

Internal Revenue Service
Appeals Office
Royal Palm One, Suite 350
1000 South Pine Island Road
Plantation, FL 33324

Release Number: **201533022**

Release Date: 8/14/2015

Date: May 19, 2015

NAME
ADDRESS

Department of the Treasury

Employer Identification Number:
Number

Employee ID Number:

Tel:
Fax:

UIL: 7428.02-00

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 June 1, 2007.

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

Organizations exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code are required to operate exclusively for charitable, education, or other exempt purposes. Organizations are not operated exclusively for exempt purposes if the net earnings of the organization inure in whole or in part to the benefit of private shareholders or individuals of the organization. See Treas. Reg. § 1.501(c)(3)-1(c)(2). We have determined that your net earnings inured to the benefit of private individuals and a for-profit organization owned by private individuals through multiple and repeated transactions. As such, you have not operated exclusively for exempt purposes and have operated for the benefit of private interests of individuals in contravention of the requirements of Treas. Reg. 1.501(c)(3)-1(d)(1)(ii).

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 revocation, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must

also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

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.

You have agreed to waive your right to contest this determination under the declaratory judgment provisions of Section 7428 of the Code.

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

Sincerely Yours,

Timothy D. Jarvis
Appeals Team Manager

Enclosure: Publication 892 and/or 556



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division

UIL: 501.03.00

ORG

Date:

April 10, 2014

Taxpayer Identification Number:

Form:

990

Tax year(s) ended:

5/31/20XX & 5/31/20XX & 5/31/20XX

Person to contact / ID number:

Contact numbers:

Phone Number:

Fax Number:

Manager's name / ID number:

ID

Manager's contact number:

Phone Number

Response due date:

May 9, 20XX

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,

Mary A. Epps

Mary A. Epps
Acting Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG	Form: 990	Year/Period Ended 5/31/20XX, 5/31/20XX, 5/31/20XX

LEGEND

ORG - Organization name XX - Date State - state President -
 president website - Website

Issue

Whether the IRS should revoke the tax exempt status of ORG ("ORG" or the "organization") pursuant to I.R.C. §§ 501(a) and 501(c)(3) effective June 1, 20XX where the organization is not operated exclusively for tax exempt purposes, its net earnings inure to the benefit of its President, and it is no longer operating.

Facts

ORG was incorporated under the Not-For-Profit Corporation Act of Illinois on June 23, 19XX. ORG operates in State.

ORG was granted tax exempt status under section 501(a) as an organization described in section 501(c)(3) on January 28, 19XX. The exempt purpose of ORG was to educate people about the Christian faith. Its activities consisted of creating and running: a website called *Website* (www.Website.com), making available to the public via its website, and its e-mail postings its *Daily Devotionals*, and operating a television show called *Website*. Daily Devotionals are daily written articles that focus and comment on practices of the Christian faith.

ORG is run by its president, who is also its founder. The president is responsible for the overall and day to day operations of ORG. He is authorized to sign corporate checks and other financial instruments, execute contracts and leases, and otherwise perform all the daily duties and functions ordinarily conducted by an officer of a corporation.

ORG derives its income from donations. In its website, www.Website.com ORG requests donations and states that donations are tax deductible.

Evidence of Inurement

The IRS's examination of ORG indicated that there was substantial inurement of ORG exempt funds to the president of ORG.

A. Payments Made Directly to the President

The IRS's examination of ORG's bank statements, canceled checks, and related books and records demonstrated that ORG's exempt organization funds were used to make payments to, or on behalf of the President of ORG in tax years ending May 31, 20XX, May 31, 20XX and May 31, 20XX. The president was a signer of ORG bank accounts who signed for ORG's business

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
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expenses. In addition, the president approved expenses and endorsed checks for the payment of his own personal expenses - including signed checks payable to "cash" which were endorsed by the president; ORG funds were also used to pay for the president's personal shopping expenses, personal residence expenses, loans, personal credit card expenses, and car payments. Below is a table showing the total expenses paid by ORG directly on the president's behalf per calendar year:

Tax Year Ending:	12/31/20XX	12/31/20XX	12/31/20XX	12/31/20XX
Total Direct Payments received by the president from ORG per year	\$0	\$0	\$0	\$0

(See Table 1 for a Description of These Payments)

- ORG did not maintain contemporaneous records documenting that the President had a housing allowance.
- ORG did not maintain contemporaneous records documenting that the President had a utilities allowance.
- ORG did not maintain contemporaneous records documenting that the President had a clothing allowance.
- ORG did not maintain contemporaneous records documenting that the President had a medical allowance.
- ORG did not maintain contemporaneous records documenting that the President was reimbursed under an accountable plan. ORG did not maintain expense reports or receipts. ORG payments of expenses incurred by the President were made under a "non-accountable" plan.
- ORG did not maintain contemporaneous records demonstrating that expenses paid were to support its exempt purpose.
- ORG issued a Form W-2 to the President in the following amounts:
Form W-2 for 12/31/20XX: \$0
Form W-2 for 12/31/20XX: \$0
Form W-2 for 12/31/20XX: \$0
Form W-2 for 12/31/20XX: \$0

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The additional amounts received as indicated above were not included on Form W-2 or 1099-MISC issued to the President.

B. Payments Made Indirectly to the President

The IRS's review of bank statements, canceled checks, and related books and records, demonstrated that the funds of a for-profit company wholly owned by ORG's president were used to make payments to, or on behalf, of the president in each tax year. The president used these funds for the payment of his personal expenses. Below is a table showing the expenses paid by the for-profit company on behalf of the president:

Payments from the For-Profit Company for the President's Personal Expenses	12/31/20XX	12/31/20XX	12/31/20XX	12/31/20XX
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Blank	\$0.00	\$0.00	\$0.00	\$0.00
Cash	\$0.00	\$0.00	\$0.00	\$0.00
Off ch #	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Total Payments per year	\$0.00	\$0.00	\$0.00	\$0.00

In connection with the above, the IRS's examination of ORG's bank statements, canceled checks, and related books and records demonstrated that ORG's exempt organization funds were used to make payments in each tax year to the president's for-profit company. The president was the signer of ORG's bank accounts. The president signed and approved payments for an alleged loan and for cash advances from ORG to his for-profit company. The president was the signer of his for-profit company's bank accounts. Below is a table showing these payments from ORG to his for-profit company:

Payments from ORG to the For-Profit Company	12/31/20XX	12/31/20XX	12/31/20XX	12/31/20XX
	(including \$0.00 "loan" of 9/27/XX)			
For-Profit Company	\$0.00	\$0.00	\$0.00	\$0.00

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Total Payments from ORG to the For-Profit Company per year	\$0.00	\$0.00	\$0.00	\$0.00
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- On 9/27/20XX, a Loan Agreement was entered into between ORG and the president's for-profit company. The agreement was executed by the president while acting as both the president of ORG (the lender), and as the president of his for-profit corporation (the borrower). The Loan Agreement provided that ORG would loan \$0 to the for-profit corporation. The loan was at 0% interest and the for-profit was required to repay the full amount on December 27, 20XX. In correspondence dated February 19, 20XX, ORG stated that \$0 was repaid. In addition, no documentation was provided verifying this partial repayment.

In correspondence dated February 19, 20XX, ORG stated the for-profit company received more than one loan from ORG over the years, and in total, the for-profit did not repay ORG \$0 in borrowed funds. Also, in correspondence dated February 8, 20XX, ORG stated that, "ORG funded [the for-profit company] with operational loans and as it was able, [for-profit company] repaid what it could. ORG ended up being owed approximately \$0 million in unpaid loans when [the for-profit company] closed down."

Evidence of a Failure to Operate

In tax year ending May 31, 20XX, ORG filed a Form 990 indicating that the organization had terminated and that it was a final Form 990. ORG reported beginning year assets of \$0 and ending assets of \$0.00. The IRS asked about this in Information Document Request ("IDR") #5 dated January 12, 20XX. IDR #5 asked why the organization filed a "terminated" Form 990 for tax year ending May 31, 20XX; asked who approved the distribution of assets; and requested documents for proof of legal termination including Articles of Dissolution and proof of filing, and a Board Resolution signed by the officers and board of directors indicating the date of dissolution.

In correspondence dated March 18, 20XX ORG stated that, "ORG was involuntarily dissolved on November 13, 20XX by the Illinois Secretary of State and had ceased all operations on March 30, 20XX." With regard to the Articles of Dissolution and Board Resolution, ORG stated, "a.) No articles of dissolution were filed. ORG was dissolved by operation of law for failure to file the corporate annual report. b.) Not applicable."

According to the State Department of State, ORG is listed as "inactive" and "Revoked for Annual Report" dated 9/24/20XX.

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IDRs and ORG Responses as Evidence of the Above

In IDR #2 issued by the IRS dated July 28, 20XX, the IRS requested information on a loan and cash advances that had been made from ORG to a for-profit corporation owned by the president of ORG. The loans and cash advances were reported by ORG to be cash advances of \$0 and \$0 in uncollected ministry consulting income to the for-profit corporation. In the IDR the IRS requested a copy of the loan contract, interest rates, repayment schedule including verification of repayment such as canceled checks, copies of wire transfers, etc., if the loans/advances were collateralized, how the loans furthered ORG's exempt purpose, and if the loans and advances were discussed or approved by the board of directors. The IDR also requested copies of bank statements along with copies of canceled checks for tax years ending 5/31/20XX and 5/31/20XX.

In correspondence dated September 15, 20XX ORG stated the following:

"a. Attachment #2: Loan Agreement

b. The loan has no interest rate since the ministry benefits from the exposure it receives through the efforts of [For-Profit Corporation].

c. The loan installment payments are being made by check. We do not get cancelled checks from our bank.

d. The note is due on 12/27/XX.

e. The loan is not collateralized.

f. The purpose of the loan was to operate the [TV] program when it went national in 20XX in a separate For-Profit entity since it will eventually receive advertising revenues. This was done to ensure that those revenues would not generate a substantial amount of unrelated business income for the 501(c)(3) organization.

g. The loan launched the television program that brings the Gospel of Jesus Christ to the lost and hurting and ministering to people's spiritual needs.

h. The president, [President] had the idea to make the loan. An initial loan was made on 9/27/XX, and additional amounts were loaned to [For-Profit Corporation] through December 20XX.

i. It was a decision made by the President and discussed with the Board at the December 20XX Board Meeting of ORG, as well as at each subsequent Board Meeting, June 20XX, December 20XX, and June 20XX. (Attachment #3: December 20XX Board Meeting minutes)

j. [For-Profit Corporation] has repaid \$0 to date."

ORG included a copy of the December 22, 20XX minutes. The minutes did not document discussion or approval of any loans or cash advances. Instead, the Minutes stated, "The Board discussed the relationship between ORG and [For-Profit Corporation], a State for-profit corporation." (ORG Minutes dated December 22, 20XX) ORG did not provide copies of the subsequent meeting Minutes that it referenced in its correspondence.

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ORG also included a copy of the Loan Agreement which was dated September 27, 20XX. The Loan Agreement contained handwritten notes including what appear to be check marks, dates, and numbers. The Loan Agreement states:

"This loan is between ORG and [For-Profit Corporation].

In consideration for a loan of \$0, [For Profit Corporation] will repay the full amount plus 0% interest on December 27, 20XX. Agreed to this on the 27th day of September, 20XX."

The Loan Agreement was signed by the president, as president of ORG and as president of the for-profit corporation. The Loan Agreement was not signed by any other officers or board of director members.

ORG did not provide copies of the bank statements or canceled checks in its reply to IDR #2.

On November 19, 20XX the IRS issued IDR #3. In IDR #3 the IRS requested copies of the bank statements and canceled checks which had not been received with the previous correspondence. The IDR also requested additional information on the loans and cash advances, and requested documentation for the repayment of the loans and cash advances. IDR #3 asked:

"Also, in your response to Question #2, you indicated that to date, loan installment payments totaling \$0 have been paid by check(s). However you did not provide any verification of any repayments made. You also stated that the loan was discussed during a Board Meeting. You provided a copy of the Minutes of the Board of Directors Meeting dated December 22, 20XX. Our review of the minutes shows that the Board did not in fact discuss any loan to [For-Profit Corporation]. Rather the directors discussed, "the relationship between ORG and [For-Profit Corporation] a State for-profit corporation." (December 22, 20XX Minutes, page 2)

Please answer the following questions with regard to the above-stated \$0 loan:

- Please explain what the handwritten notations indicate. Were these marks on the Loan Agreement before it was signed? Please explain.
- Did the Board of Directors discuss the \$0 loan made to [For-Profit Corporation]? Please provide documentation indicating the loan.
- How was the loan made to [For-Profit Corporation]? (Wire transfer, checks, etc.) Was the loan made in one transaction or several transactions/installments? Please provide documentation such as copies of canceled checks (front & back) and/or copy of wire transfer document.

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- d. Please provide documentation to verify that [For-Profit Corporation] paid \$0 to ORG, such as copies of canceled checks (front & back), and/or copies of wire transfers. On what date(s) did [For-Profit Corporation] repay the \$0, and in what amount(s)?
- e. Is [For-Profit Corporation] paying back the loan in installments? If so, what are the installment amounts and how often are the installment payments made and when are they due?
- f. How does this loan further the exempt purposes of ORG? Why was the loan made at 0% interest? Who in your organization approved and authorized this loan?
- g. Please explain what the following statement included in your response to Information Document Request #2 question #2, means: "The loan has no interest rate since the ministry benefits from the exposure it receives through the efforts of [For-Profit Corporation.]"

ORG responded to IDR #3 in correspondence dated December 9, 20XX. It stated the following:

- "a. The handwritten notations are loan disbursements made to [For-Profit Corporation.]
- b. The Board discussed the \$0 loan to [For-Profit Corporation] at the December 22, 20XX meeting. The minutes are the only documentation.
- c. The transfers were made by check. The handwritten notation reflect the date and amount of each installment. The bank does not provide canceled checks.
- d. The bank does not provide canceled checks. [For-Profit Corporation] made the payments as follows:
 - 01/31/XX \$0
 - 02/15/ XX \$0
 - 04/15/ XX \$0
 - 04/22/ XX \$0
 - 05/12/ XX \$0
 - 05/23/ XX \$0
 - 06/30/ XX \$0
 - 07/10/ XX \$0
 - 10/30/ XX \$0
- e. There is no set repayment schedule.
- f. [For-Profit Corporation] produces the religious television programs of
 . See A2.f. above.
- g. In light of the foregoing explanation of the ownership of [For-Profit Corporation] being ORG, Inc. and not [President], this statement is self explanatory." (ORG correspondence dated December 9, 20XX)

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In the same correspondence dated December 9, 20XX, ORG stated that the for-profit corporation was wholly owned by ORG, not the president personally. It indicated that the error was caused by a typo in the audited financial statements.

On July 7, 20XX the IRS issued IDR #4. IDR #4 requested the copies of bank statements and copies of the canceled checks. IDR #4 requested clarification on who is the legal owner of the for-profit corporation. Legal documentation such as Stock Certificates were requested to determine the legal owner of the for-profit corporation. IDR #4 asked what collection efforts had been taken by ORG to date. Documentation and verification of the loans and payments were requested such as copies of canceled checks, carbon copy of checks, wire transfer statements, bank statements, etc.

In ORG correspondence dated February 19, 20XX, ORG stated that \$0 of the loans had been repaid, leaving \$0 in unpaid loans that could not be repaid. ORG did not include verification of the repayment of \$0. It stated, "Although \$0 of the nearly \$0 loaned to [For-Profit Corporation] was repaid to ORG, the rest is uncollectible." (ORG correspondence dated February 19, 20XX)

The correspondence included a transfer document dated November 1, 20XX in which the President transferred all his stock in the for-profit corporation to ORG. The document states:

"On this 1st day of November, 20XX, all stock in [For-Profit Corporation] is being transferred to ORG, Inc. [President] will continue to act as President and has the authority to make all decisions in the operation of [For-Profit Corporation.]"

On the Form 990 for tax year ending May 31, 20XX ORG filed a final Form 990 by checking the "terminated" box and reporting end of the year assets of \$0.00.

In correspondence dated February 25, 20XX ORG stated that from 1/31/20XX to 10/30/20XX, \$0 of loans were repaid, leaving \$0 in unpaid loans that cannot be repaid. ORG stated that there are no canceled checks.

As previously discussed, the IRS issued IDR #5 on January 12, 20XX. IDR #5 requested the bank statements and canceled checks for tax years ending May 31, 20XX, May 31, 20XX and May 31, 20XX. IDR #5 also requested detailed information on general ledger transactions which appeared to be payments for the president's personal expenses. This included payments to cash, credit cards, banks, stores, and clothing stores.

The following questions are from IDR #5 dated January 12, 20XX:

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"These attachments have been taken from the general ledger and each one is a partial list that does not include all of the payees from the general ledger. For the payments listed in each of the above attachments, please answer the following questions:

- a.) What were the payments for?
- b.) Who authorized the check payments?
- c.) Why are checks made payable to "cash?" What is the cash used for? By whom?
- d.) It was noted that several checks made payable to "cash" were in the amount of zero. Please explain.
- e.) Please define and explain who/what each payee refers to.
- f.) With respect to payments made to individuals, please advise whether any contracts exist with respect to these payments, and if they exist, please provide them. If these payments were for services, please advise what sort of reporting, e.g., Form 1099, ORG made with respect to these payments.
- g.) What consultation services did _____ One provide? Please explain what the consultation fees were for.
- h.) What consultation services did _____ provide? Please explain what the consultation fees were for.
- i.) What are payments to stores such as _____ and _____ for? How are they related to ORG' tax exempt purpose? Please provide documentation indicating such.
- j.) With respect to the 20XX and 20XX Travel & Entertainment accounts, what are these payments for? For each of these expenses listed, please explain how they are related to ORG's tax exempt purpose. In addition, what are the listed payments to banks (_____) and credit card companies (_____) for? Please provide all supporting documentation that establish a connection between these expenses and ORG' tax exempt purpose.
- k.) Some payments were made to "Unknown Person." To whom does this refer? What was the purpose of these payments? How do they relate to ORG' tax exempt purpose?"

In ORG correspondence dated March 18, 20XX ORG stated, "ORG used [Bank]. The ministry has never received canceled checks. At present, the bank statements have not been located but they will be provided if and when they are found." ORG provided some bank statements for tax year ending May 31, 20XX. It indicated that it did not have canceled checks. In the same correspondence dated March 18, 20XX ORG provided its response to the above referenced questions as follows:

"a.) To the best of [President's] recollection, these payments related to the Internet operational costs.

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- b.) [President] authorized the check payments.
- c.) [President] does not recollect why the payments are stated to be for cash. To the best of his recollection the payments were made for operational needs.
- d.) There is no explanation available for the printout did this.
- e.) These are different companies that ORG used for its internet operations.
- f.) There are no written contracts available. These were companies that provided different internet operational services.
- g.) These payments are not consulting fees. These payments to credit card companies. It is unknown why this notation was used.
- h.) These payments are not consulting fees. These payments to credit card companies. It is unknown why this notation was used.
- i.) To the best of [President's] recollection, these payments relate to donor/fundraising activities.
- j.) To the best of [President's] recollection, these payments relate to donor/fundraising activities.
- k.) [President] does not recollect what the payments refer to."

The IRS summoned ORG's bank statements and canceled checks for tax years ending May 31, 20XX, May 31, 20XX and May 31, 20XX from the bank. A review of the bank statements and canceled checks indicated that there were several payments which appeared to be for the personal expenses of the president. This included checks made payable to "cash" which were both signed and endorsed by the president, clothing stores, jewelry stores, medical and dental payments, car payments, credit card payments, bank payments, and payments for home services provided at the president's personal home address. The memo section in the checks had the president's home address printed on it.

On December 13, 20XX the IRS issued IDRs #6, #7, #8, and #9.

IDR #6 dated December 13, 20XX asked the following questions about the transactions which appeared to be personal in nature:

- "1.) For the transactions listed in Attachment A and Attachment B (enclosed) please provide the following information for every transaction listed:
- a.) What is the nature of the payment or expense? Provide a description of the expense.
 - b.) Provide an explanation as to how the expense is used for the organization's operations.
 - c.) Provide supporting documentation such as receipts or invoices.
 - d.) Please explain why the amounts were not reported as compensation."

In response to IDR #6 dated February 8, 20XX, ORG stated the following:

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"[President] has stated that he has no documents in response to your request, only written responses."

Also, in this same response, ORG stated that the expenses were for as follows:

"Car dealership- payment was made for the use of office space for the ministry.

- the payment was for fundraising.

- cash was taken for the operation of ministry shortfalls

BLANK- repayment of funds needed to operate ministry. The \$0. And \$0 went towards TV times.

- funds were used to operate the ministry.

Cash- used to pay for TV time and repay loans for operations.

- used for operations.

Lender- loan payments

Doctor- medical expenses

- used for operations.

- satellite uplink costs

- satellite uplink costs

Finance Company- operations.

- car allowance

Tailor- clothing for TV show

[President]- repayment of funds loaned for operations and payment for State State Fair expenses.

Lawn Care-1- housing expense.

- fundraising.

- used for operations

BLANK- operations

- used for operations

Cash- payroll for [President],; petty cash,; operational loans.

- operations

Lawn Care-2- housing

Doctor- medical

- fundraising expense

Individual- housing

Lake and Pond- housing

- fundraising

Mayor's- fundraising

- clothing for TV

Professional termite: housing

- TV studio

- fundraising

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Pool service- housing”

ORG did not provide documentation to show the exempt purpose for the expenses and payments. ORG did not provide copies of a housing allowance, clothing allowance, medical allowance, utilities allowance, or accountable plan information. ORG did not provide information on loans or how the expenses were used for the organization’s operational needs.

IDR #8 dated December 13, 20XX asked about the loans ORG made to the for-profit corporation. The questions included:

- “Please answer the following questions in regard to payments to [For-Profit Corporation]
- 1.) Please explain the purpose of each of these payments. Indicate how these expenditures are related to ORG operations between 20XX and 20XX.
 - 2.) Provide documentation of any loan transactions relating to these payments.
 - 3.) Provide board minutes indicating that the Board of Directors approved these payments/loans.
 - 4.) For any loans, provide proof of repayment if the amounts were repaid.”

In correspondence dated February 8, 20XX ORG stated:

“ORG funded [For-Profit Corporation] with operational loans and as it was able, [For-Profit Corporation] repaid what it could. ORG ended up being owed approximately \$0 million in unpaid loans when [For-Profit Corporation] closed down.”

IDR #9 dated December 13, 20XX asked about car payments. IDR #9 including the following question:

- “1.) With respect to Attachment A (enclosed) review of the accounts indicates that ORG has made payments to various car dealerships including Car Dealership Inc. and
Who are the owner(s) of these vehicles? Provide proof of ownership.”

In correspondence dated February 8, 20XX ORG stated:

“Payments to Car Dealership were for office space. The owner of Car Dealership is on the board of ORG. The totaled in an accident in June 20XX.”

ORG did not provide proof of ownership for the vehicles or documents to verify that the vehicles were used for official business of the exempt organization.

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Law

Section 501 of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided that no part of the net earnings of such corporations inures to the benefit of any private shareholder or individual. See § 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that in order for an organization to be exempt under section 501(c)(3) it 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 or operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3). An organization must not engage in substantial activities that fail to further an exempt purpose.

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

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Treas. Reg. § 1.501(c)(3)-1(d)(2) defines the term "charitable" for section 501(c)(3) purposes as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the advancement of education.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" for section 501(c)(3) purposes relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Even if an organization's activities serve a charitable class or are otherwise charitable within the meaning of section 501(c)(3), it must demonstrate that its activities serve a public rather than a private interest within the meaning of section 1.501(c)(3)-1(d)(1).

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An organization does not serve a public rather than a private interest within the meaning of section 1.501(c)(3)-1(d)(1) if any of its assets or earnings inure to the benefit of any insiders (or disqualified persons). Section 1.501(c)(3)-1(d)(1)(ii). Inurement is any transfer of charitable assets to the organization's insiders for which the organization does not receive adequate consideration. Inurement can take many forms.

Section 501(c)(3) specifies that an exempt organization described therein is one in which "no part of the net of earnings inures to the benefit of any private shareholder or individual." The words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization. Treas. Reg. § 1.501 (a)-1(c).

Fact patterns suggesting inurement also frequently suggest excess benefit transactions between an exempt organization and a disqualified person under § 4958. The regulations issued under section 501(c)(3), at Treas. Reg. § 1.501(c)(3)-1(f)(ii), instruct the Service to consider a variety of factors to determine whether revocation is appropriate when section 4958 excise taxes also apply:

- (A) The size and scope of the organization's regular and ongoing activities that further exempt purpose before and after the excess benefit transaction or transactions occurred;
- (B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes;
- (C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons;
- (D) Whether the organization's implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and
- (E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f)(6) and § 53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s); who benefited from the excess benefit transaction.

The Commissioner has discretion to weight the factors depending on the particular situation, but the latter two factors are weighted heavier only when the Organization has taken preemptive steps to correct the excess benefit transaction before they were brought to the Commissioner's attention. Treas. Reg. § 1.501(c)(3)-1(f)(iii).

Treas. Reg. § 1.501(c)(3)-1(f)(iv) Example 3 supposes that an organization's founder diverts significant portions of the organization to pay personal expenses, which reduces the funds available to conduct exempt activity, over the course of multiple years. The board of trustees never authorized the organization to pay the founder's personal expenses and takes no action to

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seek repayment or terminate the founder's involvement with the organization. The founder claims that the payments represent loans, but no contemporaneous documentation exists and no payments of principal or interest were ever made to the organization. Based on the factors above, the regulations contemplate that not only does the diversion of funds constitute an excess benefit transaction under § 4958, but the prohibition against inurement has been violated and the organization no longer qualified as an organization described in section 501(c)(3).

In *Better Business Bureau of Washington D.C., Inc. v United States*, 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 *Greg R. Vinikoor v. Commissioner*, T.C. Memo. 1998-152, the United States Tax Court held that whether a financial transaction constitutes a loan depends on all the facts and circumstances, including whether (1) there was a promissory note or other evidence of indebtedness; (2) interest was charged; (3) there was security or collateral; (4) there was a fixed maturity date; (5) a demand for repayment was made; (6) any actual repayment was made; (7) the transferee had the ability to repay; (8) any records maintained by the transferor and/or the transferee reflected the transaction as a loan; and (9) the manner in which the transaction was reported for Federal tax purposes. The Court stated, "A mere declaration by the taxpayers that they intended the transfer to constitute a loan is insufficient if the transaction fails to exhibit more reliable indicia of debt."

In *Rameses School of San Antonio, Texas v. Commissioner*, T.C. Memo 2007-85 the Tax Court held that a private school failed to qualify for exemption under section 501(c)(3) because it operated for the private benefit of its founder. Factors highlighting a prohibited relationship included control by the founder over the entity's funds, assets, and disbursements; use of entity moneys for personal expenses; payments of salary or rent to the founder without any accompanying evidence or analysis of the reasonableness of the amounts; and purported loans to the founder showing a ready private source of credit.

Also in *Rameses School of San Antonio, Texas v. Commissioner*, the taxpayer failed the operational test under Treas. Reg. § 1.501(c)(3)-1(c) on grounds that the taxpayer was operated to benefit the private interests of an individual who served as the taxpayer's executive director, president, chief executive officer, and administrator, and that part of its net earnings inured to her benefit. The administrator made unexplained cash withdrawals on the taxpayer's account. There were also questionable lease agreements, signed only by the administrator, that were never approved by the board. The administrator contended that the taxpayer owned the property, but if this were true, the taxpayer had leased the property from itself under the owner rental agreement.

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The court held that in application of the organizational and operational tests, "exclusively" does not mean "solely" or "absolutely without exception". Nonetheless, the presence of a single nonexempt purpose, if substantial in nature, precludes exempt status, regardless of the number or importance of truly exempt purposes.

I.R.C. § 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

I.R.C. § 6033(a)(1) provides, except as provided in I.R.C. § 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Treas. Reg. § 1.6033-1 (h)(2) provides that every organization which has established its right to exemption from tax, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and section 6033.

I.R.C. § 7805(b)(8) provides that "[t]he Secretary [of the Treasury] may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect." Pursuant to this authority the Secretary has given the IRS discretion to retroactively revoke exemption rulings or determination letters where "the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph." 26 C.F.R. sec. 601.201(n)(6)(i), Statement of Procedural Rules. See also Revenue Procedure 2013-9¹.

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Taxpayer's Position

Taxpayer agrees with the revocation because they state they are no longer operating as of May 31, 20XX; at which time they filed a final Form 990 for tax year ending May 31, 20XX.

Taxpayer stated that ORG has been dissolved in 20XX and has not engaged in or received any financial contributions since it was dissolved in 20XX.

Government's Position

ORG's exempt status should be revoked effective June 1, 20XX because the organization was not operating exclusively for exempt purposes according to case law, the Code, and its regulations as its net earnings inured to the benefit of its president, and because the organization ceased operating.

During the examination, the IRS found that the organization's exempt funds were being used for the private benefit of the organization's president. ORG's exempt funds were used to pay for its president's clothing, jewelry, medical and dental expenses, credit card expenses, car payments, loan payments, and personal house expenses. The IRS also determined that ORG's funds were used to make checks payable to "cash" and these checks were signed and endorsed by the president.

In addition, ORG exempt funds were used to make loans and cash advances to a for-profit corporation owned and controlled by the president of ORG. The loans and cash advances were made at 0% interest and were not collateralized. ORG was unable to provide proof of repayment for the loans and cash advances.

The payments of the president's personal expenses were approved by the president. Other officers and board of director members did not approve the transactions. ORG did not seek correction of the transactions.

According to Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii), an organization is not organized or operated exclusively for one or more exempt purposes when its net earnings inure in whole or part to the benefit of private shareholders or individuals. In addition, ORG stated that the organization is no longer operating. ORG filed a final Form 990 for tax year ending May 31, 20XX.

On the issue of the retroactivity of the IRS's determination, ORG operated in a manner that was different from what it represented to the IRS in its application, Articles of Incorporation, By-Laws and Forms 990 wherein ORG asserts it operates for tax exempt purposes and in accordance with section 501(c)(3). A section 501(c)(3) organization may not allow its net earnings to inure to the benefit of any one individual or shareholder. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Despite

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these representations, ORG did not have any withdrawal or check-writing limitations imposed on its president, or a method of review for the above-described payments such as an overseeing board of directors, and regular board meetings. Without such procedures in place, inurement occurred between ORG and its president. As such, the IRS's determination to revoke retroactively is appropriate.

For these reasons, the exempt status of ORG should be revoked effective June 1, 20XX.

ORG is responsible for filing Forms 1120.

Conclusion

ORG's 501(c)(3) tax exempt status should be revoked effective June 1, 20XX because the organization was not operating exclusively for tax exempt purposes, its net earnings inured to the benefit of its president, and the organization no longer operates, as demonstrated above.

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Table 1

Expenses paid by ORG directly on the president's behalf per calendar year

Payments from ORG for President's personal expenses	12/31/20XX	12/31/20XX	12/31/20XX	12/31/20XX
Lawn Care (For service at president's personal residence)	\$0.00	\$0.00	\$315.00	\$50.00
Car Dealership, Inc.	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Blank (Endorsed by president)	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Cash (Endorsed by president)	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Lawn Care-2 (For service at president's personal residence)				
Doctor (for president's medical expenses)	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Doctor (For president's medical expenses)				
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Individual (For service at president's personal residence)				
Finance Company	\$0.00	\$0.00	\$0.00	\$0.00
Lake & Pond Maintenance (For service at president's personal residence)	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Mayors	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Professional Termite and Pest (for service at president's personal residence)				
	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00

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Tailors	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00
Pool Service (for service at president's personal residence)				
[President]	\$0.00	\$0.00	\$0.00	\$0.00
Total Direct Payments received by the president from ORG per year	\$0.00	\$0.00	\$0.00	\$0.00