's Forms 990 for the 20XX and 20XX years, which were filed with the IRS in the year of 20XX, ORG currently holds 35 conservation easements. These easements affect a total of \$ acres of land or an average of % acres per easement. The following information, which appeared in ORG's Forms 990 for the years 20XX through 20XX identify only 9 of the 35 conservation easements that ORG represents that it currently holds. To date, the IRS has not received any information or documentation regarding the remaining 26 conservation easements that are purportedly held by ORG.

Conservation Easements Accepted in 20XX

On the Form 990 that the organization filed for the tax period ending December 31, 20XX, the organization listed the following conservation easements that it accepted during the first year under examination. This list is illustrated below:

<u>Donor</u>	<u>Appraisal</u>	<u>Description</u>
DN-1	\$ \$	DESC-1
DN-2	\$ \$	DESC-2
DN-3	\$ \$	DESC-2
DN-4	\$ \$	DESC-2
DN-5	\$ \$	DESC-2
DN-6	\$ \$	DESC-2
DN-7	\$ \$	DESC-3

Conservation Easements Accepted in Years Prior to 20XX

The IRS issued to ORG an Information Document Request ("IDR"), dated April 24, 20XX, in which the IRS requested documentation that supported the information ORG had reported on Schedule A of the Form 990 for 20XX. In response to the IDR, ORG provided some information about the easements that it accepted in years prior to the first year under examination (i.e., 20XX). This information is summarized below:

<u>Donor</u>	<u>Appraisal</u>	<u>Description</u>
DN-8 (19XX)	\$ \$	DESC-2
DN-9 (20XX)	\$ \$	DESC-2
DN-10 (20XX)	\$ \$	DESC-2

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		Year/Period Ended 12/31/20XX - 12/31/20XX

DN-11 \$\$ DESC-2
(20XX)
DN-12 \$\$ DESC-3

In a response to an IDR that the IRS issued on February 26, 20XX, ORG provided information concerning the easements that it accepted during the 20XX calendar year. The easements were identified as follows:

Conservation Easements Accepted in 20XX

<u>Donor</u>	<u>Appraisal</u>	<u>Description</u>
DN-13	\$\$ & \$\$	DESC-4
DN-14	\$\$	DESC-2
DN-15	N/A	N/A
DN-16	\$\$	DESC-4
DN-17	\$\$	DESC-2
DN-18	\$\$ & \$\$	DESC-5
DN-19	\$\$	DESC-2
(20XX)		
DN-20	\$\$	DESC-5
(20XX)		
DN-21	\$\$	DESC-6
(20XX)		
DN-22	\$\$	DESC-6
(20XX)		
DN-23	\$\$	DESC-2
(20XX)		
DN-24	N/A	DESC-2
(20XX)		
DN-16	N/A	DESC-7
(20XX)		

In a response to an IDR that the IRS issued on February 26, 20XX, ORG provided information concerning the easements that it accepted during the 20XX calendar year. The easements were identified as follows:

Conservation Easements Accepted in 20XX

<u>Donor</u>	<u>Appraisal</u>	<u>Description</u>
DN-19	\$\$	DESC-2
DN-	\$\$	DESC-5

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Explanation of Items		
Name of Taxpayer ORG	Tax identification number EIN	Year/Period Ended 12/31/20XX - 12/31/20XX

20
DN- \$\$ DESC-6
21
DN- \$\$ DESC-6
22
DN- \$\$ DESC-2
23
DN- N/A DESC-2
24
DN- N/A DESC-7
16

During the examination, the assigned agent sought information concerning the activities of ORG and how it was operated during the taxable years at issue. The following narrative summarizes the information that was provided by ORG concerning its activities and manner of operations.
Initial Interview

An initial interview was conducted with President, the founder and current President of ORG, on April 18, 20XX. The following discussion is a summary (i.e., a partial transcript) of the questions and answers that were exchanged by the parties during the initial interview:

1. What role does your organization have in valuation of the property donated to the organization?
The organization ("EO") does not concern itself with the valuation of the easement other than making sure a qualified appraisal was done to determine the value of the donation.

2. Does the organization provide names of appraisers to donors? What was the criterion for the appraiser to be recommended? Were donors required to use these appraisers? What is the business relationship with the appraisers and how are they compensated?

The EO will recommend appraisers who have a background and experience in the issues. However, the EO does not require a specific appraiser to be used. The President stated that he has on occasion been involved as a consultant to the appraiser and to a client. A separate contract is signed with the President for his services as consultant in these situations.

3. Has your organization ever been involved with extinguishing or otherwise amending an easement? If so, why? What was the relationship?

Yes. One occasion: The organization received \$\$ in 20XX for the extinguishment of amendment of the easement in the case file.

4. Does your organization maintain a registry or index of its conservation easements including name and address of the land holder and a copy of the legal deed of easement?

This information is maintained in the files.

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5. Does your organization perform a baseline study of the easement prior to the completion of gift of the property?

Yes. Baseline documentation includes photographs. It consists of wetland delineation reports, maps, and environmental value statements.

6. Does the organization maintain a fund, or otherwise have the resources, to support the cost of monitoring and enforcing the easements in which it holds?

Most easements are local besides one in Eastern State and two in State.

The ability to enforce Conservation Easements:

Easements are monitored, but the ability to legally enforce easements is done by sending a copy of the deed is sent to the planning department. This in effect flags the property.

There is no special fund or account containing funds that are allocated to enforcement of easements.

7. Does the organization, on a regular basis, send out an experienced or expert employee to visit the property site subject to the easement to assist in enforcing the easement?

This is all done by the Founder/President.

8. How do you go about enforcing an easement?

- *Monitor via annual visits*
- *Speak to owner (successors in interest)*
- *Contact the permitting entity*

9. What is the organization's application process for accepting donations of conservation easements?

There is no application process.

10. Is the organization engaged in any political and/or lobbying activities and/or expenditures?

The EO gave a financial donation to the Mayor race in 20XX. It was a few hundred dollars.

ORG's Responses to Supplemental IDR

On February 25, 20XX, the IRS issued three IDRs to ORG in which it requested additional information and documentation. The IDRs contained the following requests for information and documentation:

IDR # 1:

CO-1 & The CO-2

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		Year/Period Ended 12/31/20XX - 12/31/20XX

The following requests for information and/or documentation relate to information that appears on the CO-1 website (i.e., website) and the limited liability company known as the CO-2 (hereinafter sometimes referred to as the "CO-2"). The CO-2, which advertises approximately 510 acres of land for sale on the website, uses potential conservation easement donations as a selling point and it lists the same contact information for the CO-2 (i.e., contact name, address, telephone number and email address) that ORG provided to the IRS for ORG.

For each of the following requests, please provide me with the requested information, and all of the documentation and/or other written material that is responsive to each request that ORG and/or its agents possess and control for each year that is under examination.

Request 1. Please provide a detailed list of the conservation easements that ORG accepted, received, and/or held during each of the years under examination in which the CO-2 had a financial or ownership interest at any time including, but not limited to, general partnership interest(s), limited partnership interest(s), limited liability company (CO-2) membership interest, and/or any other financial investment(s) or financial interest(s).

Request 2. Please provide a written explanation of President's personal and/or professional relationship or involvement with the CO-2.

Request 3. Please specify the percentage of time that the CO-2 used, utilized, and/or occupied all or a portion of the office space that is located at Address, City, State (hereinafter referred to as the "Office"). For example, please indicate how much time the CO-2 occupied and/or used the Office (e.g., 5 days a week, from 9 am to 5 pm each day, for 52 weeks each year).

Request 4. Please indicate the percentage of the Office space that the CO-2 used, utilized, and/or occupied, and describe the types of activities that the CO-2 performed in the Office. For example, please specify the percentage of the physical space that the CO-2 used, utilized, and/or occupied (e.g. the CO-2 occupied 100% of the Office in which it performed the following activities: [describe them]).

Request 5. Please provide a written explanation that clarifies why the contact information for the CO-2 that appears on the CO-1 website lists the same contact information that ORG provided to the IRS (i.e., President; Address: Address, City, State; Phone: PHONE; Email: EMAIL).

IDR # 2:

Forms 990 for 20XX & 20XX

Request 1. ORG has indicated in the previous documentation that it provided to the IRS that ORG has received gifts of several conservation easements, the value of which exceeds 10 million dollars. According to the IRS' records, however, ORG has not filed a Form 990 for the 20XX tax year or the 20XX tax year.

Please complete appropriate Forms 990 for the 20XX and 20XX tax years and forward them to my office for processing. Please note that the failure of ORG to file the required information returns could lead to the revocation of the organization's exemption from Federal income tax.

Form 886-A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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General Document Requests

For each of the following requests, please provide me with the requested information, and all of the documentation and/or other written material that is responsive to each request that ORG and/or its agents possess and control.

Request 2. Please provide copies of bank statements, cancelled checks, and check registers for the tax year ending December 31, 20XX.

Request 3. Please provide copies of books and records including, but not limited to, its ledgers, journals, and/or financial statements for the tax year ending December 31, 20XX.

The State Secretary of State's office's online charity records and reports indicate that the ORG is also known as the CO-3 and the CO-2 (which is listed as a regular (inactive) limited liability company). Consequently, all of the references to the ORG that appear in the requests set forth below include references to the CO-3 and the CO-2, respectively, (hereinafter collectively referred to as "ORG") as well, unless otherwise noted.

IDR # 3:

ORG's Conservation Easements

According to the documents that were filed with the Internal Revenue Service on behalf of ORG, ORG holds the following conservation easements:

I. Conservation Easements Accepted Prior to the 20XX Tax Year

ORG accepted several conservation easements prior to the first year under examination (i.e., the 20XX tax year). These conservation easements, which are described in the below chart, were reported on Schedule A of the Form 990 that ORG filed with the Internal Revenue Service (IRS) for the taxable period ending December 31, 20XX, a copy of which was produced by ORG in response to the IRS' Information Document Request (IDR), dated April 24, 20XX, in which the IRS requested information about ORG's conservation easements.

DONOR	APPRAISAL	DESCRIPTION
DN-10 (20XX)	\$\$	DESC-2
DN-8 (19XX)	\$\$	DESC-2
DN-11 (20XX)	\$\$	DESC-2
DN-9 (20XX)	\$\$	DESC-2
DN-12	\$\$	DESC-2

II. Conservation Easements Received During the 20XX Tax Year

ORG received several conservation easements during the 20XX tax year. These conservation easements, which are described in the below chart, were identified by ORG in the Form 990 that it filed with the IRS for the tax period ending December 31, 20XX.

Donor	Appraisal	Description

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		Year/Period Ended 12/31/20XX - 12/31/20XX

DN-1	\$ \$	DESC-1
DN-2	\$ \$	DESC-2
DN-3	\$ \$	DESC-2
DN-4	\$ \$	DESC-2
DN-5	\$ \$	DESC-2
DN-6	\$ \$	DESC-2
DN-7	\$ \$	DESC-3

III. Conservation Easements Accepted During 20XX and 20XX

ORG accepted several conservation easements during the calendar years 20XX and 20XX. These conservation easements, which are described in the below chart, were identified in the documentation that ORG provided to the IRS in response to the IRS' Information Document Request (IDR), dated February 27, 20XX, in which the IRS requested information about ORG's conservation easements. The following requests for information and/or documentation relate to the conservation easements that were accepted and/or held by ORG. For each request, please provide me with the requested information, and all of the documentation and/or other written material that is responsive to each request that ORG and/or its agents possess and control, for each year that is under examination.

Donor	Appraisal	Description
DN-13 (20XX)	\$ \$ & \$ \$	DESC-4
DN-14 (20XX)	\$ \$	DESC-2
DN-15 (20XX)	N/A	N/A
DN-16 III (20XX)	\$ \$	DESC-4
DN-17 (20XX)	\$ \$	DESC-2
DN-18 (20XX)	\$ \$ & \$ \$	DESC-5
DN-19 (20XX)	\$ \$	DESC-2
DN-20 (20XX)	\$ \$	DESC-5
DN-21 (20XX)	\$ \$	DESC-6
DN-22 (20XX)	\$ \$	DESC-6
DN-23 (20XX)	\$ \$	DESC-2
DN-24 (20XX)	N/A	DESC-2
DN-16 III (20XX)	N/A	DESC-7

Request 1. Please furnish a complete list of all of the conservation easements that ORG held as of December 31.

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For each conservation easement donation, (a) please state the date of the donation; (b) specify which entity received the donation (i.e., CO-3, ORG or CO-2); (c) identify the donor(s) of the easement; (d) provide a description of the property that was subject to the easement including the total acreage; and (e) detail the number of acres of the donated property that were effected by the conservation easement.

Request 2. For each easement held by ORG, please provide a written narrative that explains the easement's "conservation purpose," as that term is defined in Internal Revenue Code § 170(h)(4)(A).

Please be prepared to produce all of the documentation and other written material that substantiates and/or corroborates the "conservation purpose" for each easement that ORG accepted, received, and/or held.

Upon receiving ORG's responses to the requests set forth in this IDR, the IRS will select a sample of the conservation easements that were accepted, received and/or held by ORG, and the IRS will examine the documentation and other written material that ORG has already produced to the IRS, and/or subsequently produces, that substantiates and/or corroborates the "conservation purpose" of these easements including, but not limited to, all of the documentation that evidences the formal and/or informal research that ORG performed, and/or was performed on its behalf, for purposes of verifying the "conservation purpose" of each conservation easement before it was accepted, received, and/or held by ORG.

Request 3. A website associated with ORG (i.e., website) (hereinafter referred to as the "CO-1" website) implies that ORG has accepted more than 200 conservation easements since 19XX. However, in response to the IRS' prior request for records relating to the conservation easements held by ORG, ORG provided the information that is summarized in above charts, which indicates that ORG held fewer than 30 easements in the years 20XX through 20XX.

Please have an officer of ORG provide a written explanation of the inconsistency between the information that appears on the CO-1 website which implies that ORG has accepted more than 200 easements since 19XX, and the information that ORG provided to the IRS (that is summarized in the above charts) which indicates that ORG held fewer than 30 easements during the years 20XX through 20XX. For example, please have an officer explain why the number of easements that ORG reported on the CO-1 website (i.e., 200 easements since 19XX) is substantially higher than the number of easements that ORG represented to the IRS that it held in the years 20XX through 20XX (i.e., 5 easements prior to 20XX, 7 easements in 20XX, and 13 easements in 20XX and 20XX, respectively).

Request 4. Please have an officer of ORG provide a written explanation of the policies, processes, and/or procedures that ORG, and/or anyone acting on its behalf, followed for purposes of determining whether ORG should take the donations of the conservation easements that ORG accepted, received, and/or held during each year under examination.

Request 5. Please provide copies of the documentation that evidences the policies, processes, and/or procedures that ORG, and/or anyone acting on its behalf, followed for purposes of determining whether ORG should take the donations of the conservation easements that ORG accepted, received, and/or held during each year under examination.

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Request 6. Please provide a list of the individuals who decided which conservation easement donations should be accepted, received, and/or held by ORG during each year under examination.

The list should (a) include each individual's name, current address and telephone number; (b) detail each individual's employment background and experience that qualified them to make such determinations; (c) specify whether each individual was a volunteer or a paid staff member; and (d) identify the easements that each individual evaluated and recommended for acceptance by ORG.

Request 7. Please provide a written explanation of President's personal and/or professional relationship with each of the individuals who donated conservation easements to ORG during each year under examination.

Management Related Activities

Request 8. Please have an officer of ORG provide a written explanation of the policies, processes, and/or procedures that ORG, and/or anyone acting on its behalf, followed for purposes of determining whether management fees should be charged in connection with the conservation easements that ORG accepted, received, and/or held during each year under examination, and indicate who was responsible for implementing these policies, processes and/or procedures.

Request 9. Please provide copies of the documentation that evidences the policies, processes, and/or procedures that ORG, and/or anyone acting on its behalf, followed for purposes of determining whether management fees should be charged in connection with the conservation easements that ORG accepted, received and/or held during each year under examination.

Request 10. Please provide a list of the individuals who performed management related services in connection with the conservation easements that ORG accepted, received, and/or held during each year under examination.

The list should (a) include each individual's name, current address and telephone number; (b) detail each individual's employment background and experience that qualified them to perform the management related services that were rendered; (c) specify whether each individual was a volunteer or a paid staff member; (d) describe how each individual was paid (i.e., by cash or by check), if applicable; (e) identify the easements for which each individual provided the services; and (f) describe the management related services that each individual performed.

Request 11. Please provide copies of the documentation that evidences the management related fees that ORG paid, if any, in connection with the conservation easements that ORG accepted, received, and/or held during each year under examination.

Request 12. Please provide a written explanation of President's personal and/or professional relationship with each of the individuals who provided management related services in connection with the conservation easements that ORG accepted, received, and/or held during each year under examination.

Monitoring Activities

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Request 13. Please have an officer of ORG provide a written explanation of the policies, processes, and/or procedures that ORG, and/or anyone acting on its behalf, followed for purposes of monitoring the conservation easements that ORG accepted, received, and/or held during each year under examination, and indicate who was responsible for implementing these policies, processes and/or procedures.

Request 14. Please provide copies of the documentation that evidences the policies, processes, and/or procedures that ORG, and/or anyone acting on its behalf, followed for purposes of monitoring the conservation easements that ORG accepted, received, and/or held during each year under examination, and indicate who was responsible for implementing these policies, processes and/or procedures.

Request 15. Please provide a list of the individuals who monitored the conservation easements that ORG accepted, received, and/or held during each year under examination.

The list should (a) include each individual's name, current address and telephone number; (b) detail each individual's employment background and experience that qualified them to monitor the easement(s); (c) specify whether each individual was a volunteer or a paid staff member; (d) describe how each individual was paid (i.e., by cash or by check), if applicable; (e) identify the easements that each individual monitored; (f) indicate when the monitoring occurred; and (g) describe the monitoring services each individual performed.

Request 16. Please produce all of the documentation that evidences the monitoring of each conservation easement that ORG accepted, received, and/or held during the years under examination including, but not limited to, all records and reports, travel logs, journals, notes, photographs, and any other written materials that relate to the monitoring activities, reflect the frequency and scope of the monitoring activities, and/or describe the types of monitoring activities that were performed in connection with each easement.

Request 17. Please provide a written explanation of President's personal and/or professional relationship with each of the individuals who monitored the conservation easements that ORG accepted, received, and/or held during each year under examination.

Appraisals and Valuations

Request 18. Please have an officer of ORG provide a written explanation of the policies, processes, and/or procedures that ORG, and/or anyone acting on its behalf, followed for purposes of obtaining appraisals and/or valuations of the conservation easement donations that ORG accepted and/or held during each year under examination, and indicate who was responsible for implementing these policies, processes and/or procedures.

Request 19. Please provide copies of the documentation that evidences the process and/or procedures that ORG, and/or anyone acting on its behalf, followed for purposes of obtaining appraisals and/or valuations of the conservation easements that ORG accepted, received, and/or held during each year under examination.

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Request 20. Please provide a list of the individuals who performed appraisal and/or valuation services relating to the conservation easements that ORG accepted, received, and/or held during each year under examination.

The list should (a) include the individual's name, current address and telephone number; (b) detail each individual's employment background and experience that qualified them to appraise and/or value the donated conservation easement; (c) specify whether each individual was paid for their services; (d) describe who paid each individual for the services they rendered and how they were paid (i.e., by cash or by check), if applicable; (e) identify each conservation easement donation that each individual appraised or valued; and (f) include the appraisal and/or valuation amounts for each donation.

Request 21. Please provide copies of the documentation that evidences the payments that were made to the individuals (who are identified in response to the preceding request) who performed appraisal and/or valuation services pertaining to the conservation easements that ORG accepted, received, and/or held during each year under examination.

Request 22. Please provide a written explanation of President's personal and/or professional relationship with each of the individuals who performed appraisal and/or valuation services for ORG in connection with the conservation easement donations that ORG accepted, received, and/or held during each year under examination.

Financial Interests/Loans

Request 23. Please provide a written explanation of the financial interest(s) that President had in any of the conservation easements that ORG accepted, received, and/or held during each year under examination.

Request 24. Please provide a written explanation relating to the funds that President loaned to ORG during each year under examination.

The written explanation should (a) explain why President loaned the funds; (b) specify the amount of each loan; (c) state whether each loan was memorialized in writing and, if so, indicate which individuals have possession of the loan documentation; and (d) detail the primary terms of each loan including the principal amount(s) and applicable interest rate(s).

Request 25. Please provide copies of all of the documentation that evidences the loans that President made to ORG during each year under examination.

Request 26. Please provide copies of the documentation that evidences the loan payments that ORG made to President in connection with the loans that President made to ORG during each year under examination.

Miscellaneous

Request 27. Please explain whether ORG has defended the legitimacy of the conservation easements that ORG accepted, received, and/or held during each year under examination in any civil dispute(s) and/or in any local, state, or federal court proceedings.

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Request 28. Please provide all records or other documentation relating to ORG's defense of the legitimacy of the conservation easements that ORG accepted, received, and/or held during each year under examination in any civil dispute(s) and/or in any local, state, or federal court proceedings.

On July 1, 20XX, the IRS received ORG's responses to the IDR, a copy of which is attached hereto as Exhibit 1. ORG provided only 11 responses to the IRS's 30 requests for information and documentation. The following discussion summarizes ORG's responses:

1. The e-mail address was used by multiple entities but always paid for by President and separate of ORG.
2. ORG has accepted one conservation easement from a legal entity that is associated with President. The easement was accepted in the 20XX tax year and was contributed by CO-2. President did not claim a charitable tax deduction for this contribution.
3. President was the sole member of CO-2. It was administratively dissolved in 20XX.
4. President estimates that less than 1% of the office space was used by said CO-2 and less than 1% of the time in the office was devoted to duties associated with said CO-2.
5. The website was removed from the internet in the fall of 20XX. The website was only put up so that the managing member (President) of CO-2 (which owns 510.55 acres in City, State) could better understand the physical characteristics of the property and its ecology. President contends that no attempt to market the property was made and that there are currently no plans to market the property. President also contends that the reason the phone number listed on this site was the same as ORG is because the phone numbers existed before ORG came into existence (including President's personal cell phone number).
6. ORG has filed Forms 990 for 20XX, 20XX and 20XX. ORG contends that ORG is not required to file a Form 990 for the year 20XX because ORG's gross receipts were less than \$\$\$. It is ORG's position that the conservation easements have no value and therefore they should not be included in ORG's gross receipts.
7. According to President, ORG accepted 36 conservation easements. President states that all of the easements were accepted by CO-3 or the ORG, which are one in the same. In 20XX, the CO-3 changed its name to . President also stated that he has worked on and facilitated the acceptance of a number of conservation easements held by municipal or state corporations in the state of State.
8. ORG does not have any paid employees. The normal procedure for accepting easements includes President's judgment call on whether or not to proceed and/or accept a conservation easement. The board of directors approves or disapproves recommendations that are made by President. President is compensated as an independent consultant to the donors. He is responsible for paying the appraiser. The donors are responsible for the consulting fees that are paid to President.

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9. ORG does not have a formal policy for charging monitoring fees. The board of directors decided not to charge monitoring fees but has done so in the past.

10. ORG contends that counties and municipal cities in the _____ provide notification of any building permits that would violate the terms of the conservation easements that are held by ORG. ORG also contends that monitoring is performed every January prior to the annual meeting of its Board of Directors.

11. ORG has never had to defend the legitimacy of any of its conservation easements.

Examination of Conservation Easement

_____ documentation that ORG provided to the IRS for each one. The reviewed documentation included (1) Deeds of Conservation Easement; (2) Forms 8283, Non-cash Charitable Donations; and (3) Appraisals. All of the appraisals were prepared by RA-1 with the assistance of President. The following narratives summarize the agent's findings concerning these easements:

RA-2

According to the Deed of Easement, this easement covers approximately 450 acres of wetlands which is located along the side of the _____ in the State of State. The easement states that it was made pursuant to the provisions of I.R.C. §170(h)(4)(A)(ii), which identifies the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem as the conservation purpose of the easement donation.

The appraisal for this easement states that the following endangered or threatened species have been observed on the land that is subject to the conservation easement:

- Interior Least Tern
- Swift Fox
- Mountain Plover
- River Otter
- Wintering Bald Eagle

In addition, the appraisal states that the area has suffered a drought during the last 9 years and the _____ has suffered from extensive dewatering. Farmers have extracted water from the river for irrigation purposes.

The easement narrative identified the following restrictions:

- Construction and improvement is restricted to the 2,000 square feet upon which the existing house stands
- Soil and water extraction or alteration
- Water filling and/or damming
- Alteration of ponds and water courses
- Timber harvesting

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- Waste dumps
- Utility systems
- Signs and billboards
- Mineral development
- Use of motorized vehicles
- Use of chemicals
- Digging of wells

The easement narrative identified the following rights that were retained by the donor of the easement:

- Hunting, fishing and trapping rights
- The right to restrict access from the public
- The right to develop a physical access plan

DN-5

This easement is located on Island, in the State of State. The land upon which the easement is located is described as scenic, natural, waterfront, wetland, wetland buffer, habitat and open space. The subject property consists of 52,272 square feet and it was valued at \$\$ by the County Assessor's Office. This appraisal suggests that the owner is giving up the "right" to subdivide his property and to build a second house on the subdivided property. The appraiser estimated, by use of comparables, that the value of an additional lot was \$\$, and that the subdivision costs would total \$\$\$. The appraisal states that the value of the property with a building and the easement would increase the property's value by 10%. Thus, the appraiser estimated the value of the easement donation to be \$\$ (\$\$ [lot value] - \$\$\$ [subdivision costs] - \$\$\$).

According to the Deed of Easement, the affected property will retain its approximate and current scenic, waterfront, natural habitat, wetland, wetland, wetland buffer and open space character. The Deed of Easement contained no mention of habitat protection and/or open space character, such as public access or significant public benefit.

The Deed of Easement identified the following restrictions:

- Further subdivision and development
- Commercial development
- Construction and Improvements
- Surface alteration
- Degrading use of soil and water
- Signs and billboards
- Mineral development
- Hunting, trapping for commercial purposes
- The use of chemicals

DN-3

This easement, which covers 5.66 acres of property, has been described as scenic, natural habitat, wetland, wetland buffer and open space land. According to the appraisal, the property that is subject to

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the easement sits along side a housing development. The grantor of the easement is a developer known as DN-3. It is unclear from the appraisal which I.R.C. §170(h)(4) conservation purpose is being fulfilled. In fact, the Deed of Easement and appraisal contain very little, if any, information concerning the conservation purposes. There are no photos or any other documentation concerning the conservation purpose other than a map and legal description of the property in the respective file.

The appraisal of the property indicated that it was zoned LOS. The appraisal document indicated that "LOS zoning" requires extensive environmental review prior to development. In this case, "sensitivity" refers to the wetland and wetland buffers affecting a good portion of the site. The appraiser determined that the highest and best use of the property would be "open space" or as part of a portfolio of sensitive areas.

The Deed of Easement identified the following restrictions:

- Further subdivision and development
- Commercial development
- Construction and improvements
- Surface alteration
- Degrading use of soil and water
- Signs and billboards
- Mineral development
- Hunting, trapping for commercial purposes
- The use of chemicals

DN-4

According to the appraisal, this easement is located on 2 acres of lake front property in City, State. City is located in Eastern State, near . The land developer built four homes on four lots. The easement is located immediately in front of the lots upon which the homes were built. The highest and best use for the property, as determined by the appraiser, was zoning it for six lots with a single family home on each lot. Instead, the developer built four single family homes and placed the easement on 2 acres of the property that abuts the lake.

The appraisal describes the property as scenic, natural, wetland, wetland buffer, habitat and open space land. There are no county zoning restrictions on this parcel of land. The [describe it] document's purpose is to protect the conservation values of the property as the grantor intended that the easement would restrict the use of the property to activities that are consistent with the purpose of the easement.

The appraisal does not address any of the conservation purposes that are provided in I.R.C. §170(h)(4), nor was any other documentation submitted to the IRS establishing the conservation purpose of the easement. The easement does not grant public access to the property.

DN-2

According to the appraisal, this easement affects 1.68 acres which are located in City, State. According to the accompanying appraisal the property upon which the easement is located is zoned R118SO, which means 18 dwelling units per acre. The "SO" designation means that the entire area is a "Special Overlay"

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area due to environmentally sensitivity. The sensitivity in this case refers to wetland and wetland buffers that are located on the property. The appraisal also states, in part, that the development of the property would be expensive, time consuming and problematic.

According to the appraisal, the highest and best use would be to sell it to a local government organization as "open space" or as a part of a portfolio of sensitive areas.

The stated purpose of the easement is to maintain the property upon which the easement is located in its approximate and current scenic, waterfront, natural habitat, wetland, wetland, wetland buffer and open space character. However, no documentation was provided regarding the conservation purpose of the easement.

The easement narrative identified the following restrictions:

- Further subdivision and development
- Commercial development
- Construction and improvements
- Surface alteration
- Degrading use of soil and water
- Signs and billboards
- Mineral development
- Hunting, trapping for commercial purposes
- The use of chemicals

Board Meeting Minutes

According to the Resolution of the Board of Directors, dated January 15, 20XX, ORG stated the following concerning employees of the organization:

The institution has no paid employees. In addition to being the President of the Institute, President supports himself as a consultant on, among other subjects and endeavors, conservation easements. The Board grants to President the authority, acting in his capacity as an independent consultant, to perform work which he negotiates separately with grantors of conservation easements to the Institute. This work includes assisting in the valuation of the properties consistent with professional guidelines and as long as he does not act as the principle appraiser.

The resolution was signed by the following officers:

- President
- DIR-1
- DIR-2
- DIR-3

According to the Board minutes for previous years, the exact same resolution was adopted on January 15th of the years 20XX through 20XX, respectively.

Analysis of ORG's Financial Information

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Monetary Contributions

In response to an IDR that the IRS issued to ORG on April 26, 20XX, ORG provided the following written statement concerning the monetary contributions that were made to ORG:

"Prior to 20XX, ORG did not charge monitoring fees for receiving and holding conservation easements. Nor did it charge any other fees for its services. It was our belief that the conservation easements we received were a public service and valuable in their own right.

All deposits to the checking account of the Institute prior to 20XX represent unclaimed/un-deducted charitable contributions by President, which were alluded to frequently in the annual reports of the organization throughout those years."

This statement was signed by President (Founder/President) on June 21, 20XX.

Analysis of ORG's Expenses

During the course of the examination, the organization provided for review all of the checks that it issued during the years under examination, 20XX, 20XX and 20XX, respectively. The following analysis breaks down the organization's expenses into several broad categories:

Tax Year	20XX	20XX	20XX	Total	% of Total
Consulting Fees	\$ \$	\$ \$	\$ \$	\$ \$	%%
Appraisal Fees	\$ \$	\$ \$	-	\$ \$	%%
Rent	\$ \$	\$ \$	\$ \$ \$	\$ \$	%%
Business Travel	-	\$ \$	-	\$ \$	%%
Fringe Benefits to Founder	\$ \$	\$ \$	\$ \$	\$ \$	%%
Checks Written to Cash	\$ \$	\$ \$	\$ \$	\$ \$	%%
Office Supplies	\$ \$	\$ \$	\$ \$	\$ \$	%%
Reimbursed Expenses	\$ \$	-	-	\$ \$	%%
Telecommunications	\$ \$	-	\$ \$	\$ \$	%%
Licensing & Recording Fees	\$ \$	\$ \$	\$ \$	\$ \$	%%
Charitable Contributions	\$ \$	\$ \$	-	\$ \$	%%
Mail & Postage	\$ \$	\$ \$	\$ \$	\$ \$	%%
Lawn Care	-	-	\$ \$	\$ \$	%%
Unknown	\$ \$	\$ \$	\$ \$	\$ \$	%%
Political Campaign Contributions	\$ \$	-	-	\$ \$	%%
Total	\$ \$	\$ \$	\$ \$	\$ \$	%%

During the examination, it was determined that the fringe benefits identified above in the amounts of \$ \$ (20XX), \$ \$ (20XX), and \$ \$ (20XX), respectively, were not reported on Forms W-2, *Wage and Income Statement*, or Forms 941, *Employer's Quarterly Federal Tax Return*. These fringe benefits consisted of

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ferry tickets, car insurance payments, and car repair expenses. All of these fringe benefits were paid for the benefit of ORG's Founder, President.

It was also discovered, during the examination, that President did not officially donate his vehicle to ORG until December of 20XX. Nevertheless, the organization's records reveal that ORG paid for expenses relating to this vehicle before it was donated to ORG.

According to cancelled check # dated 8/18/20XX, the sum of \$\$ was paid to President. The memo section of the check had the word "consulting" written on it. ORG failed to file and furnish a Form 1099-MISC to President for services performed for the tax year ending December 31, 20XX, until an examination was initiated by the IRS.

According to cancelled check # dated 10/15/20XX, the sum of \$\$ was paid to President. The memo section of the check had the word "consulting" written in it. ORG failed to file and furnish a Form 1099-MISC to President for services performed for the tax year ending December 31, 20XX.

The assigned agent reviewed the bank statements for all years under examination. The ending balance for each month was noted as follows:

20XX Bank Account Balances

Month	Ending Balance
January	\$
February	\$
March	\$
April	\$
May	\$
June	\$
July	\$
August	\$
September	\$
October	\$
November	\$
December	\$
Average	\$

20XX Bank Account Balances

Month	Ending Balance
January	\$\$
February	\$\$
March	\$\$
April	\$\$
May	\$\$
June	\$\$

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July	\$\$
August	\$\$
September	\$\$
October	\$\$
November	\$\$
December	\$\$
Average	\$\$

20XX Bank Account Balances

Month	Ending Balance
January	\$\$
February	\$\$
March	\$\$
April	\$\$
May	\$\$
June	\$\$
July	\$\$
August	\$\$
September	\$\$
October	\$\$
November	\$\$
December	\$\$
Average	\$\$

The Original Form 990 and the Amended Form 990 for 20XX

ORG reported on its original Form 990 for 20XX that the value of the aggregate easement donations and other cash donations that were made to the organization totaled \$\$, as evidenced by line 1 (Contributions, Gifts, Grants, and Similar Amounts Received) of the Form 990.

On July 5, 20XX, the IRS received an amended Form 990 for ORG for the 20XX calendar year. Line 1 of the amended Form 990 reported that the total contributions, gifts, grants and similar amounts that the organization received totaled \$\$. The explanation for this \$\$ adjustment was provided by ORG's President, President. He stated in a letter, dated June 28, 20XX, that "[o]n the basis of this conservation and my review of the comments on the Land Trust List Alliance, we have concluded that the value of these conservation easements we have received do not have a percentage value of the Grantor's appraisal, but rather should be more realistically be carried (as it seems the majority of land trusts do) at a value of \$\$ per conservation easement."

Amendment of Conservation Easement

ORG amended one of its conservation easements in December of 20XX. According to a written statement from President, dated June 8, 20XX, ORG executed an amendment to the conservation

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easement that it held with the following County Identification Number, No. #. This amendment was recorded in the County Recorder's Office.

ORG accepted this conservation easement in 19XX. This easement limited future development on the subject property to one house. The property upon which the easement was located, however, was zoned to accommodate a minimum of 3 homes and most likely 4 sites.

In 20XX, RA-3 ("RA-3"), the original grantor of the conservation easement, approached ORG about amending the easement. RA-3 advised ORG in writing that a drafting error had occurred when the original conservation easement document was prepared. He stated that his intent had been to limit the development to the building of two houses, not one, and he suggested that he simply did not pay sufficient attention when he executed the conservation easement document. RA-3 claimed that he took a tax deduction for the conservation easement donation with the two house limitation. In response, ORG requested and reviewed the RA-3 tax return. Additionally, ORG reviewed additional documents that were provided by RA-3, it visited the conservation easement site, discussed the issue with both parties involved (i.e., RA-3 and the new owners, DN-25) and it eventually agreed to execute the requested amendment to the easement. At the request of ORG, the successor owners of the property (i.e., DN-25) paid ORG the sum of \$\$ for amending the easement. ORG justified this payment by citing time, and the attorney and other fees, that it spent and/or incurred during the amendment process.

Upon examination of ORG's records for 20XX, it was learned that ORG paid its Founder, President, the sum of \$\$ for the "consultant services" he performed in connection with this transaction. As discussed above, the sum of \$\$ was paid to President via check number 2045, dated August 18, 20XX. ORG failed to file or furnish a Form 1099-MISC, *Miscellaneous Income*, reporting the \$\$ in compensation that it paid to President. Furthermore, this amount was not reported on ORG's Form 990 until after the IRS initiated this examination.

Additional Findings

During the examination, it was determined that ORG does not have any of the following as a part of its exempt activities:

- A regular faculty to carry on a line of instruction or education.
- A curriculum.
- A regularly enrolled body of pupils or students in a place where educational activities are regularly carried on.

LAW

Tax Exemption

Generally, an organization that is described in I.R.C. § 501(c)(3) is exempt from income tax. See I.R.C. §§ 501(a). These organizations include 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

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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. See I.R.C. § 501(c)(3).

In order to be exempt as an organization described in I.R.C. § 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. See Treas. Reg. § 1.501(c)(3)-1(a)(1).

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 I.R.C. § 501(c)(3). See Treas. Reg. § 1.501(c)(3)-1(c)(1). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. See *Better Business Bureau of State, D.C. v. United States*, 326 U.S. 279 (1945). The operational test is not satisfied where any part of the organization's earnings inure to the benefit of private shareholders or individuals, and where the organization serves a private benefit rather than public interests. See Treas. Reg. § 1.501(c)(3)-1(c)(2).

An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than private interest. See Treas. Reg. § 1.501(c)(3)-1(d)(ii). Thus, an organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or creator's family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The presence of a single substantial non-exempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. See *Better Bus. Bureau v. United States*, 326 U.S. 279 (1945); *Am. Campaign Acad. v. Commissioner*, 92 T.C. 1053, 1065 (1989). See also, *Old Dominion Box Co., Inc. v. United States*, 477 F2d. 340 (4th Cir. 1973), *cert. denied*, 413 US 910 (1973) (operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. *Am. Campaign Acad. v. Commissioner, supra*, at 1065 -1066.

Qualified Conservation Contributions

A charitable contribution deduction may be allowed for the value of a qualified conservation contribution. See I.R.C. § 170(f)(3)(B)(iii). A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. See I.R.C. § 170(h)(1). To be eligible for such a deduction, the conservation purpose must be protected in perpetuity. See Treas. Reg. § 1.170A-14(b)(2).

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A qualified organization is defined as a governmental entity or a public charity that defined in I.R.C. §§ 509(a)(1) and 170(b)(1)(A)(vi) or I.R.C. § 509(a)(2). These sections define charities that are not private foundations because they receive at least a third of their support from the general public. Specifically, a "qualified organization" is (1) a governmental unit described in I.R.C. § 170(b)(1)(A)(v); (2) an organization described in I.R.C. Code § 170(b)(1)(A)(vi); (3) a charitable organization described in I.R.C. § 501(c)(3) that meets the public support test of I.R.C. § 509(a)(2); and (4) a charitable organization described in I.R.C. § 501(c)(3) that meets the requirements of I.R.C. § 509(a)(3) and is controlled by a publicly supported organization. See Treas. Reg. § 1.170A-14(c)(1).

For these purposes, the term "conservation purpose" means: (1) the preservation of land areas for outdoor recreation by, or the education of, the general public; (2) the protection of relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; (3) the preservation of open space where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local government conservation policy, and will yield a significant public benefit, or the preservation of an historically important land area or a certified historic structure; or (4) the preservation of a historically important land area or a certified historic structure. See I.R.C. § 170(h)(4).

To be an eligible donee, a qualified organization must have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions. See Treas. Reg. § 1.170A-14(c)(1). A conservation group organized or operated primarily or substantially for one of the conservation purposes specified in I.R.C. § 170(h)(4)(A) will be considered to have the required commitment. See Treas. Reg. § 1.170A-14(c)(1).

The legislative history of section 170(h) indicates that Congress intended for the requirements of deductibility under I.R.C. § 170(h) to be compatible with the requirements for exemption under section 501(c)(3). Thus, there is strong support for the conclusion that conservation purposes under section 170(h)(4)(A) may be considered exempt purposes under section 501(c)(3). See H.R. Conf. Rep. No. 95-262, 95th Cong., 1st Sess. 1977, 1977 U.S.C.A.N. 287, 295.

Recordkeeping Requirements

Every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe. See I.R.C. § 6001. Every organization exempt from tax under I.R.C. § 501(a), and subject to the tax imposed by I.R.C. § 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 § 6033. See Treas. Reg. §§ 1.6001-1(a) and 1.6001-1(c). The books or records required by section 1.6001-1 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. See Treas. Reg. § 1.6001-1(e).

Except as provided, every organization exempt from tax under I.R.C. § 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

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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.

See I.R.C. § 6033(a)(1).

Every organization which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the IRS for the purpose of inquiring into its exempt status and administering the provisions of subchapter F (i.e., I.R.C. § 501 and following), chapter 1 of subtitle A of the Code, I.R.C. § 6033, and chapter 42 of subtitle D of the Code. See Treas. Reg. § 1.6033-2(i)(2). See also, I.R.C. § 6001, Treas. Reg. § 1.6001-1.

An organization's failure or inability to file required information returns or otherwise to comply with the provisions of I.R.C. § 6033 and the regulations which implement it, may result in the termination of the organization's exempt status based on the grounds that the organization has not established that it is observing the conditions that are required for the continuation of its exempt status. See Rev. Rul. 59-95. These conditions require the filing of a complete and accurate annual information return (and other required federal tax forms) and the retention of records sufficient to determine whether the organization is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax. *Id.*

GOVERNMENT'S POSITION AND CONCLUSIONS

Issue 1. It is the government's position that ORG failed to operate exclusively for exempt purposes during the years under examination. In particular, ORG is not operated for a charitable purpose under section 501(c)(3).

First, there is no evidence that ORG takes the steps necessary to ensure that each easement accepted serves a conservation purpose under section 170(h)(4)(A). There are no written reports or other documentation showing that it inspects the underlying properties subject to the donated conservation easements prior to the donation. The organization provided no information or documentation (despite the Service's requests) showing its easement acceptance process and policies. Similarly it provided no information concerning the background and qualifications or experience of those responsible for deciding which easements to accept. There is no indication that any board member has any formal education or expertise in conservation matters which would enable the organization to determine whether each conservation easement would serve a conservation purpose under section 170(h)(4)(A). When interviewed, President, the founder and current President, stated that organization had no application process for accepting donations of conservation easements. In a later IDR response, the organization stated that "the normal procedure for accepting easements includes President's judgment call on whether or not to proceed and/or accept a conservation easement" and that the Board of Directors approves or disapproves recommendations that are made by President. However, there were no indications in the meeting minutes reviewed that such decisions came before the board. Although President indicated that baseline studies are done none of the easement files surveyed by the examining agent contained baseline studies.

From the five easement files reviewed, aside from the Deed of Easement, It appears that the organization's only documentation is a copy of each donor's appraisal. In each of the cases, the same

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appraiser conducted an appraisal with the assistance of President. In some cases, the appraisal briefly mentions the conservation purpose of the easement. It is not known whether the appraiser used had any formal education in conservation matters to aid him in determining whether each conservation easement serves a conservation purpose. Therefore, any mention of an easement's conservation purpose in the appraisals does not aid the organization in determining whether an easement serves a conservation purpose especially since there is no indication of that anyone on ORG's board has any formal education on conservation matters.

As indicated above, a qualified organization must be committed to protecting the conservation purposes of the donation and it must have the resources to enforce the restrictions. Furthermore, a qualified organization must be committed to protecting conservation easement contributions in perpetuity. See Treas. Reg. § 1.170A-14(c)(1). Additionally, the organization is required to meet the reporting requirements set forth in I.R.C. §§ 6001 and 6033.

ORG has demonstrated that it lacks commitment to protect the conservation easements. For example, during the years under examination, ORG accommodated a property owner whose land was subject to a conservation easement and easement restrictions. ORG worked with the property owner to modify the easement restrictions which allowed the property to be further developed in violation of its exempt purposes. Also, President, the President of ORG, benefited financially from this transaction by receiving a consulting fee for assisting with the amendment transaction. This consulting fee was not reported by ORG as income until the IRS initiated its examination.

ORG has stated in writing that it monitors the easements it holds on an annual basis. ORG has also stated that President is the sole official who performs the monitoring duties. ORG relies on city and county entities to provide advance warning on easement infringements. The government contends that it is virtually impossible for one person to annually monitor (in one month's time) a total of 35 easements with an average affected area of % acres each. ORG was asked to provide documentation and substantiation of the monitoring activities that were performed by President and it was asked to provide President's qualifications to perform such monitoring activities. To date, ORG has failed to provide the requested information and documentation. The government contends that ORG is not monitoring the conservation easements on a regular basis, if at all. Additionally, ORG lacks the resources and the staff to monitor the conservation easements and to defend the restrictions if called upon to do so. Moreover, as a consequence of ORG's failure to determine whether each easement serves a conservation purpose, ORG's subsequent monitoring activities (such as they are) also fail to serve any conservation purpose.

Additionally, ORG lacks the financial resources to enforce violations of the conservation easement restrictions. During an interview with ORG's President, President stated that the only method that ORG uses to enforce easement restrictions is to notify the local governing agencies of violations. This point is further evidenced by a quick review of ORG's bank account balances at year end for each year under examination and by the fairly constant loan activity that occurred between the organization and its founder. The funds that were available for monitoring and enforcing more than 30 conservation easements ranged from \$\$ to \$\$ during the years under examination. Moreover, ORG received financial contributions and loan support from a single individual, President, the Founder and President of ORG. ORG has not shown any initiative to garner public assistance (i.e., monetary contributions) from the general public which would enable it to financially defend and protect the easements it holds.

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Finally, ORG contends that it is not required to file a Form 990 for the tax year ending December 31, 20XX, because its gross receipts of monetary contributions did not exceed \$\$00. In its most recent IDR, the IRS asked ORG to file a Form 990 because the conservation easement donations were valued in excess of \$\$ according to the Forms 8283 that were provided by ORG. It is the government's position that ORG is required to report these gross receipts on a Form 990. To date, ORG has refused to comply with this requirement for the year 20XX. Accordingly, it is the government's position that ORG failed to meet the reporting requirements under I.R.C. §§ 6001 and 6033.

Based on the foregoing, the government concludes that ORG failed to operate exclusively for exempt purposes as set forth in Code § 501(c)(3) during the years under examination. This conclusion is supported by the fact that ORG (1) does not take the steps necessary to ensure that each easement it accepts serves a conservation purpose under section 170(h)(4)(A); (2) lacks the commitment and financial resources to enforce the conservation easement restrictions; (3) does not appear to be monitoring the conservation easements on a regular basis, if at all and that any monitoring activities it conducts are not relevant because it has no procedures and policies in place to aid it in determining whether a donated easement serves a conservation purpose; and (4) amended a conservation easement to allow additional development for a fee in violation of its exempt purposes. Moreover, as discussed in issues 2 and 3 below, ORG operated for the private benefit of its founder and its donors and allowed net proceeds of the organization to inure to the benefit of the founder in the form of unreported compensation and fringe benefits. These activities further demonstrate that ORG is operated for a substantial non-exempt purpose.

Issue 2. It is the government's position that ORG operated primarily for private benefit during the years under examination.

Amended Easement – Benefit to Successor Landowner: ORG served the private benefit of the successor landowner when it agreed to amend the conservation easement that it had held for six years. As soon as the amendment was recorded in the County Recorder's Office, the value of the successor landowner's property dramatically increased. Upon recordation of the conservation easement amendment, two single family homes, rather than one, could be built on the land which was originally zoned for four single family homes. Following the amendment, the successor landowner could either sell the property for more than the property could have been sold when it was subject to the original easement restrictions or the successor landowner could subdivide it.

Private Consulting Fees – Benefit to ORG's Founder President: ORG has stated in writing and in the Board of Directors resolutions that President, acting in his role as a private consultant, receives inquiries from private individuals about the possibilities of gifting conservation easements to ORG. President, acting in his role as a private consultant, reviews the potential donors' proposals and offers advice to them. President enters into private contracts with the potential donors and he performs a number of tasks relating to the proposed gifts. These tasks include, among others, advising the appraiser on certain aspects of approaching the valuation of the gifts. President pays the appraiser directly out of the consulting fees that he receives from the donors. The donors pay "consulting fees" to President for the services that he renders in orchestrating their charitable gifts to ORG, the organization for which President serves as President and as a member of its Board of Directors. In two instances (in 20XX and 20XX) President received compensation directly from ORG for consulting services he performed.

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ORG operated primarily for private benefit during the years under examination. ORG operated for the private benefit of its founder and President, President, by authorizing him to be compensated as a private consultant to the donors who contributed conservation easements to the organization. Also, ORG operated primarily for the benefit of the conservation easement donors when on one occasion it amended a conservation easement that ORG had held for six years by reducing its restrictions which potentially increased the value of the property that was subject to the easement, as discussed more fully above.

The organization is also operated for the private benefit of each donor. Each easement donor has received a substantial federal income tax benefit in the form of a charitable contribution under section 170 in return for granting ORG rights to enforce conservation restrictions. Because ORG fails to operate for a charitable purpose as discussed infra, it enables donors to receive improper charitable contribution deductions. Accordingly, ORG is not a "qualified organization" within the meaning of section 170(h)(3) since its operations fail to guarantee that each easement donated to the organization is exclusively for conservation purposes. It is immaterial whether donors realize that ORG operates in a non-exempt manner in determining that ORG operates for the private benefit of individual donors.

Issue 3. It is the government's position that ORG's net income inured to the benefit of its founder President during 20XX, 20XX and 20XX, respectively.

During the first year under examination (i.e., 20XX), ORG amended a conservation easement that it had held for six years. After ORG was approached by both the former and successor landowners, it agreed to amend the easement only if the successor landowners paid the organization the sum of \$\$.00 as compensation for the time the organization spent, and the attorney fees it incurred, in connection with the amendment transaction. A review of the ORG's expenditures, however, failed to reveal any expenses relating to "time" or "attorney fees." The sum of \$ \$ was paid to the organization's founder, President, for performing "consultant" services in connection with the amendment. The compensation that ORG paid to President was not reported as compensation on Forms 1099-MISC or the organization's Form 990 until after the IRS initiated its examination.

During the tax period ending December 31, 20XX, the sum of \$ \$ was paid to President for "consultant" services that he performed. Again, ORG failed to furnish and file a Form 1099-MISC to report the compensation paid to President. Additionally, it was noted during the examination that certain fringe benefits were paid by ORG for the benefit of its founder, President. ORG paid for ferry tickets, car insurance and, in one instance, car maintenance. These benefits, which totaled \$\$, \$\$ and \$\$ in 20XX, 20XX and 20XX, respectively, were not reported on Forms W-2, *Wage and Income Statement*, or Forms 941, *Employer's Quarterly Federal Tax Return*. ORG paid expenses that were related to the vehicle that President donated to ORG in December 20XX before the vehicle belonged to ORG.

The unreported income that ORG paid to its founder, President, during the 20XX calendar year, and the unreported fringe benefits that it paid on behalf of President during 20XX, 20XX, and 20XX, respectively, constitutes private inurement and supports the government's position that ORG served a private benefit rather than public interests during the years under examination.

Issue 4. It is the government's position that ORG violated the provisions of I.R.C. § 501(c)(3) by engaging in political activity.

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ORG made a campaign contribution in the amount of \$\$ to a mayoral race in City of during 20XX. During an interview with the President, President, he confirmed that ORG had made previous political campaign contributions.

The contribution that ORG made to the mayoral race is strictly prohibited by I.R.C. § 501(c)(3) which prohibits participation in, or intervention in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. Thus, ORG violated the strict prohibition of I.R.C. § 501(c)(3) when it made this campaign contribution.

Issue 5. It is the government's position that ORG does not qualify for exemption under I.R.C. § 501(c)(3), and therefore its tax exempt status should be revoked for the following reasons:

- ORG does not operate exclusively for exempt purposes as required by I.R.C. § 501(c)(3). Its operations do no serve a charitable purpose.
- ORG operated for private benefit rather than public interest during all years under examination.
- ORG's net income inured to the benefit of its founder during all years under examination.
- ORG is not a qualified organization (i.e., eligible donee) and it is ineligible to receive conservation easement donations because it lacks the commitment to protect their conservation purposes. This is evidenced, in part, by the lack of substantiated monitoring of the easements, the lack of funds that could be used for enforcing the easement restrictions, if necessary, and the lack of financial support from the public at large.
- ORG participated in a political campaign by making a contribution to a mayoral race during the first year of examination.
- ORG failed to meet the reporting requirements required by I.R.C. §§ 6001 and 6033.

As indicated above, the operational test is not satisfied where any part of the organization's earnings inure to the benefit of private shareholders or individuals, and where the organization serves a private benefit rather than public interests. ORG has failed the operational test during all of the years under examination. Based on the foregoing, ORG no longer qualifies for exemption under I.R.C. § 501(c)(3) and the regulations, and therefore its tax exempt status should be revoked effective January 1, 20XX.

TAXPAYER'S POSITION

The taxpayer disagrees with the government's position as stated in this report and has filed a formal protest to Appeals for a hearing on this case.

The following are specific areas of disagreement with the taxpayer as stated in the response received by the IRS on April 1, 20XX:

- ORG disagrees with the government contention that the organization was liable for filing Forms 990 for the years of 20XX and 20XX because the organization's monetary receipts were below \$\$.
- ORG contends that it provided organization documents shortly after the initial interview via mail.
- ORG provided several corrections pertaining to the responses to questions during the initial interview. The corrections can be read in the correspondence dated April 1, 20XX.
- ORG provided clarification to responses provided to the IRS on July 1, 20XX.

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- ORG contends that it provided the examining agent records which illustrate that the organization monitored its easements for infringements.
- ORG provides in its response that many of the easement donations accepted concern wetlands and therefore meets the Code §170(h) requirements of a conservation purpose.
- ORG disagrees with the IRS position that it's Founder (President) has not been able to demonstrate that he has sufficient experience and expertise in dealing with conservation related issues. ORG provides in its response several examples of President's experience in this field.
- ORG disagrees with the IRS position that it acted for private benefit when it amended a conservation easement deed at the request of the owner.
- ORG disagrees with the IRS position that it acted for private benefit of it its founder by allowing the founder to be compensated as a "private consultant" to many of its conservation easement donors.
- ORG disagrees with the IRS position that it allowed inurement to President in form of payments and compensation.
- ORG disagrees with the IRS position that it made a political campaign contribution.
- ORG disagrees with the IRS conclusion that its exempt status should be revoked due to a failure to operate for an exempt purpose.