



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street
Dallas, TX 75242

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: Aug. 12, 2013

Number: **201418059**
Release Date: 5/2/2014

LEGEND

ORG - Organization name
XX - Date Address - address

ORG
ADDRESS

Person to Contact:

Badge Number:

Contact Telephone Number:

Contact Address:

Employer Identification Number:

CERTIFIED MAIL

Dear _____ :

This is a final notice of adverse determination that your exempt status under section 501(c) (3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective January 1, 20XX for the following reason(s):

You are not operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3). You are not and have not been engaged primarily in activities which accomplish one or more exempt purposes. You are not a charitable organization within the meaning of Treasury Regulation 1.501(c)(3)-1(d); rather, your activities further a substantial nonexempt commercial purpose and serve private rather than public interests.

Because you did not protest the proposed modification of your non-private foundation status and have indicated your agreement by signing the Form 6018 on May 24, 2013, it is further determined that you have not exhausted your available remedies for purposes of declaratory judgment under section 7428 of the Code.

Contributions to your organization are no longer deductible.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX and for all the tax years thereafter in accordance with instructions of the return.

It is further determined that your failure to file a written appeal constitutes a failure to exhaust your available administrative remedies. However, if you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia

before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. To secure a petition form, write to the following address: United States Tax Court, 400 Second Street, NW, Washington, DC 20217.

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

You also have the right to contact the Office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778, and ask for the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in 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.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

24000 Avila Road, MS 3000

Laguna Niguel, CA 92677

TAX EXEMPT AND
GOVERNMENT
ENTITIES
DIVISION

May 15, 2013

Employer Identification Number

Form Number

Tax Year

Contact Number

Manager's name / ID number

Manager's contact number:

ORG
ADDRESS

Dear ,

We have enclosed a copy of the preliminary findings of our examination, explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary. Please respond within 30 days of the date of this letter.

If you accept our findings, please sign and return the enclosed Form 6018, Consent to Proposed Action - Section 7428, to the individual listed above. We will then send you a final letter revoking your exempt status. Please also file Federal income tax returns (Forms 1120 or 1041) for tax year ending 20XX and 20XX, with the individual listed above.

If you disagree with our findings, please provide in writing any additional information you believe may alter the findings. Your reply should include a statement of the facts, the applicable law, and arguments that support your position. Please also include any corrections to the facts that have been stated, if in dispute.

Upon receipt of your response, we will evaluate any additional information you have provided prior to issuing any final report of examination.

Alternatively, you may have the option of entering into a Fast Track settlement agreement. Please refer to the information enclosed regarding the possibility of this option.

Thank you for your cooperation.

Sincerely,

Chung Chen
Revenue Agent

Enclosure:

Form 886-A (Report of Examination)

Form 6018, Consent to Proposed Action

Publication 4167, Appeals - Introduction to Alternative Dispute Resolution

cc:

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LEGEND

ORG - ORGANIZATION NAME ORG-1 - ORGANIZATION NAME XX - DATE ADDRESS - ADDRESS CITY
- CITY STATE - STATE COUNTRY - COUNTRY WEBSITE - WEBSITE PRESIDENT - PRESIDENT
ASSISTANT - ASSISTANT POA - POA TREASURER - TREASURER DIR-1 - 1ST DIR CRA-1 THROUGH
RA-5 - 1ST THROUGH 5TH RA CO-1 THROUGH CO-5 - 1ST THROUGH 5TH COMPANIES

ISSUES

Whether ORG is organized and operated exclusively for exempt purposes within the meaning of *Internal Revenue Code (IRC) § 501(c)(3)* and the Regulations. Whether ORG qualifies for exemption under *IRC § 501(c)(3)*.

FACTS

Organizational Information

ORG (hereafter referred to as "the Foundation" or "the organization") was incorporated in year 20XX. The Foundation filed the Articles of Incorporation with the State of the State of State in the name of "President 'ORG'" on September 7, 20XX. The Section B of Article II states that:

"The specific purpose of this corporation is to collect and receive contributions and to dispose of funds exclusively for charitable, religious, scientific, literary, artistic or educational purposes."

The Article IV states that:

"...this corporation shall not, except to an insubstantial degree engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation."

The Article VI states that:

"The property of this corporation is irrevocably dedicated to charitable or educational purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any private person...."

The Article IV of the Bylaws of President "ORG" states that:

"All of the property of this corporation is irrevocably dedicated to charitable, religious, scientific, literary, or educational purposes and no part of the net earnings net income, or assets of this corporation shall ever inure to the benefit of any officer, director, or member thereof or to the benefit of any private individual...."

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The Foundation filed Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on March 15, 20XX and described its operational activities as follows:

"...The Foundation will seek to improve the lives of people who find themselves in difficult situations due to a financial crisis, a medical illness or legal troubles by helping to break down boundaries limiting individuals and families from having fulfilling lives."

"The Foundation will develop a network of providers that can be called upon to assist people in need. The Foundation plans include the creation of an Access Center whereby individuals can come to seek help and advice from a trained staff of social workers. The Foundation will model itself after the work already done by its founder, President. President, a top rated radio talk show personality, "CO-1," helps countless individuals through his morning talk show that reaches millions of people. President will now channel his charitable work through the Foundation. He has a proven track record and is revered by his listening audience for his high integrity and generosity."

"Additionally, the Foundation will position itself to respond to natural and cataclysmic disasters affecting the populations of the United States, Country and Central America. The Foundation will generate support and revenue primarily through fundraising activities and individual donations."

The Foundation provided the following information about its governing body in response to Part II, Item 4a, on the Form 1023:

*Officers & Directors
President – Member, Director & President
Address
City, State*

*DIR-1 –Director & Secretary/Treasurer/CFO
Address
City, State*

The Foundation provided the following information in response to Part II, Item 12b, on the Form 1023:

"...The selection of grantees will be made by the board of directors upon demonstration of one or more of the following:

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1. *Demonstration of financial hardship attributable to reasons beyond the applicant's control*
2. *Demonstration of need for the necessities of life due to occurrence of natural or man-made disasters*
3. *Demonstration of need due to family crisis caused by domestic violence, alcohol and drug abuse, medical emergency, terminal illness and similar events*

The organization will not extend benefits to persons related to or employed by members of board of directors."

The Foundation filed the Certificate of Amendment of Articles of Incorporation with the State of State on March 22, 20XX. The Articles amended to change the Foundation's name to "ORG-1".

The Foundation filed the Certificate of Amendment of Articles of Incorporation with the State of State on September 20, 20XX. The Articles amended to change the Foundation's name to "CO-1 Foundation".

The Foundation received the favorable determination and was recognized as an organization described under *IRC § 501(c)(3)* dated September 9, 20XX. The determination was based on evidence that the Foundation's funds are dedicated to the purposes listed in IRC section *501(c)(3)*.

The Foundation filed the Certificate of Amendment of Articles of Incorporation with the State of State on March 27, 20XX. The Articles amended to change the Foundation's name to "ORG".

Operational Information

On November 5, 20XX, the Internal Revenue Service (IRS) began the examination of the Form 990, *Return of Organization Exempt from Income Tax*, filed for the year ending December 31, 20XX. The examiner mailed Letter 3611 (initial contact letter), Information Document Request (IDR#1), and Publication 1 to the address listed on the Form 990, *Return of Organization Exempt From Income Tax*, the Foundation filed in prior years.

Address, City, State

On November 27, 20XX, the examiner received the returned Letter 3611 and attachments mailed to the Foundation on November 5, 20XX: "RETURN TO SENDER, UNCLAIMED, UNABLE TO FORWARD".

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On November 28, 20XX, the examiner left a voice message to President, President of the Foundation. President with his Assistant, Assistant, who speaks English, returned call to the examiner. The examiner had another agent, who speaks Spanish, communicate with President. He told the examiner that he put the Foundation operation on hold in 20XX because he was sick and went aboard for a break. He would have Treasurer, Former Treasurer of the Foundation, contact the examiner.

On November 29, 20XX, Treasurer told the examiner that he can assist coordinating a meeting with President of the Foundation and providing documents requested. An appointment on December 17, 20XX was scheduled. The examiner mailed Letter 3613 and attachments to the Foundation at the given address at Address, City to confirm the appointment.

On December 6, 20XX, Assistant left a voice message to the examiner that President's did not receive Letter 3613 and attachments. She provided the correct address at Address, City.

On December 11, 20XX, the examiner resent Letter 3613 and attachments to Address, City.

On December 13, 20XX, Form 2848, Power of Attorney and Declaration of Representative, was provided for POA to represent the Foundation. The examiner faxed Letter 3613 and attachments to POA's office. POA requested the appointment to be rescheduled to January 16, 20XX. The examiner discussed the availability of all parties involved and meeting place. The appointment was rescheduled on January 17, 20XX at 10 am in IRS office at Address, City.

On December 22, 20XX, the examiner received the returned Letter 3613 and attachments mailed to the Foundation at Address, City on November 29, 20XX: "RETURN TO SENDER, UNCLAIMED, UNABLE TO FORWARD".

On January 17, 20XX, the examiner had a meeting with President, Treasurer, and POA. The examiner engaged another IRS employee Agent, who can speak Spanish, to translate the information provided during the meeting, including but not limited to, the rights of taxpayers, questionnaires, and explanations to the questions of the Foundation. The meeting included the review of the relative books and records and the interview of the responsible officer of the Foundation. The Foundation provided the following documentation during the meeting.

- Amendment to Articles of Incorporation filed with State of State on September 20, 20XX to change its name from "ORG-1" to "CO-1 Foundation"
- By-Laws of President "ORG"

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- Letter 1045, Favorable letter and advance ruling on foundation status under 509(a), issued from the IRS on September 9, 20XX granting the Foundation exemption from Federal income tax under IRC section 501(c)(3)
- Letter 1050, Favorable letter on foundation status 509(a)(1) after Advance Ruling Period follow-up, issued from the IRS on May 31, 20XX
- Copies of cancelled checks (Check# # & #)
- Copy of Form 1096, Annual Summary and Transmittal of U.S. Information Returns, the Foundation filed for year 20XX
- Copy of Form 1099-C, Cancellation of Debt, the Foundation (creditor) filed for year 20XX to cancel \$\$ of debt that RA-1 (debtor) owed to the Foundation
- Copy of e-mails in January 20XX from RA-2 to RA-3, and forwarded to POA as to the filing of Form 1099-C above
- Copies of photographs took in Country, Country, Country, and Country as to the activities of the Foundation conducted in prior years
- The Foundation's response to the attachment of IDR1 in response to our inquiry whether any personnel in the Foundation received salaries, compensations or benefit in 20XX, the Foundation marked "No" as its response.
- Monthly Bank Statements of the Foundation's bank account (Account # #) at CO-2 from January 20XX through November 20XX

The following transactions provided by the above bank statements:

Date	Payer	Payee	Amount	Accumulated Amount
12/22/20XX	The Foundation (check ##)	President	\$\$	\$\$
1/15/20XX	The Foundation (check ##)	President	\$\$	\$
1/15/20XX	The Foundation (check ##)	President	\$\$	\$\$
2/22/20XX	CO-3 (online banking transfer)	The Foundation	(\$\$)	0
7/1/20XX	The Foundation (online banking transfer)	President	\$\$	\$\$
7/14/20XX	The Foundation (online banking transfer)	President	\$\$	\$
7/29/20XX	The Foundation (online banking transfer)	President	\$	\$\$
9/14/20XX	The Foundation (online banking transfer)	President	\$\$	\$\$
10/27/20XX	The Foundation (check ##)	CO-4 (Account of Treasurer, CO-3)	\$	\$\$

IDR#2 was issued to provide a memorandum of interview on January 17, 20XX and request the outstanding items listed on IDR#1. IDR#2 also inquired the Foundation to

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provide corrections, comments or additional information for the information documented on the memorandum

In response to IDR#2, on February 11, 20XX, the Foundation provided the following documents:

- Bank statement (Statement period: January 30 through February 26, 20XX) of checking account (Account # #) possessed by CO-3
- Monthly Bank Statements of the Foundation's bank account (Account # #) at CO-2 from December 20XX through January 20XX
- Written contract, dated November 5, 20XX, between President "ORG", and RA-4. The contract was written in Spanish
- Written agreement, dated October 29, 20XX, between President, aka ORG, and RA-5

The Foundation did not provide corrections or comments to the memorandum of interview on January 17, 20XX. After review the documents above, additional information was needed to enable the examiner to determine whether the transactions in question were bona fide loans and whether President conducts personal business or performs duties related to the Foundation's operation, for which IDR#3 was issued.

On March 14, 20XX, the Foundation faxed the following documents to the examiner:

- A narrative prepared by Assistant in response to Item 1c and 1d on IDR#3:
 - *The original intention for a temporary advance to be paid back short term. When President continued to have difficulty, it became clear that the advance would have to be cancelled. President did not have competent professional advance at the time, and was not aware of additional legal steps to be taken.*
 - *President did not conduct any personal business or perform duties related to the Foundation's operation in 20XX.*
- Statement of CO-4 Credit Card Account (Account #, billing cycle from September 28 through October 27, 20XX) possessed by CO-3 (CO-3)
- Invoice issued on July 31, 20XX to the Foundation by CO-5, An Accountancy Corporation

On March 28, 20XX, a letter enclosed with IDR#4 was sent to inform the Foundation that the examination for 20XX and had been expanded to year 20XX.

The Foundation provided the following information, prepared by Treasurer, in response to Item 4a through 4e on the IDR#4: (4a) credit card statements provided to the Foundation to pay off the \$\$ credit bill owed by Treasurer with the corporate account of CO-3, (4b) whose signature was on the check ##, ##, and ##, (4c) who authorized and completed the online banking transfers made on 7/1/20XX, 7/14/20XX, 7/29/20XX, and 9/14/20XX, (4d)

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whether the Foundation makes efforts to recover the funds, and (4e) whether the Foundation implements safeguards to prevent funds being used for nonexempt purpose.

4. (a) *The people who were handling the foundation under a power of attorney had previously given specific advice to President that the transactions could be done as a loan as described in 4 above. The use of the funds is documented on the CO-4 credit card statements #*

(b) *Treasurer. Secretary and treasurer signed the checks, and advised President that he needed to return the money...and he returned money to the foundation 2-22-20XX.*

(c) *President (President of the ORG)*

(d) *The people who were handling the foundation under a power of attorney had previously given specific advice to President that the transactions could be done as a loan as described in 4 above. It has always been handled that way with the intent to make the proper corrections, but the people in charge never correctly handled this issue.*

(e) *Yes. Once President was informed by the IRS that this could not be done, then it is was not done. The people who were handling the foundation under a power of attorney are now not handling it any more and we are trying to correct all of this.*

The Foundation provided the following information, prepared by Treasurer, in response to Item 5a and 5b on the IDR#4: (5a) how the written agreements between President and RA-4 and RA-5 were related to the funds withdrawn by President and how they would affect the Foundation's going concerns, and (5b) whether the Foundation or President consult tax adviser before these funds were used for personal expenses

The Foundation provided the following information, prepared by Treasurer, in response to Item 5a and 5b on the IDR #4:

5. (a) *Those individuals are no longer part of running the foundation. President has had a very long and distinguished charitable career. He has always given a large sums of money to the disadvantaged. The foundation need to regroup which it is in the process of doing.*

(b) *The people who were handling the foundation under a power of attorney gave specific advice to President that the transactions could be done as a loan as described in 4 above. These individuals held themselves out to be knowledgeable on accounting and legal issues, told President that they knew what they were doing legally and accounting wise. They breached their fiduciary duties to President and in the papers previously provided to the IRS about the Labor Commission Petition President filed against these people, they were practicing law without a license.*

Along with the narrative above, the Foundation also provided the following documents:

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- Monthly Bank Statements of the Foundation's bank account (Account # #) at CO-2 from December 20XX through February 20XX
- Monthly Bank Statements of the Foundation's bank account (Account # #) at CO-2 from December 20XX through January 20XX
- Statement of CO-4 Credit Card Account (Account #, billing cycle from May 28 through October 27, 20XX) possessed by CO-3 (CO-3)

The Foundation's Website

The examiner browsed the Foundation's official web site at website on November 5, 20XX. There are seven subpages of the site as follows:

- Website - this is where web page starts. It introduces how the Foundation was created and how President's personality impacts his listeners and community.
- Website - This page was under construction.
- Website with ORG - An event (held on September 25, 20XX) of State Hospital Medical Center Health Fair was published here.
- Projects - The past projects (year 20XX through 20XX) of the Foundation were listed on this page.
- ORG Help Center - The page introduces the Foundation's Help Center (open in February 20XX), which provided referral services and served urgent needs of County's most poverty stricken Latino communities.
- Volunteers - The page provided a list of volunteers and contact information to whom wants be a volunteer of the Foundation.
- Supporters - The page provided a list of supporters, who supports the Foundation financially.

The website was no longer active as of May 15, 20XX.

The Contracts signed between the Foundation's President and two individuals

On 2/11/20XX, the Foundation provided President's contracts with RA-4 (written in Spanish) and RA-5 revealed that the two individuals will act on his behalf effective on 11/5/20XX and 10/29/20XX respectively for seven years. The contract President's signed with RA-5 is summarized below:

- To represent President to negotiate the terms of agreements for the use, employment, or exploitation of President's services and the products thereof in the entertainment industry
- To supervise President's professional employment in the entertainment industry and to consult with employers and potential employers so as to assure the proper use of President's talents and products and promote demand therefore throughout the industry

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- To be available at reasonable times and places to confer with President in connection with all matters concerning President's career in the entertainment industry
- To engage and discharge and supervise booking agents which President may elect to utilize for the purpose of securing engagements

LAW

IRC Section 501(c)(3) provides that a tax exempt organization includes 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 intentional 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, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg §1.501(a)-1 defines "private shareholder or individual" as a person "having a personal and private interest in the activities of the organization.

Treas. Reg. §1.501(c)(3)-1(b) provides an entity's organizing documents should limit the purpose of the organization to one or more exempt purposes and not empower the organization to engage in activities which are not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(c) defines that the operational test is based on the primary activities and the distribution of earnings:

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

(2) Distribution of earnings. —An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. §1.501(c)(3)-1(c)(2) states 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.

In Rameses School of San Antonio, Texas v. Commissioner, T.C. Memo. 2007-85, the Tax Court upheld that the taxpayer was not operated exclusively for exempt purposes. It was determined that the petitioner no longer qualified for exemption from *Federal income taxation under section 501(a)* as an organization meeting the requirements of *section*

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501(c)(3). The petitioner failed to establish that it was operated exclusively for an exempt purpose, in that it was operated for the benefit of private interests and a part of net earnings inured to the benefit of its founder. For purposes of determining tax-exempt status, factors indicative of prohibited inurement and private benefit include control by the founder over the entity's funds, assets, and disbursements, use of entity moneys for personal expenses, payment of salary or rent to the founder without any accompanying evidence or analysis of the reasonableness of the amounts, and purported loans to the founder showing a ready private source of credit. Internal Revenue Service properly revoked the petitioner's tax-exempt status.

GOVERNMENT POSITION

In order for an organization to retain its exempt status, it must demonstrate to the Internal Revenue Service that it meets both the organizational and the operational tests. The facts stated above indicate that the Foundation failed the operational tests.

The only grounds upon which a corporation may be held exempt, or retain exemption under section 501(c)(3) of the Code are that it is organized and operated for public charitable, educational or scientific purposes enumerated therein rather than for private advantages; and that no part of its net earnings inures to the benefit of any private person, through either distribution of profits or in any other manner such as the use of its resources or facilities to serve private interests. The specific issue in the case is whether Foundation is operated exclusively for exempt purposes or whether the Foundation operates primarily for the private benefit of its founder. Further, it should be ascertained as to whether the Foundation has allowed financial benefits to inure to the benefit of its founder, President

The facts illustrate that the Foundation did not conduct any activities in 20XX and years after to fulfill its exempt purposes. In 20XX, the Foundation provided loans to its President without bona fide collaterals to secure funds borrowed or written documents to specify interests, terms and conditions of the loans. In 20XX, the Foundation cancelled the debt because of President's financial difficulty. No minutes or other documents recorded and discussed the usage of the funds. We do not observe the Foundation exercises any control as to the usage of its funds. In fact, the Foundation provided that such Board did not exist in 20XX and years after. Namely, these loans and cancellation of debts were made upon the discretion of President, a disqualified person, or from his advice-giver if any. These loans and cancellation of debts undoubtedly benefit President financially, thus violate the prohibition against the inurement of benefits to private shareholders or individuals.

Under the circumstances, the loans and cancellation of debts to President constitutes inurement to a private individual that jeopardizes the Foundation's exempt status.

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TAXPAYER'S POSITION

A teleconference was held on May 15, 20XX to provide a summary of facts and documents provided by the Foundation, inform and explain the results of the examination, and how the determination for revocation is reached. The Foundation agreed to the proposed revocation to the recognition of its tax exempt status.

CONCLUSION

The Foundation fails the operational test prescribed in *Treas. Reg. 1.501(c)(3)-1*. Since the Foundation is not operated exclusively for one or more exempt purposes under *IRC § 501(c)(3)*, its Federal tax exempt status under such section is revoked effective on January 1, 20XX. The Foundation is required to file Form 1120, *U.S. Corporation Income Tax Return*, for the tax year ending December 31, 20XX and all years there after.

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