

**Internal Revenue Service**

Appeals Office  
2525 Capitol Street, Suite 201  
Fresno CA 93721

**Department of the Treasury****Employer Identification Number:**Release Number: **201802017**

Release Date: 1/12/2018

Date: October 17, 2017

UIL Code: 509.01-01

**Person to Contact:**

Employee ID Number:

Tel:

Fax:

A

B

**Certified Mail**

Dear :

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Section 501(c)(3) of the Code.

We have hereby revoked the favorable determination letter to you dated December 19, and you are no longer exempt under Section 501(a) of the Code effective January 1,

We made the adverse determination for the following reason:

You failed to demonstrate that you are operated exclusively for any exempt purpose as described in Internal Revenue Code 501(c)(3). This failure includes failing to substantiate how your expenditures in further tax-exempt purposes.

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

You're required to file Federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676).

If you were a private foundation as of the effective date of the adverse determination, we will consider you 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, Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation, by the 15th Day of the fifth month after the end of your annual accounting period.

We'll 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 either:

- United States Tax Court,

- The United States Court of Federal Claims,
- The United States District Court for the District of Columbia.

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court  
400 Second Street, NW  
Washington, DC 20217

US Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20005

U. S. District Court for the District of Columbia  
333 Constitution Ave., N.W.  
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeals an IRS Determination on Tax -Exempt Status, for more information about the Appeals process.

You also have the right to contact the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You If you qualify for TAS assistance, which is always free. TAX will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS 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.

If you have any questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosure: Publication 892



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

Date:  
December 20, 2016  
Taxpayer Identification Number:

Form:

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**

**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,

A handwritten signature in black ink, appearing to read "Mary A. Epps", with a long, sweeping flourish extending to the right.

*for* Mary A. Epps  
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 |
| <b>Explanation of Items</b> |   |                         |
| Name of Taxpayer:           |   | Year/Period Ended:      |

**Issue 1:**

Does \_\_\_\_\_ continue to qualify for exemption from Federal income tax under Internal Revenue Code section 501(c)(3)?

**Facts:**

**History -** \_\_\_\_\_ (Foundation) was created by the execution of the Trust Agreement on \_\_\_\_\_ in \_\_\_\_\_ in \_\_\_\_\_ State (attachment 1).

Article II of the Foundation's Trust Agreement states \_\_\_\_\_ is created exclusively for charitable, religious, scientific, literary and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code.

The Foundation submitted Form 1023 (attachment 2), *Application for Recognition of Exemption Under Section 501(c)(3)*, to the Internal Revenue Service (Service) on \_\_\_\_\_.

The top margin of the first page of Form 1023 shows *Disaster Relief*, in a hand written note.

The narrative description in Part IV, *Narrative Description of Your Activities*, provides in part:

The mission of \_\_\_\_\_ is to provide compassion, hope and resources to enable people to rise above the ashes of life's disasters.

The Foundation will be classified as a private non-operating foundation and plans to be exclusively a grant making foundation as defined in IRC 4942.

The Foundation will make grants exclusively to other qualified 501(c)(3) organizations classified as private non-operating or public charities for religious, charitable, educational, scientific, and literary purposes. See Internal Revenue Publication 78.

The Board of Trustees will develop operating procedures to assure that the Foundation adheres to the rules of IRC section 4941, 4942, 4943, 4944 and 4945 as applicable to private operating foundations.

Part V shows \_\_\_\_\_ and \_\_\_\_\_, husband and wife, as the only Trustees.

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Part VIII, question 13 indicates the Foundation will make grants, loans, or other distributions to organization(s) and an attached narrative provides details regarding the question (page labeled 19 of 29). The narrative states in part that grants, loans and distributions will further Foundation's charitable purposes, the Foundation will keep detailed records, a grant application is necessary, a grant proposal is required, and provides for oversight procedures subsequent of the grant distribution; see pages labeled 20 through 29.

Part X, question 1b requests a statement to describe where the Foundation's organizational documents meet the provision provided by Code section 508(e). The Foundation's statement references Trust Agreement, Article IV. The statement provides in part no part of the Foundation's net earnings shall inure to the benefit of any individual, the Trustees shall not engage in any act of self-dealing as defined in Code section 4941(d), nor make any taxable expenditure as defined in Code section 4945(d).

The Service issued Letter 1076 (attachment 3) on \_\_\_\_\_ recognizing the Foundation as an exempt organization under Code section 501(c)(3) and as a private foundation under Code section 509(a).

#### Present Examination

**F990PF** – The Foundation's Form 990-PF (attachment 4), *Return of Private Foundation*, for the period ending \_\_\_\_\_, Part I (Analysis of Revenue and Expenses) shows \$ \_\_\_\_\_ in total expenses; \$ \_\_\_\_\_ in occupancy and \$ \_\_\_\_\_ in travel expenses is a partial list of the of the items comprising the total expense amount. Part I shows the Foundation did not pay out any contributions, gifts, or grants.

Part VII-A (Statements Regarding Activities) indicates the Foundation does not have a web site.

Part VII-B (Statements Regarding Activities for Which Form 4720 May Be Required), question 1 indicates the Foundation did not reimburse the expenses or make any assets available for the benefit of disqualified person.

Part VIII (Information About Officers, Directors, Trustees...) shows \_\_\_\_\_ and \_\_\_\_\_ as the only Trustees.

Part IX-A (Summary of Direct Charitable Activities) shows N/A.

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Part XII (Qualifying Distributions) shows \$ \_\_\_\_\_ as the amount paid to accomplish charitable, etc., purposes.

Part XV (Supplementary Information) indicates the Foundation only makes contributions to preselected charitable organizations and does not accept unsolicited requests for funds but the recipient schedule shows N/A.

Schedule B (Schedule of Contributors) shows \_\_\_\_\_ and \_\_\_\_\_ contributed \$ \_\_\_\_\_ and \$ \_\_\_\_\_ respectively. Both entities are owned by the Trustees. The \_\_\_\_\_ contributed \_\_\_\_\_.

**Website** – The Foundation has a website (www. \_\_\_\_\_ org) consisting of five pages (attachment 5). The CONTACT page provides the Foundation's contact information, shows View Cart, Oder Status, Products, Category Index, Product Index, and Shipping & Returns tabs at the bottom of the page. The DISASTER RELIEF shows two donation tabs; a general fund and \_\_\_\_\_ Relief Fund. The RESOURCES page shows *Check out a variety of sources available to help get going again*, but the page does not list any resources. The DONATE NOW page allows a visitor to click on a predetermined amount beginning with \$ \_\_\_\_\_ up to \$ \_\_\_\_\_, or enter another amount. The Product Index page shows aromatherapy oils for sale.

A Letter 3611 was mailed to the Foundation on \_\_\_\_\_ to each of the two addresses found on file and RA called the Foundation numerous times and left messages. On \_\_\_\_\_ Trustee \_\_\_\_\_ (Trustee) called and said he did not receive Letter 3611 and could not commit a \_\_\_\_\_ meeting; he would check his calendar and call RA back. RA called TP twice and left messages but calls were not returned.

On \_\_\_\_\_ RA received a letter dated \_\_\_\_\_ from Trustee (attachment 6) in which he states he will cooperate fully, he is unable to meet face to face, and instructs RA not to visit Trustee's place of business. The letter does not provide a telephone number and provides that all questions be sent to the Foundation's address. Trustee pledges to comply with IDR 1 by \_\_\_\_\_. Trustee has not returned any telephone calls subsequent to \_\_\_\_\_.

Trustee provided the requested information on \_\_\_\_\_ but for unknown reasons the packet was returned to Trustee by mail room personnel. On \_\_\_\_\_ RA received a packet as response to Form 4654, Information Document Request (IDR 1).

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In a subsequent Form 4564 (IDR 2) Trustee was asked detailed follow up questions regarding the documentation he provided as a response to IDR 1. Trustee provided a 21 page response to IDR 2 (attachment 7).

IDR 1 requested the Minutes of the governing body. Trustee provided a letter (attachment 8) in which he cites Article X of the Trust Agreement and provides *no one dealing with the trustees need inquire concerning the validity of anything the trustees purport to do. No one dealing with the trustees need see the application of anything paid or transferred to or upon the order of the Trustees of the* The letter also states Trustee can't comply in good conscience with the request.

IDR 1 requested an Income and Expense Statement for the period under examination. Trustee provided three financial documents and the one with the hand written notes reflects the figures on the return (attachment 9). The statement shows \$ in Building and Property Security expense, \$ in Landscaping expense, and \$ Utility expense; which were combined and reported as the \$ ( Occupancy expense on the return.

IDR 1 requested Trustee have available income and expense receipts. Trustee provided receipts and grouped them by line item.

Line 16a shows \$ in legal fees. Trustee provided a five page response to IDR 1 which consisted of three receipts including a \$ payment to (attachment 10). Trustee's response to IDR 2 to explain and provide documentation to show how these expenses further the Foundation's charitable purposes is provided in item number 26 of his response and states *In accordance with the trust agreement and supported by minutes, the foundation purchased property to provide charitable, religious, scientific and educational services to those in need. In addition in order to construct the facility, the decision was made to purchase a heavy duty pickup in order to move construction material to the remote location. All expenses are in accordance with the trust agreement.* No other documentation was provided.

Line 18 shows \$ in tax expense and Trustee provided a response to IDR 1 which consisted of a Closing Statement for the purchase of two parcels of land as a receipt (attachment 11). Trustee's response to IDR 2 to explain and provide documentation to show how the land purchase further the Foundation's charitable purposes is provided in item 27; see question 26. No other documentation was provided.



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Line 20 shows \$ \_\_\_\_\_ in Occupancy expense and Trustee provided a 15 page response to IDR 1 which consisted of \_\_\_\_\_ receipts (attachment 12). Some receipts are from national retailers such \_\_\_\_\_, and \_\_\_\_\_.

Other receipts indicate a regional retailer for items such as a 20 horse power tractor, propane, starter repair, and a Ford truck purchase. Trustee's response to IDR 2 to explain and provide documentation to show how these expenses further the Foundation's charitable purposes is provided in item 28; see question 26. No other documentation was provided.

Line 21 shows \$ \_\_\_\_\_ in travel expenses and Trustee provided a response to IDR 1 which consisted of 29 pages containing 28 Expense Reimbursement Forms dated from June to December \_\_\_\_\_ (attachment 13). The forms reimburse the Trustee for mileage and items purchased on a weekly basis in which he traveled \_\_\_\_\_ miles. The notes on the form indicate some of the purchased items were fruit trees, planting equipment, chains saw repair, propane, pump, fix a flat, batteries, heating lights, heating pots, fence connectors, solar panels, fuel, coffee, battery connectors, solar battery minder, air compressor, chipper air filter, tarp, rope, post driver, tie downs, power adaptor, auto shelter, chipper belt, solar array and inverter, axe, breaker bar, and deep cycle battery. The form provide a place to insert a Business Purpose, some are blank, some state the reason for the visit was to water orchard, remove barb wire, establish walking trails, repair flat tire, install solar panel, brush clearing, chipping, install portable garage, transport tractor, install outhouse, security check perimeter, winterize trailer, install battery, install rod gates, remove fallen trees, brush burning, weather stripping, prepare for heat install, and measure for stove install. Trustee's response to IDR 2 to explain and provide documentation to show how these expenses further the Foundation's charitable purposes is provided in item 29; see question 26. No other documentation was provided.

IDR 2 (item 1) requested a narrative detailing the Foundation's charitable, religious, scientific, literary and or educational activities. The Trustee's response is *The foundation endeavors to educate people who are interested in learning how to improve their lifestyles, health, marriage, business based on Biblical principles.*

IDR 2 (item 2) requested a list of all the organizations, and the amounts, the Foundation has made distributions to. The Trustee's response is found on page 10 and it shows seven distribution; all distributions are dated in \_\_\_\_\_. The first distribution was made to \_\_\_\_\_ (a go cart racing organization), four distributions were made to \_\_\_\_\_ (presumably a church), one distribution was made to \_\_\_\_\_

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(presumably a charitable organization), and one distribution to (presumably ).

IDR 2 (items 40 – 48) requested details regarding the Foundation's website. The Foundation stated that some of the items found on the website were inserted by the web developer through a template of some sort. The Foundation did receive any donation for relief, it did not sell aromatherapy oils, and the web site has been deactivated.

**F990PF** – The Foundation's Form 990-PF (attachment 14) for the period ending , Part I shows \$ in total expenses; \$ in automotive, \$ in landscaping, \$ in mileage reimbursement, \$ in repairs & maintenance, \$ in small tools & equipment, and \$ in utilities is a partial list of the items comprising the total expense amount.

Part VII-A indicates the Foundation does not have a web site.

Part VII-B, question 1 indicates the Foundation did not reimburse the expenses or make any assets available for the benefit of disqualified person.

Part VIII shows and as the only Trustees.

Part IX-A shows N/A.

Part XII shows \$ as the amount paid to accomplish charitable, etc., purposes.

Part XV does not indicate the Foundation only makes contributions to preselected charitable organizations and does not accept unsolicited requests for funds and does not show if grants or contributions were paid.

Schedule B shows contributed \$ is owned by Trustees.

The Foundation has not filed its Form 990PF for the period ending . The Foundation filed a second extension making it due by , but at the time this report was prepared the return was not filed.

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The Foundation's Form 990PF for the period ending \_\_\_\_\_ Part I shows \$ \_\_\_\_\_ in travel, conference, and meetings expenses. Part I, line 25 indicates the Foundation did not make any contributions, gifts, or grants.

A letter dated \_\_\_\_\_ and IDR 3 were sent to the Foundation to advise the examination was expanded to include the two subsequent years and to request corresponding documentation; the response date was \_\_\_\_\_. The Foundation did not comply with request.

**Law:**

Code section 501(c)(3) exempts from Federal income tax corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Code section 509(a) provides in part, the term "private foundation" means a domestic or foreign organization described in Code section 501(c)(3) other than an organization described in Code section 170(b)(1)(A) (other than in clauses (vii) and (viii)),

Code section 509(a)(2) an organization which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of Code section 513), not including such receipts from any person, or from any bureau or similar agency of a governmental unit,

Code section 509(a)(3)(A) an organization that is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2), is operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2), supervised or controlled in connection with one or more such

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organizations, or operated in connection with one or more such organizations, and is not controlled directly or indirectly by one or more disqualified persons (as defined in Code section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

Code section 509(a)(4) an organization which is organized and operated exclusively for testing for public safety.

Code section 170(b)(1)(A)(i) describes a church or a convention or association of churches.

Code section 170(b)(1)(A)(ii) describes an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Code section 170(b)(1)(A)(iii) describes an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research.

Code section 170(b)(1)(A)(iv) describes an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Code section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions.

Code section 170(b)(1)(A)(v) describes a governmental unit referred to in subsection (c)(1).

Code section 170(b)(1)(A)(vi) describes an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Code section

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501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public.

**Federal Tax Regulations:**

Regulations section 1.501(c)(3)-1(a) states in part that in order to be exempt as an organization described in Code section 501(c)(3), the organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Code section 501(c)(3).

Regulations section 1.501(c)(3)-1(c)(1) provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Regulations section 1.501(c)(3)-1(b)(4) states in part that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Regulations section 1.6001-1 state in part except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information. In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by Code section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under Code section 501(a) shall keep such permanent

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books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by Code section 6033. 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 so long as the contents thereof may become material in the administration of any internal revenue law.

**Taxpayer's Position:**

A copy of this report has not yet been provided to TP.

**Government's Position:**

**Issue 1:**

The Foundation does not continue to qualify for exemption under Code section 501(c)(3) because it did not demonstrate that it is organized or operated exclusively for a charitable purposes as required by the Code section 501(c)(3) and Regulations 1.501(c)(3).

The Trustees purchased land, vehicles, small tools, farming equipment, trees, other items, and received expense reimbursements, however the Foundation's proposed activities on Form 1023 was to be exclusively a grant making foundation. The Trustees did not demonstrate the purchases furthered a charitable purpose.

Based on the information provided by the Trustee for the period ending \_\_\_\_\_, a review of the \_\_\_\_\_, and \_\_\_\_\_ Forms 990PF, the Foundation never operated as it proposed to operate on Form 1023.

**Conclusion:**

The Foundation does not continue to qualify for exemption under Code section 501(c)(3) because it did not demonstrate that it is organized or operated for any charitable purpose and its assets inure to the benefit of the Trustees. The effective date of the proposed revocation is \_\_\_\_\_