

Internal Revenue Service
Appeals Office

Department of the Treasury

Employer Identification Number:

Release Number: 201511023

Release Date: 3/13/2015

Date: December 17, 2014

Person to Contact:

Employee ID Number:

Tel:

Fax:

UIL: 501.03-00

Certified Mail

Dear

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

Our revocation was made for the following reason(s):

You are not operated exclusively for exempt purposes as specified in section 501(c)(3) of the Code because you are not engaged primarily in activities which accomplish an exempt purpose. A substantial part of your activities serve commercial and private interests. Private interests served include direct benefits to the Trustees and their for-profit companies.

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

You are required to file Federal income tax returns on Forms 1120. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

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

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

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

to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Nan Shimizu".

Appeals Team Manager

Enclosure: Publication 892 and/or 556

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

Department of the Treasury

Date:

Taxpayer Identification Number:

Form:

990 EZ Return

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

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,

Director, EO Examinations

Enclosures:
Report of Examination

Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	EIN: XXXXXX
Name of Taxpayer XX		Year/Period Ended XXXXXXXXXXXX XXXXXXXXXXXX

Revised November 14, XXXXXX

ISSUES

1. Is money given to the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX by its officers loans or gross income?
2. Do contracts between XXXXX and its officers constitute substantial private benefit?
3. Do purchases made with the organization's Credit card and payments to XXXXX constitute inurement?
4. Should the tax-exempt status, under Internal Revenue Code section 501(c)(3), of XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX be revoked for failing to operate as an organization exempt under the aforementioned code section?

FACTS

I Organizational Structure

A. Articles of Incorporation

- Item 1 of the articles of Incorporations for the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX states its purpose as organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue code.
- Item 3 of the articles state "No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers or other private persons, except the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Item 3 (and Article 1) of this filing."
- Item 3 also states "Notwithstanding any other provision in this filing, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

B. By Laws

- The organization provided the lasted revision to its by laws dated XXXXXXXXXXXXXXX (previous revisions were dated XXXXXXXXXXXXXXX , and XXXXXXX).
- Article 2, Section 2 lists specific objectives and purposes as:
 1. To identify entrepreneurial companies and bring them aid and support that they need, targeted to their businesses.
 2. To solicit the help and support of the large business community.
 3. To assist entrepreneurial businesses in obtaining financial aid.

Form 886A	Department of the Treasury - Internal Revenue Service	EIN: XXXXXX
Explanation of Items		
Name of Taxpayer XX		Year/Period Ended XXXXXXXXXXXXXX XXXXXXXXXXXXXX

Year	XXXXXX	XXXXXX	XXXXXX
Application Grants	\$ XXXXXX	\$ XXXXXX	\$ XXXXXX
Non-Profit Organization Grants	\$ XXXXXX	\$ XXXXXX	\$ XXXXXX
Total	\$ XXXXXX	\$ XXXXXX	\$ XXXXXX

III Actual Operations

A. Revenues

- XXXXXX operations are inconsistent with the information provided on Form 1023. XXXXXX does not get income from the community as it stated in its application. Based on interview with XXXXXX treasurer, XXXXXXXXXXXX, and the examination findings, the agent learned XXXXXX major operation is what they call an XXXXXX certification and training program. As part of this program, XXXXXX charges prospective business advisors or consultants \$XXXXXX for what they call "certification by the organization." XXXXXX states this certification is important to ensure their "advisors" administer help to entrepreneurs in a manner consistent with their teachings. However, the agent learned this statement is false. The advisors are paying for business leads.
- In XXXXXX, XXXXXX received the following payments for participants in the XXXXXX program:

<u>Name</u>	<u>Payment</u>
XXXXXXXX XXXXXX	\$ XXXXXX
XXXXXXXX	\$ XXXXXX
XXXXXXXXXXXXXXXX	\$ XXXXXX
XXXXXXXX	\$ XXXXXX
XXXXXXXXXXXXXXXX	\$ XXXXXX
XXXXXXXX	\$ XXXXXX
XXXXXXXXXXXXXXXX	\$ XXXXXX
XXXXXXXXXXXXXXXX	\$ XXXXXX
XXXXXXXXXXXXXXXX	\$ XXXXXX
Total	\$ XXXXXX

- XXXXXX is not receiving revenue from fees charged to the XXXXXX community as stated in Form 1023, but instead is receiving 73% of its revenue from this XXXXXX program.

B. Expenses

- XXXXXX contracted with businesses owned by current and former trustees or their spouses (XXXXXX is the wife of XXXXXX, President of XXXXXX). XXXXXX is a trustee of XXXXXX in XXXXXX). The agent submitted IDR #6 and IDR #7 to XXXXXX specifically asking for

Form 886A	Department of the Treasury - Internal Revenue Service	EIN: XXXXXX
Explanation of Items		
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XXXXXX held seminars representing how they help consultants get work and showed her examples of such. XXXXXX had consulting positions open and stated applicants can earn from \$XXXXXX to \$XXXXXX annually but her focus was on the lead sourcing. She participated in a three-day training program where they provided her a binder with materials they went through. After the course, she was to receive 120 letters sent on her behalf, as an entrepreneur, to targeted organizations and 10 meetings were set up with business owners in her area who they described as having a need for business consulting. After attending at least three meetings, which resulted in no business, the businesses made it clear that they had no understanding for the reason of the meeting. In addition, when attending some meetings, the companies told her that they never agreed to an appointment with an XXXXXX advisor. Lastly, she states the funds spent were a waste of money and the program should be investigated for its validity. She paid XXXXXX \$XXXXXX.

2. On XXXXXXXXXXXX , the agent received the following response mailed from XXXXXXXXXXXX : She signed up in XXXXXXXXXXXX and participated in a three-day training course. The organization developed a mailing list of additional client prospects and sent introductory letters to them over several months. The XXXXXX protocol begins with a pro-bono introductory meeting. She paid the organization XXXXXX , continues to be an active member of XXXXXX and continues to have interaction with the leadership certified business advisors of the organization. XXXXXX provided the list of businesses that XXXXXX set up appointments with and the list of business contacts provided to her by XXXXXX
3. On XXXXXXXXXXXX , the agent received the following mailed response from XXXXXXXXXXXX : He came across the organization on the internet while looking for a job. They offered training and business leads that would facilitate starting a small business-consulting firm. They provided him with a three-day training course and at least six business leads with face-to-face meetings with potential clients. He paid XXXXXX \$XXXXXX
4. On XXXXXX XXXXXX , the agent received the following mailed response from XXXXXX : She answered online to become a small business consultant and was invited to attend an informational session about the program. She attended a three-day training program where they provided her with the names of small business owners that would meet with her for a free consultation. XXXXXX mailed out letters under her name to potential clients for follow up. She paid the organization \$XXXXXX.
5. On XXXXXXXXXXXX , the agent received the following mailed response from XXXXXXXXXXXX : He heard about the organization from the employment section of Craig's List describing an opportunity to leverage extensive business experience with small companies into a consulting business. He attended a three-day training session and, received a binder to review during training. XXXXXX sent solicitation

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	EIN: XXXXXX
Name of Taxpayer XX		Year/Period Ended XXXXXXXXXXXXXX XXXXXXXXXXXXXX

letters to entrepreneurs and made six appointments with businesses looking for help. He paid the organization \$XXXXXX

6. On XXXXXXXXXXXX, the agent received a mailed response from XXXXXXXXXXXX stating the following: He is unsure of how he found out about XXXXXX but initially they led him to believe they had clients. He stated XXXXXX did not present things in a clear manner. Finally, he figured it out and felt scammed. XXXXXX provided him with a training course to teach him how to "present himself" to prospective clients. He states XXXXXX had no clients and provided him a database for potential clients. They also provided a marketing campaign where XXXXXX sent letters and made calls on his behalf to arrange appointments with potential clients. The clients were not aware that the consulting had a cost as they were told it was a pro bono consultation from a not for profit organization. He paid the organization \$XXXXXX.
7. On XXXXXXXXXXXX, the agent received the following mailed response from XXXXXX: He found XXXXXX on Monster.com. He had a phone interview where they offered him training in starting a consulting business. They also scheduled his initial appointments. The calls were worthless and did not result in any income to him. The leads were unqualified and did not meet the company profile requirement of having at least three employees. The prospective clients had no business interest. He feels XXXXXX preys on unemployed businesspersons trying to generate income. He never understood how they achieved approval as a non-profit corporation. He paid XXXXXX \$XXXXXX.
8. On XXXXXXXXXXXX, the agent received an e-mailed letter from XXXXXX stating the following: He heard about XXXXXX through a posting on LinkedIn. He participated in a three-day training program designed to teach him how to become a consultant. XXXXXX set up eight meetings under their local Business Assistance Program. He paid XXXXXX \$XXXXXX.

E. Credit Card Purchases

- On XXXXXXXXXXXX, the agent received XXXXXX XXXXXX and XXXXXX credit card statements, the signature card, and credit application summoned from TD Bank. Review of the statements revealed the organization made purchases that constitute inurement:

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Name of Taxpayer XX		Year/Period Ended XXXXXXXXXXXX XXXXXXXXXXXX

- (c) Scientific,
- (d) Testing for public safety,
- (e) Literary,
- (f) Educational, or
- (g) Prevention of cruelty to children or animals.

Treasury Regulation 1.501(c)(3)-1(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In the court case **Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945)**, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In **American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962)**, 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.

In **Todd v. Commissioner, T.C. Memo. 2011-123, aff'd, 2012 WL 3530259 (5th Cir. 2012). (Appeals)** The U.S. Court of Appeals for the Fifth Circuit has held that whether a transaction constitutes a loan for income tax purposes is a factual question involving several considerations, and a distinguishing characteristic of a loan is the intention of the parties that the money advanced be repaid. Important factors considered by courts in finding a bona fide debt are whether: (1) The promise to repay was evidenced by a note or other instrument; (2) interest was charged; (3) a fixed schedule for repayments was established; (4) collateral was given to secure payment; (5) repayments were made; (6) the borrower had a reasonable prospect of repaying the loan, and whether the lender had sufficient funds to advance the loan; and (7) the parties conducted themselves as if the transaction was a loan.

In **Revenue Ruling 67-5, 1967-1 C.B. 123**, it was held that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities, which were beneficial to them, but detrimental to the foundation. It was further held that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. Therefore, the foundation was not entitled to exemption from Federal income tax under section 501(c)(3).

In **United Cancer Council, Inc. v. Comm'r., 165 F.3d 1173 (7th Cir. 1999)**, holds that the inurement prohibition requires an organization not to siphon its earnings to its founder, or the members of its board or their families, or anyone else fairly to be described as an insider, that is, as

Form 886A	Department of the Treasury - Internal Revenue Service	EIN <small>XXXXXX</small> <small>XXXXXX</small>
Explanation of Items		XXXXXX
Name of Taxpayer XX		Year/Period Ended XXXXXXXXXXXX XXXXXXXXXXXX

the equivalent of an owner or manager. The test is functional. It looks to the reality of control rather than to the insider's place in a formal organizational chart of an organization. The insider could be a mere employee or even a nominal outsider, such as a physician with hospital privileges in a charitable hospital.

In **People of God Community v. Comm'r., 75 T.C. 127 (1980)** The prohibition on inurement denies exempt status to an organization whose founders or controlling members have a personal stake in that organization's receipts.

In **Founding Church of Scientology, supra, 188 Ct. Cl. at 497, 412 F.2d at 1201; Kenner v. Commissioner, 318 F.2d 632, 634 (7th Cir. 1963); and Labrenz Foundation, Inc. v. Commissioner, 33 TCM 1374, 1379 (1974).** The payment of personal automobile expenses for private individuals was held to be prohibited inurement of earnings.

In order to take entertainment related expenses such as meals etc, the individual must provide specific substantiation. **IRC 274(d):**

No deduction or credit shall be allowed--

- (1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),
- (2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,
- (3) for any expense for gifts, or
- (4) with respect to any listed property (as defined in section 280F(d)(4)),

unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense, which does not exceed an amount prescribed pursuant to such regulations. This subsection shall not apply to any qualified non-personal use vehicle (as defined in subsection (i)).

Treasury Regulation 1.162-1 Business expenses:

(a) in general. Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, except items which are used as the basis for a deduction or a credit under provisions of law other than section 162.

Governments Position

1. Is money given to the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX by its officers loans or gross income?

As stated on the application for exemption, Part V, line 8c, each of the trustees during that year gave a loan to XXXXX for \$XXXXX at 0% interest. The organization continued to receive loans from current, prior and prospective officers as follows:

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The credit card statements also show several entertainment expenses such as meals and hotel stays. In IRC 274(a), no deduction otherwise allowable is permitted for an item considered to be "entertainment, amusement, or recreation" unless the taxpayer establishes that the item is "directly related to, or associated with, the active conduct of the taxpayer's trade or business." Furthermore in IRC 274(d)(1)-(4), no deduction or credit is allowed for any expense constituting entertainment unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift.

In **John Marshall Law School and John Marshall University v. United States, 228 Ct. Cl. 902 (1981), 81-2U.S.T.C. 9514**, the court sustained the services revocation of the colleges exempt status based on inurement for such things as payment of non-business entertainment.

XXXXXXXXXXXX, the treasurer, stated the President of XXXXXX XXXXXX inadvertently made the purchase from Sears Roebuck using the wrong credit card. He claimed the President reimbursed the organization. Again, XXXXXX did not provide any documents to substantiate the reimbursement or the business use required under IRC 162. It too constitutes inurement.

Lastly, XXXXXX (XX .) is a for-profit organization previously owned by XXXXXX, XXXXXXXXXXXX, and XXXXXXXXXXXX (all current, past or previous officers or trustees of XXXXXX XXXXXX made a payment to XXXXXX which they would not verify. As stated previously, In **People of God Community v. Comm'r., 75 T.C. 127 (1980)** the prohibition on inurement denies exempt status to an organization whose founders or controlling members have a personal stake in that organization's receipts.

<u>Payee</u>	<u>Amount</u>	<u>Date</u>	<u>Check Number</u>
XXXXXXXXXXXXXXXXXXXX .	\$ XXXXXX	XXXXXX	XXXXXX
	XXXXXX		

4. Should the tax-exempt status, under Internal Revenue Code section 501(c)(3), of XXXXXXXXXXXX XXXXXXXXXXXX be revoked for failing to operate as an organization exempt under the aforementioned code section?

- XXXXXX is not conducting the activities it stated in its original application for exemption. XXXXXX solicits prospective customers through advertisements and online forums such as Meetup.com, LinkedIn and Craig's list. These individuals pay the organization \$XXXXXX (although most participants claim \$XXXXXX) for leads. The members attend a three-day training program to aid them in their consulting businesses. Members also receive several leads to prospective businesses. XXXXXX makes appointments with businesses for the consultants in hopes that they will retain the consultant's services for a fee.

In XXXXXX XXXXXX had the following participants in the program:

1. XXXXXXXXXXXX
2. XXXXXXXXXXXX

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3. XXXXXX
4. XXXXXXXXXXXX
5. XXXXXXXXXXXX
6. XXXXXXXXXXXX
7. XXXXXX
8. XXXXXX
9. XXXXXXXXXXXX

All of xxxxxx participants responded to the third party request except xxxxxxxxxxxx . xxxxxx provided each respondent that participated in the training program with leads to obtain prospective business. In addition as stated previously, xxxxxx lists the following in its Articles of Incorporation:

- Item 1 of the articles of Incorporations for the xxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxx states its purpose as organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue code.
- Item 3 of the articles state "No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers or other private persons, except the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Item 3 (and Article 1) of this filing."
- Item 3 also states "Notwithstanding any other provision in this filing, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

The organization does not operate exclusively for charitable purposes but operates in a commercial manner by conducting business as a referral service where consultants pay for "leads" to potential clients. The net earning of xxxxxx inure to the officers whose businesses receive payments for services that were not proven arm's length transactions. xxxxxx does carry on activities not permitted under section IRC 501(c)(3) and therefore, its exempt status should be revoked.

Taxpayers Position

On xxxxxx, the agent received xxxxxx written response to Form 886-A sent to xxxxxx on xxxxxx xxxxxx. The following is a rebuttal to xxxxxx response to Form 886-A:

The agent would like to state for the record:

1. xxxxxx was not cooperative during this examination. During field visits, the treasurer, xxxxxx xxxxxx, initially refused to give the agent copies of invoices and other documents. He prolonged the process by repeatedly calling the manager for what the agent feels are frivolous reasons. He required the agent to complete and sign an IDR each time she would request copies of documents although the agent previously issued these IDR's.
2. xxxxxx refusal to provide documents prolonged the examination process requiring the agent to visit their field location on four different occasions.

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3. XXXXXX did not respond to IDR's number six and seven nor did they provide price comparisons or detailed analysis as they state. XXXXXX refusal to respond to the IDR's required the agent to secure the information from the state of XXXXXX and TD Bank.
4. XXXXXXXXXXXX is a related entity, as the President's wife, XXXXXX, owns it.

XXXXXX states, **"The 886A inaccurately claims that XXXXXX loans from trustees should be considered taxable gross income."**

The agent is not confused about the characterization of loans, revenue and accrued interest as XXXXXX states. Perhaps XXXXXX is confused.

The agent has always contended that the money given to XXXXXX is not loans but constitutes gross income in the form of program service revenue, not contributions. In **Todd v. Commissioner, T.C. Memo. 2011-123, aff'd, 2012 WL 3530259 (5th Cir. 2012) (Appeals)** The U.S. Court of Appeals for the Fifth Circuit has held that whether a transaction constitutes a loan for income tax purposes is a factual question involving several considerations, and a distinguishing characteristic of a loan is the intention of the parties that the money advanced be repaid. Important factors considered by courts in finding a bona fide debt are whether: (1) The promise to repay was evidenced by a note or other instrument; (2) interest was charged; (3) a fixed schedule for repayments was established; (4) collateral was given to secure payment; (5) repayments were made; (6) the borrower had a reasonable prospect of repaying the loan, and whether the lender had sufficient funds to advance the loan; and (7) the parties conducted themselves as if the transaction was a loan. XXXXXX does not satisfy any of these factors. Once the agent converts XXXXXX return to a for-profit corporation, and files Form 1120, this money becomes taxable revenue and not paid-in-capital.

Furthermore, XXXXXX was not following the "applicable rules" as they state when they filed Forms 1099 for "accrued" interest. XXXXXX did not pay this interest to the trustees. Additionally, XXXXXX did not provide an account showing details of payments, canceled checks or wire transfers. XXXXXX is a cash basis taxpayer and should report interest expense when it is paid, not accrued as they did on their Form 990. The agent believes XXXXXX reference to "a personal detriment" is the language of IRC 7872, which refers to "imputed" interest for below market loans, which does not apply in this case.

Conclusion:

- XXXXXX is confused.
- The money given to XXXXXX from its trustees is not loans but gross income.

XXXXXX States, **"The 886A inaccurately claims XXXXXX officers received substantial private benefit by using revenue to pay expenses and by funneling loan money back to businesses owned by its officers"**

The agent asserts XXXXXX received substantial private benefit by paying corporations owned by current and former officers, trustees and their spouses.

Treasury Regulation 1.501(c)(3)-1(d)(1)(ii) states an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is

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The fact that xxxxxx officers never jointly owned businesses or received remuneration for services is irrelevant in this case. The fact remains that xxxxxx paid its trustees corporations 111% of its revenues in xxxxxx and 68% of its revenues in xxxxxx. In fact, documents secured from the state show that xxxxxx xxxxxx status was revoked effective xxxxxxxxxxxxxx for not filing its annual reports for two consecutive years.

In **Rev. Rul. 67-5, 1967-1 C.B. 123**, it was held that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities, which were beneficial to them, but detrimental to the foundation. It was further held that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. Therefore, the foundation was not entitled to exemption from Federal income tax under section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the regulations 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 such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization must be organized and operated to serve a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Conclusion:

- The officers and related parties who contracted with xxxxxx received substantial private benefit from xxxxxx. Their personal corporations were able to use xxxxxx revenue and charge xxxxxx for services that were not arms length transactions.
- As stated previously, the insiders give money to xxxxxx because it will eventually go back to their organization for "services." They can also obtain interest income.

xxxxxx states, "**The 886A inaccurately claims activities are not tax-exempt.**"

Although xxxxxx received tax-exempt status in xxxxxx, Determination's agent, xxxxxx, based her decision on forecasted information. xxxxxx reported its exempt activities as follows:

- xxxxxx Community (40% time and effort)
- Outreach Programs (45% of time and effort)
- Recognition and Grant Programs (15% time and effort)

Although, xxxxxx states they described these programs in detail to the IRS during the application process, they failed to mention their major revenue producing xxxxxx program on its application. Had they mentioned this program, a for-profit endeavor, the service would not have approved it.

Conclusion:

- Determinations Agent, xxxxxx based her decision on forecasted information provided by xxxxxx. The agent based her information on facts from a full scope examination of financial data and activities.

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- The agent interviewed the treasurer, XXXXXXXXXXXX, the President, XXXXXX, and read all documents, brochures and pamphlets related to the organization. Therefore, the agent had a thorough understanding of XXXXXX operations and based her decision on such.
- The agent has not mistaken "shifts" in available program funding to mean the organization's tax-exempt status has changed. The agent is asserting XXXXXX activities are not consistent with the activities they state in their application and are not exempt.

XXXXXX states, "**The 886A inaccurately claims operations are inconsistent from those presented in the application for tax exemption, primarily related to XXXXXX XXXXXX program.**"

As stated previously, the agent conducted a thorough review and examination of XXXXXX and its activities to understand its operations.

XXXXXX reported the following on Form 1023:

4. XXXXXX Community (40% time and effort)
"XXXXXX provides an online community for entrepreneurs and professionals who specialize in helping entrepreneurs. The community provides a welcoming and collegial environment wherein entrepreneurs can find information, guidance, advice, tools and access to financing and support services."
5. Outreach Programs (45% of time and effort)
A program where XXXXXX coordinates and sponsors outreach programs to enable such things as networking. XXXXXX seeks out local co-sponsors and experts, who are willing to lead programs, make presentations, provide meeting facilities, supply resource material and contribute time to assist in making the outreach programs a success.
6. Recognition and Grant Programs (15% time and effort)
A program that gives grants and awards to qualified entrepreneurs and entrepreneurial organizations.

The percentages above are incorrect; XXXXXX spends its time operating their XXXXXX program, which is a referral service. XXXXXX advertises on LinkedIn, Monster.com, Craig's list, etc to businesses with the notion that they will receive help. However, XXXXXX simply uses them to compile a list of potential customers to give to consultants in the XXXXXX program to use as business leads. XXXXXX uses this same avenue to lure consultants into its XXXXXX program.

In **American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962)**, 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.

Conclusion:

XXXXXX activities and operations are inconsistent with what they state on their application for exemption.

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XXXXXX states, "The 886A inaccurately claims that XXXXXX operates a lead referral service based on questions she posed to XXXXXX Advisors."

XXXXXX states the agent posed leading questions to XXXXXX certified advisors instead of asking about XXXXXX purpose, non-profit mission or tax-exempt status. However, the agent had a very clear understanding of the organization's operations before contacting the program participants. The treasurer insists the consultants were "volunteers" however; the consultant never stated they were volunteers for the organization. Instead, they say they paid the organization approximately \$XXXXXX, for business leads.

The participants state the following:

1. On XXXXXXXXXXXX, the agent received an e-mailed letter from XXXXXX XXXXXX stating the following: she received marketing literature from XXXXXX in XXXXXX XXXXXX asks applicants to take a test to make it look like they are selective but she later found out everyone is selected. She stated XXXXXX held seminars representing how they help consultants get work and showed her examples of such. XXXXXX had consulting positions open and stated applicants can earn from \$XXXXXX to XXXXXX annually but her focus was on the lead sourcing. She participated in a three-day training program where they provided her a binder with materials they went through. After the course, she was to receive 120 letters sent on her behalf, as an entrepreneur, to targeted organizations and 10 meetings were set up with business owners in her area who they described as having a need for business consulting. After attending at least three meetings, which resulted in no business, she learned that target customers had no understanding for the reason of the meeting. In addition, when attending some meetings, the companies told her that they never agreed to an appointment with an XXXXXX advisor. Lastly, she states the funds spent were a waste of money and the program should be investigated for its validity. She paid XXXXXX \$XXXXXX.
2. On XXXXXXXXXXXX, the agent received the following response mailed from XXXXXX XXXXXX: She signed up in XXXXXXXXXXXX and participated in a three-day training course. The organization developed a mailing list of additional client prospects and sent introductory letters to them over several months. The XXXXXX protocol begins with a pro-bono introductory meeting. She paid the organization XXXXXX, continues to be an active member of XXXXXX and continues to have interaction with the leadership certified business advisors of the organization. XXXXXX provided the list of businesses XXXXXX set up appointments and the list of business contacts provided to her by XXXXXX.
3. On XXXXXXXXXXXX, the agent received the following mailed response from XXXXXXXXXXXX: He came across the organization on the internet while looking for a job. They offered training and business leads that would facilitate starting a small business-consulting firm. They provided him with a three-day training course and at least six business leads with face-to-face meetings with potential clients. He paid XXXXXX \$XXXXXX.
4. On XXXXXXXXXXXX, the agent received the following mailed response from XXXXXX: She answered online to become a small business consultant and they invited her to attend an informational session about the program. She attended a three-day training program and provided her with the names of small

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business owners that would meet with her for a free consultation. xxxxxx mailed out letters under her name to potential clients for follow up. She paid the organization xxxxxx .

5. On xxxxxxxxxxxx , the agent received the following mailed response from xxxxxxxxxxxx : He heard about the organization from Craig's List in the employment offering section describing an opportunity to leverage extensive business experience with small companies into consulting business. He attended a three-day training session and, received a binder to review during training. xxxxxx sent solicitation letters to entrepreneurs and made six appointments with businesses looking for help. He paid the organization xxxxxx .

6. On xxxxxxxxxxxx , the agent received the following mailed response from xxxxxxxxxxxx stating the following: He is unsure of how he found out about xxxxxx but initially they led him to believe they had clients because they did not present things in a clear manner. Finally, he figured it out and felt scammed. xxxxxx provided him with a training course to teach him how to "present himself" to prospective clients. He states xxxxxx had no clients and provided him a database for potential clients. They also provided a marketing campaign where the sent letters and calls made on his behalf to arrange appointments with potential clients. The clients were not aware that the consulting had a cost as they were told it was a pro bono consultation from a not for profit organization. He paid the organization xxxxxx .

7. On xxxxxxxxxxxx , the agent received the following mailed response from xxxxxx : He found xxxxxx on Monster.com. He had a phone interview where they offered him training in starting a consulting business and scheduling of his Initial appointments by xxxxxx . The calls were worthless and did not result in any income to him. The leads were unqualified and did not meet the company profile requirement of having at least 3 employees. The prospective clients had no business interest. He feels xxxxxx preys on unemployed businesspersons trying to generate income. He never understood how they achieved approval as a non-profit corporation. He paid xxxxxx xxxxxx .

8. On xxxxxxxxxxxx , the agent received an e-mailed letter from xxxxxx stating the following: He heard about xxxxxx through a posting on LinkedIn. He participated in a three-day training program designed to teach him how to become a consultant. xxxxxx set up eight meetings under their local Business Assistance Program. He paid xxxxxx xxxxxx .

xxxxxx uses the guise that because the consultants offer a free consultation, they are providing charitable services to businesses. Instead, the consultants provide "free consultations" in hopes to gain the organizations business as stated by the above participants.

In **Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945)**, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. xxxxxx has an "underlying commercial motive".

Conclusion:

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- The agent asked the program participants pertinent questions to ascertain the reason for the payment to XXXXXX and to determine their dealings with the organization. The agent never asked if XXXXXX gave the consultants business leads to prospective clients. The participants freely provided this information.
- XXXXXX operates a lead referral service.

XXXXXX states, "The 886A inaccurately claims XXXXXX has provided less support to businesses than projected."

XXXXXX clearly states in its application that they will dedicate 100% of its activities to help businesses. Including 15% "time and effort" to Recognition and grants.

Form 1023 states, "Recognition and Grant Programs (15% time and effort)." They list grant projections as follows:

Year			
Application Grants	\$	\$	\$
Non-Profit Organization Grants	\$	\$	\$
Total	\$	\$	\$

XXXXXX continues to reiterate that providing grants to businesses helps the entrepreneurial community. The agent agrees that giving money to newly started or struggling businesses is a charitable endeavor. However, in XXXXXX, XXXXXX gave a \$XXXXXX grant to XXXXXXXXXXXX . and in XXXXXX, gave XXXXXX each to XXXXXX and XXXXXXXXXXXXXXXXXXXXXXXX . XXXXXX did not give out the 15% grant projections because it was giving the money to the officer's related organizations. These payouts are insignificant compared to the revenue earned.

In relation to the "pro-bono" advice given to businesses by professionals, it is merely incidental to the professional's real cause. XXXXXX connected the consultants with the businesses as part of their referral service program.

Conclusion:

XXXXXX business support is insignificant compared to its for profit activity as a referral service selling leads.

XXXXXX states, "The 886A inaccurately claims revenue and expenses are not as projected on Form 1023"

Form 1023 is an "application" for exemption, a projection of operations, activities and their associated costs. Therefore, being over zealous in your predictions is understandable. However, the agent contends it was never XXXXXX intention to give grants to businesses but to use XXXXXX as a conduit to divert funds back to the related parties (corporations owned by officers, their wives and former trustees).

Although XXXXXX states they hold online forums, seminars and meetings, they did not provide any evidence to substantiate their claims. If XXXXXX does conduct such activities, it is insubstantial compared

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to their major activity of conducting a lead referral service. XXXXXX main reason for luring new businesses to their forum is to add these businesses to their list of potential leads.

Conclusion:

XXXXXX is not conducting the activities consistent with its statements on Form 1023

XXXXXX states, **"The 886A inaccurately claims XXXXXX has been adversarial and that XXXXXX refused to provide requested information"**

XXXXXX has been adversarial and uncooperative beginning with the first telephone call to the Organization. When the agent called XXXXXX XXXXXXXXXXXXX stating he was the treasurer greeted her. XXXXXX XXXXXX was belligerent and combative. He made statements such as "why was the organization being audited, he thought not for profit organizations could not be audited, was this really the IRS, what was I looking for."

Subsequently during the field examination, XXXXXX XXXXXX refused to give the agent documents she requested and would not accept the agent's explanation for its need. Consequently, the agent would direct XXXXXX XXXXXX to the manager who would assure him of the need for these items. XXXXXX XXXXXX would continually go back and forth with refusal to provide documents and calling the manager, hence, prolonging the exam. If XXXXXX XXXXXX feels the agent was "running behind" clearly this was because of his behavior. XXXXXX XXXXXX actions caused the agent to visit the organization a fourth time to complete the exam. Ultimately, XXXXXX XXXXXX provided the agent with the documents requested only if the agent created an IDR and signed for them although the agent previously issued these IDR's.

During the XXXXXX exam, the agent requested the organization's credit card statement from XXXXXX . XXXXXX gave the agent a one-page sheet that was incomplete. In addition, XXXXXX crossed out some of the purchases. When the agent asked for a better copy, XXXXXX replied, "this is all I have and all you will get" Because of XXXXXX refusal to provide the statements, the agent had to summons these statements from XXXXXX . Review of these statements revealed inurement by XXXXXX .

XXXXXX made the following purchases constituting inurement using their XXXXXX credit card:

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TD Bank Credit Card Statements

<u>Transaction Date</u>	<u>Payee</u>	<u>Amount</u>
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On XXXXXXXXXXXX, the agent mailed IDR #3, to XXXXXX requesting explanation and source documents to verify the XXXXXX reported as "paid to XXXXXX" and XXXXXX reported as "Paid for XXXXXX." XXXXXX refused to provide any information about these payments. Subsequently, after review of the canceled checks, the agent learned XXXXXX paid the XXXXXX to XXXXXXXXXXXX. Currently, XXXXXX has not accounted for the XXXXXX.

<u>Payee</u>	<u>Amount</u>	<u>Date</u>	<u>Check Number</u>
	\$ _____		

On XXXXXXXXXXXX, the agent mailed IDR number 6 requesting XXXXXX association with the businesses they contract with and their corresponding Articles of Incorporation. The agent also requested canceled checks verifying loan payments. XXXXXX refused. The agent secured status reports from the State of XXXXXX to verify the relationship between XXXXXX officers and these businesses.

On XXXXXXXXXXXX, the agent mailed IDR number 7, requesting the same information above but also the person who signed the XXXXXXXXXXXX contract. XXXXXX refused.

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During the organization's XXXXXX examination, XXXXXX refused to provide a list of XXXXXX program participants and payments.

The agent was never "running behind" as XXXXXX stated. In fact, XXXXXX XXXXXX homemade spreadsheets were insufficient to conduct the examination because they did not cross-reference checks, invoices and payments. Rather than have XXXXXX XXXXXX Recreate his spreadsheet, to facilitate the exam and ease XXXXXX XXXXXX burden, the agent chose samples for XXXXXX XXXXXX to provide check numbers and invoices that the agent could verify. The agent understands that XXXXXX feels personal attacks will bolster their cause however; the agent would like to stick to the relevant facts of the case.

Finally, the agent has never nor will ever make bullying remarks to any taxpayer.

Conclusion

- XXXXXX substantially serves the private interest of its officers.
- XXXXXX is not a charitable organization under IRC § 501(c)(3) because it conducts its activities as a trade or business under IRC § 162.
- XXXXXX use of its credit card for personal purchases constitutes inurement and is prohibited by an organization exempt under IRC 501(c)(3).
- XXXXXX exempt status should be revoked and the monies received from the officers should be added to revenue as gross income.
- XXXXXX owes the following taxable income for the XXXXXX and XXXXXX tax years respectively. The agent disallowed all expenses paid to the corporations owned by the officers because they are not ordinary and necessary expenses under IRC 162.

From 1120-Tax Year XXXXXX

Gross Receipts	\$ XXXXXX	
Interest	\$ XXXXXX	
Total Income		\$ XXXXXX

Charitable Contributions	\$ XXXXXX	
Other Deductions	\$ XXXXXX	
Total Expenses		\$ XXXXXX
Taxable Income		\$ XXXXXX

From 1120-Tax Year XXXXXX

Gross Receipts	\$ XXXXXX	
Interest	\$ XXXXXX	
Total Income		\$ XXXXXX

Charitable Contributions	\$ XXXXXX	
Other Deductions	\$ XXXXXX	
Total Expenses		\$ XXXXXX
Taxable Income		\$ XXXXXX