



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

Release Number: 201834013
Release Date: 8/24/2018
UIL Code: 501.03-00

Date: December 22, 2017

Tax Year Ending:
December
Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:
(Phone)
(Fax)

CERTIFIED MAIL – RETURN RECEIPT

Dear _____ :

This is a final 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 Code section 501(c)(3) effective January 1, 20XX. Your determination letter dated August 22, 20XX is revoked.

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

Organizations described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to establish that you are operated exclusively for exempt purposes and that no part of your net earnings inure to the benefit of private shareholders or individuals.

The transferors/donors of business and property interest, including limited partnerships and limited liability companies, to you handled their business and property interests in substantially the same way both before and after the purported transfers/donations to you.

Also, little or no actual economic benefits were transferred to you as a result of the purported transfers/donations.

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

Organizations that are not exempt under section 501 generally are required to file federal income

tax returns and pay tax, where applicable. For further instructions, forms, and information, please visit www.irs.gov.

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 and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, N.W.
Washington, D.C. 20217

U.S. Court of Federal Claims
717 Madison Place, N.W.
Washington, D.C. 20439

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

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under section 7428 of the Internal Revenue Code.

The Taxpayer Advocate Service (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. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

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

Sincerely,

Maria Hooke
Director, EO Examinations

Enclosure:
Publication 892



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

Date:
June 10, 2016
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:
20XX, 20XX, 20XX, 20XX, 20XX
Person to Contact/ID Number:

Contact Numbers:
Telephone:
Fax:
Manager's Name/ID Number:

Manager's Contact Number:

Response due date:
June 20, 2016

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,

Margaret Von Lienen
Director, EO Examinations

Enclosures:

Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer	-Tax Identification Number	DECEMBER 31, 20XX- 20XX

Issue:

Whether the I.R.C. § 501(c)(3) exempt status of _____, should be revoked effective January 1, 20XX.

Facts:

The _____ was organized as a section 501(c)(3) organization on February 1, 20XX. The organization was granted exempt status under section 501(c)(3) as a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) per our letter dated August 22, 20XX.

Articles of Incorporation states:

The organization is organized exclusively for charitable, scientific, literary, and artistic purposes under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future tax code

Form 1023

_____ stated on its Form 1023 that its specific activities were "management of assets will be inverted into fund that is a LP". The organization "will accept unrestricted partnership interest- no conditions". The organization responded to our July 16, 20XX Form 1023 follow-up letter requesting the organization to explain in detail, the sources of its gifts and contributions in 20XX, and to explain how they would satisfy the public support tests of IRC 170(b)(1)(A)(vi). The organization responded in their letter dated August 14, 20XX by stating: _____ will receive the bulk of its contributions from _____. (_____) was formed in 19XX and is currently classified as a public charity. _____ satisfied the public support test and is considered a valid 501(c)(3) public charity. For purposes of the "public support test", contributions will be counted if they are received directly from the public or indirectly from other publicly supported organizations under Regulation 1.170-2(b)(5). Contributions received from publicly supported organizations are considered "indirect contributions" from the public. Therefore, any and all contributions received from _____ a publicly supported organization, will be considered indirect contributions from the public and will satisfy the public support requirement. Again, _____ will provide the bulk of funding for _____ charitable endeavors.. The Form 1023 shows _____ and _____, the parents of _____, as the president and vice-president.

(represented by _____, a Director of the organization) stated in its letter dated September 30, 20XX, to the IRS that it is soliciting various financial professionals to have their clients do charitable planning with

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According to _____, the individual planners will have no private interest in _____, but will merely use the organization as their charity of choice when and if they take on clients with charitable priorities. They will only be a source of clients for the organization and will receive no compensation for their efforts.

Forms 990 for 20XX thru 20XX year were examined. In statements provided during the examination, _____ stated that:

() primary goal is to support charitable organizations exclusively both locally and nationally. Funds are raised through distributions from LPs and LLCs wherein _____ has been gifted an interest. _____ markets its services through financial planners who implement charitable giving plans for their clients. They refer their clients to _____ as their designated charity in most situations. _____ has as a program where certain donor can direct their gifts to their favorite charities or charitable causes. All directed gifts are required to be distributed to organizations who qualify under one or more of the exempt categories. _____ only material expense is the marketing/fundraising fees paid to financial advisors who refer donors to _____.

20XX Form 990

In its 20XX Form 990, the organization reported \$0 as total contributions (0- was noncash), investment income of \$0, royalties of \$0 and net rental income of \$0. Total assets shown on the balance sheet was \$0. It reported a total of \$0 in grants. The "fundraisers" were paid \$0 with \$0 paid to one individual. The organization did not issue Form 1099 to any of these individuals.

20XX Form 990

In its 20XX Form 990, the organization reported \$0 as total contributions (\$0- was noncash), investment income of \$0, royalties of \$0, net rental income of \$0, and a capital loss of \$0. Total assets shown on the balance sheet was \$0. It reported a total of \$0 in grants. The "fundraisers" were paid \$0 with \$0 paid one individual. The organization did not issue Form 1099 to any of these individuals.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
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The Forms 990 for 20XX- 20XX state that the same individuals (, and) were the officers and board members. In 20XX, took over the organization. Agent interviewed on April 22, 20XX and he stated that he hasn't been involved with the organization for the last years. Agent also noted that signed all of the returns except for 20XX (signed by), 20XX (signed by but name was typed in, and 20XX return that was signed by

is an attorney, a certified public accountant, and a certified valuation analyst. He earns his revenue from high-wealth clients to which he assists in forming and administering various partnerships and LLCs established to accomplish charitable giving. He also provides valuation services. He serves as the organization's accountant, bookkeeper, tax return preparer, legal advisor, spokesman, and POA. The Board of Director minutes provided by the organization indicated that he also was the secretary of the organization

has organized several tax-exempt entities including .; .()*; (); ((is a one- member LLC under) and -(For Profit). These have been used as the organizations to which many of his clients ultimately donate portions of their LLC interest to (i.e. Interest of 0%). The LLC entities then distribute funds to the tax-exempt company and it then sends checks to various other charities (such as churches after charging an administration/management fee). When the clients gift a portion of the created LLC's, a charitable deduction is created. He receives income for his professional services and the related tax exempt entities serve as the charitable gifting avenue. During 20XX, created the following transactions:

1. On August 30, 20XX, was formed by and he paid \$0 for 0 member units.
2. On August 31, 20XX, he transferred 0 units to for \$0 consideration (gifted).
3. On October 12, 20XX, "gifts" Intellectual Property (IP) stated to be: Customer lists, Contacts lists, Trade Secrets, Systems and Processes, Client Agreements, Appraisal Systems and Accounting Processes to for \$0 consideration. He appraised this IP at \$0. These are the same services he performs in his private business and reports on his individual tax return. He explained to his business associates (financial planners and contacts) that payments from new clients (Nov 20XX and forward) requesting

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
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- formation and administering services for their charitable gifting arrangements are to now be made payable to
4. On October 13, 20XX, transferred the IP to
 5. On October 15, 20XX, was created. was issued 0% of the membership interest (0 units)
 6. On October 20, 20XX, transferred the IP to in exchange for 0 LLC units of . (formed on August 20, 20XX and he paid \$0 for 0 member units. On August 31, 20XX, transferred 0 units to for \$0 consideration.)
 7. On October 23, 20XX, transferred the 0 units in to for \$0 consideration. (This was not reported on Form 990)
 8. On October 25, 20XX, and entered into a Trade Secret and Intellectual Property Licensing Agreement whereby pays 0% of its gross revenues to for the use of the IP.
 9. On April 30, 20XX, transferred his 0% interest in to for \$0 consideration
 10. prepares all of the related entities tax returns.
 11. On January 1, 20XX, () assigned any and all interest of any kind currently owned in Limited Partnerships or LLCs to , a 501(c)(3) public charity.
 12. On February 11, 20XX, filed Certificate of Dissolution with the Secretary of State Office. (Voluntarily Dissolved- 1/1/20XX, Adoption date- 1/1/20XX and effective date- 2-11-20XX)
 13. On February 11, 20XX, created - a For-Profit Domestic Corporation

prepared and signed the 20XX and 20XX Form 990 returns. It should be noted that on the 20XX Form 990, name was typed on the return. The required signature was actually signature.

Board Meetings

The only board meeting held was the annual meeting where officers were appointed. No other issues were documented and no other actions were authorized. The organization did not provide any minutes or other documentation to show that was elected or named President of the organization as reported on the organization's Form 990 for 20XX.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
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Board of Directors

The organization stated (correspondence letter 10/8/20XX) that from 20 - 20XX, the directors were not related. and his wife have been the directors of from 20XX to present. works full time for County school corporation. (Revenue Agent confirmed this and that he is employed as a custodian) during his interview of on 4/29/20XX. is currently attending college and works for a local bank. (Agent did not confirm this statement). stated in the interview that he has not been active with the organization for over years. The filed Form 990 indicates the following: 20XX- - Pres, - VP, 20XX- - VP, - Pres, 20XX- - Pres, - VP, 20XX- - Pres, - VP, 20XX- - President

Activities

The organization stated that their activities support local and nationwide charities as part of its mission. The Directors (,) choose the charitable organizations to support for 20XX- 20XX. They stated that there were no loans made prior to 20XX. The organization contracts with professional fundraisers to help raise funds for the organization. The fundraiser is paid a percentage of the "gift" amount received. These fees are only paid after the "gift" has been received by the organization. An examination of the organization's financial and operational records indicates that the organization had substantial "donors" who reside outside of . The primary "fundraisers" live and work in . It was noted that these fundraisers did not receive a Form 1099 for the clients they provided.

Promotion of Partnership

The examination of the financial and operational records presented showed that main activity was the promotion of a program where a donor creates an entity, a LLC entity, with a 0% non-voting interest owned by the donor, and a 0% voting interest owned by donor. The donor contributes the 0% non-voting interest to creating a partnership. Through the agreement creating the partnership entity, the general partner retains full control of the partnership entity. The non-voting interest cannot be sold, transferred, or substituted without the general partner's permission. The general partner can admit new non-voting interest members diluting ownership and the general partner can dispose of assets at will and on any terms and controls any distributions. In some partnership agreements, the non-voting interest assigns a power of attorney to the general partner. The donor then donates the non-voting interest to

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while retaining the ownership of the general partner. The donor never relinquishes control of the underlying assets. There were 0, 0, 0, 0, and 0 partnerships returns (Form 1065) filed respectively for 20XX, 20XX, 20XX, 20XX, and 20XX.

The Partnership/LLC/LP agreement that has with its donors does not allow to have any control of the assets of the partnership. The General Partner (Donor) has complete control of the assets. He can sell, trade, or use the assets for nonexempt purposes without consent of . only receives the income generated from the assets as reported on the Form 1065's and K-1's. It was also noted that several identified financial planners had setup LLC/LP with and therefore created a relationship that will identify them also as an insider.

charges a fee to set up and maintain the partnerships and to appraise the non-voting interest donated to . He charges an additional annual fee based on the asset value. Appraisals are for around 0% to 0% of the book value even though the appraisal states that non-voting interest is not transferable and has no control. He is the founder and is listed on the 20XX Form 990 as the president of and controls the bank account of . He deposits substantially all earnings to accounts. has no accounting records. During the examination, it was determined that had a personal accounting, legal and appraisal service and that receipts for those services were sometimes deposited into bank account. An examination of the cancelled checks revealed that two checks were written to on July 10, 20XX and August 18, 20XX in the amounts of \$0 and \$0 The memo on the checks indicated that they were loans to . told another Revenue Agent that this was not a loan, but a "return of capital" since he was not allowed a deduction he made in a prior year as a result of her examination of his return. There was no loan agreement drawn up and there was nothing recorded in the minutes to indicate approval of the loan by the Board of Directors. In 20XX, was listed as the President on the Form 990.

filed Articles of Dissolution with the Secretary of State on January 1, 20XX. The effective date listed on the document states February 11, 20XX. Agent asked via a phone conversation on June 1, 20XX which date is correct. stated that January 1, 20XX is the effective date. On that date, all assets were transferred to . had previously provided the assignment of assets document to agent.

The LLC and partnership interests accepted by that were reviewed included very few prepared by independent contractors. The majority was prepared by and all that the agent reviewed were appraised by . Fees for the preparation and appraisals were deposited to the account but it was not possible to determine if the funds were part of funds or

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private practice. The agreements do not allow sales or distributions and the appraisals note that the donated 0% limited interests are completely controlled by the general partner. Donations are exclusively non-voting interests in partnerships and LLC's, a small amount of cash distributions and fees. Investments are the maintained partnership and LLC agreements and residual income.

Income from the partnerships in 20XX- 20XX

After donation receives K-1 Forms for the allotted share (usually 0%) of income from the partnership. The general partner receives 0% of the income. treats the income as passive income excluded from UBIT.

During the years 20XX- 20XX, failed to report on its Form 990, income from Schedule K-1's. The Schedule K-1's arise from limited partnership interests resulting from non-cash contributions. The donors claim a charitable deduction for the amounts reported as contributions on Form 990. The donors are the general partners that retain control over the assets held by the partnerships. The income reported on the Schedule K-1's issued to should be reported on its Form 990.

Year	Per Schedule K-1	Per Form 990	Unreported Income
20XX	\$ 0	\$ 0	\$ 0
20XX	\$ 0	\$ 0	\$ 0
20XX	\$ 0	\$ 0	\$ 0
20XX	\$ 0	\$ 0	\$ 0
20XX	\$ 0	\$0	\$ 0

For the years 20XX through 20XX, unreported its gross income by a total of \$0.

In a past examination (20XX- 20XX), IRS successfully revoked the tax exempt status of a related entity also created and operated by . That entity was also created and operated in the exact same manner as . agreed to the decision to revoke the entity's exempt status and stated in his response (dated 12/20/20XX) to our IDR request that the revocation of tax exempt status as of 12/31/20XX would be an obvious way to settle the case.

Law:

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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).

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code 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.

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

Section 1.501(c)(3)-1(c)(2) of the regulations 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.

Section 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.

Section 1.501(c)(3)-1(d)(2) defines the term "charitable" for §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.

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

Section 1.501(c)(3)-1(e) provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of §501(c)(3) if the trade or business furthers an exempt purpose, and if the organization's primary purpose does not consist of carrying on an unrelated trade or business.

In *Better Business Bureau v. United States*, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will

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preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of section 501(c)(3).

Rev. Rul. 68-489, 1968-2 C.B. 210, holds that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes. The revenue ruling states that the exempt organization ensures use of the funds for section 501(c)(3) purposes by limiting distributions to specific projects that are in furtherance of its own exempt purposes. It retains control and discretion as to the use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes.

In *Best Lock Corporation v. Commissioner*, 31 T.C. 620 (1959), the court upheld the denial of an organization that loaned funds to members of the founder's family, even though the loans were repaid. The court determined that loans to family members and unsecured loans to friends of the founder and his family promoted private rather than charitable purposes.

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

IRC § 6033(a)(1) provides, except as provided in IRC § 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(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC § 501(a) and subject to the tax imposed by IRC § 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by IRC § 6033.

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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, whether or not it is required to file an annual return of information, 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 IRC § 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under IRC §§ 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Benefiting Private Interests

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

Rev. Rul. 72-147, 1972-1 C.B. 147, held that an organization that provided housing to low income families did not qualify for exemption under § 501(c)(3) because it gave preference to employees of business operated by the individual who also controlled the organization. The ruling reasoned that, although providing housing for low-income families furthers charitable purposes, doing so in a manner that gives preference to employees of the founder's business primarily serves the private interest of the founder rather than a public interest.

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In *KJ's Fund Raisers v. Commissioner*, T.C. Memo 1997-424 (1997), aff'd, 1998 U.S. App. LEXIS 27982 (2d Cir. 1998), the Tax Court held, and the Second Circuit affirmed, that an organization formed to raise funds for distribution to charitable causes did not qualify for exemption under § 501(c)(3) because its activities resulted in a substantial private benefit to its founders. The founders of the organization were the sole owners of KJ's Place, a lounge at which alcoholic beverages were served. The founders served as officers of the organization and, at times, also controlled the organization's board. The Tax Court found, and the Second Circuit agreed, that the founders exercised substantial influence over the affairs of the organization. The organization's business consisted of selling "Lucky 7" or similar instant win lottery tickets to patrons of KJ's Place. The organization derived most of its funds from its lottery ticket sales. The organization solicited no public donations. The lottery tickets were sold during regular business hours by the owners of the lounge and their employees. From the proceeds of the sales of the lottery tickets, the organization made grants to a variety of charitable organizations. Although supporting charitable organizations may be a charitable activity, the Tax Court nevertheless upheld the Commissioner's denial of exemption to the organization on the ground that the organization's operation resulted in more than incidental private benefit. The Tax Court held, and the Second Circuit affirmed, that a substantial purpose of KJ's activities was to benefit KJ's place and its owners by attracting new patrons, by way of lottery ticket sales, to KJ's Place, and by discouraging existing customers from abandoning KJ's Place in favor of other lounges where such tickets were available. Thus, the organization was not operated exclusively for exempt purposes within the meaning of § 501(c)(3).

An organization does not serve a public rather than a private interest within the meaning of Reg. 1.501(c)(3)-1(d)(1) if any of its assets or earnings inure to the benefit of any insiders (or disqualified persons). Treas. Reg. § 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.

Excessive compensation for services is a form of inurement. For example, in *Mabee Petroleum Corp. v. U.S.*, 203 F. 2d 872, 875 (5th Cir. 1953), the Fifth Circuit held that the organization's payment of a full-time salary for part-time work was inurement.

The use by insiders of the organization's property for which the organization does not receive adequate consideration is a form of inurement. See, e.g., *The Founding Church of Scientology v. U.S.*, 412 F.2d 1197, 1201 (Ct. Cl. 1969) (holding that the insiders' use of organization-owned automobiles and housing constituted inurement *Spokane Motorcycle Club v. U.S.*, 222 F.Supp. 151 (E.D. Wash. 1963) (holding that the organization's provision of goods, services and refreshments to its members constituted inurement).

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Loans that are financially advantageous to insiders from the organization's funds (particularly unexplained, undocumented loans) are a form of inurement. For example, in *The Founding Church of Scientology*, 412 F.2d at 1200-01, the Claims Court listed unexplained loans to and from insiders among the examples of inurement. In *Church of Scientology v. Commissioner*, 823 F.2d 1310, 1314-15, 1318 (9th Cir., 1987), the Ninth Circuit held that "debt repayments" in the form of 10 percent of the organization's income made to the organization's founder, allegedly to compensate the founder for the organization's past use of his personal income and capital, constituted inurement. In *Airlie Foundation v. Commissioner*, 283 F. Supp. 2d 58 (D.D.C., 2003), the court held that forgiveness of interest was a form of inurement.

Leasing arrangements that favor disqualified persons to the detriment of the organization are a form of inurement. In *The Founding Church of Scientology*, 412 F.2d at 1201-02, the Claims Court treated the organization's payment of rent to the founder's wife as inurement in the absence of any showing that the rental was reasonable or that the arrangement was beneficial to the organization. See also *Texas Trade School v. Commissioner*, 272 F.2d 168 (5th Cir. 1959) (holding that inflated rental prices constitute inurement).

Payment to one person for services performed by another (or for services presumed to be performed, without any proof of performance) is a form of inurement. In *Church of Scientology*, 823 F.2d at 1314, 1317-18, the court listed royalties received by the organization's founder on the sale of publications written by others among the improper benefits received by the founder from the organization. In *The Founding Church of Scientology*, 412 F.2d at 1202, the court held that the payment of salary to the founder's daughter without any proof that she actually performed any services for the organization constituted inurement.

A number of courts have held that unaccounted for diversions of a charitable organization's resources by one who has complete and unfettered control can constitute inurement. *Parker v. Commissioner*, 365 F.2d 792, 799 (8th Cir. 1966); *Kenner v. Commissioner*, 318 F.2d 632 (7th Cir. 1963); *Church of Scientology*, 823 F.2d at 1316-17, 1319.

The provision of inurement can be direct or indirect. In *Church of Scientology*, 823 F.2d at 1315, the organization transferred in excess of \$3.5 million to a for-profit corporation incorporated by the organization's founder and his wife. The directors of the corporation were high-ranking members of the Church of Scientology. The directors approved the founder's decision to transfer \$2 million from the corporation's account to the ship *Apollo*, aboard which the founder and his family lived. The Ninth Circuit held that the

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funds funneled through the for-profit corporation constituted inurement to the founder and his family. *Church of Scientology*, 823 F.2d at 1318.

In *Church by Mail, Inc. v. Commissioner*, 765 F.2d 1387 (9th Cir. 1985), the Ninth Circuit held that a church that conducted its activities by mail did not qualify for exemption under § 501(c)(3) because a substantial purpose of its activities was to benefit a for-profit corporation controlled by the church's insiders. The church employed an advertising agency controlled by its insiders to provide all of the printing and mailing services for the church's mass mailings. The advertising agency devoted approximately two-thirds of its time to the work for the church. The majority of the church's income was paid to the advertising agency. Although the advertising agency claimed to have clients unrelated to the church, it did not advertise its services and refused to identify its other clients. The Ninth Circuit held that the church was operated for the substantial non exempt purpose of "providing a market for [the advertising agency's] services" and, thus, primarily served the private interests of the advertising agency and its owners rather than a public purpose. In so holding the Ninth Circuit rejected the church's argument that the income paid by the advertising agency should not be included in the determination of reasonableness and treated this income as indirect inurement of the church's earnings to the church's insiders.

The prohibition on inurement in § 501(c)(3) is absolute. The Service has the authority to revoke an organization's exempt status for inurement regardless of the amount of inurement. See, *Spokane Motorcycle Club*, supra; *The Founding Church of Scientology*, 412 F.2d at 1202.

Government's Position:

does not qualify as an organization described in IRC 501(c)(3) because (1) it is not operated for an exclusive exempt purpose; (2) it substantially benefits private interests and (3) its net earnings inure to the benefit of private shareholders and individuals.

Not operated for an exclusive exempt purpose

does not engage in any charitable activities. The organization stated on its Form 1023, that it will not make grants, loans or other distributions to organizations. During 20XX- 20XX, the organization made \$0 in distributions to various organizations and individuals. The organization did not provide any documentation to support the claim that monies are awarded based on need. The organization did not have any specific guidelines and procedures to determine whether an individual qualified (as a charitable class) for a charitable or educational grant. There was no independent group of individuals who were charged the task of making the grant selections. The

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organization did not exercise due diligence in determining that the monies that the grants were being used for the intended exempt purpose. When agent interviewed the President () and about the award procedures, they stated that there were no specific procedures, they would send checks to whomever told them. Therefore, the grants awarded do not qualify as an exempt function expense and is considered to be a private benefit to the individuals who received the funds.

main activity in 20XX- 20XX was the promotion of partnerships with donors. During the examination period, there were the following number of partnerships: 20XX-0, 20XX-0, 20XX-0, 20XX-0, and 20XX- 0. operates a program that (1) allows individuals, partnerships, limited partnerships, and LLC's to claim a section 170 deduction for asset(s) donated to , but allows the donor to retain control and subsequently purchase the asset(s) back at a value that is substantially less than the charitable amount initially claimed. These transactions do not exclusively serve an exempt purpose described in section 501(c)(3) and provides substantial private benefit to persons who do not belong to a charitable class (including the organization's founder)

It is the Service's position that the donor does have advisory and/or control of monies/assets contributed only by him (not over the entire general fund and segregated as the organization seems to be stating) and even though the organization claims there's no segregated fund recorded, the facts are that the funds are identified when donated and checks were issued to the donor's named charity. These transactions are structured to give the appearance that they are donor advised funds when in fact, the organization has not provided any information to support the position that they control the distributions of the monies, and they did not perform their due diligence in making sure that the funds were being used for exempt purposes. This will allow the shifting of income from taxable entities to a tax exempt organization for the purpose of deferring or avoiding taxes. These transactions have the same economic effect as the transaction described in Notice 2004-30, IRB 2004-17, April 26, 2004.

The Partnership/LLC/LP agreement that has with its donors does not allow to have any control of the assets of the partnership. The General Partner (Donor) has complete control of the assets. He can sell, trade, or use the assets for nonexempt purposes without consent of . only receives the income generated from the assets as reported on the Form 1065's and K-1's. It was also noted that several identified financial planners had setup LLC/LP with and therefore created a relationship that will identify them also as insiders.

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It is our position that the partnership activities, which were the main activities of _____, had a substantial non-exempt purpose. In addition, the partnership activities provided a private benefit to the donors.

The organization filed a certificate of dissolution with the State of _____ on 1/1/20XX. They also filed Form 990 for the year ended December 31, 20XX. The Form 990 for 20XX indicated that the organization had assets (Cash- \$0, Loan Receivable- \$0, and Investments- \$0 remaining that has not been transferred to another charity or State. _____ subsequently had these assets transferred to another charity (_____) which he created and was an officer in 20XX. He had the same officers (_____ , and _____ (20XX) of _____ listed as officers for _____. Neither the Internal Revenue Code nor the Regulations make provision for voluntary relinquishment of exempt status by organizations that are not private foundations

The organization has also failed to meet the reporting requirements (Failed to report gross revenues from its partnership activities - this understatement exceeded 0% of the reported gross receipts for tax years 20XX, 20XX, and 20XX), correct balance sheet amounts (notes receivable), and its accrued interest earned under IRC § 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3).

Inurement

The gifting of _____ IP to _____ is considered to be inurement because he received a financial benefit in the form of a 170 deduction when he never gave up control of the IP. The IP licensing Agreement between _____ and _____ calling for a 0% fee for the use of the IP is considered to be inurement because _____ had complete control of _____ when _____ "gifted" him his ownership and it was acknowledged by the parties that the services _____ offers could only be performed by _____ (promoting and developing charitable gift plans for high wealth individuals. This entails creating LLC's, LLP's, Trusts, filing organization papers, valuating client's properties, working with other financial planners, preparing tax and information returns. _____ has no other employees. _____ acknowledges he did all of the work and was the brains behind the business, without him, there would be no business. He directed the financial planners and other contacts to "write my fee to _____ . _____ stated that this income is reported on _____ tax return, which is consolidated with _____ Form 990, and therefore wouldn't show up as taxable income.

Taxpayer's position:

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In a past examination (20XX- 20XX), IRS successfully revoked the tax exempt status of a related entity also created and operated by that was created and operated in the exact same manner as agreed to the decision and stated in his response (dated 12/20/20XX) to our IDR request that the revocation of the tax exempt status 12/31/20XX would be an obvious way to settle the case.

Conclusion:

It is the IRS's position that failed the operational test as described in Income Tax Regulations 1.501(c)(3)-1(d)(i) and 1.501(c)(3)-1(d)(ii). was not operated exclusively for an exempt purpose. It serves private rather than public interests. Its net earnings inured to the benefit of private shareholders and individuals. has also failed to meet the reporting requirements (Failed to report gross revenues from its partnership activities - this understatement exceeded 0% of the reported gross receipts), correct balance sheet amounts (notes receivable), and its accrued interest earned under IRC § 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3). Accordingly, the organization's exempt status should be revoked, effective January 1, 20XX. The Service agreed to enter into a Closing Agreement whereby the organization's exempt status will be revoked, effective January 1, 20XX and the remaining assets shall be returned to the donors. The organization agreed and signed the Form 906.