

**Internal Revenue Service**  
Appeals Office

**Department of the Treasury**

**Taxpayer Identification Number:**

**Release Number: 201203030**  
**Release Date: 1/20/2012**  
**Date: 10/28/2011**

**Person to Contact:**

Tel:  
Fax:

**Tax Period(s) Ended:**

**Certified Mail**

**UIL: 501.03-01**

::

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, XXXX.

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

To be an organization described in section 501(c)(3) of the Code, an organization must be organized and operated exclusively for charitable, educational, or other exempt purposes described in section 501(c)(3). Our examination of your operations in 2007 and 2008 showed that you were not operated exclusively for exempt purposes because your net earnings inured to your founder and principal officer by your failure to maintain appropriate records to demonstrate furtherance of exempt purposes and by comingling your finances with said officer. Moreover, more than an insubstantial purpose of your organization was to further the private interests of said officer.

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

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit [www.irs.gov](http://www.irs.gov).

If you were a private foundation as of the effective date of revocation, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

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 Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

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 matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit [www.irs.gov/advocate](http://www.irs.gov/advocate) for more information.

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

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892

**Internal Revenue Service**

**Department of the Treasury**

Date: **SEP 30 2010**

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,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer:		EIN:
ORG	EIN	Year/Period Ended December 31, 20XX December 31, 20XX

**LEGEND**

ORG - Organization name      XX - Date      Address - address      City -  
city      State - state      President - president      DIR-1& DIR-2 - 1<sup>st</sup>  
& 2<sup>nd</sup> DIR      CO-1, CO-2, CO-3, CO-4, CO-5 & CO-6 - 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> &  
6<sup>th</sup> COMPANIES      RA-1, RA-2, RA-3, RA-4, RA-5, RA-6, RA-7 & RA-8 - 1<sup>st</sup>,  
2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> RA

**I. Issue**

Is ORG, Inc., operating exclusively for charitable and educational purposes described in Internal Revenue Code (IRC) §501(c)(3)?

**II. Facts**

**A. Organizing Documents**

**i. Articles of Incorporation**

ORG, Inc ("Organization") was formed on August 31, 20XX. Its Articles of Incorporation state the Organization's specific purpose is:

"to conduct anthropological cross-culture original performing artistry. Preparing ways of self-care by cleansing and purifying body, mind and spirit thru [sic] praying, fasting, singing, meditation, sharing stories, and performing circle ceremony."

**ii. Form 1023**

On February 28, 20XX, ORG, Inc., sent Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code to the Service.

On Part IV, Narrative Description of Your Activities, Page 2, the Form 1023 application states in part that the specific goal of the organization is to:

"involve people attending organized gatherings in taking care of the harmonic development of their body and spirit in close connection with nature by means of:

- Contacting Native American Elders, Chiefs, people engaged in medical sphere and Spiritual Leaders;
  - A web-site which includes pages about sacred Ceremonies designed to awaken and protect original healing cultural traditions, serving to mitigate dramatic Earth changes such as global warming.
1. Ceremonial Workshops at sacred sites 55%
  2. Self-Care Healing with Sweat Lodges 20%

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3. Tours at Sacred Sites - 15%
4. Other Key Activities - 10%

Ceremonial Workshops at sacred sites

Conduct meetings and sacred actions at CO-3 in City. The First gathering took place on April 1, 20XX. For the Ceremonies we need Sacred Sites in nature, holy drums, feathers, pipes, crystals, magnets and blankets. Our President is in charge of the activity. Our spiritual mentors should be effective Native Americans who possess ancient knowledge of natural resources preservation, holding sacred ceremonies and healing skills. The Ceremonial workshops are conducted for the benefit of all people who attend as well as Mother Earth.

Self-Care Healing with Sweat Lodges

The aim of this activity is to purify the mind, body and spirit of the participants and to help them develop spiritually and receive energy to work for the benefit of Mother Earth. This program event includes:

Ceremonial representation being held in the City conference room with Shoshone Elder RA-1, City Buffalo Stands, RA-2, and others who had Inner Earth experiences;

Native American Purification Sweat Lodge Ceremony with City Elder RA-3;

Bath in City;

Dinner;

Fire Ceremony with RA-2, Founder of CO-1 Journeys & Creatrix of the CO-2. April 1<sup>st</sup>, 20XX was the day we started holding healing procedures. Address, City State.

Attendees may choose a place for accommodation themselves

Inform the public of the possibility to join our ceremonies via flyers, magazine publications, and the organization's website.

All the participants of the ceremonies pay for the services of City from their own pocket. Rental charges for using the conference room are paid by the organization. Donations are the means of paying advertising and transportation expenses for the organization.

Tribal Elders gave verbal permission for conducting healing gatherings. No other licenses or permissions are required. President controls and oversees the activity that benefits all the community members attending events as well as Mother Earth.



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Tours at Sacred Sites

The first tour organized by ORG was conducted on April 1, 20XX. CO-3 on City was the place where we gathered together. To help preserve sacred sites of nature we need drums, feathers, pipes, flutes, crystals, and magnets.

We will notify the public of the possibility to join us in tours around wonderful sacred places of the Earth through printed materials and the organization's website.

Any expenses incurred are paid by the participants or through donations from the public. The activity is managed by President.

Administrative activities:

Includes regular meetings

Page 4 of the attachment stated that the organization is dependent on public donations and grants. The Organization solicits both in-kind donations and financial contributions using various fundraising methods described on pages 7-8 below. All monies collected as a result of our fundraising efforts are used to organize healing ceremonies for the benefit of people and Mother Earth. These funds will not be used for private gain of any person. Any surplus income for each year that may occur will go in the next year to be used for the primary purposes of the organization.

Section 501(c)(3) of the Internal Revenue Code provides tax exemption for groups organized and operated exclusively for religious and charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. By holding traditional Native American religious ceremonies, providing people with knowledge on how to keep their body and soul in harmony, how to protect nature against harmful influence of mankind, and teaching them to heal any trouble, ORG, Inc. is clearly engaged in furthering religious and charitable purposes for the benefit of the community.

In Part VIII, Line 4a, The Organization describes its fundraising activity:

Solicit funds by means of:

1. Mail Solicitations
2. Email Solicitations
3. Personal Solicitations
4. Foundation Grant Solicitations
5. Accepting donations on our website
6. Receiving donations from other organizations' websites.

Part V, Compensation and other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and Independent Contractors:

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Name: President  
Title: Director and President/CEO  
Mailing Address: Address,, City, State  
Compensation: None

Name: DIR-1  
Title: Director and Secretary  
Mailing Address: Address, City, State  
Compensation: None

Name: DIR-2  
Title: Director and Treasurer  
Mailing Address: Address, City, State  
Compensation: None

In Part V, Line 4, the Organization stated "Yes" to questions, 4 (a), Do you or will the individuals that approve compensation arrangements follow a conflict of interest policy, 4 (b), do you or will you approve compensation arrangements in advance of paying compensation, 4 (c), Do you or will you document in writing the date and terms of approved compensation arrangements, 4 (d), do you or will you record in writing the decision made by each individual who decided or voted on compensation arrangements, 4 (e), Do you or will you approve compensation arrangements based on information about compensation paid by similarly situated taxable or tax-exempt organization's for similar services, current compensation surveys compiled by independent firms, or actual written offers from similarly situated organizations, 4 (f) do you or will you record in writing both the information on which you relied on to base your decision and its source?

ORG Inc does not and does not plan to establish any compensation to its directors and officers. We have no paid staff. The directors donate their time and expenses to run the organization. However, if the board of directors offered compensation to the officers of this corporation at a later stage, is should be fixed from time to time by resolution of the Board of Directors and be very reasonable and in return, for services actually rendered to or for the corporation for the cause of its tax exempt activities alone. The Board of Directors would keep to all the recommended practices

On Part V, line 6a, the Organization stated "No" when asked, "Do you or will you compensate any of your officers, directors, trustees, listed on Lines 1a, 1b, or 1c through non-fixed payments such as discretionary bonuses or revenue-based payments?"

Page 9, Part IX, Financial Data reported:



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	1/1/20XX - 12/31/XX	1/01/XX - 12/31/XX	1/01/XX - 12/31/XX	8/27/XX - 12/31/XX	Total
1. Gifts Grants and Contributions					
13. Total Revenue					
14. Fundraising Expense					
20. Occupancy (Rent, utilities)					
22. Professional Fees					
23. Program service					
24. Total Expenses					

The organization reported \$0 in Assets, Liabilities and Fund Balances or Net Assets on its Balance Sheet for its most recently completed tax year.

### iii. Determination Letter

The Organization received its determination letter on May 28, 20XX. The Service recognized the Organization as a tax exempt entity described in IRC § 501(c)(3), and classified as a publicly supported organization under 170(b)(1)(a)(vi). The effective date of exemption is August 27, 20XX.

### B. The Organization and Affiliated Entities

ORG reported its mailing address as Address, City, State. President's home address is Address, City, State.

CO-4 provides all of ORG's financial support. CO-4's principal is RA-4, President's husband.

### C. Form 990 Filings

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The Organization file Forms 990 for the years 20XX and 20XX. The 20XX Form 990 was filed on July 10, 20XX and the 20XX Form 990 was filed on 5/27/20XX.

Year	20XX	20XX
1. Contributions Gifts Grants		
9. Total Revenue		
10. Grants		
12. Salaries, other compensation		
15. Printing, publications postage, shipping		
16. Other Expenses		
17. Total Expenses		
19 Excess		
21. Net Assets at end of year		

#### D. Activities

The Organization has not explained full details of all its activities, the Organization did provided a printout of its web page. The copy of the website showed the activities for 20XX and 20XX consisted of Cultural Gatherings. The organization has not provided expense accounting on how these events furthered an exclusive exempt purpose rather than President's personal and private interests:

#### CULTURAL GATHERINGS 20XX:

March 31st & April 1st, City  
State, May 16th, City, State,  
October 27th-28th, City, State

#### CULTURAL GATHERINGS 20XX

April 19th & 20th,  
City, State  
August 30th  
City, State

Oct 25th  
City, State

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March 19-23, Elders Gathering at City, State, and July 5-6th, Photos & info City, State were not part of the Organization but was on the website for "informational purposes".

On the last sentence in the first paragraph of the narrative of, it stated, "To participate in the original ceremonies please scroll down on the left for events." There are no links on the Organization's site map or anywhere on the website that explicitly invites the public to participate, furthermore, the nature of the activities conducted only allow a limited number of individuals to participate.

It is evident that the Organization sponsored President, personally, to attend these events, however, the Organization could not provide any substantiation that its expenditures were used to sponsor these events. The Organization has not explained how paying for President to attend these events, in addition to paying her numerous personal expenditures serve a charitable and/or educational purpose. The Organization has not explained nor accounted how Organizational expenditures were used to further an exempt purpose<sup>1</sup>.

The Organization provided the Service with a flyer entitled "City Transformational Gathering". The location of this event was City, Address, City, State. The event was held on April 19 & 20<sup>th</sup> 20XX

Organizational expenditures incurred for the "City Transformational gathering at City" event strongly appear to be for President's personal attendance, rather than the Organization's financial support to sponsor and conduct the "cultural gathering". The Organization has not provided substantiation how these expenditures served an exclusive exempt purpose rather than President's personal interests.

City is actually City Resort that offers baths in City (at an extra charge), lodging (extra charge), Sweat lodge<sup>2</sup>.

#### D. Revenues

The only source of revenue for the years under audit was from CO-4. Total revenue per the Form 990:

\* \* \* \*

<sup>1</sup> President "threw" the 20XX receipts and accounting away (see F expenditures)

<sup>2</sup> Per the City Website, "There is no charge for the [redacted] A-3 works with the spirit of giveaway, and supports his family through the donations you give."



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October  
November  
December

The revenue for 20XX on the Form 990 were understated by \$\$ and the revenue for 20XX was understated by \$\$.

## ii. Expenditures

CO-5 Account #			
20XX	20XX		\$\$
<u>Withdrawals</u>	<u>Withdrawals</u>		\$\$
			-\$
		Total	
		Withdrawals	-\$
			\$\$
		<u>Expenditures</u>	
		<u>Reported on Form</u>	
		990	
		20XX	\$\$
		20XX	\$\$

Expenditures reported on the Form 990 were understated by approximately \$ and \$ for 20XX and 20XX, respectively.

President is responsible for all recordkeeping and financial transactions of the Organization. No books and records are kept, rather, President makes a purchase and retains the receipts. Agent was unable to differentiate 'Organizational expenditures' from President's personal expenditures.

The return preparer, RA-5, used the bank statements and the receipts to complete the returns and arbitrarily classify expenditures as "foundation expenditures" for 20XX and 20XX. The return preparer stated that he was 'guessing' what was foundation expenses versus President's personal expenditures.

President stated that she threw the 20XX receipts away. President did provide receipts for 20XX, but only for \$, leaving approximately \$ unaccounted for (Organizational Deposits \$\$ - \$ (President's receipts). Furthermore, the receipts

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provided do not evidence that they were exclusively for exempt purposes. In fact, the receipts prove that expenditures served President's private interests. President commingles her personal expenditures with the Organization's bank account. The Organization's bank account is being used for President's personal gain. The Organization's asset (bank account) are inuring to President.

The amounts \$ (\$ Salary \$ - Expense account) and \$ (\$ - Salary \$ - Expense account) reported as compensation for 20XX and 20XX respectively, were arbitrarily obtained, inaccurate and not deemed compensation at all. The Organization did not file any information returns such as Forms W-2, Forms 1099, nor did the Organization file any Forms 941 or pay any employment taxes. Furthermore, the expenditures in questions are not expense reimbursements because they were not payments under an "accountable plan" nor were they incurred in the normal course the Organization's business. These amounts consisted of personal expenditures for President paid for by the organization. "Items that seemed personal went on a 1099-MISC." Rather, these amounts were actually "unexplained expenses that were deemed as compensation" by the return preparer. The \$ was not compensation or payment for services, but "miscellaneous donations that were not used".

President also received \$ which was reported as an "expense account allowance". This figure includes:

Art	\$
Health: Eyes & Teeth	\$
Parking tickets	\$
Clothing	\$

**BOA Account #**

Unsubstantiated Cash  
Withdrawals:

Rent payment for RA-6<sup>4</sup>,  
Address, City,  
State

20XX

\* \* \* \*

<sup>4</sup> President's son.



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**Cash withdrawals**

5/14/20XX  
7/16/20XX  
8/27/20XX  
8/27/20XX  
9/5/20XX  
10/22/20XX  
10/22/20XX  
10/25/20XX  
10/26/20XX  
10/30/20XX  
11/1/20XX  
11/8/20XX  
11/13/20XX  
11/21/20XX  
11/23/20XX  
11/23/20XX  
12/XX/20XX  
12/13/20XX  
12/18/20XX  
12/20/20XX  
Total

**Rent checks 20XX**

Date	Check #	Amount
05/04/XX		
07/05/XX		
8/17/XX		
09/05/XX		
10/04/XX		
06/XX/XX		
12/11/XX		
11/06/XX		
<b>20XX</b>	<b>Total</b>	

**Rent Checks 20XX**

Date	Check Number	Amount
1/8/20XX		
2/7/20XX		
3/XX/20XX		
4/8/20XX		
5/8/20XX		
6/9/20XX		
7/8/20XX		
8/7/20XX		
9/8/20XX		
10/7/20XX		
11/14/20XX		
12/5/20XX		
<b>20XX</b>	<b>Total</b>	

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Unsubstantiated Cash Withdrawals  
(Continued)

**20XX**

**Cash Withdrawal**

1/7/20XX	6/2/20XX
1/XX/20XX	6/3/20XX
1/18/20XX	6/11/20XX
1/25/20XX	6/12/20XX
1/31/20XX	6/25/20XX
2/5/20XX	7/9/20XX
2/6/20XX	7/XX/20XX
2/7/20XX	7/23/20XX
2/11/20XX	8/5/20XX
2/11/20XX	8/7/20XX
2/20/20XX	8/8/20XX
3/XX/20XX	8/11/20XX
4/1/20XX	8/26/20XX
4/1/20XX	8/26/20XX
4/1/20XX	8/28/20XX
4/2/20XX	9/5/20XX
4/3/20XX	9/8/20XX
4/3/20XX	9/17/20XX
4/8/20XX	9/22/20XX
4/9/20XX	9/25/20XX
4/XX/20XX	9/26/20XX
4/11/20XX	10/1/20XX
4/14/20XX	10/XX/20XX
4/16/20XX	10/14/20XX
4/17/20XX	10/14/20XX
4/21/20XX	10/28/20XX
4/21/20XX	11/5/20XX
4/23/20XX	11/5/20XX
4/24/20XX	11/6/20XX
4/25/20XX	11/6/20XX
4/29/20XX	11/12/20XX
5/2/20XX	11/12/20XX
5/8/20XX	11/21/20XX
5/14/20XX	11/28/20XX
5/20/20XX	12/19/20XX
5/20/20XX	12/22/20XX
5/27/20XX	12/22/20XX
	<b>20XX Total</b>

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20XX Expenditure totals in which the organization did not provide or maintain contemporaneous substantiation to the Service to account for business versus personal use.

**20XX<sup>5</sup>**

Auto  
Clothing  
Computer  
Foundation  
Expense  
Groceries  
Car Insurance  
Medical  
Rent Office  
Supplies  
Telephone  
Travel  
Total

The receipts maintained by President are for 20XX only and are labeled into the following expense categories:

**20XX**

Car expense  
Clothing  
Parking Tickets  
Health  
Merch  
Car Insurance  
Food  
Phone  
Postal  
AT&T  
Gas  
Motels  
Education  
Art  
Foundation Expense  
Air Fare

\* \* \* \*

<sup>5</sup> 20XX expenses report Prepared By RA-5

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	<u>20XX</u>	<u>20XX</u>
Unsubstantiated cash withdrawals	\$	\$
Rent payments for RA-6	\$	\$

- Car Expense for 20XX – receipts total \$\$\$. The organization provided an envelope that stated "Car exp. 20XX \$\$\$". Receipts included auto repair, oil, etc. The receipts tape total prepared by RA-7 totaled \$\$\$\$. The envelope, prepared by President, contained numerous receipts, however, no records were provided to the Service to substantiate business use versus personal use. All car expenditures are deemed personal. None of the organization's auto expenditures further an exempt purpose. All auto expenditures are inuring to President and serving her private interests. The Organization does not own any assets, i.e., automobile. These payments are for President's personally owned vehicle – 20XX CAR.
- Envelope labeled "20XX Clothing Personal \$\$\$" by President. The envelope, prepared by President, contained numerous receipts, however, all clothing expenses are deemed personal. None of the organization's clothing expenditures furthered an exempt purpose. The Organization's clothing expenditures are inuring to President and serving her private interests.
- Envelope labeled "Parking Tickets 20XX personal \$" by President for 20XX totaled \$. All Parking Ticket expenditures are deemed personal. None of the organization's expenditures for parking tickets incurred by President furthered an exempt purpose. The Organization's parking ticket expenditures are inuring to President and serving her private interests.
- Envelope labeled "Compensation for Mand. Tn. F. to me / Health 20XX \$". The envelope contained numerous receipts, however, all "Health" expenditures are personal. None of the organization's "health" expenditures furthered an exempt purpose. Health expenditures are inuring to President and serving her private interests.
- Envelope labeled "Merch. 20XX \$" contained numerous receipts, however, no records were provided to the Service to substantiate business use versus personal use. All "Merc." expenses are deemed personal.
- Envelope labeled "ins. 20XX \$" contained receipts for payments to CO-6 for President's car insurance. All car insurance payments were paid with money orders to CO-6 Services, City, State. All payments to CO-6 are personal expenditures. None of the organization's auto insurance expenditures further

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an exempt purpose. All auto insurance expenditures are inuring to President and serving her private interests. The Organization does not own any assets, i.e., automobile. These payments are for insurance for President's personally owned vehicle.

- Envelope labeled "Food \$ 20XX" contained numerous receipts, however no records were provided to the Service to substantiate business use versus personal use. All "Food" expenses are deemed personal. All food and dining expenditures are inuring to President and serving her private interests.
- Envelope labeled "Phone 20XX \$" Included payments for her son's personal cell phone RA-6, #. numerous receipts, however no records were provided to the Service to substantiate business use versus personal use. Get receipts for phone.
- Envelope Labeled "PG&E 20XX ?". No Dollar figure was on this envelope.
- Envelope Labeled "Postal 20XX \$". Included receipts for postage and shipping, but the vast majority of these expenditures were for money orders. It was not explained by the organization how the money order's were spent or what as being shipped and how this expenditure furthered an exempt purpose. No records were provided to the Service to substantiate business purpose of this expenditure. Majority of these expenditures were cash.
- Envelope labeled "AT&T \$" Not sure what this is for; no records were provided to the Service to substantiate the exempt purpose.
- Envelope labeled "Gas 20XX \$". The Organization included receipts for gas, paid for by cash and ATM charges, however, it was not explained how these expenditure furthered an exempt purpose rather than personal. Fuel expenditures were weekly, occurring, personal in nature. There were some out of town receipts for travel in Idaho Falls, however, no records were provided to the Service to substantiate the exempt business purpose of this expenditure. All gas expenditures are inuring to President and serving her private interests.
- Envelope labeled "Motels 20XX \$". The Organization included receipts for "Motels", however, it was not explained how these expenditure exclusively furthered an exempt purpose rather than personal.

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- Envelope labeled "Education 20XX \$". The Organization included receipts for "education", however, it was not explained how these expenditure exclusively furthered an exempt purpose rather than personal.
- Envelope labeled "Art 20XX \$ - personal". These expenditures are personal in nature and do not further the organization's exempt purpose. All art expenditures are inuring to President and serving her private interests.
- Envelope labeled "Found. Exp. 20XX \$ + rent \$ - \$. The Organization included numerous miscellaneous receipts for this category or "Foundation expenditures". It was not explained how these expenditure furthered an exempt purpose rather than personal. No records were provided to the Service to substantiate business purpose of these expenditures.
- Rent expenditures was for an apartment occupied by President's son RA-6, Address, City, State.  
20XX Rent - \$  
20XX Rent - \$  
Expenditures for President's son's apartment is not related to any exempt purpose and is a non-exempt expenditure.
- Envelope Labeled "Airplane Tickets 20XX \$" RA-8 April 12 City, State to City / April 21 City to City, State \$; RA-9, RA-10, RA-11 Friday April 18, 20XX LV City, State - City returning on Monday April 21, City to City, State \$ per ticket (3@) = . President, Friday October 24, 20XX, SFO - City United #
- City - City, State / Monday 27, City - City - SFO \$; Billing info: Card holder RA-4, Visa , Address, City, State. President - \$ 11/29/20XX SFO to City.
- Envelope labeled "donations 20XX \$", explained by President as gifts to the Native Americans: not compensation, but give's gifts, buys them clothes food, gives them money: Donation of \$ to RA-5 - western union wire transfers.

The 20XX and 20XX expenditures can best be described as being daily personal expenses that serve President's personal interest. The Organization could not provide the Service contemporaneous substantiation to show that its expenditures furthered and exclusive exempt purpose. Funds are being commingled with President.

### III. Law



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### A. Statutes

I.R.C. § 501(c)(3) provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable 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)-1(a)(1) provides that an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code in order to be exempt as an organization described in such section.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it is engaged primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

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(c)(3)-1(d)(ii) states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, 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, shareholders, or persons controlled, directly or indirectly, by such private interests.

Treas. Reg. § 1.501(a)-1(c) defines a private shareholder or individual as those persons having a personal and private interest in the activities of an organization. In general, a private shareholder or individual is considered an "insider" with respect to the exempt organization.

Treas. Reg. § 1.6033-2(i)(2) provides that "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 Internal Revenue Service for the purpose in inquiring into its exempt status and administering the provisions of subchapter F (section 501 and following), chapter 1 of subtitle A of the Code...."

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## B. Cases

*Better Business Bureau v. United States*, 316 U.S. 279 (1945), holds that the existence of a single non-exempt purpose, if substantial in nature, will destroy the exemption under section 501(c)(3). 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 purposes.

In *Church of World Peace, Inc. v. Commissioner*, 67 T.C.M. (CCH) 2282 (1994), *aff'd*, 52 F.3d 337 (10th Cir. 1995), the Tax Court held that a church did not operate exclusively for religious purposes because the church facilitated a circular tax-avoidance scheme. The facts showed that individuals made tax-deductible contributions to the church. The court found that the church then returned the money to the individuals claiming that the payments were for housing allowances and reimbursement of expenses. The court further found that such payments were in fact unrelated to the church's operations.

In *John Marshall Law School v. U.S.*, 81-2 U.S.T.C. 9514 (Ct. Cl. 1981), in which the Court found that the Commissioner acted properly in revoking exemption under IRC 501(c)(3) on the grounds of inurement to the controlling officers and their families. The inurement included, but was not limited to, payments to the families as follows: automobile, education and travel expenses, insurance policies, basketball and hockey tickets, membership in a private eating establishment, membership in a health spa, interest-free loans, home repairs, personal household furnishings and appliances, and golfing equipment.

*People of God Community v. Commissioner*, 75 T.C. 127 (1980) decided that a portion of gross earnings inured to the benefit of private shareholders or individuals. The court stated:

An organization will qualify under section 501(c)(3) only if (1) it is organized and operated exclusively for exempt purposes, (2) no part of its net earnings inures to the benefit of any private shareholder or individual, and (3) it devotes no substantial part of its activities to political or lobbying activity...

Respondent argues that petitioner's loan policies and ministers' compensation each demonstrate both private inurement of net earnings and prohibited private purposes. While not necessarily identical, the prohibitions against private inurement and private purposes overlap to a great extent ... we will confine our discussion herein to the private inurement issue....

...The burden falls upon petitioner to establish the reasonableness of the compensation paid to Donhowe and petitioner's other ministers. Bubbling Well

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Church of Universal Love Inc. v. Commissioner [Dec. 36,999], 74 T.C. 531 (1980).  
Petitioner has failed to do so inasmuch as the record on this point contains little more than conclusory assertions and the fact that Dowhowe's compensation was partly based on his personal needs. Moreover, the method by which ministers' compensation was determined shows clearly that a part of petitioner's net earnings was paid to private shareholders or individuals.

In *Founding Church of Scientology v. United States*, 412 F.2d 1197 (Ct. Cl. 1969), a wide variety of devices were employed, including fees, commissions, excessive rental payments, loans and excessive salaries, to divert the organization's funds to its founder, L. Ron Hubbard, and his immediate family. The principle of inurement was summarized when the Court stated, "what emerges from these facts is the inference that the Hubbard family was entitled to make ready personal use of the corporate earnings."

Rev. Rul. 67-5, 1967-1 C.B. 123 held that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities which were beneficial to them, but detrimental to the foundation. It was further held that the foundation did not operate a charitable program commensurate in scope with its financial resources, rather the foundation was only able to carry out minimal charitable activities. The ruling stated that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. Therefore, the foundation was not entitled to exemption from Federal income tax under I.R.C. § 501(c)(3).

In Rev. Rul. 59-95, 1959-1 C.B. 627, an organization previously held exempt from Federal income tax was requested to produce a financial statement as of the end of the year and a statement of its operations during such year. However, its records were so incomplete that it was unable to furnish such statements. Section 6033 of the Internal Revenue Code of 1954 provides that every organization, except as provided therein, exempt from taxation under section 501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and shall keep such records, render under oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe. Held, failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

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In determining the effective date of revocation, 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, §14.01 (cross-referencing §13.01 et seq.), 20XX-1 C.B. 123. 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 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. Rev. Proc. 20XX-52, 20XX8-30, IRB 222.

The Commissioner may revoke a favorable determination letter for good cause. Treas. Reg. § 1.501(a)-1(a)(2). 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. Rev. Proc. 20XX-52, 20XX-30 IRB 222.

#### **IV Analysis**

##### **A. Taxpayer's Position**

Taxpayer's position is unknown at this time.

##### **B. Government's Position**

Is ORG operating exclusively for public, charitable, and educational purposes described in Internal Revenue Code (IRC) § 501(c)(3) in which no part of its net earnings inure to the benefit of any private shareholder or individual?

The Government contends that ORG failed the operational test of IRC 501(c)(3) on the following grounds:

ORG's earnings and assets inured to the benefit of its private shareholder. The Organization's assets, (i.e. bank account) are being used by President, President of ORG for personal gain, and a substantial part of the organization's activities are in the furtherance of non exempt activities; thus, it did not operate exclusively for one or more exempt purposes as required under Treas. Reg. 1.501(c)(3)-1(c)(2). ORG's key officer and shareholder is President, as she meets the definition of such under Treas. Reg. §1.501(a)-1(c) because she is a "person having a personal and private interest in the activities of an organization."

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In 20XX and 20XX, President made \$ and \$ respectively in Unsubstantiated cash withdrawals in addition to the \$ and \$ amounts that were arbitrarily deemed as compensation. President devoted all of her time to the organization and was not treated as an employee nor did she receive any salary, hourly wages or compensation from the organization for services performed. The organization did not file any employment tax returns (i.e. Forms 941) or information returns such as Forms W-2 or 1099-MISC. These amounts were not compensation nor did the Organization provide any contemporaneous substantiation that these expenditures served an exclusive exempt purpose.

By allowing the Organization's income to inure to President, the organization fails Treas. Reg. § 1.501(c)(3)-1(c)(2) which 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.

President is the sole authorized signer for the Organization's CO-5 Account 0182467813. President commingles the Organization's bank account with her personal use. The Organization's bank account is also President's primary bank account. The Organization's asset, i.e. its bank account, is readily available for President's immediate and personal use. Review of the Organization's expenditures revealed that majority of the payments are for President's personal use:

**20XX**

Auto  
Clothing  
Computer  
Foundation  
Expense  
Groceries  
Car Insurance  
Medical  
Rent Office  
Suplies  
Telephone  
Travel  
Total

**20XX**

Car expense                    \$\$  
Clothing                        \$\$  
Parking Tickets  
Health  
Merch  
Car Insurance  
Food  
Phone  
Postal  
AT&T  
Gas  
Motels  
Education  
Art  
Foundation  
Expense  
Air Fare



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Rent payments for RA-6's apartment at Address, City, State for the years 20XX and 20XX totaling \$\$ an \$\$, respectively.

Reviewing expenses reveals that President never relinquishes control over the funds. President has complete control over the organization's accounts and all financial transactions. There is no Board of Directors or other independent body responsible for reviewing, approving, co-signing financial transactions. There is no internal controls in place preventing Organizational assets (bank account) from inuring to its founder. President does not have to substantiate or provide accounting for any expenditure made from the organization's bank accounts. She has unfettered access to spend organizational funds. All of the organization's cancelled checks that were provided were approved and signed by President.

Similar to the case John Marshall Law School v. U.S., 81-2 U.S.T.C. 9514 (Ct. Cl. 1981), the Organization is paying for President's personal automobile insurance, clothing, telephone, her son's rent for a personal residence, etc. Any purported "foundation expenditure" is indistinguishable from President's personal expenditure, as there are no records kept<sup>6</sup> to substantiate that these expenditures served an exclusive exempt purpose rather than President's personal interest. In addition there is no accountable plan in place to document and allocate business versus personal usage. By operating in this manner, the Organization fails Treas. Reg. § 1.501(c)(3)-1(d)(ii), which states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, 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, shareholders, or persons controlled, directly or indirectly, by such private interests.

The Organization is operating in a manner that is inconsistent with its Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code to the Service. The Organization stated:

Page 4 of the attachment stated that the organization is dependent on public donations and grants. The Organization solicits both in-kind donations and financial contributions using various fundraising methods described on pages 7-8 below. All monies collected as a result of our fundraising efforts are used to organize healing ceremonies for the benefit of people and Mother Earth. These funds will not be

\* \* \* \*

<sup>6</sup> In addition to President throwing away the 20XX receipts.



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used for private gain of any person. Any surplus income for each year that may occur will go in the next year to be used for the primary purposes of the organization.

President controls the Organization and the use of its assets. She uses the Organization as a vehicle to promote her personal interests. She has sole signature authority over the Organization's bank account. By having sole signature authority, President is able to use the Organization's assets without any board approval.

A charity's assets must be irrevocably dedicated to charitable purposes. Treas. Reg. § 1.501(c)(3)-1(b)(4). The inurement prohibition serves to prevent the individuals who operate the charity from siphoning off any of a charity's income or assets for personal use. The Organization breached the dedication requirement and its assets have inured to the benefit of President .

The organization did not provide contemporaneous substantiation to the Service that its expenditures served exempt purposes exclusively or how these foundation expenditures benefited a charitable class versus President. An exempt organization must provide information to Internal Revenue Service inquiries to establish that it is entitled to tax exempt status. In this case the taxpayer had failed to establish that it was engaged in exempt activities, that its expenditures were for the purpose of exempt activities, or that its assets did not inure to private shareholders or individuals.

Section 6033 of the Internal Revenue Code of 1954 provides that every organization, exempt from taxation under section 501(a) of the Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and shall keep such records, render under oath such statements, make such other returns and comply with such rules and regulations as the Secretary of the Treasury or his delegate may from time to time prescribe. Held, failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

### C. Effective Date of Revocation

While revocation of a determination letter is generally not retroactive, revocation of a determination letter may be retroactive if the organization omitted or

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misstated a material fact or operated in a manner materially different from that originally represented. In cases where the organization omitted or misstated a material fact, revocation may be retroactive to all open years under the statute. 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. 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. Rev. Proc. 20XX-52, 20XX-30 IRB 222.

In this case, the agent recommends retroactive revocation of the determination letter because the Organization operated in a manner inconsistent with its exempt status under IRC 501(c)(3). Accordingly, it is recommended that revocation be effective as of January 1, 20XX.