

**Internal Revenue Service  
Appeals**

Number: 201130018  
Release Date: 7/29/2011

Date: May 3 2011

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**Department of the Treasury**

**Address any reply to:**

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**Employer Identification Number:**

\*\*\*\*

**Person to Contact:**

\*\*\*\*

**Contact Telephone Number:**

\*\*\*\*

**Fax Number:**

\*\*\*\*

9999.98-00

**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 \*\*\*\* is hereby revoked and you are no longer exempt under section 501(a) of the Code effective \*\*\*\*.

The revocation of your exempt status was made for the following reason:

You are not described in section 501(c)(3) since you do not operate exclusively for an exempt purpose. You do not serve a public interest but serve private interests to a more than insubstantial degree. Your grants of scholarships in 20XX and 20XX were made only to descendants of the nieces and nephews of \*\*\*\*.

Contributions to your organization are no longer deductible under IRC §170.

You are required to file income tax returns on Form \*\*\*\*. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 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 under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgment. To secure a petition from the United States Tax Court, write to the following address:

United States Tax Court  
400 Second Street, NW  
Washington, DC 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 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:

Taxpayer Advocate Service

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Tel: \*\*\*\*

Fax: \*\*\*\*

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

Sincerely yours,

/s/

Appeals Team Manager

**Internal Revenue Service**

**Department of the Treasury**

Date: November 13, 20XX

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.

**Letter 3618 (Rev. 11-2003)**  
Catalog Number: 34809F

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,

Sunita Lough  
Director, Exempt Organizations Exams

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

**Letter 3618 (Rev. 11-2003)**  
Catalog Number: 34809F

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit: Form 6018-A
<b>Name of Taxpayer</b> ORG		<b>Year/Period Ended</b> 20XX12 to 20XX12

**LEGEND**

ORG = Organization name      XX = Date      City = City      State = state  
Country = country      Trust = trust      website = website      SC-1, SC-2  
& SC-3 = 1<sup>ST</sup>, 2<sup>ND</sup> & 3<sup>RD</sup> SC      SR-1 & SR-2 = 1<sup>ST</sup> & 2<sup>ND</sup> SR      BM-1, BM-2, BM-3 &  
BM-4 = 1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup> & 4<sup>TH</sup> BM      CO-1 THROUGH CO-5 = 1<sup>ST</sup> THROUGH 5<sup>TH</sup> COMPANIES  
RA-1 THROUGH RA17 = 1<sup>ST</sup> THROUGH 17<sup>TH</sup> RA

**ISSUES:**

**Secondary Position:**

1. Whether ORG is not organized or operated exclusively for purposes listed under IRC § 501(c)(3) of the Code. If so, should the organization's exemption under IRC § 501(a), as an organization described in IRC § 501(c)(3), be revoked?

**Primary Position:**

2. If ORG is revoked, should the organization's tax exempt status be retroactively revoked to December 24, 20XX per Treas. Reg. § 601.201(n)(6)(i) because it omitted or misstated material facts in its application for exempt status?

**Facts:**

Organizational Information

ORG (hereinafter referred to as foundation) was incorporated in the state of State on December 24, 20XX (Attachment One). On August 10, 20XX, the organization's articles of incorporation were amended to add a purpose and dissolution clause to comply with Treas. Reg. § 1.501(c)(3)-1(b). Their stated purpose is "the corporation is organized exclusively for charitable, religious, 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, or the corresponding section of any future tax code" (Attachment Two). A search of the State's Secretary of State website shows that this amendment was not filed with the State of State (Attachment Three).

The organization's bylaws were adopted on February 1, 20XX (Attachment Four). They state the organization was organized to "recognize the achievements of those immigrants to the United States from Eastern European area commonly referred to as Country (and more fully described in the Grant process attached hereto as Addendum I below) who, through their love, passion, and participation in the performing arts, brought a unique view of humanity, a special dedication to culture, and an extraordinary enlightenment to the United States from Eastern Europe. In recognition of what these immigrants brought to their families and to the overall community, current Americans of decent with to recognize the contributions of and assist future generations with financial assistance for college. The corporation is founded, and funded, with this mission in mind. By seeking contributions, bequests, and inter vivos gifts, the Fund seeks to aid juniors and seniors in college, who are descendants of immigrants in the performing arts, with financial aid to help insure success in either college or vocational school."

On October 29, 20XX, the organization was granted tax exempt status under IRC § 501(c)(3) as a IRC §

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170(b)(1)(A)(vi) public charity during their 5 year advanced ruling period. According to Internal Revenue Service records, the organization filed form 990(s) for 20XX and 20XX. No Form 990s have been filed for subsequent periods.

Application For Exemption (Attachment Five)

As stated in the bylaws purpose clause, the organization described in its application for exemption that their sole activity was to provide scholarships to students who had a immigrant ancestor in the performing arts. They described the scholarship selection criterion as the following:

Scholarship Process:

Eligibility

All undergraduate students attending an accredited college, university, or vocational school may apply. They need to be a junior or senior in college or the last 50% of their vocational training. Applicants will be considered eligible for assistance if such an applicant is a descendant of an immigrant to the United States who has emigrated from Country and if that immigrant was involved in the performing arts.

Eligible Assistance

Assistance shall be for tuition, books, housing expenses, room, board, or any other qualified educational expenses as defined in IRC § 529. No more than \$\$ in tuition assistance shall be given per semester.

Grant/scholarship Process

In the spring season of each year, the corporation shall announce the availability of financial assistance to eligible recipients. This, announcement shall minimally be made in at least two newspapers of general circulation. The corporation may advertise the assistance through any other mass media vehicle it determines to be appropriate, including but not limited to the world wide internet.

The scholarship committee shall review the available applicants, decide who gets the scholarship, and then divides the funds available to the scholarship recipients. The board of director must make final approval of all scholarship assistance.

Post Grant Evaluation

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The corporation is supposed to be notified by the scholarship recipient each year of assistance as to their progress. The recipient shall forward his transcript to show their progress.

The organization stated that it would advertise its scholarship program through opening a website, becoming registered with Website and other scholarship websites, becoming registered with financial aid offices and placing press releases in a variety of college newspapers around the nation.

In the application, the organization marked that it would receive donor directed funds.

In a letter dated July 30, 20XX on question 1, the Exempt Organization (hereafter "BO") Determinations specialist assigned to the case inquired into what the organization meant by this. Specifically, he asked "Donor Directed gifts are listed as a source of funding. Describe a donor directed gift" (Attachment Six). The organization responded by stating the following:

"In reviewing the different ways to fund our organization, we noted several different important vehicles. One way is through bequests. In fact, we have already received notice that once the organization is tax exempt, it will be receiving a bequest from the Estate of RA-1, deceased. A second way is through inter vivos gifts. The organization has been notified that two other individuals would be interested in donating funds to the scholarship goals of the organization. Though "donor directed gifts" is not a technical term of art, in lay terms both of these vehicles are donor directed gifts.

The pending bequest from RA-1 is a donor directed gift. The pending inter vivos gifts are also donor directed gifts. The non-technical use of the term was simply to cover all donations from a donor as compared to funding from other tax exempt groups. Our goal is to seek support from individuals who understand the mission of the organization."

In the letter dated July 30, 20XX question 4 the EO Determinations Specialist asked "How did the organization decide to support this class of individuals with these scholarships? What brought about the formation of this scholarship?" The organization responded by stating:

"The scholarship program and the entire mission of the organization came about from good, old Eastern European guilt. While visiting the United States Smithsonian's Holocaust Memorial Museum in City, State with an elderly client, the undersigned was struck by the immense culture and heritage of communities in pre-WWI and WWII Country (both Jewish and non-Jewish). While many residents of Country were forced to work each day to survive, some ignored the challenges of every day life to maintain and sustain the performing arts. The same individuals came to the United States seeking a better life, endeavoring to fulfill the dream of life, liberty, and happiness.

While we cannot assist most of the immigrants today, as they are deceased, their grand children, great-grandchildren, and further generations are here and should be honored for not only the

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cultural contributions of their ancestors but also the tenacity to emigrate from what they knew and immigrate to the unknown in America.

That day in City, the undersigned's client asked why someone cannot recognize and honor these immigrants. Given the fact that educational assistance carries a timeless need, this scholarship program was thus envisioned."

In the letter dated July 30, 20XX question 5 the EO Determinations Specialist asked "Why are only Juniors or Seniors eligible for this award?" The organization responded by stating:

"Only college juniors and seniors are included due to the realities of the program's economics. The organization is aware that the assistance may not be as substantial as envisioned, nor as free-flowing as dreamed. By providing assistance only to junior college and seniors, there is a belief that the aid will be directed to applicants who will most probably graduate and thus will carry a maximum impact to the applicants."

In the letter dated July 30, 20XX question 9 the EO Determinations Specialist asked "will any of the potential scholarship applicants be related to any individuals involved with the organization, officers, board members, directors, etc? If so, can those related to individuals involved with the organization apply for aid?" The organization responded by stating:

"You inquire as to whether potential scholarship applicants will be related to members of the organization's board of directors, and if so, can such applicants apply for assistance. It is quite normal, logical, and sensible that the people who will be involved in the organization, through its fund-raising and governance, will be those who care about honoring and recognizing immigrants. Generally, they will be descendants of immigrants themselves. However, the organization is determined both not to exclude eligible students from aid simply because a family member is involved with the organization yet not to provide any biased assistance to a student because of family involvements.

Consequently, the organization has developed an operational paradigm to make this issue moot. First of all, ALL eligible applicants will receive an award blindly based only on the amount of scholarship monies available, limited to the aid needed. For example, if the organization has \$\$ available the first year for scholarship assistance and only five eligible students apply, each will receive \$\$ in assistance. In addition, the scholarship committee will be comprised of individuals who have no direct blood family members applying for aid, so as not to indicate even a hint of conflict or impropriety.

To summarize, the scholarship program is designed so that no eligible applicant can receive a biased benefit due to any factor. All eligible applicants shall receive the same amount of aid, capped only by the need expressed. (IF all applicants are awarded \$\$ and the student only requires \$\$, then only the \$\$ will be awarded)"



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In the letter dated August 26, 20XX (Attachment Seven) question 1 the EO Determinations Specialist asked "will donors, such as those mentioned in the response to the last question #1, have any say in distribution of or have control over any of the funds they donate to the organization?" The organization responded by stating:

"In response to your first question, please note that donors to the Foundation will have absolutely no continuing say, input, nor voice in the distribution of funds they have donated to the organization. Once funds are donated to the Foundation such funds become the responsibility of the Foundation. Donors would not have any continuing control over contributions."

In a letter dated September 10, 20XX (Attachment Eight), the EO Determinations Specialist stated "...further, in order to demonstrate that the organization is serving a public, rather than private purposes, it would need to show that a large enough pool of candidates could apply for this award and qualify. To date, the organization has not shown the potential pool of candidates that are available, stating only that the potential pool is 'to large to calculate.' With such limited criteria for who can apply, in combination with the locality of the organization, a pool of candidates should be estimable..."

The organization responded by stating that the scholarships will only be granted to those who evidence a financial need. Financial need will be evidenced through the FAFSA form, or similar independent form.

In the letter dated October 4, 20XX (Attachment Nine) question 1 the EO Determinations Specialist asked "who are the three individuals comprising the selection committee? List them by name." The organization responded by stating:

"The initial members of our scholarship committee will be SC-1, former Dean of the College of Education, CO-1, City, State, SC-2, the former president of CO-2, City, State, and SC-3, member, South State Admissions Committee, CO-3"

During the tax exempt application process, the organization's Board Member at the time and current Board Member BM-1 represented the organization before the Internal Revenue Service. No other person was involved even though BM-2 and BM-3 are also Board Members (Attachment Ten).

Interview of BM-1 for the Audit of the organization's 20XX form 990(s)

On June 6, 20XX, an interview was conducted with BM-1 to inquire about the organization's 20XX form 990 (Attachment Eleven). During the initial interview with BM-1, the organizational activities were discussed. What BM-1 stated was similar to what he stated in the organization's application for exemption.

As described during the interview, BM-1 stated the following about the organization's formation and operations:

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The organization was formed in 20XX. It was for students that are descendants of Eastern Immigrants. The organization received its initial funds from the Estate of RA-1. It was described in RA-1 Will that the money should go toward the purpose of education of Descendants of Immigrants. The organization did not receive any other funds during the tax year of 20XX, but planed to hold fundraisers in future tax years through events like fund raising dinners.

Aside from the initial qualifying requirements, the scholarships are decided based on financial need of the student. Initial qualifying criteria are to be a descendant of Eastern Immigrants and have an acceptable GPA. A minimum of \$\$ will be given per scholarship. The organization requires the applicant to submit their student aid report which is a summary of their FAFSA (form filled out to get student aid from the Department of Education).

Their financial need rank is based on their Expected Family Contribution amount listed on the student aid report. This is the sole indicator to rank applicants on their financial need. No other figures are used on the Student Aid Report. There is no maximum Expected Family Contribution amount that a student needs to be below in order to qualify for a scholarship. Selection is based on the facts and circumstances of each case. If the school that the student is going to does not use Student Summary Reports, a similar report can be used to rank the applicants. Expected Family Contribution means what part of students tuition they would be expected to be liable to pay on their own aside from any outside financial aid. An example brought up was say that one person's Expected Family Contribution is \$\$ and that person had student loans, but another person had the same Expected Family Contribution but with other 3rd party grants rather than student loans, the person with student loans would be picked before the person without student loans because that person is in more need.

Scholarship funds go toward the student's tuition, books, and living expenses, but only expenses that would be allowed under a 529 plan. The funds were paid directly to the scholarship recipients during the 20XX tax years. The organization only funds one semester/quarter at a time. Potential scholarship recipients need to fill out an application and send in other required paperwork such as their Student Aid Report. The organization matches the students request against the Student Financial Aid Letter which lists the Educational Costs. If there is a discrepancy, the scholarship committee will inquire as to why.

The Scholarship Selection Committee decides the scholarship recipients from the pool of applicants. The board makes the decision about the amount of money for the total program. The board knows who the scholarship recipients are and can deny a scholarship for cause. The board can only deny a scholarship recipient, but can not add one. BM-1 and the other directors receive the scholarship applications and write a memo about what they think of the application to the scholarship committee.

The 20XX Scholarship Selection Committee Was made up of the following People:

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SC-1 – Former President of the CO-4. He receives a Stipend for his work on the committee. He is a friend of BM-1. They met at a rotary club function.

SC-3 – She is a State Attorney. She is the spouse of BM-1's Personal Attorney.

During the tax year of 20XX, there were no formal written operating rules for the scholarship Selection Committee other than the approved grant proceeds. The Board of Directors just told the Scholarship Selection Committee how much money could be distributed for the year. There were no formal rules to break a tie if one scholarship committee member voted one way and the other voted another way. This could have happened during the 20XX tax year since there were only 2 Scholarship selection committee members, but did not actually happen though.

The organization publicized its scholarship through word of mouth, \_\_\_\_\_, Website, and sent letters to school financial aid offices to let them know that this scholarship program was available. The organization did not keep copies of the solicitation letters sent during the year of 20XX, but they can provide a printout of the schools they sent to and the generic form letter sent to the school financial aid offices. Website and \_\_\_\_\_ are scholarship search engines. A student enters their profile and then the search engines provide the scholarships that meet their criteria. The organization did not have a website during the 20XX tax year, but currently has a website which is \_\_\_\_\_

During the 20XX tax year, scholarship recipients were sent a check directly to them in their name. In order to see if the funds are being used for their intended purpose, the organization requires the student to send in their transcripts to prove that they passed the class and Bursar Statement (Receipts that shows the class was paid for). What ever money that is left over from tuition costs can be spent on other expenses that would be allowed under a 529 plan (ex. Rent) based on pre-approved & justified expenses.

There were only two scholarship recipients during the tax year of 20XX. SR-1 and SR-2 educational expenses were actually paid for by the Estate of RA-1 as pre-existing claims. These expenses were not claimed on the organizations 706 return because it was part of the automatic exclusion money that is exempt from gift tax.

Of the three board member of the organization (BM-1, BM-2, and BM-3), BM-1 explained that himself and the other board member BM-2 were executors of the RA-1 Estate. He also stated that all were related and cousins of each other.

BM-1 stated that he got a BA in history and then his Jurist Doctorate. After that he became a real estate lawyer. Currently, he is not licensed to practice law and is studying to become a Rabbi. However, through research on the internet it was found out that BM-1 was a lawyer that worked with estates back in the late 1990(s).

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Records Relating to the Estate

During the 12/31/XX audit, the organization provided a copy of the Estate of RA-1 form 20XX form 706. Attached to the form 706 was RA-1 Will (Attachment Twelve).

According to Article IV of the Estate of RA-1 Last Will, money is to be given to the "...children of my nephews and neices: RA-2, RA-3, RA-4, RA-5, RA-6, RA-7, RA-8, SR-2, RA-9, BM-1, RA-10, RA-11 and BM-2."

The form 706 showed a \$\$ charitable estate tax deduction was taken. The return showed that the estate had donated that entire amount to the foundation. As an addendum to the estate tax return, the following described the nature of the donation:

"In accordance with the decedent's Will, Article VI, the residuary estate is devised to the Trust, a donor-designated Philanthropic fund of  
of \_\_\_\_\_ in the CO-5 (EN EIN). This foundation has received a favorable determination letter dated December 24, 20XX granting it tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. A copy of this letter is attached. Additional Information with respect to the nature and operations of this qualifying charity is available upon request."

In addition, RA-1 Will was attached to the form 706. The Will listed the following purposes and operating procedures of the Trust:

Article VI of RA-1 Will states that "I devise the rest, residue, and remainder of my estate, of every kind, nature, an description, which I now own, or hereafter acquire, or have the right to dispose of at the time of my death, to The Trust. ..I appoint BM-1 and BM-2 as the co-trustees of all trusts created herein. If either one of the said specified co-trustees predeceases me, or is unable or unwilling to serve as trustee, I appoint RA-5, as successor co-trustee of all trusts created herein...In the event that my Trustees are unable to agree upon any course of action involving the trust created hereunder, RA-12 shall be consulted and his decision will be respected and followed by both trustees."

Article VII of RA-1 Will states that "the purpose of this trust is to aid in the financing of the college education for the descendants of RA-13, RA-14, RA-15, RA-16, and RA-12, my nieces and nephews. Each of said descendants, upon reaching their junior year in college, shall, upon production of a receipt or bill from an accredited college or university, receive directly, or have paid on their behalf, an amount equal to tuition, books, housing expenses, room, board, or any other qualified educational expenses as defined by 26 U.S.C. 529 as amended at such institution for that semester or year. The amount of tuition paid shall not exceed \$\$ per semester. The Trustees shall also provide similarly for the senior year of education. No single beneficiary shall receive more then two years (limited to two semesters per year) of any such payment. For those descendants who chose not to go to college, a similar amount of money may be used to pay tuition and related expenses for the final two years of education at a trade or prep school. There is no requirement that each potential beneficiary receive the exact same dollar value of assistance

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and the trustees shall not be held accountable for uneven distributions as long as the terms of this trust are strictly followed."

Article VII B of RA-1 Will states "The term of this trust if funds are not expired sooner, shall expire upon the 50th anniversary of my death. The trustee shall then distribute the then remaining funds and assets to the ten living issue of RA-13, RA-14, RA-15, RA-16, and RA-12, per stirpes."

To transfer the assets to / from the Estate of RA-1 to the organization under audit, BM-1 signed a gift agreement both as a director of the foundation and as an executor of the estate. This contract states that the Estate is to gift all of its "securities, common stock, preferred stock, corporate bonds, and publicly traded equities representing the residuary portion of the Estate for a term of fifty years" effective March 15, 20XX. The term ends April 1, 20 .

It goes on to state that the "donee shall have full, complete, irrevocable, unconditional, and indivisible title, interest, control, and ownership over this asset with complete and unitary rightful, legal, and equitable powers to invest, liquidate, dissipate, transfer, or dispose of this asset in any manner allowed by law, whether reasonable or not." The gift shall be no less than \$\$\$. Regarding the deductibility of the gift for the estate, the contract states "the current valuation of the charitable contribution for tax purposes shall be determined, as best as possible, by the Educational Assistance Foundation and shall be communicated to the Estate as soon as practicable according to the applicable rules and regulations governing such determination and valuation.

On the second page of the contract, there is a provision to have the gift revert to the estate after the fifty year term is up. The provision is the following:

"Expiration of Gift: The parties hereto recognize that the Educational Assistance Foundation, by its By-Laws and by Federal statutory regulations, is prohibited from allowing any part of the net earnings to inure to the benefit of private persons, from carrying on any activity not permitted to be carried on by a 501(c)(3) tax exempt organization, and from disposing of assets to parties or organizations which are not organized and operated exclusively for one or more of the purposes as specified in Section 501(c)(3) of the Internal Revenue Code.

Unless negated by Section 4 below, at the conclusion of the fifty year term, the remaining assets of this gift, if any, shall revert back to the Estate, or the remaining successor beneficiaries of the Estate as allowed by law and as directed by the Estate. Such a reversion shall not be considered a violation of the obligations outlined above. Such a reversion shall not be considered a voluntary distribution or disposition but rather an automatic reversion of all right, title, interest, control, and ownership of the remaining corpus of this gift. To summarize, this gift is intended to be an unconditional, complete, and irrevocable gift but only for a fifty year term."

The Section 4 exception to the revision of the assets is as follows:

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"The parties hereto recognize, and the parties' tax advisors have confirmed, that the tax laws associated with this type of gift (that is a charitable gift from an estate to a public charity) are complex. The extent of charitable contributions, deductibility, reporting requirements, and the like are confusing and intricate. While the parties seek to follow every rule and regulation associated with this transaction, a concern has been raised as to inadvertent, unintended non-compliance.

Consequently, in the event that this agreement is deemed by taxing authorities to be a donation that does not fall within an exception to the partial interest rule of charitable lead gifts with private remainders (or is determined to be anything other than the proper charitable donation anticipated by the donor and donee), this gift shall be deemed, considered, and interpreted, and this gift shall be, a complete, irrevocable, unconditional, and absolute gift from the Estate to the Educational Assistance Foundation with no reversion after any term of the years. It is the intent and goal of the parties primarily to effectuate the absolute philanthropic desire of contributing the residuary funds of the Estate to the worthy public charity goals of the donee."

In a letter to an attorney and other bankruptcy court document related to the family members of RA-1 suing the attorney that set up his Will, it was stated by BM-1 that the reason the foundation was set up was for the avoidance of federal estate tax and it was hoped that the IRS would not catch the arrangement because it would be disallowed.

Through the form 706, it was learned that scholarship committee member RA-5 is related to RA-1. She is also specifically named in his will to become an executor of the estate if one of the other executors drops out.

BM-1 also signed as a witness when the Will was finalized. Lawsuit

(Attachment 13):

In response to an Information Document Request (hereafter "IDR") was included a letter dated December 18, 20XX regarding a law suit filed by . In that letter, BM-1 stated, on page 11 of Attachment 13 stated:

"The return represents an aggressive decision by us and our accountants to try to minimize our damages due to poor drafting. We formed a 501(c)(3) scholarship fund, post mortem, with the hope that the IRS will ignore the specific provisions of the will and let us do what should have done originally. Consequently, we deducted the monies transferred to the scholarship fund, thus minimizing our taxes. At the same time, we forwarded to the taxing authorities the necessary tax as if the deduction is not allowed, so that we do not have an underpayment penalty or interest. We fully expect the IRS to disallow what we did, but we at least wanted to try."

On page 2 of the lawsuit, the lawsuit is being filed because:

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"...was, according to the terms of the will, placed into the Trust, to be used for the purpose of financing the college education of Plaintiffs as intended beneficiaries of this trust.

Because Defendant failed to employ the appropriate, well-recognized, and customarily utilized tax avoidance methods for setting up the remainder of Decedent RA-1 estate to provide the educational benefits he intended to give to Plaintiffs, the estate paid federal and state taxes, subject to ongoing review, which in all likelihood, may end up costing approximately \$ in those taxes, almost all but approximately \$ of which could have been avoided..."

Page 3, section H, of the lawsuit details who the plaintiffs are:

"At all times, including the preparation of the 1997 will, as well as the 20XX will, there were approximately 25 individuals who were the descendants of Decedent's nieces and nephews, and thus, eligible beneficiaries for the educational assistance fund. Those individuals are the Plaintiffs herein."

Page 4, section J, states that:

"Each of the Plaintiffs named above, are members of an identified class and as such, the named and intended beneficiaries of the educational trust whom decedent RA-1 intended to benefit in his Will."

Page 4, section L and M, outlines the steps that could have been taken to avoid taxes and carry out the purposes of the will. These sections state that a Generation Skipping Transfer Tax could have been created, and a charitable foundation created for any amount in excess of the \$ exemption.

Page 4, section N, outlines how the funds were moved:

" , as co-executors under the will, and trustees of the trust, then transferred the funds from the trust to the foundation in an effort to mitigate the damages and obtain the tax benefits that should have been obtained..."

Page 5, sections O and P, state that it was the opinion of legal and accounting experts that this was a way to potentially salvage the trust funds as a result of the Defendant's negligence. Further, section P states:

"However, these same experts made clear to plaintiff that this attempt to preserve the educational funds by avoiding the tax impact in question, though legal, reasonable and proper, would, in all likelihood fail, after the actual will which was attached as an exhibit was reviewed by auditors at the Internal Revenue Service and the Commonwealth of State."

Page 7, section V, states:

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"...This intent was to transfer the decedent's wealth at death to the plaintiffs for financing their last two years of college education. This intent was the over-arching goal of Decedent as reflected by his Will, prior Wills, and by the direct knowledge of many of the decedent's family members."

The organization founders knew that what they were doing would—according to their experts—not be acceptable, yet they knowingly and willingly went forward in the formation of the Foundation for the benefit of the decedent's family.

#### Scholarship Records

In IDR 2, a request for all 20XX scholarship records was made. The request asked for Scholarship Advertisements, all records on scholarship recipients SR-1 and RA-7 for 20XX, the Current Address and phone numbers for the scholarship recipients. There were no other scholarship applicants for 20XX per the interview with BM-1, so such records were not asked for.

The scholarship applications of SR-1 and RA-7 were provided. With the application, there was a Memorandum from the board of directors to the scholarship committee that the SR-1 and RA-7 were eligible to receive scholarship aid. It is note worthy that the determination of eligibility is made by the Board of Directors—all of whom are related and two out of three are executors of the will and Board of Directors for the Foundation.

These applications were reviewed (Attachment Fourteen). While the area for financial need was checked off by someone, there is no evidential substantiation of a financial need for the applicants. Financial need requires more then substantiation of expenses, it also requires substantiation of income. As outlined in the description of how the scholarship process works (Attachment Eight), the organization was supposed to have evidence of financial need. Financial need is not substantiated.

The following were the scholarship recipients and amounts of assistance claimed by the foundation during 20XX:

- SR-1 = \$\$
- RA-7 = \$\$

The following were the scholarship recipients and amounts of assistance claimed by the foundation during 20XX:

- SR-1 = \$\$
- RA-17 = \$\$

RA-7 is listed in Article IV of the Will as being a child of the Decendent's nephew.

While the Foundation provided copies of letters to various institutions, third party contacts were made



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to and Website (Attachment Fiveteen). It was found that the foundation didn't start advertising the scholarship until after 20XX. In fact, after making a third party contact to it was stated that the organization signed up on June 6, 20XX. Also, the organization's website wasn't created until May 24, 20XX which is after the organization was notified on April 11, 20XX that an audit was occurring according to a lookup on

Board of Directors Minutes

In the December 27, 20XX Minutes (Attachment Sixteen), their was a motion made, seconded, and carried that the Corporation look favorably upon the 20XX grant requests for school aid submitted by SR-1 and RA-7 for the upcoming academic year.

An analysis of the 20XX year's expenditures was completed. Funds from the Will and funds from the Foundation were co-mingled. According to the General Ledger summary excerpt of the General Ledger (Attachment Seventeen) \$\$ was spent out of the Will and \$\$ was spent for Foundation activities. Out of that \$\$ the Board of Directors authorized scholarship winner received \$. The remaining \$\$ went to other individuals.

The Will's provisions were also looked at, and \$\$ were paid out according to the terms of the Will. \$\$ were paid out, but not according to the terms of the will.

Pending the completion of a scholarship committee, and given the familial relationship involved, RA-5 reviewed the applications for integrity to eligibility and expenses. A follow up motion was made, seconded, and carried that a follow up audit would be conducted by the Corporation's CPA firm to confirm the proper eligibility and propriety of expenses covered by these applications.

In the December 27, 20XX Minutes (Attachment eighteen), a motion was made, seconded, and carried that the corporation look favorably upon the 20XX grant requests for school aid submitted by SR-1, RA-7, and RA-17 for the upcoming academic year.

Pending the completion of a scholarship committee, and given the familial relationship involved, RA-5 reviewed the applications for integrity to eligibility and expenses. A follow up motion was made, seconded, and carried that a follow up audit be conducted by the Corporation's CPA firm to confirm the proper eligibility and propriety of expenses covered by theses applications.

This denotes that as of December 27, 20XX no scholarship committee was functioning even though funds were being spent and scholarships were being approved by the Foundation.

The general ledger for 20XX was reviewed (Attachment Nineteen). Page 8, the expenses payable, shows that several individuals were paid a total of \$. Page 10, shows scholarship disbursements made which totals \$. Of note is that the foundation obtained tax refunds from the United States and the State of State.

In a response to an Information Document Request for scholarship applications, and additional

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information, BM-1 stated that MB-4, the co-executor, has the books and records and that, following the advice of legal counsel, he was not going to send any information (Attachment Twenty).

Financial Information

The amounts on the Form 990 for the year ended December 31, 20XX, and the amount per exam, is given below:

20XX form 990 \_\_\_\_\_

Income:                      Per 990                      Per Exam

Contributions

Interest

Dividends

Capital Loss

Expenses:

Grants

Compensation

Accounting Fees

Legal Fees

Other Expenses

Net Income

The amounts on the Form 990 for the year ended December 31, 20XX, and the amount per exam, is given below:

20XX form 990 \_\_\_\_\_ Per Form 990                      Per Exam

Income:

Contributions

Interest

Dividends

Capital Loss

Expenses:

Grants

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Accounting Fees

Other Expenses

Net Income

**Note A:** Internal Revenue Code Section 170 states that a contribution is a voluntary transfer of money or property with no expectation of procuring a financial benefit commensurate with the amount of the transfer (see also Tax Regulation 1.170(A)-1(c)(5), H.R. Rep No 1337, 83<sup>rd</sup> congress, 2d session, A44 (1954), and Revenue Ruling 83-104). Revenue Ruling 83-104 states that one factor in determining if a charitable contribution is actually a contribution is whether or not a earmarking is made for the direct benefit of a particular individual.

In this case, the contribution of \$ in 20XX is not deemed to be an actual contribution received by the Foundation because the donation was made with the intent to benefit a particular group of individuals.

**Law 1:**

Section 501(a) of the Internal Revenue Code exempts from taxation organizations described in subsection (c) or (d) under this subtitle unless such exemption is denied under section 502 or 503.

Section 501(c)(3) of the Code exempts from taxation: "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."

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, educational, or scientific purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(3)-(a)(1) provides, in part, that: "In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

Treas. Reg. § 1.501(c)(3)-1 provides:

(c) Operational test--(1) Primary activities. An organization will be regarded as "operated exclusively"

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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.

Treas. Reg. § 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg § 1.501(a)-1(c) defines private shareholders as being persons who have a persona and private interest in the activities of the organization.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provide that 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.

It is well established in the law of charities that scholarships and student loans are a charitable endeavor if they are granted on the basis of need, as in Rev. Rul. 66-103, 1966-1 C.B. 134, or merit, as in Rev. Rul. 69-257, 1969-1 C.B. 151, and are not subordinate of private purposes.

Rev. Rul. 67-367, 1967-2 C.B. 188, provides that a nonprofit organization whose sole activity is the operation of a "scholarship" plan for making payments to pre-selected, specifically named individuals does not qualify for exemption under section 501(c)(3) of the Code. Under these agreement, whereby the organization pays "scholarships" to pre-selected, specifically named individuals designated by subscribers, the organization is serving private interests rather than public charitable and educational interests contemplated under section 501(c)(3) of the Code. Therefore, it does not qualify for exemption from federal income tax under that section. Compare Rev. Rul. 56-403, C.B. 1956-2, 307, which holds that awarding scholarships by a foundation solely to undergraduate members of a designated fraternity will not preclude the foundation from exemption under section 501(c)(3) of the Code.

In Rev. Rul. 66-266 1969-1 C.B. 151, An organization formed and controlled by a doctor of medicine, "hired" to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered, is not exempt under section 501(c)(3) of the Code. In the rational of the revenue ruling, it described that under the facts described the operation of the medical practice by the organization does not differ significantly from the private practice of medicine for profit. The organization is operated by its creator essentially as an attempt to reduce his personal Federal income tax liability while still enjoying the benefits of his earnings. Thus, the organization's primary function is to serve the private interest of its creator rather than a public interest.

In Better Business Bureau v. United States, 326 U.S. 278 (1945) states that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section

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501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

In Puritan Church of America v. Comm., (1953, Dist Col) 209 F2d 3-6. 53-2 USTC section 9601, 45 AFTR 119 cert den (1954) 347 US 975, 9898 LED 1115, the court found that an organization is disqualified from exemption if it serves private rather than a public interest. It must therefore establish that it is not organized and operated for the benefit of private interests such as designated individuals, the creator of the organization or his family, shareholders, or persons controlled (directly or indirectly) by such private interest, and the accomplishment of the exempt purposes must not be accompanied by personal, private, or selfish consideration.

In Wendt/ L. Parker Rehabilitation Foundation, Inc. v. Comm., 86 TNT 155- 115, the court held that the organization was not exempt because the Foundation's selection of a family member as a substantial beneficiary of its disbursements violated the prohibition against using the funds of a tax-exempt organization to inure to the benefit of private individuals.

In Charleston Chair Company v. United States, 203 F. Supp. 126 (E.D.S.C. 1962), exemption was lost by a foundation that spent a large part of its funds on a scholarship grant to the son of a foundation trustee.

In Crellin (Amy Hutchinson Crellin Trust), 46 BTA 1152, a trust that was set up to provide scholarships for the senior's family was not a charitable organization.

**Law 2:**

The exempt status of an organization may be recognized by the Internal Revenue Service through the application process described in a revenue procedure issued by the Service. See , e.g. , Rev. Proc. 20XX-1, 20XX-1 I.R.B. 1; Rev. Proc. 90-27, 1990-1 C.B. 514. Although not required to apply for a determination letter in order to claim exempt status, organizations seeking recognition of exemption from the Internal Revenue Service under I.R.C. § 501(c)(15) may file a Form 1024, Application for Recognition of Exemption under Section 501(a).

A determination letter recognizing tax-exempt status is issued by the Internal Revenue Service to an organization where its application and supporting documents establish that it meets the requirements of the category of exemption it claims. Rev. Proc. 90-27, § 5.01, 1990-1 C.B. 514. All information by the applicant must be provided under penalties of perjury. Rev. Proc. 20XX-4, § 9.13, 20XX-1 I.R.B. 128. The application process ends with the issuance of a determination letter. A "determination letter" is a written statement issued by the Internal Revenue Service in response to a written inquiry by an individual or an organization that applies to the particular facts. Treas. Reg. § 601.201(a)(3).

An organization may ordinarily rely on a favorable determination letter received from the Internal Revenue Service. Treas. Reg. § 1.501(a)-1(a)(2); Rev. Proc. 20XX-4, §13.01 (cross-referencing § 13.01 et seq.), 20XX-1 C.B. 128. An organization may not rely on a favorable determination letter, however, if the organization omitted or misstated a material fact in its application or in supporting documents. In

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addition, an organization may not rely on a favorable determination if there is a material change, inconsistent with exemption, in the organization's character, purposes, or methods of operation after the determination letter is issued. Treas. Reg. § 601.201(n)(3)(ii); Rev. Proc. 90-27, § 13.02, 1990-1 C.B. 514. Any such changes must be reported to the Service so that continuing recognition of exempt status can be evaluated.

The Commissioner may revoke a favorable determination letter for good cause. Treas. Reg. § 1.501(a)-1(a)(2). A favorable determination letter may be revoked by written notice to the organization to whom the determination originally was issued. Treas. Reg. § 601.201(m) (cross-referencing Reg. § 601.201(1)); Rev. Proc. 90-27, § 14, 1990-1 C.B. 514, 518.

If the Commissioner revokes the tax-exempt status of an organization, the remaining question is whether the revocation should be applied prospectively or retroactively. Generally, revocation of a determination letter is prospective. Rev. Proc. 20XX-4, § 13.04, I.R.B. 20XX-1. Revocation of a determination letter may, however, be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Treas. Reg. § 601.201(n)(6)(i); Rev. Proc. 90-27, § 14.01, 1990-1 C.B. 514; Rev. Proc. 20XX-4, § 13.05.

In cases where the organization omitted or misstated a material fact, revocation may be retroactive to all open years under the statute. See Treas. Reg. § 601.201(1)(I). In cases where revocation is due to a material change, inconsistent with exempt status, in the character, the purpose, or the method of operation, revocation will ordinarily take effect as of the date of the material change. Treas. Reg. § 601.201(n)(6)(i); Rev. Proc. 90-27. In any event, revocation will ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked. Treas. Reg. § 601.201(n)(6)(i).

In Christian Echos Nat'l Ministry, Inc., CA-10, 73-1 USTC ¶9129, 470 F2d 849. Cert denied, 414 US 864, the retroactive revocation of a church's tax-exempt status was proper where the facts revealed on audit were materially different from those disclosed in the organization's original exemption application, which did not refer specifically to the organization's involvement in legislative activities.

In Western Catholic Church, 73 TC 196, Dec. 36,412, The IRS could retroactively revoke an organization's exempt status where it was shown that the organization was not, nor had it ever been, operated exclusively for charitable, etc., purposes, and it was not shown that no part of its net earnings inured to the benefit of private individuals.

**Taxpayer's position 1:**

It is not know at this time what the foundation's position is on the proposed revocation.

**Government's position 1:**

In order to qualify for exemption on under IRC § 501(c)(3), you must establish that you are organized and operated exclusively for religious, charitable, or educational purposes and that no part of your net

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earnings inure to the benefit of a private individual or shareholder.

After examining the records and testimony acquired during the audit, it was determined that you are operating exclusively for the benefit of the RA-1 Will.

The only activity your organization has conducted since the date of incorporation has been to fulfill the terms of RA-1 Will. In RA-1 Will, it directed the Executors of his estate who are also sole directors of the foundation to create a fund called the Trust for the purpose to pay educational expenses for his descendants. In the Will, it describes certain criteria for types of expenses that can be paid for, what lineal descendants are eligible for such funds, and the limits on the amount of money that can be spent on. From the date of incorporation up until the time you found out the foundation was being audited, you have fulfilled the terms of the Will by making the terms of your scholarship match those in the Will and only paying for educational expenses of RA-1 descendants. You have not had an independent scholarship selection committee as you stated in the application of exemption and interview. This is shown by the organization minutes directing the scholarship committee to look favorably toward the relatives of RA-1. In addition, the only scholarship committee member that participated was RA-5 who is related to RA-1. This hardly makes an independent scholarship committee.

BM-1 stated that the organization had advertized the scholarship on Website and in 20XX. Also, it was stated during the interview on June 5, 20XX that the foundation had a website called to advertize the scholarship. After making third party contacts with and Website, it was found that the foundation didn't start advertising the scholarship until after 20XX. In fact, after making a third party contact to it was stated that the organization signed up on June 6, 20XX, a full day after the interview with BM-1. Also, the organization's website wasn't created until May 24, 20XX which is after the organization was notified an audit was occurring according to a lookup on

Further proof that the foundation was used to fulfill RA-1 Will was shown in the form 706 Estate Tax Return in which it states in relation to the 100% charitable estate tax deduction that the Trust is a fund of the foundation. By allowing the RA-1 Will to pre-select the ultimate scholarship recipients, and, by managing the donated funds as described in the Will, you are conducting your activities in a manner that is indistinguishable from those of the scholarship plan discussed in Rev. Rul. 67-367, 1967-2 C.B. 188. Therefore, you have failed to establish that your primary activity is an activity described in IRC § 501(c)(3).

The foundation was set up specifically to fulfill the terms of the RA-1 Will. Like the trust discussed in the court case Crellin (Amy Hutchinson Crellin Trust), 46 BTA 1152 and Charleston Chair Company v. United States, 203 F. Supp. 126 (E.D.S.C. 1962), your distribution of scholarships are only to the Grantor's family is not charitable but instead serves their private interests. Because the foundation serves the private instead of public interests, it does not qualify for exemption under IRC § 501(c)(3). See Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) of the Regulations and Puritan Church of America v. Comm., (1953, Dist Col) 209 F2d 3-6. 53-2 USTC section 9601, 45 AFTR 119 cert den (1954) 347 US 975, 9898 LED 1115.

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Furthermore, by your organization being created for the sole purpose to shelter RA-1 estate from federal estate tax, the foundation is like the organization described in Rev. Rul. 66-266 1969-1 C.B. 151 in which an organization was formed to shelter income from tax which was ruled to serve a private rather than a public interest. Such a purpose is a substantial nonexempt purpose within the meaning of Business Bureau v. United States, 326 U.S. 278 (1945) thereby disqualifying you from exemption under IRC § 501(c)(3).

In addition, because your funds inure to the benefit of RA-1 decedents, exemption under IRC § 501(c)(3) is precluded. See Wendy L. Parker Rehabilitation Foundation, Inc. v. Comm., 86 TNT 155-115.

Accordingly, you do not qualify for exemption as an organization described in IRC § 501(c)(3).

**Taxpayer's Position 2:**

It is not know at this time what the foundation's position is on the proposed revocation.

**Government's Position 2:**

While revocation of a determination letter is generally not retroactive, revocation of a determination letter may be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Treas. Reg. § 601.201(n)(6)(i). See also, Rev. Proc. 20XX-1, 20XX-1 I.R.B. 1; Rev. Proc. 90-27, §14.01 (cross-referencing § 13.01 et seq.), 1990-1 C.B. 514. In cases where the organization omitted or misstated a material fact, revocation may be retroactive to all open years under the statute. See Treas. Reg. § 601.201(1)(1). In cases where revocation is due to a material change, inconsistent with exempt status, in the character, the purpose, or the method of operation, revocation will ordinarily take effect as of the date of the material change. Treas. Reg. § 601.201(n)(6)(i); Rev. Proc. 90-27, 1990-1 C.B. 514. In any event, revocation will ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked. Treas. Reg. § 601.201(n)(6)(i).

In this case, the foundation never provided information during its application of exemption that it was organized and operated for the benefit of RA-1 Will. As in Christian Echos Nat'l Ministry, Inc., CA-10, 73-1 USTC ¶9129, 470 F2d 849. Cert denied, 414 US 864, retroactive revocation of the determination letter is being applied because there were omissions and misstatements of material fact during the application process and also a material change in operation. Accordingly, it is recommended that revocation be effective as of December 24, 20XX, the date of inception, as identified in foundation's determination letter.

**Conclusion 1:**



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The foundation does not qualify for exemption under IRC § 501(a) as described in IRC §501(c)(3) effective January 1, 20XX because it is organized and operated exclusively for the benefit of RA-1 Will.

**Conclusion 2:**

The foundation is revoked retroactively to the date of inception effective December 24, 20XX because it omitted and misstated material facts in its application for exemption. Form 1120 returns should be filed for the tax periods ending on or after December 24, 20XX for all years that have an open statute of limitations.

The statute of limitations is three years from the due date of the Form 1120, or the three years from the date actually filed, whichever is later.