



**DEPARTMENT OF THE TREASURY**

INTERNAL REVENUE SERVICE  
TE/GE: EO Examination  
1100 Commerce, MS 4920 DAL  
Dallas, Texas 75242-1100

**Date: February 19, 2019**

**Number: 201925019**  
**Release Date: 6/21/2019**

**Employer Identification Number:**

**Person to Contact/ID Number:**

**UIL: 501.03-00**

**Contact Numbers:**

Voice:

Fax:

LAST DATE FOR FILING A PETITION  
WITH THE TAX COURT:

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear \_\_\_\_\_ :

This is a final determination regarding your foundation classification. This modifies our letter dated June 15, 19XX, in which we determined that you were an organization exempt from Federal income tax under section as described in section 509(a)(2) of the Internal Revenue Code (IRC). We have modified your foundation status to that of an organization described in IRC section 509(a) as a private non-operating foundation, effective for tax years beginning January 1, 20XX.

Your tax-exempt status under section 501(c)(3) of the Internal Revenue Code is not affected. Grantors and contributors may rely on this determination, unless the Internal Revenue Service publishes a notice to the contrary. Because this letter could help resolve any questions about your private foundation status, please keep it with your permanent records.

We previously provided you a report of examination explaining the proposed modification of your tax-exempt status. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On October 28, 20XX, you signed Form 6018, *Consent to Proposed Action – Section 7 428*, in which you agreed to the modification of your foundation classification to 509(a) organization. This is a final determination letter with regards to your Federal tax-exempt status under IRC section 501(a).

You are required to file Form 990 PF, Return of Private Foundation. Form 990 PF must be filed by the 15<sup>th</sup> day of the fifth month after the end of your annual accounting periods. A penalty of \$20 a day is charged when a return is filed late, unless there is a reasonable cause for the delay; however, the maximum penalty charged cannot exceed \$10,000 or 5

percent of your gross receipts for the year whichever is less. In addition, organizations with gross receipts exceeding \$1,000,000 for any year will be charged a penalty of \$100 a day when a return is filed late; however, the maximum penalty charged cannot exceed \$50,000. These penalties may also be charged if a return is not complete, so be sure your return is complete before you file it.

If you are subject to the tax on unrelated business income under section 511 of the Code, you must also file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return.

If you decide to contest this determination in court, you must initiate a suit for a declaratory judgment in the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date this final determination letter was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

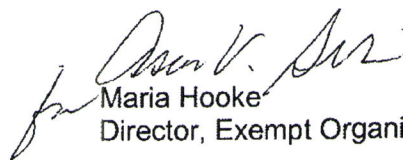
United States Tax Court,  
400 Second Street  
Washington, D.C. 20217

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your rights. We 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 our assistance, which is always free, we will do everything possible to help you. Visit [taxpayeradvocate@irs.gov](mailto:taxpayeradvocate@irs.gov) or call 1-877-777-4778.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Maria Hooke", is written over the printed name and title.

Maria Hooke  
Director, Exempt Organizations Examinations



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

Date:  
October 16, 2018  
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact:

Employee ID:  
Telephone:  
Fax: .

Manager's Contact Information:

Employee ID:  
Telephone:  
Response Due Date:

**CERTIFIED MAIL – Return Receipt Requested**

Dear :

**Why you're receiving this letter**

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to modify your organization's foundation status under Internal Revenue Code (IRC) Section 509(a).

Your exempt status under IRC Section 501(c)(3) is still in effect.

**If you agree**

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final letter modifying your foundation status.

**If you disagree**

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to



sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

**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 letter modifying your foundation status.

**Effect of modification of your foundation status**

If you receive a final modification letter making you a private foundation or a private operating foundation, you'll be required to file annual returns on Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

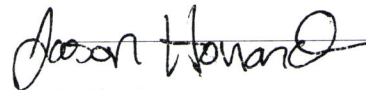
The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance,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

**Additional information**

You can get any of the forms and publications mentioned in this letter 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 have questions, you can contact the person shown at the top of this letter.

Sincerely,



for Maria Hooke  
Director, Exempt Organizations  
Examinations

Enclosures:  
Form 886-A  
Form 6018



<b>Form 886-A</b> (May 2017)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last four digits)	Year/Period ended 12/31/20XX & 12/31/20XX

**Issues:**

1. Does ("Foundation") fail the public support test and gross investment income test, and should therefore be reclassified as a private foundation under Internal Revenue Code ("IRC") Section ("§") 509(a) of the Code?
2. If Foundation is reclassified as a private foundation, is it liable for taxes under IRC § 4940 on net investment income for tax years ending December 31, 20XX and December 31, 20XX?
3. If Foundation is reclassified as a private foundation, is it liable for taxes under IRC § 4942 for undistributed income for the tax years ending December 31, 20XX & December 31, 20XX?

**Facts:**

Foundation incorporated in the state of on May 31, 19XX. On May 15, 19XX, Foundation filed its amended Articles of Incorporation. The amendment added specific language that limited its purposes and activities to those allowed for exemption from tax under IRC § 501(c)(3). The specific purpose is to disseminate materials and information on stress-free living and to engage in any legal activities to cover costs for the corporation. The amendment also included a provision if the foundation dissolved. The assets upon dissolution will be distributed for one or more exempt purposes within the meaning of IRC § 501(c)(3) or distributed to the federal government, or to a state or local government for a public purpose.

Foundation received a favorable determination that it was exempt from tax under IRC § 501(c)(3) in August 19XX, with an effective date for exemption as the day after the date of incorporation, June 1, 19XX. Foundation was further classified as not a private foundation because it qualified as a publicly supported organization under Section 509(a)(2) of the Code.

The Organization's Forms 990 for tax years 20XX and 20XX reflect the following:

**Form 990 – Revenue & Expenses**

	<b><u>20XX</u></b>	<b><u>20XX</u></b>
Contributions: All Other Gifts:	\$0	\$0
Program Service Revenue (1): Special Events/Classes	\$0	\$0
Investment Income:	\$0	\$0
Gross Rents:	\$0	\$0
Less: Rental Expenses	\$0	(\$0)
Gross Sales of Inventory:	\$0	\$0
Less: Cost of Goods Sold:	(\$0)	(\$0)
<b>Total Revenue</b>	<b>\$0</b>	<b>\$0</b>
 Fees: Legal:	 \$0	 \$0
Fees: Accounting:	\$0	\$0
Advertising & promotion	\$0	\$0

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Office Expenses:	\$0	\$0
Information Technology	\$0	\$0
Occupancy:	\$0	\$0
Travel:	\$0	\$0
Conferences, Conventions, Meetings:	\$0	- \$0
Insurance:	\$0	\$0
Other Expenses (1): Bank Charges/Fees	\$0	\$0
Other Expenses (2): Taxes - Non UBIT	\$0	
Other Expenses (3): Postage/Mailing	\$0	\$0
Other Expenses (4): Telephone/Internet	\$0	\$0
Other Expenses (5): Dues/Memberships	\$0	\$0
Other Expenses: All Other:	\$0	\$0
<b>Total Expenses</b>	<b>\$0</b>	<b>\$0</b>

### **Form 990 - Balance Sheet**

	<b><u>20XX</u></b>	<b><u>20XX</u></b>
Cash: Non-Interest Bearing:	\$0	\$0
Savings & Temporary Cash:	\$0	\$0
Accounts Receivable:	\$0	\$0
Inventories for Sale or Use:	\$0	\$0
Land, Buildings & Equipment:	\$0	\$0
Less: Accumulated Depreciation:	(\$0)	(\$0)
<b>Total Assets</b>	<b>\$0</b>	<b>\$0</b>
<b>Total Liabilities</b>	<b>\$0</b>	<b>\$0</b>
<b>Net Assets</b>	<b>\$0</b>	<b>\$0</b>

Foundation's filed Forms 990 for tax years 20XX – 20XX were used to calculate its public support and gross investment income (see table below).

<b>Public Support</b>	<b>20XX</b>	<b>20XX</b>	<b>20XX</b>	<b>20XX</b>	<b>20XX</b>	<b>20XX</b>
Contributions: All Other Gifts:	\$0	\$0	\$0	\$0	\$0	\$0
Program Service Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Gross Sales of Inventory:	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Public Support</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Total Support</b>	<b>20XX</b>	<b>20XX</b>	<b>20XX</b>	<b>20XX</b>	<b>20XX</b>	<b>20XX</b>
Public Support	\$0	\$0	\$0	\$0	\$0	\$0
Investment Income:	\$0	\$0	\$0	\$0	\$0	\$0

<b>Form 886-A</b> (May 2017)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last four digits)	Year/Period ended 12/31/20XX & 12/31/20XX

Gross Rents:	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Support</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Public Support Percentage</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>
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<b>Gross Investment Income Percentage</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>
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Foundation's net average noncharitable-use assets for purposes of computing IRC § 4940 excise tax for the 20XX and 20XX tax years was calculated taking an average of 0 months for the accounts and an average of 0 months for the accounts.

		20XX	20XX
January 1st			
	- Savings	\$0	\$0
	- Money Market	\$0	\$0
	- Debit	\$0	\$0
	- Savings	\$0	\$0
	- Money Market	\$0	\$0
	- Checking	\$0	\$0
	Checking	\$0	\$0
	GICs	\$0	\$0
February 1st			
	- Savings	\$0	\$0
	- Money Market	\$0	\$0
	- Debit	\$0	\$0
	- Savings	\$0	\$0
	- Money Market	\$0	\$0
	- Checking	\$0	\$0
March 1st			
	- Savings	\$0	\$0
	- Money Market	\$0	\$0
	- Debit	\$0	\$0
	- Savings	\$0	\$0
	- Money Market	\$0	\$0
	- Checking	\$0	\$0
April 1st			
	- Savings	\$0	\$0
	- Money Market	\$0	\$0
	- Debit	\$0	\$0
	- Savings	\$0	\$0
	- Money Market	\$0	\$0
	- Checking	\$0	\$0



<b>Form 886-A</b> (May 2017)		<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer		Tax Identification Number (last four digits)	Year/Period ended 12/31/20XX & 12/31/20XX

May 1st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0

June 1st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0

July 1st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0

August 1st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0

September 1st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0

October 1st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0

<b>Form 886-A</b> (May 2017)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last four digits)	Year/Period ended 12/31/20XX & 12/31/20XX

November 1st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0

December 1st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0

December 31st

- Savings	\$0	\$0
- Money Market	\$0	\$0
- Debit	\$0	\$0
- Savings	\$0	\$0
- Money Market	\$0	\$0
- Checking	\$0	\$0
Checking	\$0	\$0
GICs	\$0	\$0

<b>Average Net Assets</b>	<b>\$0</b>	<b>\$0</b>
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#### Law - Issue 1:

IRC § 501(c)(3) provides, in part, exemption from federal income tax to organizations that are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, as long as no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

IRC § 509(a) states in part the term *private foundation* means a domestic or foreign organization described in section 501(c)(3) other than 509(a)(1), (2), (3), or (4).

IRC § 509(a)(2) describes 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 section 513), not including such receipts from any person; or from any bureau or similar agency of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of \$5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and normally



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receives not more than one-third of its support in each taxable year from the sum of gross investment income (as defined in subsection (e)) and the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511.

### Law - Issue 2:

IRC § 4940(a) imposes a on each private foundation which is exempt from taxation under IRC § 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

IRC § 4940(c)(1) defines net investment income as the amount by which the sum of the gross investment income and the capital gain net income exceeds the deductions allowed by IRC § 4940(c)(3).

IRC § 4940(c)(2) defines the term "gross investment income" as the gross amount of income from interest, dividends, rents, payments with respect to securities loans and royalties, but not including any such income to the extent included in computing tax imposed by IRC § 511.

IRC § 4940(c)(3) defines deductions as all ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income.

IRC § 4940(e)(1) states in the case of any private foundation that meets the requirements of paragraph (2) for any taxable year, Section 4940(a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent."

IRC § 4940(e)(2) states, a private foundation meets the requirements of this paragraph for any taxable year if-

(A) the amount of the Qualifying Distributions made by the private foundation during such taxable year equals or exceeds the sum of-

- (i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus
- (ii) 1 percent of the Net Investment Income of such foundation for such taxable year, and

(B) such private foundation was not liable for tax under Section 4942 of the Code with respect to any year in the base period. [Section 4942 of the Code is the tax on private foundations for the failure to distribute required minimum amounts of income each taxable year.]

### Law - Issue 3:

IRC § 4942(a) imposes a tax on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second taxable year following such taxable year, a tax equal to 30 percent of the amount of such income remaining undistributed at the beginning of such second taxable year.



<b>Form 886-A</b> (May 2017)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
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IRC § 4942(b) imposes an additional tax in any case in which an initial tax is imposed under IRC § 4942(a) on the undistributed income of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

IRC § 4942(c) defines the term "undistributed income" as with respect to any private foundation for any taxable year as of any time, the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made before such time out of such distributable amount.

IRC § 4942(c)(2)(i) excludes any future interest of a foundation in the income or corpus of any real or personal property, until all intervening interest in, and rights to the actual possession or enjoyment of, such property has expired.

IRC § 4942(d) defines distributable amount as with respect to any private foundation for any taxable year, an amount equal to the sum of the minimum investment return plus amounts described in IRC § 4942(f)(2)(c), income modifications, reduced by the sum of the taxes imposed on such private foundation for the taxable year under IRC § 4940.

IRC § 4942(e) defines minimum investment return for any private foundation for any taxable year as 5 percent of the excess of the aggregate fair market value of all assets of the foundation, other than those which are used directly in carrying out the foundation's exempt purpose, over the acquisition indebtedness with respect to such assets.

Regulation section 53.4942(a)-2(c)(3) defines assets used (or held for use) in carrying out the exempt purpose as an asset that is actually used by the foundation in the carrying out of the charitable, educational, or other similar purpose which gives rise to the exempt status of the foundation, or if the foundation owns the asset and establishes to the satisfaction of the Commissioner that its immediate use for such exempt purpose is not practical (based on the facts and circumstances of the particular case) and that definite plans exist to commence such use within a reasonable period of time. Consequently, assets which are held for the production of income or for investment (for example, stocks, bonds, interest-bearing notes, endowment funds, or, generally, leased real estate) are not being used (or held for use) directly in carrying out the foundation's exempt purpose, even though the income from such assets is used to carry out such exempt purpose.

Regulation section 53.4942(a)3(b)4 defines the minimum distribution required during start-up period for private foundations created before January 1, 1972, the start-up period is the four taxable years immediately preceding the taxable year beginning in calendar year 1976. For private foundations created after December 31, 1971 (or for organizations that first become private foundations after that date), the start-up period is the four taxable years following the taxable year in which the private foundation was created (or otherwise became a private foundation). For purposes of this subparagraph (4), a private foundation will be considered "created" in the taxable year in which the private foundation's distributable amount (as determined under section 4942(d)) first exceeds \$500.

(ii) Start-up period minimum amount. The amount that a private foundation must actually distribute in cash or its equivalent during the private foundation's start-up period is not less than the sum of:

(a) Twenty percent of the private foundation's distributable amount (as determined under section 4942(d)) for the first taxable year of the start-up period,



<b>Form886-A</b> (May2017)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
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(b) Forty percent of the private foundation's distributable amount for the second taxable year of the start-up period,

(c) Sixty percent of the private foundation's distributable amount for the third taxable year of the start-up period, and

(d) Eighty percent of the private foundation's distributable amount for the fourth taxable year of the start-up period.

(iii) Timing of distributions. The requirement that a private foundation distribute the start-up period minimum amount during the start-up period is a requirement that such amount be distributed before the end of the start-up period and is not a requirement that any portion of such amount be distributed in any one taxable year of the start-up period.

### Government's Position - Issue 1:

Organizations generally qualify under IRC § 509(a)(2) if the main source of their revenue is from exempt function income, such as fees for services, admissions, or sales of materials supporting their exempt function. Contributions, gifts, and grants are normally not substantial in nature. IRC § 509(a)(2) indicates that in order to qualify as a public supported organization under IRC § 509(a)(2) - (i) more than one-third of the support must normally come from exempt function income, gifts, grants, contributions, or membership fees; and (2) not more than one-third of the support can come from gross investment income and the excess of the amount of unrelated business taxable income over the amount of taxes imposed by section 511.

Here, using Foundation's filed Forms 990, we calculated Foundation's public support for the period including tax years 20XX to 20XX. Foundation failed the public support test in 20XX, 20XX, 20XX, and 20XX; and gross investment income percentage is above 33 1/3% in 20XX through 20XX. The testing calculation is shown below:

Public Support	20XX	20XX	20XX	20XX	20XX	20XX
Contributions: All Other Gifts:	\$0	\$0	\$0	\$0	\$0	\$0
Program Service Revenue	\$0	\$0	\$0	\$0	\$0	\$0
Gross Sales of Inventory:	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Public Support</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Total Support	20XX	20XX	20XX	20XX	20XX	20XX
Public Support	\$0	\$0	\$0	\$0	\$0	\$0
Investment Income:	\$0	\$0	\$0	\$0	\$0	\$0
Gross Rents:	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total Support</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>Public Support Percentage</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>
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<b>Gross Investment Income Percentage</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>	<b>0.00%</b>
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<b>Form 886-A</b> (May 2017)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer	Tax Identification Number ( <i>last four digits</i> )	Year/Period ended 12/31/20XX & 12/31/20XX	

Therefore, since Foundation fails the public support test and the gross investment income test, it no longer qualifies as a publicly supported organization under IRC § 509(a)(2). Foundation must be reclassified as a private foundation.

### Government's Position - Issue 2:

Since Foundation failed the public support test and the gross investment income test, and must be reclassified as a private foundation, it is liable for the 2% excise tax under IRC § 4940(a) on its net investment income. This tax calculation for tax years 20XX and 20XX is shown below:

Income	<u>12/31/20XX</u>	<u>12/31/20XX</u>
Interest Income	\$0	\$0
Rent Income	\$0	\$0
Gross Investment Income	\$0	\$0
<b>Deductions</b>		
Bank Fees	\$0	\$0
Property Tax	\$0	\$0
Repair & Maintenance - Facility	\$0	\$0
Utilities	\$0	\$0
Total Deductions	\$0	\$0
Net Investment Income	\$0	\$0
Multiply by IRC 4940(a) rate - 2%	2%	2%
<b>IRC 4940(a) excise tax</b>	<b><u>0.00</u></b>	<b><u>0.00</u></b>

The Foundation does not qualify for the 1% rate reduction for computing the net investment tax under IRC § 4940(e) for 20XX as it is the Foundation's first modified tax year under a private foundation. The Foundation also does not qualify for the rate reduction in 20XX because the qualifying distributions made by the private foundation during that tax year do not exceed the sum of the amount equal to the assets of the foundation multiplied by the average payout for the base period plus 1 percent of the net investment income of the foundation.

### Government's Position - Issue 3:

Since Foundation failed the public support test and gross investment test, and must be reclassified as a private foundation, it is required to pay out distributions for exempt purposes (Distributable Amount) in each year in proportion to its Minimum Investment Return per IRC § 4942. If Foundation fails to make the minimum required distributions (Distributable Amount), it is liable for excise taxes under IRC § 4942(a) on the Undistributed Income.



<b>Form 886-A</b> (May 2017)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number <i>(last four digits)</i>	Year/Period ended <b>12/31/20XX &amp; 12/31/20XX</b>

The Minimum Investment Return, Distributable Amount and the Undistributed Income are calculated as follows for the tax years ending December 31, 20XX and December 31, 20XX:

**Minimum Investment Return**

	Tax Years	<u>20XX</u>	<u>20XX</u>
Average Monthly Cash Balances		\$0	\$0
multiply by 0.0%		0.0%	0.0%
Cash deemed for charitable activities (avg. cash* 0.0%)		\$0	\$0
 Average Monthly Cash Balances		 \$0	 \$0
less Cash deemed for charitable activities		(\$0)	(\$0)
Net Value of Assets for Investment Purposes		\$0	\$0
 Minimum Investment Return (multiply Net Value of Assets for Investment Purposes by 0%)		 \$0	 \$0

**Distributable Amount**

	Tax Years	<u>20XX</u>	<u>20XX</u>
Minimum Investment Return		\$0	\$0
Less Tax on Investment Income (IRC § 4940(a))		(\$0)	(\$0)
Distributable Amount (IRC § 4942(d))		\$0	\$0
Rate for start-up period (Treas. Reg. 53.4942(a)3(b)4)		0%	0%
Start-up period minimum distributable amount		\$0	\$0
Must distribute this amount by		12/31/20XX	12/31/20XX

**Undistributed Income**

	Tax Years	<u>20XX</u>	<u>20XX</u>
Start-up period minimum distributable amount		\$0	\$0
Less Qualifying Distributions		(\$0)	(\$0)
Undistributed Income		(\$0)	\$0
Added to/taken from corpus		\$0	(\$0)
Total undistributed income		(\$0.00)	\$0

The excise tax under Section 4942(a) is calculated as follows:

**Excise Tax per IRC 4942(a)**

	Tax Years	<u>20XX</u>	<u>20XX</u>
Undistributed Income		(\$0.00)	\$0

<b>Fonn886-A</b> (May2017)	<b>EXPLANATIONS OF ITEMS</b>		Schedule number or exhibit
Name of taxpayer	Tax Identification Number ( <i>last four digits</i> )		Year/Period ended 12/31/20XX & 12/31/20XX
Excise Tax Rate - 30%	30%	30%	
<b>Excise Tax per IRC 4942(a)</b>	<b><u>(\$0.00)</u></b>	<b><u>\$0</u></b>	

Foundation's qualifying distributions exceeded the distributable amount in tax year ending December 31, 20XX. The exceeded amount is to be added into corpus. Foundation's qualifying distributions did not meet the required distribution amount in tax year ending December 31, 20XX. Therefore, Foundation is liable for excise taxes under IRC § 4942(a) on the Undistributed Income for tax year ending December 31, 20XX.

In any case in which an initial tax is imposed under IRC § 4942(a) on the undistributed income of a private foundation for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, under IRC § 4942(b), there is hereby imposed a tax equal to 100 percent of the amount remaining undistributed at such time. Foundation is not liable for IRC § 4942(b) taxes in tax years ending December 31, 20XX, because it did not have undistributed income. Foundation is not liable for IRC § 4942(b) taxes in tax years ending December 31, 20XX, because it had direct expenditures, exceeding the undistributed amount, to accomplish its exempt purpose in tax year ending December 31, 20XX.

#### Taxpayer's Position:

Foundation has not provided a written position on any of the issues at this time.

#### Conclusion:

- Issue #1: Foundation fails the public support test and gross investment income test. It no longer qualifies as a publicly supported organization under IRC § 509(a)(2). Foundation should be reclassified as a private foundation under IRC § 509(a). The effective date of this reclassification is January 1, 20XX. Foundation is required to file annual return Form 990-PF, *Return of Private Foundation*.
- Issue# 2: As a private foundation, Foundation is liable for excise taxes on net investment income under IRC § 4940(a) as follows:
- |                       |
|-----------------------|
| 20XX - \$0.00         |
| 20XX - <u>\$0.00</u>  |
| <b>Total - \$0.00</b> |
- Issue# 3: As a private foundation, Foundation is not liable for excise taxes on its undistributed income under IRC § 4942(a) for the tax year ended December 31, 20XX. However, Foundation is liable for excise taxes on its undistributed income under IRC § 4942(a) for the tax year ended December 31, 20XX in the amount of **\$0**.