

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICETAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 24, 2014

Release Number: 201445018
Release Date: 11/7/2014Taxpayer Identification Number:
Person to Contact:
Employee Identification Number:
Employee Telephone Number:

CERTIFIED MAIL – RETURN RECEIPT

Dear :

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

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

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

You were not organized for an exempt purpose under your current bylaws. You are not operating exclusively for an exempt purpose under IRC section 501(c)(3). Your primary activity is offering short term lodging to the public for payment in a way that is similar to commercial enterprises. By operating in the manner described, you are furthering a substantial nonexempt purpose.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file income tax returns on Form 1120. 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 Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st 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 judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at 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:

Internal Revenue Service
Office of the Taxpayer Advocate

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

Sincerely,

Mary A. Epps
Acting Director, EO Examinations

Enclosures:
Publication 892

**Internal Revenue Service
Tax Exempt and Government Entities Division**

Department of the Treasury

Date: March 11, 2014

Taxpayer Identification Number:

Form:

990 Return

Tax Year(s) Ended:

12/31/20^{XX}; 12/31/20^{XX}; 12/31/20^{XX}

Person to Contact/ID Number:

Contact Numbers:

Manager's name/ID number:

Manager's contact number:

Response due date: :

Certified Mail – Return Receipt Requested

Dear :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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:

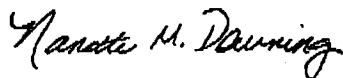
Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

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:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended 20XX; 20XX; 20XX

ISSUES

Whether the organization's tax exempt status under Code §501(c) (3) should be revoked due to the following issues:

1. The _____ was not organized for an exempt purpose as required by Internal Revenue Code ("Code") §501(c) (3) based on the amended bylaws.
2. ("The _____") failed to operate exclusively for exempt purposes as required by Internal Revenue Code ("Code") §501(c)(3) during the years under examination.
3. The _____ was operated primarily for commercial purposes.

FACTS

Organization Background

The organization was originally incorporated on November 1, 19XX with the name ("Organization"). The original Form 1023 showed the Organization intended to operate as a school when it checked "yes" in Part III Question 15 of Form 1023.

Part III Question 15 asks: "Is the organization, or any part of it, a school?" If "Yes" complete Schedule B.

The Organization completed Schedule B and answered "yes" to Question 1 on page 16 of Form 1023, Schedule B Schools, Colleges and Universities.

Question 1 on page 16 asks:

"Does or will the organization regularly have a) regularly scheduled curriculum, b) faculty of qualified teachers, c) regularly enrolled student body, and d) facilities where educational activities are regularly carried on?"

Additionally, the original Form 1023 showed the Organization's source of support was as follows (in order of size):

1. Tuition and enrollment fees of students
2. Income from seminar and cultural events
3. Donations
4. Weekly rental of rooms and guest cottages

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The original Form 1023 showed the housing on the property was to be used for faculty and student housing. The Organization expected to charge each student \$0 tuition per month.

The founder of the Organization is _____ is a voting board member and the Executive Director. He has a master's degree in education.

Program Service Accomplishments on December 31, 19XX

The Organization filed its Form 990 for the year ending December 31, 19XX. Part III Statement of Program Service Accomplishments stated: "Presented seminars and lectures; maintained site and educational materials for self-study courses."

Program Service Accomplishments on December 31, 20XX

The Organization filed its Form 990 for year ending December 31, 20XX. Part III Program Service Accomplishments stated: "Provides facilities _____ for people of all backgrounds. It offers facilities for cultural and social events for the community."

The Organization submitted amended articles of incorporation and bylaws to the Service with its Form 990 for December 31, 20XX.

The amended bylaws read as follows:

Article 1 of the BYLAWS of this corporation reads now as follows:

The purpose of this Corporation () is to provide the following services:

- a. It offers a place of _____ for people of all backgrounds
- b. It offers cultural events for the community the following areas:
- c. It offers social events for the community:

The Organization completed Part IV: Other Information of the Form 990 for year ending December 31, 20XX. Question 76 asked the following question: *Did the organization engage in any activities not previously reported to the IRS?* The organization checked the box "No" in answer to this question

Name Change

The name of the Organization was changed to _____ in 20XX. In 20XX, the organization changed its name to _____

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Location and Guest Rooms

(The) is located in . The has 0 guest rooms on a five acre property. These rooms include four cottages and four main houses. All 0 guest rooms are offered as lodging for payment to the general public 24 hours a day/ 7 days a week. The grounds also include a kitchen, Quiet Room and patio gardens. The also rents out its facilities to groups and holds classes/workshops/seminars and community events. The is also available for weddings. The allows public charities to use its facilities free of charge.

Advertising
Website Advertising

The website at www. .com advertises the as a

The home page describes itself as follows: “

.”
“ is ideal for getaways, workshops, as well as conferences, and weddings.”
“

Additionally, The stated that it does not allow children under 7 or dogs. It also offers massage, spa treatments, yoga classes, a variety of workshops and community events.

Telephone book Advertising

The paid to advertise in the 20XX Directory white pages. The contact information was listed in the Directory under the following headings: *Bed and Breakfasts; Hotel and Motel; Lodging; and*

Guides and Directories

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In 20XX, The _____ was listed in the _____ News supplemental guide as being voted: "Best lodging in the _____ 20XX."

The _____ is listed in the _____ Chamber of Commerce business directory as " _____ -- _____ under the heading _____ /Lodging."

Anyone may reserve a room online at the _____ website, www. _____ .com. and pay online with their credit card. Potential guests may also book a room on www.hotel.com and www.breadandbreakfast.com.

Sources of Revenue

The following chart shows the source of The _____ revenue for three years:

REVENUE	20XX	20XX	20XX	% of 3 year total
Donations	0	0	0	%
Group _____ s	0	0	0	%
Individual _____ s	0	0	0	%
Gift Certificates, rebates, etc.		0	0	%
Meeting Room Rental	0	0	0	%
Misc. Income (Classes)	0	0	0	%
Fundraiser Income		0	0	%
Program Income (Classes, events)	0	0	0	%
Reservation refunds accounted for	0			
Total:	0	0	0	0

The _____ did not receive tuition or enrollment fees for students. The primary source of income came from individual _____. Individual _____ refer to payments from anyone of the general public who pays for a stay in guest rooms. Group _____ refer to payments for group use of the entire grounds or specific meeting rooms. The examination showed that group _____ were primarily educational classes. The _____ is not receiving more than 33 1/3% of its income from an exempt activity.

The _____ offered the facility free of charge for non-profit organizations to use for fundraisers or at a 50% discount for other uses.

The _____ has verbal arrangements with a yoga instructor and a massage instructor that hold classes every week. The classes are open to _____ guests as well as to the public. Guests are not required to attend. The classes are not part of a scheduled curriculum at _____. Class attendees

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pay the instructors directly. The instructors pay a percentage of the fees collected from class attendees to _____, usually _____ % of gross proceeds.

Expenses

The chart below shows The _____ expenses for three years:

EXPENSES	20XX	20XX	20XX	% of 3 year total
Executive Director	0	0	0	1%
Other wages (Includes taxes, insurance, etc.)	0	0	0	%
Advertising and marketing	0	0	0	%
Breakfasts	0	0	0	%
Credit card processing fees	0	0	0	%
Property: tax, insurance, maintenance, utilities, etc.	0	0	0	%
Housekeeping: Linen cleaning and supplies	0	0	0	%
Other expenses:	0	0	0	%
TOTAL EXPENSES (not including depreciation or interest accrual)	0	0	0	0

Employees

Wages were the _____ largest expense. The _____ had 0 employees in the examination year. The founder of _____ was employed full-time as Executive Director. The _____ employed housekeepers; _____ gardeners and _____ maintenance workers; _____ breakfast workers, and _____ clerical workers. The _____ did not employ any teachers.

Please see the chart below for employee hours per position:

Annual Employee hours

Year	Housekeeping	Clerical	Maintenance	Breakfasts	Grounds	Night Manager	Misc	Total Hours
20XX	0	0	0	0	0	0	0	0
20XX	0	0	0	0	0	0	0	0
20XX	0	0	0	0	0	0	0	0

*Note Executive Director was salaried in 20XX and 20XX. Only night manager hours were included in 20XX and 20XX chart.

*Executive Director changed to hourly in 20XX per board. Misc. includes _____ Exec Dir hours.

*Misc hours includes holiday, vacation pay and other employees in 20XX and 20XX

**20XX - Misc hours include the above plus _____ hours for development employees not included on 20XX or 20XX. Development employees worked on fundraising and grant writing.

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Executive Director Position

The Executive Director is responsible to prepare educational activities for the . However, the Executive Director was unable to invest much time in preparing an educational program because the was struggling financially and has been struggling almost since inception. A major donor did not agree with direction and stopped contributing, so the Executive Director used his inheritance and also obtained loans to help finance The . The Executive Director's duties were primarily to manage The and the employees. He also worked sporadically as the night manager.

The has a secondary issue for employment taxes for its Executive Director who was allowed to stay in empty rooms at most nights. The FMV of the rooms were not included in compensation.

Other Employee Positions

The office manager checks guests in and out and receives guest payments, issues keys, maintains the office and The website. The housekeepers maintained the rooms. Gardening and maintenance personnel maintain the grounds and make facility repairs. Breakfast workers prepared and served the continental breakfasts. Clerical workers included a night manager, and weekend receptionist. None of these employees were involved in preparing, presenting or publishing educational programs during the examination year or subsequent years.

Educational Activities

Actual Educational Program Hours

Year	20XX
Hours in one year (24 hrs x 360 days)	
Day hours in one year (8 hrs x 360 days)	
Actual annual educational program hours at The in 20XX	
Actual percentage annual educational program day hours	%
Actual percentage annual educational program year hours	%

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The had classes and workshops for eight to twenty-one hours each week in year ending December 31, 20XX. The also sponsored community events that are not considered educational such as poetry readings, wildlife memorial, informal get-togethers, concerts, etc. These are not included in the chart above. The posts its monthly events calendar on its website.

Guest Room Rates

The website www. .com, shows that its current room rates range from \$0 to \$0 per night depending on which day of the week the room is used. A room rate list for 20XX was not available during the examination. A room rate list from November 20XX showed the room rates were similar to the current rates.

The chart below shows a price comparison between The and three local hotels for similar rooms. rooms with a price range of \$0 - \$0 per night share bathrooms, refrigerator and microwave. The in also offers rooms with shared bathrooms. Their rates are \$0 - \$0. These lower priced rooms are not included in the comparison below.

<u>Comparison of guest room rates</u>	<u>Price Ranges*</u>
The ,	\$0 - \$0
The ,	\$0 - \$0
The ,	\$0 - \$0
	\$0 - \$0

*Comparison of standard rooms with bathrooms in guest rooms and two room cottages/suites

LAW

Organized and Operated for an Exempt Purpose

Generally, an organization that is described in Code §501(c)(3), is exempt from income tax. These organizations include corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private 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.

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In order to be exempt as an organization described in Code §501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section.

An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in Code §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. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test.

An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or creator's family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose.

Code §501(c)(3) exempts from Federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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

Treas. Reg. section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Code §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. section 1.501(c)(3)-1. describes organizations exempt from tax under section 501(c)(3) as organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(3) Educational purposes are defined

(i) In general. —The term "educational", as used in section 501(c)(3) relates to

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(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. section 1.501(c)(3)-1

(ii) Examples of educational organizations. —The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example (2). An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example (3). An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

The operational test, formulated in Treas. Reg. Section 1.501(c)(3)-1(c)(1), provides:

(c) Operational test.

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

The term “exclusively” has not been construed to mean “solely” or “absolutely without exception.” An organization that engages in exempt activities qualifies for exempt status so long as those nonexempt activities are only incidental and less than substantial. Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945); Copyright Clearance Center v. Commissioner, 79 T.C. 793, 804 (1982).

The term “charitable” is used in section 501(c)(3) in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged as well as the advancement of education. Treas. Reg. section 1.501(c)(3)-1(d)(2).

In Better Business Bureau of Washington, D.C., the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will prevent exemption regardless of the number or importance of truly exempt purposes. The Court held that a trade association had an

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"underlying commercial motive" that distinguished its educational program from that carried on by a university.

An organization is not described in I.R.C. section 501(c)(3) if it operates a trade or business that primarily furthers a nonexempt purpose. Treas. Reg. Section 1.501(c)(3)-1(e) Similarly, the courts have denied exempt status under what is generally known as the commerciality doctrine. See, e.g., B.S.W. Group v. Commissioner, 70 T.C. 352 (1978); Airlie Foundation v. Commissioner, 283 F. Supp.2nd 58 (D.D.C. 2003). Courts have found that, due to the "commercial" manner in which an organization conducts its activities, the organization is operated for nonexempt commercial purposes rather than for exempt purposes. Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; reasonableness of financial reserves; whether the organization uses commercial promotional methods; and the extent to which the organization receives charitable contributions. Airlie Foundation, and cases cited therein.

Competition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes. See American Institute for Economic Research v. United States, 302 F.2d 934 (Ct.Cl. 1962); Scripture Press Foundation v. United States 285 F.2d 800, 806 n 11 (Ct. Cl. 1961); United Hospital Services, Inc. v. United States, 384 F. Supp. 776, 780 (S.D. Ind. 1974). In Airlie Foundation, the organization operated a conference center that was not limited to tax-exempt entities. The Court found that the fact that the organization's conference center derived substantial income from events that competed with commercial and non-commercial entities constituted strong evidence of a commercial nature and purpose. In B.S.W Group, the Tax Court found that a corporation formed to provide consulting services in the area of rural-related policy and program development to tax-exempt and not-for-profit clients was not entitled to section 501(c)(3) status because it was primarily engaged in an activity that was characteristic of a trade or business. The Court found that the organization's planned service areas were of the sort normally carried on for profit by commercial businesses and the organization's financing was not typical of section 501(c)(3) organizations. The organization did not provide any free or below-cost services; its clientele was not limited to section 501(c)(3) exempt organizations; its support came from fees for services, and it did not receive or solicit charitable contributions.

In Easter House v. United States, 12 Cl.Ct. 476 (1987), *aff'd*. 846 F.2d 78 (Fed. Cir. 1988), the Court determined that the organization was not exempt because its conduct of adoption services was in furtherance of a non-exempt commercial purpose.

In The Schoger Foundation v. Commissioner, 76 T.C. 380, a not-for-profit corporation owns and operates a mountain lodge that it characterizes as a religious facility. The lodge makes available to its guests numerous activities, religious, recreational, and social, none of which are regularly scheduled or required. The record does not show the extent to which the guests participated in any of the activities, religious or otherwise.

Although the organization's mountain lodge offered guests religious, recreational, and social activities; however, none were regularly scheduled or required. The court concluded that the

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organization had not met its burden of proof to show that the lodge was operated primarily for an exempt religious purpose and that the recreational and social activities at the lodge were only incidental to a religious purpose. In making that finding the court stated:

Wholesome family recreation or just sitting on a rock contemplating nature way well provide a family or individual with a religious, or at least a spiritually uplifting experience, but it is difficult to see how that experience differs, if it does, from the same experience one can have at any quiet inn or lodge in the beautiful mountains of Colorado.

In Living Faith, Inc. v. Commissioner, 950 F. 2d 365 (7th Cir. 1991) aff'g 70 T.C. 352 (1978), the court held that a vegetarian restaurant and health foods store that adhered to the principles of the Seventh Day Adventist Church was not operated exclusively for exempt religious purposes, but rather for a substantial commercial purpose. The court examined the method of operations to infer the purposes. The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including:

- a. The organization's operations were presumptively commercial;
- b. The organization competed directly with other restaurants and food stores;
- c. The organization used profit-making pricing formulas common in the retail food business;
- d. The organization engaged in a substantial amount of advertising;
- e. The organization's hours of operation were competitive with other commercial enterprises

The organization's primary activities were managing a restaurant and health food store that was operated in competition with commercial entities, charging competitive prices set by formulas common in the retail food business, and using commercial promotional methods.

In American Institute for Economic Research v. United States, 302 F.2d 934, 157 Ct. Cl. 548 (Ct. Cl. 1962), the Court considered the status of an organization that provided analyses of securities and industries and of the economic climate in general. The organization sold subscriptions to various periodicals and services providing advice for purchases of individual securities. Although the court noted that education is a broad concept, and assumed for the sake of argument that the organization had an educational purpose, it held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and was not entitled to be regarded as exempt. The court found that the corporation's sales of its publications were more analogous to commerce than to education. The court concluded that the business purpose was primary and not incidental to any educational purpose which might have been present.

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In United Missionary Aviation, Inc. v. Commissioner, T.C.M. (CCH) 1990-566, the Tax Court held an organization formed to support religious missionary work not exempt under IRC 501(c)(3) because it had a substantial nonexempt commercial purpose. The court focused on how the organization carried on its primary activity, a tape and equipment supply division. No one factor was determinative, but the court considered the following operations particularly relevant:

- a. The supply division was operated in the same manner as any profitable commercial enterprise;
- b. The majority of equipment and tapes sold by the organization were also sold by commercial firms;

In Goldsboro Art League, Inc. v. Commission of Internal Revenue, 75 T.C. 337 (1980) the operational test focuses on the purpose and not on the nature of the activity.

In Forest Press, Inc. v. Commissioner of Internal Revenue 'as long as the corporation was created to further an exempt purpose and its activities are consistent with that purpose, it is irrelevant that other for-profit enterprises engage in the same activity.'

In Peoples Translation Service, on the surface the entity's activities were conducted in an ordinary commercial manner, the operation was not sufficiently like a commercial enterprise because there was no intent to make a profit.

In Hawaii, Inc. v. Commissioner, 71 T.C. 1067 (1979) 'an organization may engage in trade or business as long as its operation furthers an exempt purpose and its primary objective is not a production of profits and provided it serves a public rather than a private interest.'

In Colorado State Chiropractic Society v. Commissioner, 93 T.C. 487, at 496 (1989), the Court stated, "Petitioner's original articles of incorporation are not the only evidence from which petitioner's purposes might be determined. Rather, petitioner's bylaws are also indicative of the 'objects motivating' petitioner and, therefore, must also be considered."

In Copyright Clearance Center, Inc. v. Commissioner, 79 T.C. 798, 807-808 (1982), the "potential" for a substantial profit driving operations and organization are good enough to show a nonexempt purpose.

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Taxpayer Positions:

The taxpayer provided six written responses to oral discussion with the agent. The details of the taxpayer's written correspondences are shown below in chronological order.

1) Taxpayer Correspondence dated June 13, 20XX

In correspondence dated June 13, 20XX, The _____ stated the following:

- 1) They were not informed about the IRS tax-exempt criteria for educational organizations.
- 2) Requested that the IRS define the tax-exempt requirements for an education center and, possibly, harmonize the definition with the definition of _____ law.
- 3) It submitted a proposed schedule of events for July 20XX and asked if these events would meet the IRS criteria.
- 4) It has been zoned by the County of _____ for a _____. No motel or hotel would be allowed to operate on this property.
- 5) Because it has all of the following amenities it is designed and operated as a _____ and not a motel or hotel:
 - i. It's a quiet place (no young children), surrounded by nature. The rooms are simple with no TV, radio, or telephone
 - ii. We have a Quiet Room (with a library of spiritual, philosophical and psychological books) for reading, writing and meditation.
 - iii. We have a Conference Room with an _____ Author's Library and a general library. The County allows us to have educational events for up to 100 people in this room (or outside)
 - iv. We have two outdoor event areas: a waterfall garden and Outdoor Event Center with a stage (to be built)

2) Taxpayer Correspondence dated June 16, 20XX

In correspondence dated June 16, 20XX, The _____ included the following:

- 1) Reports from the _____ to grant welfare exemption from property tax dated 4/24/20XX.
- 2) Two pages from _____ Report 20XX that included a partial list of the events held at the _____ in 20XX. The _____ stated that it offered over _____ events that focused on the environment, health & healing, spirituality, the arts and culture, and an ongoing film series. The _____ also discussed its cooperation with local business, and its board and staff.
- 3) Statement that it supports local non-profit organizations by allowing them to use their facility free of charge for fundraising events and at a _____ % discount for other types of events.
- 4) Comparison on the differences between _____ and three for-profit hotels in National Parks. (I referred _____ to Old Faithful Inn, Lake Yellowstone Hotel and Wawona Hotel in Yosemite, as part of the interview. This referral was in answer to _____ statement that unlike _____ hotels and motels always have television and telephones.)
 - a. The _____ stated these hotels differ from _____ in that they do not provide all of the following:

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- i. Events for their guests and the community (except tours which appear to be organized by the Park)
- ii. Events organized by community groups
- iii. Yoga
- iv. A conference room for events
- v. A quiet room for meditation, reading and writing
- vi. A spiritual and educational library
- vii. no charitable component (such as supporting other non-profit organizations, providing work-exchange programs, etc). The stated that according to law, an educational center has to have a charitable component as well as a community and educational component.
- viii. None of these hotels are in locations zoned for
- ix. "These hotels are rustic national park lodges, where there is some emphasis on connecting guests to nature, which is probably why they don't offer TVs, radios, etc. (or they are just trying to save money). However, centers, such as , do not have these amenities because they want to provide a quiet, peaceful place."
- x. "If we were simply a hotel, we would have transformed the quiet room into a bedroom, because it would increase our revenue. We have always refused to do so, despite many suggestions, because a quiet room is an important part of a center."

3) Taxpayer Correspondence dated July 11, 20XX

In correspondence dated July 11, 20XX, The stated the following:

- 1) When they sent in their change of name and orientation, they never heard anything about the "51% clause" and that they always followed all the rules they were informed about.
- 2) They are in the process of having more and more educational programs.
 - i They received a \$0 grant for educational activities on July 9, 20XX.
- 3) The is seriously planning for educational /workshops in the areas of their mission statement:
 - i Writing workshops (Sept 20XX)
 - ii Film Studies (Nov 20XX)
 - iii Non-Violent Communication
 - iv Spirituality & Science, Etc.

4) Taxpayer Correspondence dated July 15, 20XX

In correspondence dated July 15, 20XX, The stated the following:

- 1) Requested "a clear definition of an Educational Center in and how it relates to educational programs and TAX-EXEMPT STATUS."

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- 2) Requested "SAMPLES of Educational Centers" that comply with the Service definition.
- 3) Requested an explanation of the "51% CLAUSE" be sent with the appropriate text, and an exact description as to how this applies to . They expressed their desire to comply and stated that the rules are simple for a school but not so simple for an educational center.
- 4) The was granted a welfare exemption from the County of and the State of based on a study of educational programs, community and charitable aspects, non-profit status, educational facility (conference room, library/Quiet Room, etc.), and zoning.
- 5) The flow of people to educational events exceeds 50% of their traffic and that income should not be the determining factor. This correspondence also stated that over 51% of the people visiting The are given educational events or courses and that "even a stay at is educational."
- 6) The received a \$0 yearly renewable grant that will increase educational programs substantially.
- 7) The listed four differences between and hotel and a motel.
 - i They are located in a county zone for a . The has to be in a quiet place and in a quiet neighborhood.
 - i The whole layout of a is different from the hotel or motel. They have a Meeting Room, Quiet Room, two Outdoor Event Centers, three libraries, and no TVs and no Tel's in the rooms. The regular hotel or motel guests will not come to a like theirs. The only attracts a specific segment of the population.
 - ii People go to a for quietness, reflection, writing, reading and learning. "It is a real "GET-AWAY" from it all, a "
 - iii They also offer regular educational and cultural programs. They rent out their facility to other educational groups.

5) Taxpayer Correspondence on July 21, 20XX

In correspondence dated July 21, 20XX and July 29, 20XX, The sent a tentative schedule for educational programs for August, September, October & November 20XX and asked for a review. The wants to know if the revised schedule meets the Service's criteria.

September 20XX - 16 days of classes/workshops/seminars and two events

October 20XX - 13 days of classes/seminars/workshops and a community event on environmental achievements & ecological projects

November 20XX - 15 days of workshops and 5 days for an artistic center & gallery/seminars

6) Taxpayer Correspondence on July 29, 20XX

In correspondence dated July 29, 20XX, The sent their schedule for educational programs for August 20XX and asked for a review. The wants to know if the revised schedule meets the Service's criteria.

July 29 – August 20XX – 9 events that include three film showings/discussion; one fundraiser; and five teacher/speakers.

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Government's Positions and Responses:

Issue 1: The _____ was not organized for an exempt purpose as required by Internal Revenue Code ("Code") §501(c)(3) based on the amended bylaws.

Based upon the amended bylaws, the _____ is not organized for an exempt purpose. In relevant part, I.R.C. section 501(c)(3) limits charitable exemption to an organization organized and operated "exclusively for exempt purposes." The organizational test, formulated in Treas. Reg. Section 1.501(c)(3)-1(b)(1), provides in relevant part:

(b) Organizational test.

(1) In general. (i) An organization is organized exclusively for one or more exempt purposes only if its articles of incorporation. . . (a) limit the purposes of such organization to one or more exempt purposes. . .

i (iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business", or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of section 501 (c) (3) of the Code." (iv) in no case shall an organization be considered organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c) (3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

Issue 2. ("The _____") failed to operate exclusively for exempt purposes as required by Internal Revenue Code ("Code") §501(c)(3) during the years under examination.

The Service has incorporated its position on Issue 2 into its responses to the taxpayer's correspondences, as shown below, and as requested by the taxpayer.

Issue 3. The _____ was operated primarily for commercial purposes.

The Service has incorporated its position on Issue 3 into its responses to the taxpayer's correspondences, as shown below, and as requested by the taxpayer.

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- 2) Not informed about educational requirements: The _____ was informed of the educational requirements of Section 501 (c)(3) of the Internal Revenue Code.
- i The _____'s Newsletter No. 3 was included with the original Form 1023 application for exemption. The first paragraph of the newsletter stated the following description in part:

“ _____ is an educational organization which offers a creative and individualized approach to university level education.”
 - ii The original determination Letter 947 was issued based on information in the original Form 1023. The subsequent letter dated May 7, 20XX that recognized _____'s change in its Articles of Incorporation notified _____ that it should inform the Service of changes to its purposes and stated the continuance of exemption was based on the original application. In its original application for exemption _____ stated that it would be a school and an educational institution. It would charge tuition, employ teachers and have a curriculum.
- 3) Definition of tax-exempt requirements for educational _____: The Service does not address a specific meaning in the Code for educational _____; however, it does define “educational” as noted in Regulations §1.501(c)(3)-1.
- i The _____ is subject to Regulations §1.501(c)(3)-1 which define educational as
 - (1) (i) *In general.* —The term “educational”, as used in section 501(c)(3) relates to
 - (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
 - (b) (b) The instruction of the public on subjects useful to the individual and beneficial to the community.
 - ii The federal law does not require organizations exempt for educational purposes to have a community or charitable component.
 - (a) Regulations §1.501(c)(3)-1(a) provides that in order to be exempt as an organization described in Code §501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.
 - (b) Regulations §1.501(c)(3)-1(c)(1) provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Code §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
 - iii Article V of The _____ original Article of Incorporation states that The _____ would dedicate its assets to charitable and educational purposes within the meaning of the meaning of Internal Revenue Code section 501(c)(3) and The _____ would not be able to truthfully make the statement in Article V if it did not know the meaning of the sections of the Internal Revenue and _____ Codes.

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4) July 20XX proposed schedule of events: The proposed July 20XX educational program increased the regular schedule by 30.30 hours. The normal schedule is 22 hours per month. See chart below for total hours for July 20XX:

Jul-13	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Daily hours	6	4	4	4	4	0	0
Monthly hours	<u>1st week</u>	<u>2nd week</u>	<u>3rd week</u>	<u>4th week</u>	<u>5th week</u>		
July Hours:	0	2	25.3	3	0		

- i Adding 30.3 hours of classes and workshops to its primary activity of offering lodging for payment 24 hours a day/7 days a week does not make the educational. For-profit hotels operate 24 hours a day/7 days a week and also add classes to their primary activity of offering lodging for payment.
- ii For example: The 's website at , shows that is a that is also located in
- iii The Standard Spa in Miami Beach website, www.standardhotels.com/spa-miami-beach, shows that it offers many different yoga classes seven(7) days a week, three(3) or more hours per day. The Standard also customizes for groups and offers its own . The Standard offers weekend , many types of yoga classes, and guided meditation. The shows its teacher's biographies on its website. The Standard's schedule for July 29 through August 4 shows about 35 hours of yoga classes for the week. In addition, they have a film series and other classes this same week.
- iv A third example: The in offers regular yoga classes and massage. The website, www.com, advertises it as a . Children under 18 are not allowed and neither are pets.

- 5) Zoning as a : The assessor's parcel number 0 shows it is zoned as rural – agricultural on the County Assessor website at www.org. The County of zoning map does not show specific zoning for . The has a conditional use permit to operate. The location and style of cottages on 0 acres appear as residential homes and fit in with the residential landscape it is located in. A different type of hotel or motel may not be allowed to operate in this location; however, County is allowing The to operate in a residential area as an establishment that provides lodging on a short term basis as hotels and motels do.
- 6) Designed as a : The stated its facility is designed and operated as a and not as a motel or hotel. A hotel is not required to have all of the same characteristics as to

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be comparable. Commercial enterprises each compete in the free market with their own version of a . Potential guests select lodging depending on individual tastes. The Service responds to The distinction below:

- i A quiet place surrounded by nature, simple rooms without TV, radio or telephone.
Having a quiet place surrounded by nature, simple rooms without TV, radio or telephone does not distinguish the organization from for-profit hotels or motels. The is similar to the organization described in the court case - The Schoger Foundation v. Commissioner, 76 T.C. 380 (1981). In the Schoger Foundation v. Commissioner, supra, the court stated that "... just sitting on a rock contemplating nature may well provide a family or individual with a religious, or at least a spiritually uplifting experience, but it is difficult to see how that experience differs, if it does, from the same experience once can have at any quiet inn or lodge in ... the mountains"
- ii A Quiet Room and library: Having a Quiet Room or library does not distinguish from hotels or motels.
 - (1) For example: The Library Hotel in New York City, shows on it's website: www.libraryhotel.com, that it has thousands of books available for guests as well as a reading room, writer's den, and poetry garden. The reading room is open 24 hours a day. The Post Ranch previously mentioned also has a library.
 - (2) Another example: The Crowne Plaza Hotel's website http://www.ihg.com/crowneplaza/hotels/us/en/global/exp/sleep_adv#scmisc=nav_slep_adv_cp shows that it has a Quiet Zone. The Crowne Plaza Hotel is in the city of . Guests can request a room in the Quiet Zone to relax or rest. In the Quiet Zone there will be no room attendant, housekeeping or engineering activities Sunday through to Thursday carried out from 9.00pm to 10.00am, unless specifically requested by a guest.
- iii Conference Room with library: Having a conference room does not distinguish The from hotels or motels. Many hotels have conference rooms or outside facilities available to rent for any purpose, including educational events.
 - (1) For example: Crowne Plaza Hotel shows on its website: that it has ten meeting rooms available with ocean views.
 - (2) As mentioned above, hotels also have libraries.
- iv A waterfall garden and Outdoor Event Center: Having a waterfall garden and Outdoor Event Center with a stage does not distinguish from hotels or motels. Many hotels have gardens, including those hotels previously mentioned. Hotels also have outdoor event areas.
 - (a) For example: The a for-profit hotel in , the same city as states the following on its website: "

"
 - (2) Another example: The sister hotel of ___ mentioned above is . The website: [/meeting-and-event-spaces.html](#) shows that it has an outdoor event area. Like many hotels have outdoor event areas.

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v The conference room and other rooms at are also available for a fee and the contracts are drawn up in a for-profit, commercial manner much like those described in B.S.W. Group Inc. v. Commissioner, 70 T.C. 352 (1978). The provided sample rental agreements for the use its conference room; Quiet room; Waterfall and Gardens and Group Rentals. The sample agreements show basic fees, required security deposits; damage fees; set up and clean up fees and cancellation policies. Weddings are required to pay an additional flat fee depending on whether the party has 0 people or 0 people.

Government Response to correspondence dated June 16, 20XX

- 1) Welfare exemption: The received its original determination letter dated August 2, 19XX that approved its federal exemption. The approval for property tax exemption dated 4/24/20XX was after the date the Service approved The Form 1023 Application for Exemption. The requested the federal exemption letter as part of its process to determine that The was tax exempt from property taxes. The argument that used the approval for property tax exemption to determine whether it was in compliance with federal exemption is erroneous.
 - i The did not request a ruling on its change of activity from that which was presented on the original Form 1023 Application for Exemption.
 - ii There is a significant difference between charging tuition, employing teachers and having a curriculum for self-study courses at a university level as contrasted with offering lodging for payment to the general public as an individual
- 2) Events in 20XX: The submitted an events schedule that listed the names of 16 multi-cultural programs that it held in 20XX and a statement that it offered over 100 events that year. The Service cannot determine how many hours the events covered, or whether the events were primarily educational in a way that differs from for-profit hotels that also offer classes, workshops, and events. The reports topics on cooperation with local business, the board and staff are not relevant to this discussion.
- 3) Nonprofit support: The listed seven (7) charitable organizations as a partial list of organizations that it has provided meeting space free of charge or at a 50% discount. The Service agrees that providing free or discounted meeting space to nonprofits is a charitable activity. However, whether these organizations contributed to the educational requirement significantly is not shown. It seems that each event may be a few hours long and not more than a few days each. Thus, providing facilities for educational events combined with other classes and workshops are not primary activities. Additionally, there are for-profit entities that offer free or discount space to charities.
 - i For example: The American Saddlebred Horse Association (ASHA) website, www.asha.net/news shows that the Holiday Inn Express in Springfield, Illinois offers discount rooms for the Midwest Charity Horse Show.
 - ii Another example: Half-Price Books, a Dallas bookstore shows on their website, www.hpb.com that it offers free meeting space to nonprofit organizations in its community room.

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- iii Another example: Clarkson Davis, a consulting firm and Caddo Holdings a real estate firm offer free meeting space in Lakewood Towers in Dallas Texas for nonprofits.
- iv In Airlie Foundation v. Commissioner, it was clear that the plaintiff engaged in conduct of both a commercial and exempt nature, the question was whether the organization was entitled to tax-exempt status turned to whether its activities were conducted primarily for a commercial or for an exempt purposes.
- 4) Comparison of _____ with hotels in national parks:
 - i Events for their guests and the community: The three hotels mentioned do not provide the same events as _____; however, other hotels do have events.
 - i For example: The Standard Spa- High Line New York City shows on its website: <http://standardhotels.com/high-line/meetings-events/the-high-line-room> availability for many different events. (The Standard – Miami Beach mentioned above has events similar to _____.)
 - ii The _____ Hotel operates in _____, _____, shows on its website _____ that it offers: _____ . The _____ mentioned some like activities in its event calendar.
 - iii How much events held at _____ contribute towards its educational requirement is important to determine if it operates primarily educational.
 - ii Events organized by community groups: As shown above hotels offer conference and meeting rooms to anyone who wants to use them. This includes community groups.
 - i For example: The _____ Visitors & Convention Bureau website, _____, states the following about meeting facilities: “ _____ ”
 - iii Yoga: As shown above for The Standard Miami Beach and _____, hotels offer yoga. The Standard offers about 35 hours a week of yoga. _____ offers free yoga six days a week. The _____ offers 7.5 hours of yoga five days a week.
 - iv Conference room for events: As already shown, many hotels have conference rooms available for a variety of events.
 - v A quiet room for meditation, reading and writing: The Library Hotel as previously mentioned has a reading room, writer's den, and poetry garden.
 - vi A spiritual and educational library: The Library Hotel and _____ previously mentioned both have libraries that include many types of books.
 - vii No Charitable component (supporting other non-profit organizations, providing work exchange programs, etc.):
 - i As previously shown, some hotels offer discount rooms during charity events, such as Holiday Inn Express for Midwest Charity Horse Show in Springfield, IL.
 - ii Jazz Hostels and Pink Hostels in New York City and Miami have a work exchange program for living accommodations.
 - (1) The difference between for-profit hotels and non-profit organizations is that non-profit organizations primarily engage in exempt activities. Hotels and motels engage primarily in commercial activities such as offering short term lodging for payment to the general public.
 - viii _____ zoning: As shown above, The _____ zoning is Rural-Agricultural. The County does not have _____ zoning.

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ix Quiet, peaceful place: The hotels mentioned offer their facilities for similar reasons as The

i For example: The Lake Yellowstone Hotel and Cabin
Website: http://www.usparklodging.com/yellowstone/lake_hotel.php, states that "radio, television, and Internet hook-ups are not available in order to accentuate the natural essence of Yellowstone."

ii Additionally, The Wawona Hotel in Yosemite website:
<http://www.yosemitepark.com/wawona-hotel-lodging.aspx>, states: "There are no telephones or televisions, allowing guests to completely escape and relax while on vacation."

x As demonstrated above there are several for-profit entities that provide a similar "get-away" experience such as quietness, reflection, writing, reading, and learning. They are not required to have exactly the same or all characteristics of The . However, The is required to not operate in a commercial manner as hotels and motels do.

xi The is operating like the organization in Airlie Foundation v. Commissioner by setting fees which are comparable to those of similar for-profits and by spending significant resources on publicity. The has not shown how its lodging sales are not commercial in nature.

xii In Airlie Foundation v. Commission, The courts applied the operational test by relying on what has come to be termed the "commerciality" doctrine. In many instances, courts have found that, due to the "commercial" manner in which an organization conducts its activities, that organization is operated for nonexempt commercial purposes rather than for exempt purposes. Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations.

i As shown in the chart above fee structure is in direct competition with local hotels.

(1) The primary source of revenue is from guest room rates. The primary expenses are to maintain the facilities and operation of for offering guest rooms as shown by expenses for types of employees, breakfasts, credit card processing fees, and property expenses.

ii The uses commercial promotional methods such as advertising on its website, other websites and printed brochures.

iii The is like the organization in American Institute for Economic Research v. United States It is obvious that the service offered by the organization is one commonly associated with a commercial enterprise. The subscribers received full value in exchange for their money.

Government Response to correspondence dated July 11, 20XX

1) "51% Clause" The states that when they sent in their change of name and orientation, they never heard anything about the "51% clause" and that they always followed all the rules they were informed about.

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- i The original purpose of _____ was to be a school as shown in the original Form 1023 application for exemption. The amended bylaws submitted to the Service with the 20XX Form 990 showed the purpose of The _____ was to have group and individual _____ However, Part VI Other Information Question 76 Did the organization engage in any activity not previously reported to the IRS? was checked, "No."
 - ii The Service issued a letter dated May 7, 20XX that recognized _____ change in its Articles of Incorporation and notified The _____ that it should inform the Service of changes to its purposes and stated the continuance of exemption was based on the original application.
 - iii The _____ did not inform the Service that its purposes had significantly changed from its original application. The _____ did not request a ruling to determine whether they still qualified for exemption.
 - iv Organizations exempt from tax under section 501(c)(3) must be organized and operated exclusively for one or more of the purposes specified in such section.
 - v An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in Code §501(c)(3).
 - vi The Code does not have strict guidelines for interpreting the terms "exclusively", "primarily" and "insubstantial", however, there is practical guidance found in Treas. Reg. section 53.4942(b)-1(a)(2)(ii) that shows that more than 50% of total activities is considered "primary."
 - vii The definition of Insubstantial is defined as less than 15%. This definition is defined as a derivative in terms of the 85% "substantially all" test shown in Treas. Reg. section 53.4942(b)-1(c). The _____ held educational programs for 2% of the year and 7% of the daytime (8 hour day) hours of the year. However, using an eight hour day is not fair to for-profit entities, such as The Standard Miami Beach that offers 35 hours a week of yoga classes in additional to workshops and events.
 - viii The financial records show that 89% of _____ income comes from individuals who pay for guest rooms. The employee hours and duties show that their primary efforts are also towards maintaining guest stays.
 - ix Although _____ operated at a loss, _____ priced its rooms at comparable rates that competed with local hotels as shown above. Therefore, similarly to United Missionary Aviation, Inc. v. Commissioner, T.C.M. (CCH) 1990-566, The _____ guest room lodging was operated in the same manner as any profitable commercial enterprise and similar rooms were available as those available commercial enterprises;
- 2) Grant for educational activities: Whether this receipt of a \$0 grant will increase the educational activities of _____ to "operate exclusively" for exempt purposes is not determinable at this time. Proposed use of the grant was not provided to The Service.
- 3) Planned _____/workshops: The _____ workshops/ _____ and classes are merely additional amenities instead of primary activities. As previously, noted for-profit hotels such as The Standard also have _____ and workshops as well as a significant amount of yoga class hours each week which exceed those at _____

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- 1) Definition of education: As stated above in our response to correspondence dated June 13, 20XX, The Service does not address a specific meaning in the Code for "educational"; however, it does define educational as noted in Regulations §1.501(c)(3)-1. This Regulation is quoted above.
- 2) Samples of educational programs and examples of how education relates to tax-exempt status:
 - i Regulations §1.501(c)(3)-1
 - ii Examples of educational organizations. —The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:
 - ii Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.
 - iii Example (2). An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.
- 3) Explanation of the 51% clause: As stated above, the appropriate text in Treas. Reg. section 53.4942(b)-1(a)(2)(ii) that shows that more than 50% of total activities is considered "primary." The is open 24 hours a day/7 days a week as are for-profit hotels. The current schedule does not consider that for profit hotels offer similar and even more hours of classes and are not exempt from taxation. The states that rules are simple for a school but not so simple for an educational retreat center. Thus, should have notified the Service about its significant change in activity and requested a ruling to determine whether it still qualified for tax exempt status.
- 4) Welfare exemption: As shown above, the partially relied on the Federal exemption letter that was dated 8/2/19XX for its determination to grant welfare exemption in April 20XX. As discussed above, this federal exempt status letter was issued for the activity shown in the original application for exemption. The letter was not reliable for the change in activities that were not covered by the letter. Additionally, educational programs, relevance of community and charitable aspects, non-profit status, educational facility (conference room, library/Quiet Room, etc.), and zoning are examined against federal law for federal tax exemption.
- 5) Flow of people exceeds 50% of traffic: The advertises in a similar manner to a hotel; charges similar rates as hotels, and its income, expenses, and employee duties are similar to hotels. Income as well as these other factors are determining factors. In Living Faith, Inc. v. Commissioner, 950 F. 2d 365 (7th Cir. 1991) aff'g 70 T.C. 352 (1978), the court held that a vegetarian restaurant and health foods store was operated for substantial commercial purpose. The court examined the method of operations to infer the purposes. The organization operated in competition with commercial entities, charging competitive prices set by formulas common in the retail food business, and using commercial promotional methods. Like Living Faith is operated in competition with commercial entities and operates in a similar commercial manner.
 - i In Better Business Bureau of Washington, D.C. Inc. v. United States, the court determined that a single non-educational purpose, if substantial in nature will destroy the exemption regardless of the number or importance of truly educational purposes.

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- i The activity of providing lodging for payment is substantial as it occurs 24 hours a day/7 days a week.
 - ii A stay at _____ is not educational. Guests are paying for lodging. Education is not the primary reason for guest stays.
- 6) As previously stated, whether receipt of the \$0 renewable annual grant will cause _____ to increase educational activities so that they operate exclusively for exempt purposes is not determinable at this time. What _____ proposes to use the grant for was not stated in taxpayer correspondence.
- 7) The differences the taxpayer listed between _____ and hotels or motels are addressed below:
- i Layout: As demonstrated above there are several for-profit hotels that have similar layout as _____ with meeting rooms, quiet room, event centers, libraries, no TV and no telephones in rooms.
 - ii _____: Each hotel attracts a different type of guest depending on the accommodations, location and amenities these guests desire.
 - i. As demonstrated above there are several for-profit hotels that provide a similar "get-away" experience such as quietness, reflection, writing, reading, and learning. Some offer much a much larger library and more hours of classes than _____. Many hotels rent meeting rooms for all kinds of purposes. As demonstrated above, hotels and businesses offer discount meeting rooms to nonprofits. They are not required to be exactly like the _____. The key factor is whether _____ activities are primarily educational.
 - iii Programs: According to payroll records the _____ currently has one to three persons working on grant writing and fundraising. Fundraising and grant writing are not educational activities; however, they do make educational activities possible. However, the majority of _____ employees manage and maintain _____ for the purpose of offering lodging.

Government Response to correspondence dated July 21, 20XX

In correspondence dated July 21, 20XX The _____ sent a tentative schedule for educational programs for September, October, & November 20XX and asked for a review. The _____ wants to know if the revised schedule meets the Service's criteria.

The agent prepared the chart below of proposed educational hours and percentage of facility use and assumed an eight(8) hour day to give consideration to _____ proposal. How many actual hours are included and whether each day is an eight(8) hour day was not stated in the taxpayer's correspondence.

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The operates 24 hours a day/ 7 days			
a week			
Month	Sept	Oct	Nov
Hours in one month (24 hrs x 30/31 days)	720	744	720
Day hours in one month (8 hrs x 30/31 days)	240	264	240
Proposed monthly educational program hours if 8 hour day	150	157	176
Proposed percentage of day hours	63%	59%	73%
Proposed percentage of month hours	21%	21%	24%

As stated above, is operating 24 hours a day/7 days a week as other hotels. Therefore, may be primarily educational if guests primarily stayed at The as participants enrolled in educational courses, educational events, educational workshops or educational seminars that were held for at . If guest stays at without enrolling in a program are insubstantial, the lodging revenue should be treated as unrelated business income.

Classes are offered, but are not mandatory to visitors. The adjustments to schedule do not negate unfair competition to taxable entities that provide similar location, layout, experience, amenities and as many or more classes. The has no activities that can be deemed educational in nature for guests that would distinguish it or demonstrate an exclusively educational or charitable purpose. The operates in a manner consistent with a commercial business.

Likewise, as in United Missionary Aviation, Inc. v. Commissioner, the particular manner in which an organization's activities are conducted, the commercial hue of those activities, competition with commercial firms are all relevant evidence in determining whether an organization has a substantial nonexempt purpose. This Court and others have consistently held that an organization's purposes may be inferred from its manner of operations.

Government Response to Correspondence dated July 29, 20XX

In correspondence dated July 29, 20XX, The sent their schedule for educational programs for August 20XX and asked for a review. The wants to know if the revised schedule meets the Service's criteria.

The correspondence showed July 29 – August 20XX – 9 events that include three film showings/discussion; one fundraiser; and five teacher/speakers.

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July 29 – August 20XX - None of the events appear to be longer than a few hours. Event hours are in addition to regular classes. Regular classes include yoga five days a week for 1.5 hours each day and a weekly dialogue for 2 hours a week. This is a total of 9.5 hours of regular classes.

Taxpayer's Response to Government's Preliminary Report:

On October 24, 20XX, the examining agent issued a preliminary report proposing revocation of The exempt status under section 501(c)(3) for the tax years ended December 31, 20XX; December 31, 20XX, and December 31, 20XX.

The representative replied to The Service's preliminary report on January 16, 20XX with a 31 page letter and 119 pages of attachments. (See attached 31 page letter.)

The follow up response stated that satisfied the requirements for the organizational and operational tests of Treasury Regulations section 1.501(c)(3)-1(a)(1). The representative also raised arguments that The activities further an exempt purpose and are fundamentally different from for-profit entities such as hotels and inns.

Government's Rebuttal to Taxpayer's Response:

The response does not alter the Government's position.

1. Organizational Test

The is incorrect in stating that only the articles of incorporation are considered in meeting the organizational test.

The Tax Court has stated that original articles of incorporation are not the only evidence from which an organization's exempt purposes might be determined. In Colorado State Chiropractic Society v. Commissioner, 93 T.C. 487, at 496 (1989), the Court stated, "Petitioner's original articles of incorporation are not the only evidence from which petitioner's purposes might be determined. Rather, petitioner's bylaws are also indicative of the 'objects motivating' petitioner and, therefore, must also be considered."

The Court further stated:

The question of whether petitioner is organized exclusively for one or more exempt purposes is purely a factual inquiry. We could not judiciously decide such a factually intensive question if we were to myopically consider only petitioner's original articles of incorporation, to the exclusion of all other evidence relevant to the issue. As we have previously stated:

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It is well settled that:

The issue of "organized" * * * is primarily a question of fact not to be determined merely by an examination of the certificate of incorporation but by the actual objects motivating the organization and the subsequent conduct of the organization. Taxation With Representation v. United States, 585 F.2d 1219, 122 (4th Cir. 1978); Samuel Friedland Foundation v. United States, 144 F. Supp. 74, 85 (D. N.J. 1956). * * * [Peoples Translation Service v. Commissioner, 72 T.C. 42 48 (1979).]

The organization's purposes are determined when articles and enacted bylaws are read together. It is not permissible for bylaws to specifically allow an organization to engage in substantially nonexempt purposes. Thus, the Service maintains that the _____ fails the organizational test because its bylaws allow it to devote more than an insubstantial part of its activities to purposes which are not in furtherance of an IRC section 501(c)(3) exempt purpose.

The examination is based on the bylaws in effect during the examination as shown in Form 886-A page 2; page 15; page 22 and page 27. As we previously discussed with your representative, amendments to bylaws made after the examination must be evaluated by the filing of a new Form 1023 *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*.

a. IRS Letter dated May 7, 20XX

The letter from the Service dated May 7, 20XX indicates that the Service acknowledged the name change shown in the organization's Articles of Incorporation filed with the state on March 28, 20XX. As a result of the Service's examination of bylaws in effect during our examination, we have proposed revocation effective as of January 1, 20XX.

2. Operational Test

a. Goldsboro Art League, Inc. v. Commission of Internal Revenue, 75 T.C. 337 (1980)

The _____ cites Goldsboro Art League, Inc. v. Commission of Internal Revenue, 75 T.C. 337 (1980) for the proposition that the operational test focuses on the purpose and not on the nature of the activity. While Goldsboro does stand for that proposition, the court further stated, "Among the factors we consider in determining whether an organization is operated to further a substantial commercial purpose are the particular manner in which an organization's activities are conducted, the commercial hue of these activities, and the existence and amount of profit from these activities." [citing B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978)]

In Goldsboro, the organization operated two art galleries which exhibited and sold artworks without a written contract in a county where there were no other galleries or similar facilities in competition with it. Conversely, _____ is in competition with other for profit establishments as

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evidenced by its own advertisements and monitoring of its reviews on travel websites. (Exhibit 1 shows the _____'s letter to the _____ Chamber of Commerce to protest not being included in the Visitor's Guide under "places to stay" and the _____, subsequent ad.) Additionally, the letterhead The _____ used for its letter to the Chamber is different than that used in its ad. The _____ described itself as "_____ A non-profit corporation 501(c)(3)" to the Chamber in its correspondence. However, in its ads _____ described itself as "_____!" (See Exhibit 1 and Exhibit 2.) Nothing in the ad would attract guests to the _____ for educational purposes. This is the same way _____ described itself on its website.

The _____ is unlike Goldsboro, in which the purpose of the art gallery and art market was primarily to foster community awareness and appreciation of contemporary artists. It also provided a constant flow of art for students to study art and painting techniques. The fact that there were no other art museums or galleries in the area and that works were chosen for representation of modern trends, not salability, significantly influenced the court to conclude the petitioner's purpose was primarily to educate rather than to sell. Conversely, the _____ board of director discussions on occupancy rates in comparison with other local entities, profit and loss discussions, and commercial advertising, and emphasis on gaining market share of the industry show that _____ had a substantial nonexempt purpose.

Excerpts from _____ Board Reports, set forth below, demonstrate the commercial manner in which The _____ was operated.

"2. We are still late with some bills, but it seems that we should be okay by the end of the month. The reservations are clearly picking up even nationwide (according to our marketing expert, _____." *Email from _____ to Board Feb 13, 20XX Item 2.*

"7. Guestroom prices: we moved them slightly up (for March and April): \$0 in average for weekdays and \$0 in average for weekends. See prices now with "9", and there is a room for all price ranges from \$0 to \$0. "*Email from _____ to Board Feb 13, 20XX Item 7.*

"11. Trip Advisor: we have moved up in rank from No. 4 to No. 3." *Email from _____ to Board Apr 01, 20XX Item 11.*

"4. Occupancy Rate April 23 – May 31, 85%"
 "Occupancy Rate June 1 - 4 (weekdays): 95%"
 "Occupancy Rate June 1 – 30 (as projected): 75% (will increase)." *Email from _____ to Board Jun 06, 20XX Item 4.*

"14. National rating: all guest comment websites combined (TripAdvisor, Yelp, Travel.com, etc) we are No. 0 in the category of similar sized places in _____ and No 0 in the category of all places in _____ (independent of size). This includes the _____ . On Trip Advisor alone, however, we are No. 0 (but very close to 0)." *Email from _____ to Board July 31, 20XX Item 14*

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Excerpts from Board Meeting Minutes, set forth below, also demonstrate the commercial manner in which was operated.

"An eco friendly spa will generate more income and can be used for multiple purposes such as special events, weddings, etc. It was decided by the board that all room rates can be raised for the use of the spa. If special events are planned, guests will be notified for the time period that the spa is in use for a special event." *Board Minutes dated Feb 2, 20XX re: Project- Last paragraph page 1 and first paragraph on page 2*

"6. Various Items: ... reported that the online Trip Advisor service rates the as #0 in popularity among B&Bs in (is #0). At this point in time, has 0 total guest reviews on this site of which 0 are rated excellent and 0 are rated very good (there are no average, poor or terrible ratings). and staff work diligently each day of the week to provide the best experience possible. Their efforts are paying off handsomely." *Board Minutes dated July 6, 20XX Item 6.*

"We went over the April occupancy, is way above average for , and the industry in general. We agreed occupancy should be April 1-30, not till May 1, and that it should be this way from now on, i.e. from the first day till the last day of that month."

"P&L statement- \$0 was a record high (\$0 was added in due to a bookkeeping error)" *Board Minutes dated May 3, 20XX*

"6. Finances"

"a) Occupancy rate May 20XX = 77.9%"

"b) P/L = it was negative (apprx. \$0) due to extremely high and unusual expenses."

Board Minutes dated June 9, 20XX

"June Profit – Income was \$0 with an 87% occupancy rate and a profit of \$0." *Board Minutes dated July 7, 20XX*

"Jan – June 20XX average \$7,000 monthly profit compared to 20XX which was \$1,000 loss each month." *Board Minutes dated July 7, 20XX*

"3) The Overall Balance Sheet and improvement of the Profit and Loss Overview for January 1 to June 30, 20XX was explained by ; he showed that the average monthly profit was \$0 – a great improvement over 20XX, 20XX, and all previous years before the remodeling was undertaken and finally completed about July 20XX."

"4) Strategies for improving the financial condition of for the rest of 20XX were suggested and analyzed as follows:"

"a) Focusing on attracting guests between the weekends;"

"b) Gradually, increasing some room rates while leaving a couple of inexpensive ones;"

"c) Taking a second look at internet booking companies like Expedia, Orbitz, and Priceline;"

"d) Continue to transfer as many bills as possible to "level pay plans""

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"e) Sell "Memberships" in _____, a 501 (c)(3) non-profit, and offer appropriate "rewards" for various levels of contributions;"

"f) Continue to have fundraising events for the General and Reserve Funds as well as for the Development Fund, half of which would go back into the Reserve Fund;"

"e) Making a yearly appeal for donations and hiring a professional fundraiser who should or should not be a member of the National Fundraising Foundation and abide by its guidelines." *Board Minutes dated August 10, 20XX*

"2) The current financial condition of the _____ was reviewed by _____ Director and he noted that a record higher occupancy rate in April and prepayments by some guests for future stays helped with two major payments in April..." *Board Minutes dated April 29, 20XX*

"5. GRANT WRITING PROJECTS: b) A grant writing committee has been created. The Board requests that priority be given to grants that pay for operating expenses and/or general maintenance expenses (mainly for the gardens)." *Board Minutes dated June 5, 20XX*

"6. OVERALL FINANCIAL SITUATION: Even though the occupancy rate is increasing (82.5% in May), there is a monthly shortfall of approx. \$0. – due to a high mortgage interest rate. _____ is in the process of applying for a better rate with several banks." *Board Minutes dated June 5, 20XX*

(See Exhibit 3 for details of the board reports and meeting minute discussions from 20XX through 20XX. Also included in Exhibit 3 are The _____ newsletters from 20XX that show substantial promotion of the _____ as, "The Place to Stay _____" rather than primarily as an educational center.)

b. Forest Press, Inc. v. Commissioner of Internal Revenue, 22 T.C. 265 (1954)

The _____ relies on Forest Press, Inc. v. Commissioner of Internal Revenue, and states that "as long as the corporation was created to further an exempt purpose and its activities are consistent with that purpose, it is irrelevant that other for-profit enterprises engage in the same activity."

In Forest Press, the Tax Court determined that an organization "devoted to developing and propagating the use of the Dewey Decimal Classification System and Related Index" was a charitable organization. Forest Press' primary activity was the ongoing development of the system, which required continuous revision. To this end, Forest Press regularly employed an editor-in-chief and four editorial assistants and an additional two to three editorial assistants as publication dates approached. By the time Forest Press was formed, the System had "been adopted by more than 90 percent of the libraries in the United States to classify and index their collections" and was "in

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use in 42 countries." Thus, the court concluded that the System was "an important aid to education and research and not a commercial enterprise."

In Forest Press, the organization did not fix prices with any intent to make a profit over and above the expenses involved in the corporation and publishing the system. Additionally, the organization in the Forest Press case did not advertise its publications in the conventional sense. The organization's creation as well as the activities it engaged in was for educational purposes. This is not true of the . . . The board reports and meeting minutes show that the board regularly monitored its position in the industry and was in competition with other inns for guest room occupancy. The board also made adjustments in guest room rates to maximize profitability. (See Exhibit 2 for sample advertising and Exhibit 3 board meeting minutes.)

As shown above and in Form 886-A pages 15 and 16, the examination determined that fails the organizational test due to nonexempt purposes included in its bylaws. Unlike Forest, was not created to further an exempt purpose. Additionally, activities are inconsistent with a charitable purpose. Instead they show a substantial nonexempt purpose.

c. Educational Programs

In Exhibit 6 of its reply to the Service, submitted a list of programs that were offered to its overnight guests and the community at large from January 14, 20XX – December 31, 20XX. The stated that it averaged 26 educational programs per month. This average is inaccurate as it does not include the 20XX examination year which only offered approximately 200 hours of educational programs for the entire year. The list also includes scheduling changes made after the examination ensued. Since is open 24 hours a day/7 days a week, hours are a more accurate measurement of activities as noted on Form 886-A page 17.

Likewise, even if the agent counted all of activities in 20XX as charitable, literary, or educational, the total is still insignificant in comparison to its promotion and maintenance of its lodging activity. Additionally, subsequent changes to calendar and whether the organization offers a significant amount of charitable programs were previously discussed with representative. The representative was referred to Rulings and Agreements to file a new Form 1023 *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*.

d. Overnight Accommodations Relative to Educational Programs

The stated that overnight guests stay at the because they have come to the for an educational or literary purpose. The listed the number of persons it believes attended educational programs compared to overnight stays. The does not have a breakdown of the number of overnight guests versus local attendees at various events held at the. Additionally, the advertising as an Inn, the proximity and similarities to other for-profit hotels, the

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emphasis on competing for travelers' accommodations, and the intent to make a profit, contradict The statement that overnight guests come for educational or literary purposes.

e. Peoples Translation Service/Newsfront International v. Commissioner of Internal Revenue, 72 T.C. 42 (1979)

The refers to Peoples Translation Service to support its argument that, while on the surface the entity's activities were conducted in an ordinary commercial manner, the operation was not sufficiently like a commercial enterprise because there was no intent to make a profit. The facts in the Peoples case are distinguishable from the facts in the instant case. For example, the Peoples court's determination was based on publication services below cost. Conversely, specifically considered its pricing to make a profit and priced its guest rooms competitively as shown on Form 886-A page 7 and Exhibit 3. The "potential" for a substantial profit driving operations and organization are good enough to show a nonexempt purpose. See Copyright Clearance Center, Inc. v. Commissioner, 79 T.C. 798, 807-808 (1982). Moreover, in Peoples, the organization spent an insignificant amount on advertising even in comparison to its small budget and the organization did not engage in practices associated with commercial publishing. Conversely, as shown in Form 886-A page five, The spent significant amounts on advertising. Advertising costs were: \$0 in 20XX; \$0 in 20XX; and \$0 in 20XX. Further, objected to its exclusion from the Visitor's Guide to . Instead, it wrote a complaint letter to the Chamber asking to be included and advertised in the Guide as " ." Additionally, intended to raise room rates after adding a spa and pool, as shown in its meeting minutes. Adding a pool and spa would also increase comparability to the local hotels and inns that also had a pool and spa. Additionally, the has surcharges for cancellations and increased its room rates during peak area events such as during the

These charges are above cost. (See Exhibit 4, the terms and policies.)

g. Percent of Expenses

The states that the Service should allocate wage expense by designating employee upkeep of facilities that directly support educational programs. The lists the outdoor event venues; conference room; three libraries; and a Quiet Room and states that these facilities directly support educational programs. However, all of these areas are open to anyone who stays at The not just those who come for events or programs. As previously stated in Form 886-A page 6 The had approximately 200 hours of educational programs during 20XX, the first examination year. Adjusting wages for this amount of hours in comparison to total wage hours of 11,000 hours (rounded) is insignificant and unwarranted.

The states that its teachers are for the most part volunteers, however, the primary teachers at were paid directly by class participants. The yoga and massage teachers were the primary teachers during the examination years, as they taught weekly classes for about 7.5 hours a week. The teachers usually paid the % of the fees collected from participants. As shown in Form 886-A pages 4-5, had verbal payment agreements with its yoga and massage teachers.

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h. Advertising

The _____ argues that it is listed as a member of _____ Chamber of Commerce as a _____ and does not dictate categories it is advertised in. However, during the examination year _____ the _____ wrote a letter to _____ Chamber of Commerce that argued that it should be included in the _____ Visitors Bureau website, under "Places to Stay" (See Exhibit 1.) This letter was subsequently followed by a contract to advertise in the Visitor's Guide (See Exhibit 2 for a copy of the advertising submitted to the Chamber by _____.)

i. Comparisons to Other Organizations

The Service concedes that the County _____ does specifically define " _____ ." The _____ has stated that the Service did not compare the _____ to any other entity that fits the definition of a _____. However, the Service reiterates that its comparisons to for-profit lodging entities and _____ in Form 886-A was at the request of _____. The _____ stated that other for-profit lodgings _____ did not have the same or similar amenities that it specifically identified in its correspondence. Thus, the Service comparisons answer the _____ inquiry and show that _____ is not unique in the _____ areas it proposed in its correspondence.

The _____ has suggested the Service review the websites of three organizations that it considers similar to The _____ and which hold 501(c)(3) recognition of exemption. These websites are for: _____ Institute, and _____ Educational Center. The Service reviewed these websites and a significant difference is that all three organization's websites emphasize workshops/programs more than lodging. The _____ website emphasizes a certain philosophy and encourages lodging for inquiry into this philosophy. The _____ website clearly emphasizes its workshops and boasts 600 workshops and programs per year. Lodging is offered primarily to those who first find a workshop they wish to attend. The website shows that it has specific dates for personal _____ however, no personal _____ dates were available when the Service accessed its website. The Educational Center has several large group events during the year and a staff of educators. It also customizes _____. Individual lodging seems to be incidental if at all, as the majority of its accommodations are for large groups.

The new information presented in the _____ response on pages 14 through page 31 is primarily based on changes the _____ has made or plans to make subsequent to the audit. The _____ amended its bylaws, is revising its website to emphasize educational programs more than guest rooms; and revised its calendar subsequent to the examination. The Service previously notified the _____ representative that changes to _____ structure should be evaluated by Rulings and Agreements by following formal procedures. Formal procedures entail completing Form 1023 *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code* and submitting it to Rulings and Agreements for evaluation.

The proposed revocation of The _____ exempt status applies to its organization and operation in the examination years of 20XX through 20XX. The Service's position is based on _____

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activities during the exam years, not subsequent changes made after the examination and future intentions.

j. Schoger Foundation v. Commissioner of Internal Revenue, 76 T.C. 380 (1980)

The _____ states that it differs significantly from Schoger Foundation because it offers overnight accommodations incidental to offering a forum for group education, libraries and quiet space for study. The Service disagrees and concludes that as it advertised, The _____ boasts itself as a "real get away from it all." The _____ operations as a for profit inn or bed and breakfast are a substantial nonexempt purpose. Like Schoger, it is difficult to see how the experience at _____ differed, if it did, from the same experience one can have at any quiet inn or lodge in beautiful surroundings.

During the examination, the Service received permission from _____ to take pictures. The agent took photographs of the libraries on _____ grounds on June 13, 20XX. One photograph shows one bookcase, which is the local author's library. The second photograph partially shows the Quiet Room that included three bookcases consisting of the spiritual and educational library. (See Exhibit 5 for photographs of the bookshelves.) The _____ exaggerates the library component.

Additionally, participation in educational events was incidental. At _____, guests could participate in yoga, massage, Quiet Room, gardens, and occasional events. However, _____ primarily emphasized its quiet and beautiful location and serene atmosphere as reasons to stay at the location.

The _____ relies on est of Hawaii, Inc. v. Commissioner, 71 T.C. 1067 (1979) and concludes that "an organization may engage in trade or business as long as its operation furthers an exempt purpose and its primary objective is not a production of profits and provided it serves a public rather than a private interest." The Service takes the position that _____ promotion, reservation, and maintenance of its guest rooms for overnight guests is a substantial disqualifying nonexempt purpose. As stated in Copyright Clearance Center, Inc. v. Commissioner, 79 T.C. 793, 804 (1982):

* * * It is nevertheless plain that the word "exclusively" places a definite limit on the "purpose" at issue. And that limit has been clearly articulated by the Supreme Court in Better Business Bureau v. United States, 326 U.S. 279 (1945), as follows (p. 283):

the presence of a single [nonexempt] * * * purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] * * * purposes.
[Emphasis supplied.]

We are, of course, aware that in some cases the test has been restated in terms of "whether an organization's primary purpose is exempt or nonexempt." (Emphasis supplied.)

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See est of Hawaii, Inc. v. Commissioner, 71 T.C. 1067, 1079 (1979), affd. 647 F.2d 170 (9th Cir. 1981); cf. B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 357 n.2 (1978).

However, regardless of whether any real differences may be thought to exist between these two formulations, we are obviously bound by the Supreme Court's authoritative exposition, and will proceed to consider whether, in the language of the Supreme Court, there is present here a disqualifying nonexempt purpose that is "substantial in nature."

Conclusion:

The _____ response to The Service's preliminary report does not alter the government's position. The Service maintains that _____ should be revoked of its exempt status under Code §501(c)(3).

The _____ tax exemption should be revoked because Treas. Reg. section 1.501(c)(3)-1(a) provides that in order to be exempt as an organization described in Code §501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

The _____ was not organized for an exempt purpose under its current bylaws. The _____ is not operating exclusively for an exempt purpose under IRC section §501(c)(3). The _____ primary activity is offering short term lodging to the public for payment in a way that is similar to commercial enterprises. This activity should not be treated as unrelated business income because the activity is substantial. By operating in the manner described, _____ is furthering a substantial nonexempt purpose.