



Department of the Treasury
Internal Revenue Service
Independent Office of Appeals
2525 Capitol Street, Suite 201
Fresno, CA 93721

Date: DEC 03 2019

Person to contact:
Name:
Employee ID number:
Telephone:
Fax:

Employer ID number:

Uniform issue list (UIL):
501.36-00

Number: 202019029
Release Date: 5/8/2020

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 _____ and you are no longer exempt under Section 501(a) of the Code effective _____.

We made the adverse determination for the following reasons:

You are not as described in section 501(c)(3) of the Code because you have not established that you meet the operational test as per Treas. Reg. Section 1.501(c)(3)-1(a)(1). You operate in a manner consistent and in competition with other for-profit businesses.

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 or by calling 800-TAX-FORM (800-829-3676).

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

We'll make this letter and the proposed adverse determination letter available for public inspection under Section 6110 of the Code after deleting certain identifying information. We 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 have questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosures:

cc:



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

Date:
November 1, 2018
Taxpayer Identification Number:

Forms:

Tax Year(s) Ended:

Person to Contact / ID Number:

Employee ID:
Contact numbers:
Telephone:
Fax:

Manager's Name / ID Number:

Employee ID:
Manager's Contact Number:

Response Due Date:

Certified Mail – Return Receipt Requested

Dear :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter.

The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

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,

Maria Hooke
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

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Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31, 20XX December 31, 20XX

Issues:

- (1) Given the facts, should _____ continue to be recognized as exempt under Internal Revenue Code (IRC) § 501(c)(3)?
- (2) If revocation is upheld, what is the effective date of the revocation?
- (3) What are the tax consequences of the revocation?

Facts:

_____ (hereafter called " ") is a _____ Corporation, located at _____, _____, _____ was incorporated on August 7th, 20XX by _____, _____, and _____ was recognized as exempt under IRC § 501(c)(3) effective August 7th, 20XX.

The Form 1023, *Application for Recognition of Exemption under § 501(c)(3) of the Internal Revenue Code*, received by the IRS on October 27th, 20XX was analyzed. The Form 1023 was signed by _____ on October 22nd, 20XX. In Part V, the initial board of directors are:

- President
- Director
- Director
- Director
- Director

In Part VI of the Form 1023, Line 1, _____ would provide goods, services or funds to individuals, organizations and groups. In Part VIII, Line 8, _____ would enter into joint ventures, including partnerships or limited liability companies treated as partnerships.

In Part VIII, Line 13, _____ would make grants, loans or other distributions to organizations. In Part VIII, Line 21, _____ would provide low-income housing or housing for the elderly or handicapped. In order to explain its response to Part IV, _____ attached an activity summary summarized below:

- _____
- By being a general partner, _____ has a measure of control over the historic property.
- _____ provides historic preservation education for the general public by sponsoring conferences, seminars and other professional meetings.
- Grants are provided to assist historic properties so they don't decay beyond repair.
- _____ is paid _____ of the tax credit amount sold. The remaining funds are used to assist in the restoration and preservation of historic structures.

_____ attached a narrative description explaining why _____ qualifies for exempt status. The narrative is summarized below:

- The partial interests in property used for conservation purposes are a charitable deduction under IRC § 170(f)(3)(B).
- _____ purposes and planned activities are directed toward the restoration and preservation of property that allows museums and similar organizations to be educational under Treasury Reg. § 1.501(c)(3)-1(d)(3)(ii).

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- Certain financial activities are consonant with exempt status (See Revenue Ruling 77-47, 1977-1 C.B. 157).
- Historic preservation organizations fund their activities through a variety of means (see Revenue Ruling 75-470, 1975-2 C.B. 207).
- Participation by organizations in partnerships acquiring or promoting tax credits is not, in and of itself, antithetical to exempt classification (see Housing Pioneers Inc. v. Commissioner (T.C. Memo 1993-120, aff'd No 93-70583 (9th Circuit, March 7, 1995)).
- Private inurement or private benefit of more than incidental amount has been resolved by the organization's corporate structure and policies (see GCM 39862). A private letter ruling can be obtained that resolves the issue of private benefit (Revenue Procedure 90-27, 1990 C.B. 515, § 5).
- The organization has attempted to make sure that its activities fit solidly within decades of precedent (See Revenue Ruling 76-204, 1976-1 C.B. 152; Revenue Ruling 75-207, 1975-1 C.B. 361; and Revenue Ruling 76-147 1976-1 C.B. 151).
- By selling tax credits that providing financing for historic preservation, supports the State of and serves a public interest (See Revenue Ruling 76-147 (IBID); and Revenue Ruling 70-186, 1970-1 C.B. 128).

included the additional disclosure that that is an employee of
, and has an ownership interest in exceeding 0%.

Starting on May 6, 20XX, the IRS asked for:

- Additional detail concerning the activities will be doing, and how those activities benefit the public.
- To know how will ensure that the organization, and the partnerships enters into, will be operated for 501(c)(3) purposes.
- How will make sure that retains control of the partnerships.
- How will ensure that the rehabilitated property does not provide private benefit to the owners of the property.
- Details pertaining to the consulting services will provide to those seeking to use tax credits, how will promote consulting, and how much would charge.

responded on behalf of :

- will assist in the planning, financing and oversight of historic preservation work by being the General Partner of the limited partnerships.
- will have the work associated with historic rehabilitation, and continued maintenance of the building.
- provided a copy of the Model Limited Partnership agreement.
- The developer / owner / or other 3rd party contracts regarding participation in the rehabilitation process.
- Immediately after the limited partnership is created, title to the property will be transferred to the limited partnership at which time will assume its full authority, responsibilities and duties as set forth in the Limited Partnership Agreement.

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- consulting services includes the review of rehabilitation plans, review historic elements during construction, serve in the chain of possession of the tax credits, and ongoing consultation and maintenance of the property for at least years.
- The cost for consulting is 0% of the tax credit sales amount fee plus a share of the operating income. This amount is in line with amounts paid for tax credit syndicators.
- provides that the flow of the tax credit funds will be allocated to without triggering a taxable event.
- will not, on its own, initiate or solely own any historic rehabilitation properties.

On June 9, 20XX, the IRS asked for additional information and clarification:

- Because the operating agreement did not specify that the Partnership will operate in a manner that furthers charitable purposes, please describe in detail how will do this.
- The operating agreement must include a provision specifying that the charitable purposes in the partnership agreement will prevail.
- The operating agreement submitted with your response dated June 8, 20XX indicated that will not be in control of the partnership. The nonprofit partner also must have the capacity to ensure that the partnership's operations further charitable purposes.

On June 30, 20XX responded. A summary of that response is given below:

- Business entities that will be involved with are confined to those projects which have a historic preservation element. will have sufficient authority in the operating agreement to exercise control to ensure historic preservation purposes are satisfied.
- pointed to Section 4.02 of the operating agreement (that deals with distribution and application of cash flows and proceeds from the sale of reported transactions).
- pointed to Section 5.02a that General Partner B shall have responsibility for, and control over, the historic rehabilitation and maintenance of the property.
- The purpose of this fund will be to fund the historic preservation activity in the event the partnership fails to do so.
- cited St. David's Healthcare Systems (IBID). This portion of the opinion outlines the differentiation between St. David's position and our own position in that we have operational control over the historic preservation activities of the entities and can ensure that those purposes are met.

The limited partnership agreement template was analyzed (see Attachment 1) with the key points summarized below:

- § 1.15a states that General Partner A (blank), a (blank) corporation with its principle office located at (blank).
- § 1.15b states that is General Partner B.
- § 3.02 will make a capital contribution based on the amount of tax credits sold.
- § 4.02 Except as otherwise provided in this agreement or required by law, cash distributions are made at the end of each quarter:
 - (a) cash flows will be applied in the following order: (i) to partners having an unpaid voluntary loan balance, (ii) the balance, (blank)% to General Partner A, (blank)% to General Partner and (blank)% to limited partner;

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(b) Sale or re-financing transaction proceeds are applied in the following order: (i) payment of sales or re-financing expenses, (ii) the payment of debts associated with the sales or re-financing, (iii) Establish such reserve as General Partner A determines to be reasonable as a contingent or foreseeable liability until such time as the General Partner determines the reserve is no longer necessary, and can be distributed in the order given in (b), (iv) to the partners, any amount equal to the unpaid balance of any voluntary loan, (v) The balance, if any, (blank)% to General Partner A, (blank)% to General Partner B, and (blank)% to the limited partner.

- § 5.01 General Partner A will have control over the day-to-day operations of the partnership, and can expend funds for the purpose(s) of the partnership. General Partner A only needs General Partner B's written approval if the assets are sold, money is borrowed, another partner is admitted, or the partnership will be terminated.
- § 5.01a General Partner B will have charge of the historic rehabilitation and maintenance of the property from the standpoint of the architectural design, approvals, and inspections to verify compliance with preservation plans.
- § 5.02 General Partner A will have control over the ordinary and usual management and operation of the partnership business, and will keep the partnership books and records.
- § 5.02 General Partner B will have control over the historic features of the building and will keep books and records pertaining to the historic features.
- § 5.03 names General Partner A as the tax matters partner for the partnership.
- § 5.08 states that no partners can withdraw from the partnership and take with them, or encumber, any assets.
- § 6.03 states that the limited partner agrees to be available to consult with, and advise, the General Partners to ensure that the partnership operates in a manner sufficient to qualify for the tax credits including reviewing the preservation plan, making periodic construction inspections to ensure compliance with the preservation plan; providing advice during the construction process; provide periodic inspections to ensure proper implementation and maintenance plans.
- § 7.02 states that should the partnership liquidate, after the payment of debts, any remaining assets are distributed according to the terms of the partnership agreement.

In determining that qualified for exempt status, the IRS determined that would promote an appreciation of history through the acquisition, restoration and preservation of homes, churches and public buildings and open those structures for viewing by the general public who paid for these viewings (citing Revenue Ruling 75-470, 1975-2 C.B. 207).

The Form 990s for 20XX and 20XX were analyzed. recognizes revenues from the sale of historic tax credits on its Form 990.

	20XX	20XX
Revenues (sale of tax credits)	\$ 0	\$ 0
Investment income	<u>0</u>	<u>0</u>
Total Revenue	\$ 0	\$ 0
Expenses	<u>0</u>	<u>0</u>
Net Income	\$ 0	\$ 0

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The asset amounts and investment amounts for 20XX through 20XX are summarized below:

Year	Beginning Net Assets	Ending Net Assets	Net Asset Change	Beginning Investments	Ending Investments	Net Investment Change	Investment Income
20XX	0	0	0	0	0	0	0
20XX	0	0	0	0	0	0	0
20XX	0	0	0	0	0	0	0

On the Form 990, Schedule D, Part VIII, for 20 through 20 is summarized below:

	20	20	20
Number of conservation easements	0	0	0
Number of partnerships	0	0	0

The 20XX and 20XX Form 990-T, *Exempt Organization Business Income Tax Return*, was analyzed. The 20XX Form 990-T hasn't been filed. The General Business Credit is a passive business credit.

	20XX	20XX
Revenues	0	0
Expenses	0	0
General Business Credit	0	0
General Business Credit carryforward	0	0

website was analyzed (see Attachment 2). states that it adds value to a preservation project by charging half the amount some firms charge without needing a call / put option. Because it is a partner, mitigates the tax effects from the sale of tax credits.

Initial Interview

At the time of the first interview dated 8/22/20XX with (Treasurer), (President) and (Revenue Agent), principle activity is the sale of state tax credits almost exclusively in the State of

allows income tax credits for the rehabilitation of qualified buildings based on qualified expenses. Qualified buildings are those that have been listed on the National Register of Historic Places, the or have been deemed contributors to a National or State Registered Historic district. The buildings may be either income-producing or non-income producing, and private residences do qualify for the tax credit.

The credit equals 0% of eligible expenses and can be used on a dollar-for-dollar reduction in income tax liability. Proposed work must follow a qualified rehabilitation plan. Qualified projects are those that have been reviewed and approved by the State Historic Preservation Office through the application process. All rehabilitation work must meet the Secretary of Interior's standards for rehabilitation. The rehabilitation standards apply to both the exterior and interior,

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and also encompass landscape features, the building site, as well as attached, adjacent or new construction.

According to the State of , the application for a permit from a governmental entity will trigger a review of the property to verify that it is in compliance with State Historic Preservation Law. State law requires the property to meet the Federal Secretary of the Interior's Standards for the Treatment of Historic Properties. Essentially, this is a determination to see if the historic property has been damaged or destroyed.

State tax credits may be carried forward for 0 years, and may be transferred to an unlimited number of other taxpayers. requires notification of the transfer after the transfer so that can notify its Department of Revenue concerning who owns the tax credit, and how much the tax credit is.

The property owner goes through the application process with the State of , hires individuals and organization to carry out the rehabilitation, and hires accounting firms to attest to which expenses are qualified expenditures. The property owner carries out everything that is required in order to determine the value of the state tax credit.

assists the property owner in completing the National Park Service forms so the property can be listed as a historic property on the national register. also assists the property owner in answering the State of Department of Revenue questions.

forms a disregarded entity generally named after the name of the property project. After the property owner completes its work and receives notification of the amount of the State Historic Rehabilitation Credit, (through the disregarded entity) forms a partnership with the property owner. It generally takes 0 or 0 years from the time of the initial contracts are signed to when the partnership is formed. currently has 0 partnerships.

According to the partnership agreement, is allocated 0% of the state tax credit. After sells the state tax credit, retains 0% of the sales proceeds and invests the remaining % of the funds into the partnership. Analysis of the K-1s for 20XX shows that this investment amount is recorded as a capital account amount in the partnerships. This investment does not change ownership percent in the partnership.

keeps books and records for each partnership in order to keep track of revenues generated from those partnerships. Amounts in excess of the escrow can be transferred from the disregarded entity to the parent when the parent needs additional funds. The property owner is the general tax matters partner, runs the day-to-day operations and—depending on the particular partnership—owns between 0% and 0% of the partnership.

This general partner is responsible for all operations and can expend partnership funds in any way it desires without the approval of other partners. (through the disregarded entity) owns the remaining partnership interest. is the general partner responsible for maintenance of the property, and the sale of the state tax credit.

has never resorted to legal action with any of the partnerships that is involved with.

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hired a contractor to inspect the historic buildings to confirm that the historical features of the property are maintained. The reports, and associated contractor expenses, associated with this inspection are forwarded to the partnership by

The expenses are reimbursed to . Effective April 17, 20XX (the son of) was contracted to provide documented periodic inspections of the historic features of certain historic properties identified by an officer of . The contract is signed by (for) and

/ Document Review

Because and are located at the same address, public records were used to analyze (see Attachment 3). was founded to act as a developer of multifamily housing projects on November 24th, 19XX by the sole director,

According to the Secretary of State, in 20XX the officers were:

- President and director
- Secretary
- Treasurer and director

Because of the close relationship between and , and in order to differentiate the activities of the two organizations, documentation was requested to substantiate the activities of the employees. According to part of a response dated June 6, 20XX, all five of employees are salaried employees who also work for . Their names and positions for and are summarized below:

Employee Name	Position	Position	20XX Pay	20XX	20XX	20XX
Chairman of the Board	President	President	0	0	0	0
President	SR VP of Operations	SR VP of Operations	0	0	0	0
Secretary / Treasurer	Treasurer	Treasurer	0	0	0	0
Asst. Sec. / Asst. Treas.	Assistant Treasurer	Assistant Treasurer	0	0	0	0
Legal Counsel	Legal Counsel	Legal Counsel	0	0	0	0

had one employee that was not an employee of (President of). All the above employees are salaried employees who were issued Form W-2. stated that generally employees are not employees of partnerships that is involved with. These employees often advise on issues. stated that none of the employees keep a time sheet for either or for

The only substantiation of work for employees was a calendar for for the 20XX and 20XX years. These calendars were analyzed. The calendars show meeting times. The

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number of hours did work in 20 and 20XX is estimated to be 0 and 0 hours respectively.

On September 3, 20XX, the Board of Directors approved the salaries for the officers commencing January 1, 20XX. The approved salaries are:

Chairman of the Board	\$0 annually (\$0 / month)
President	0 annually (\$0 / month)
Asst. Secretary / Asst. Treasurer	0 annually (\$0 / month)
Secretary / Treasurer	0 annually (\$0 / month)

Effective September 1, 20XX the approved salary is:

Vice-President Legal	\$0 annually (\$0 / month).
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provided substantiation of educational activities. This information was analyzed. For 20XX and 20XX, the educational activities consisted of emails between and a variety of other individuals, and a prior period presentation performed by . One email example is an email dated 3/2/20XX from originally sent to that was forwarded to . asked about obtaining a grant to stabilize or mothball a building, and asked for additional information.

Partnership Document Review

The partnership documents for 1 of the 36 partnerships reviewed is given as an example of the partnership documents (see Attachment 4). On November 12, 20XX, signed a commitment letter with regarding admission to the LLC as historic participant and for the acquisition of Rehabilitation Tax Credits. signed for as President, and signed for . The relevant points are:

- This letter sets forth the commitment of , its affiliates, assigns and successors (" ") to acquire, and ("owner") to allocate Historic Rehabilitation Tax Credits to (hereafter called "tax credits").
- The rehabilitation of the building is a qualified historic structure.
- Coinciding with the terms of the tax credit commitment letter between owner and purchaser, upon receipt of the tax credits, will transfer to purchaser the tax credits. After making the transfer, and retaining \$0 per \$0 of tax credits, will make a capital contribution to owner of the balance of the amount paid by purchaser.
- Owner shall pay all fees associated with the tax credit application, and transfers.
- Owner grants exclusive right to sell the tax credits. Owner shall not negotiate with any other party during the term of this commitment.
- Owner will pursue the tax credit approvals from the State Historical Society.
- Owner will develop, rehabilitate, construct, operate, use and manage the project in such manner so that the tax credits will not be revoked, cancelled, terminated or disallowed, or otherwise prevent from receiving the tax credits.
- has reviewed the proposed historic renovation and agrees to join owner as either a member or partner whose sole responsibility shall be to control the historical preservation aspect of the project, and oversight of historic compliance.

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- Owner agrees to admit _____ as a member or partner and will establish a \$0 reserve fund over which _____ has exclusive control.

The restated operational agreement for _____ dated November 22, 20XX signed by _____ and _____ is summarized below:

- _____ was formed on April 23, 20XX. Prior to the restated operational agreement, _____ and _____ were the only members.
- The manager or co-managers refer to _____ and _____. Each of these persons are the co-manager, and as such can bind the company without the consent of the others.
- _____ has been admitted as a special administrative manager.
- The manager may change the name, or principle place of business of the LLC without the consent or approval of the members.
- The LLC may engage in any business or activity in which an LLC may lawfully engage.
- While the proportion of the percentage interests can be adjusted based on additional capital contributions, no adjustment shall be made to the percentage interest held by _____ due to making an additional capital contribution.
- As outlined in the commitment letter, _____, agrees to make an additional capital contribution to the LLC after its sale of the state tax credits.
- Profits, losses and non-recourse deductions are allocated to the members as follows:

Member	Percent Interest	Capital Contribution
	0 %	\$ 0
	0 %	\$ 0
	0 %	\$ 0
	0 %	\$ 0

- The state tax credits are allocated to _____.
- The parties agree that any taxable income resulting from the sale of the state tax credits by _____ shall be recognized by _____ and shall not be taxable income of the LLC.
- _____ shall be allocated 0% of profits, losses, and distributions (excluding the amount resulting from the sale of the tax credits). _____ ownership shall, at all times, be 0%.
- The overall management and control of the business and affairs of the LLC are vested in the managers, the managers shall keep the books and records of the LLC.
- The managers shall designate a member to serve as the tax matters partner.
- Members holding a majority of the percentage interests of the LLC have the right to appoint, remove, increase or decrease the number of managers.
- The LLC shall establish a _____ of \$0 subject to the exclusive use of _____ for the benefit of the LLC.
- In the event _____ interest ownership (the capital account) is redeemed by the LLC, the proceeds held in this preservation fund shall be used to offset the redemption price.
- No member has the right to require any in-kind distribution of LLC assets.

Activity in Subsequent Time Periods

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Historic Boardwalk Hall v CIR (694 F.3d 425 (2012)) changed how several organizations in the tax credit industry operated. _____ power of attorney, _____, stated that since this case, _____ has changed its activities.

In 20XX and 20XX, _____ contracted with organizations that _____ would receive donations of tax credits, sell them and loan the proceeds back (less _____ fee). As an example of these 5 business relationships, the documents associated with _____ (Attachment 5) are summarized below:

- The Tax Credit purchase agreement dated January 5, 20XX states that _____ will sell the tax credits to Commerce Bank.
- The amended operational agreement that was dated January 28, 20XX gave _____ LLC ownership in _____
- _____ Investment was allocated the Historic State Tax Credits by _____
- _____ Investment donated the tax credits to _____ on condition that _____ would do a mortgage loan of the net proceeds (less a 0% fee of \$0) to _____
- _____ signed as the designated member representing _____
- The terms of the mortgage note are 0% interest with a balloon payment after 0 years.
- The mortgage is subordinated to the lien of the Senior Mortgages.
- The property is used to secure the note.
- When the payment is due, _____ can modify or waive any of the borrower's obligations or lender's rights under this note.
- The \$0 mortgage and promissory note were recorded on February 1st, 20XX. The note matures on December 31, 20XX.
- The mortgage amount was increased to \$0 on October 16, 20XX.

According to the _____ Secretary of State Website (Attachment 6) _____ Investment has 0 LLCs, 0 of which are dissolved. _____ was incorporated by _____ (who owns at least 0% of the capital), its registered agent is _____, and its address is _____

Law Section:

In order to be exempt under Internal Revenue Code (IRC) § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the following exempt purposes: Religious, Charitable, Scientific, Testing for public safety, literary, educational or prevention of cruelty to children or animals with no part of the earnings inuring to the benefit of any private shareholder or individual (IRC §501(c)(3), Treasury Reg. §§ 1.501(c)(3)-1(a), and 1.501(c)(3)-1(d)(1)). The term "charitable" as used in IRC Section 501(c)(3) is used in its generally accepted legal sense (Treasury Reg. §1.501(c)(3)-1(d)(2)).

An organization is not organized exclusively for exempt purpose or purposes unless its assets are dedicated to an exempt purpose (Treasury Reg. § 1.501(c)(3)-1(b)(4). An absolute dedication of assets to charity is a precondition to exemption under IRC § 501(c)(3). The organization is required to substantiate its activities and demonstrate that it continues to operate exclusively for one or more of the purposes given in IRC § 501(c)(3) (IRC § 6033).

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In cases where an organization's activities could be carried out for either exempt or nonexempt purposes, we examine the manner in which those activities are carried out in order to determine their true purpose. The operation of a conference Center was not deemed to be a charitable activity because the conference center operation was competing with commercial organizations (Arlie Foundation 283 F. Supp. 2d 548 (2003)).

Under the operational test, the purpose towards which an organization's activities are directed, and not the activities themselves, is ultimately dispositive of the organization's right to be classified as exempt under IRC § 501(c)(3). Providing a consulting service of the sort ordinarily carried out by commercial ventures means the organization is operating in a commercial fashion and does not qualify for exempt status (BSW Group v CIR, 70 T.C. 352 (1978)).

An organization is not operated exclusively for one or more exempt purposes if its net earning inures in whole or in part to the benefit of a private shareholders or individuals (Treasury Reg. §1.501(c)(3)-1(c)(2)). An organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest (Treasury Reg. §1.501(c)(3)-1(d)(1)).

Inurement is benefit to an individual member of the organization (Treasury Reg. Section 1.501(c)(3)-1(e)(1)). The prohibition against inurement is absolute; the organization loses its tax-exempt status if even a small percentage of income inures to a private individual (Church of Scientology of California v CIR, 823 F.2d 1310 (1987)). An organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. The payment of expenses and expenditures on behalf of a private person is also prohibited inurement (Founding Church of Scientology v United States, 412 F.2d 1197, 188 Ct. Cl. 490).

A non-exempt entity that substantially benefits from the activities of the exempt organization, and exerts considerable control over the exempt organization and how the exempt organization carries out its activities means the exempt organization is being used as an instrument to further the private benefit of the non-exempt and does not qualify as tax exempt (Est. of Hawaii v Commissioner 71 T.C. 1067 (1979)).

Certain organizations such as limited liability companies may choose treatment as a partnership, corporation or disregarded entity for federal tax purposes. By default, if an election is not made, a domestic entity with a single owner is a disregarded entity (Treasury Reg. § 301.7701-3(b)(1)). Disregarded entities are treated as a branch or division of its owner (Treasury Reg. § 301.7701-2(a)). Partnerships made between the disregarded entity and another organization is treated as if the owner entered into the partnership.

The partnership must demonstrate that it is operated exclusively for charitable purposes (Plumstead Theatre Society, Inc. v CIR, 675 F.2d 244 (1982), Housing Pioneers Inc. v Commissioner 58 F. 3d 401 (1995)) and that the private benefit to the other partners is incidental (Treasury Reg. § 1.501(c)(3)-1(c)(2)). In this case, Plumstead needed additional funds in order to carry out its exempt purpose and for that reason entered into a partnership with three non-exempt partners. These non-exempt partners were limited partners who had

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claim on the share of any profits in one theatre production. The partnership agreement expressly reserved full control of daily operations to Plumstead.

Housing Pioneer's sole activity was making sure that the properties owned by the partnership complied with the federal and state laws that created the tax credits. The court ruled that providing state and federal tax credits to partnerships is a non-exempt purpose and not exclusively charitable. Further, the proceeds from these tax credits inured in part to individuals. For these two reasons, Housing Pioneers lost its exempt status (Housing Pioneers Inc. (IBID)).

A tax-exempt organization and non-exempt entity were controlled by the same persons, and their activities were so interrelated as to be functionally inseparable, then the benefit to the non-exempt was not incidental (P.L.L. Scholarship v Commissioner, 82 T.C. 196 (1984)). A tax-exempt organization in a partnership with a non-exempt entity that can only veto partnership action, but cannot initiate action without the consent of the non-exempt entity has ceded effective control of the operations to the non-exempt entity thereby conferring impermissible private benefit to that non-exempt entity. For this reason, the tax-exempt organization was not operating exclusively within the meaning of IRC § 501(c)(3) (Redlands Surgical Services v CIR 113 T.C. 47, 47 (1999)).

Whether the organization qualifies for tax-exempt status must be based upon the totality of circumstances. The organization argued that it passed the operational test because its activities via the partnership furthered its charitable purposes. The court disagreed with this argument. The court stated that we do not simply consider whether the partnership furthers the organization's activities, but we must also ensure that those activities do not substantially further other (non-charitable) purposes. When the non-profit cedes control over the partnership to the non-exempt entity, we assume that the partnership's activities substantially furthers the non-exempt's interests. Because the activities further the profit-seeking interests of the general partner who operates the partnership, St. David's operates for a non-exempt purpose to a more than insubstantial degree. There are reasons to doubt that the partnership documents provide St. David's with sufficient partnership control. St. David's can veto board actions, but cannot initiate action without the support of the for-profit partner. Control of partnership activities must be clearly stated in the governing documents of the partnership that would empower St. David's to enforce exempt activities. St. David's appears to assert that the primary means through which it can force the for-profit to comply with the partnership agreement is by taking legal action. Given the time and expense of judicial proceedings, we doubt that St. David's will resort to litigation every time the for-profit makes a single decision that creates a conflict with exempt activities (St. David's Health Care System v U.S. 349 F.3d 232 (2003)).

The courts are not compelled to respect a taxpayer's characterization of a transaction for tax purposes based on how document-intensive the transaction becomes. The "substance-over-form doctrine" is applicable to instances where the substance of a particular transaction produces tax results inconsistent with the form embodied in the underlying documentation, permitting recharacterization of the transaction in accordance with its substance. The sales of tax credits through a limited partnership is a disguised sale by the owner of the tax credits (Historic Boardwalk LLC v Commissioner of Internal Revenue, 694 F.3d 425 (2012)).

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In an organization, largely animated by a commercial purpose, the substantial purpose was to identify and destroy unethical and fraudulent merchandising schemes. The Supreme Court ruled that if an activity is substantial in nature and is not carried out for an exempt purpose, then no matter how many other exempt purposes are being carried out, the organization's exemption can be lost (*Better Business Bureau v U.S.* 326 U.S. 279, 283 66 S. Ct. 112, 114 (1945)).

A tax is imposed on the "unrelated business taxable income." In determining the amount of the tax, the term "taxable income" as used in IRC Section 11 shall be read as "unrelated business taxable income" (IRC §511(a)(1)).

The term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less those allowable deductions which are directly and indirectly connected with the carrying on of such trade or business (IRC §512(a)(1), Treasury Reg. §1.512(a)-1)).

The term "unrelated trade or business" means any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under IRC §501 (IRC §513(a)).

Donations are largely synonymous with gifts, and gifts are deemed to be voluntary transfers without consideration (*DeJong v Commissioner* 36 T.C. 896). The use of the donation to purchase a note from the donor with property as collateral means that the value of the donation needs to be adjusted by the value the donor received in return (IRC § 170(c)(1)(C), Revenue Ruling 76-151 (1976-1 C.B. 59), *Mason v U.S.* (513 F. 2d 25)). The transfer of the property back to the donor clearly shows that the donor has not given up control over the property. This means that the property is not a gift because the donor retained control over the property. Since the donation is not a gift, it is also not a donation (*Davis v Commissioner of Internal Revenue* (81 T.C. No. 49, 81 T.C. 806)). Payments made in exchange for goods or services are not tax deductible donations (*Hernandez v CIR* (490 U.S. 680, 109 S. Ct. 2136)).

Organizations that facilitate tax avoidance schemes do not qualify for exemption under IRC §501(c)(3) (*Church of World Peace Inc. v Commissioner* T.C. Memo 1994-87 (1994), *aff'd* 52 F.3d 337 (10th Cir. 1995)). In this case, the church used its tax-exempt status to create a circular tax avoidance scheme. Individuals made tax-deductible donations to the church. The church returned the funds in the form of tax-free "housing allowances".

An exemption ruling or determination letter may be revoked or modified retroactively if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented (Treasury Reg. Section 601.201(n)(6)).

Taxpayer Position:

In addition to the correspondence between the IRS and (as given in the facts section), the taxpayer's position is augmented by the correspondence dated December 18, 20XX and April 10, 20XX. In summary, makes the following points and clarifications:

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In 20XX, _____, through _____, completed a historic preservation project in _____ utilizing a _____ State Historic Tax Credit Program. The only entity that they could locate to facilitate the sale of the tax credits was a non-exempt entity out of _____ that charged an 0% fee and provided no additional project services.

_____ and _____ were looking for an alternative that could become involved in the projects in which they were assisting, and could provide cost-efficient services. Recognizing the importance of historic preservation, both _____ and _____ were involved in the effort to create the _____ Historic Tax Credit Program that operates in _____ Today.

_____ participates in discussions that deal with the basic mechanics of understanding historic preservation in projects. In this capacity, _____ is a resource to individuals and professional developers by helping these individuals learn what to do, and what to watch out for when undertaking a project. This expertise is provided without charge.

_____ and its Chairman of the Board are regular speakers at historic preservation conferences and various community organizations. Like many modern cities, _____ has several historic buildings. By providing information, _____ has allowed _____ to begin moving forward with the development of _____ historic properties in _____ that will ultimately provide additional and better housing to individuals in _____

_____ is involved in development projects where individuals use the state historic tax credits. The National Park Service works through the State Historic Preservation Office (SHPO). The SHPO works with the property owner to complete Part 1 (designation of historic properties), Part 2 (reconstruction plan), and Part 3 (certificate that creates the dollar amount of the tax credit). _____ involvement is primarily with Part 2, and occasionally with Part 1.

_____ reviews the project to make sure that it appears to be financially sound, and reviews the proposals to make sure that the key historic elements are maintained. _____ is not involved in deciding what the project is used for, and is not involved with the audits of the property owner that determines the amount of the tax credits.

It may take a _____ before the rehabilitation project is complete and state rehabilitation tax credits are available for sale. The state tax credits are important because the tax credits provide additional capital so that the rehabilitation project is viable.

The difference between _____ and non-exempt entities is _____ role as a general partner or as a secured lender. By being a general partner, and having funds allocated to _____ by the partnership, _____ retains sufficient control to protect the historic features of the buildings. The protection of these historic features is the principle reason for why _____ is an exempt organization.

While many states require the historic buildings to be open to the public for tours, _____ does not require properties to be open to the public for tours in order to qualify for tax credits, so no buildings are open to the general public to tour. The public can see the buildings, and see the historic features that are preserved.

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contracts with inspectors who monitor historic features. If problems are detected, then would consult with the owner to determine how to remedy the project in accordance with Secretary of Interior Standards.

Currently, has 0 projects in which they have been involved, of those projects have involved as the developer, of which are low income housing tax credit projects. Because of its close relationship with , knows what does with these projects.

Prior to Historic Boardwalk Hall LLC v CIR, involvement was to receive the allocation of state historic tax credits, and then sell those tax credits to a third party. After the Boardwalk case, in order to provide funds for the project, the developer donates the state historic tax credits to who then sells the tax credits and makes a low interest loan back.

With regards to educating the public, receives phone calls from people having questions or seeking advice. is located from internet searches, from attorneys, the State Historic Preservation Offices, local chamber of Commerce, or other professionals.

Included in the correspondence were emails from a variety of individuals asking for help in rehabilitating their property. referred many of these individuals to the and other resources that can assist the property owner. Many of these emails deal with grant funds that would be used to mothball the property until a development plan is developed.

has a grant program that provides funds that will mothball a significant building so that it doesn't suffer additional damage. Most of the funds are spent for weather proofing. Mothballing refers to keeping a property from suffering additional damage due to the effects of weather.

President receives the grant requests, reviews them and makes proposals to the Board of Directors. The Board decides when to provide grant money, and how much the grant will be. asserts that because retains control over the historic features of the property, provides educational activities and reduces the burden of government, continues to qualify for exempt status.

Government Position:

Operationally, creates wholly owned LLCs that are treated as a branch or division of (Treasury Reg. §§ 301.7701-3(b)(1), and 301.7701-2(a)). These LLCs enter into Partnerships with non-exempt entities. These partnerships are treated as if the owner of the disregarded entity entered into the partnership. Based on documents reviewed, the activities of the various parties are summarized below. The activities of the property owner is:

- Develop, or have another organization develop, rehabilitation plans to rehabilitate the historic property owned by the property owner.
- Register, or have registered, the rehabilitation plan or plans with the U.S. Secretary of the Interior.
- Oversee, either directly or through another organization, the rehabilitation of the historic property.

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- Register, or have another organization register, the property as historic property with the U.S. Secretary of the Interior.
- Comply with the U.S. Secretary of the Interior and the individual state to create the federal and state historic tax credits, and determine the value thereof.
- Identify the purchaser of the state tax credits.
- Transfer the historic tax credit(s) to the partnership formed with .
- The partnership with was formed with the explicit purpose of selling the historic tax credits, with those funds (less a 0% commission) invested in the partnership by .
- The property owner(s) becomes the general partner(s) responsible for the day-to-day operations of the partnership.
- The property owner(s) becomes, or designates, the tax matters partner.

The activities of the partnership are:

- Accept the historic tax credits generated by the property owner's activities.
- Allocate the historic tax credits to .
- Use partnership funds to pay to monitor and inspect the historic features of the property.
- Run the day-to-day operational activities relating to the rehabilitated historic property.
- Expend partnership funds in any way the general partner(s) desire.
- Keep the books and records of the partnership activity or activities.

The activities of are:

- Generally obtain a 0% ownership in the partnership no matter how much money puts into the partnership.
- Receipt of historic tax credits from the partnership.
- Sale of historic tax credits to third parties already identified by the property owner(s).
- Contractually obligated to invest the proceeds from the sale of tax credits (less a 0% fee) into the partnership.
- Claim the entire amount of the historic tax credit sales amount on its books and records, and be responsible for the payment of any applicable taxes.
- Generally, receive \$0 in funds to monitor the historic features of the owner's property. These funds can be used to cash out of the partnership.
- Keep books and records to record monitoring activities in the partnership.
- Provide services that designates as a limited partner.

It should be noted that only state tax credits were transferred to . On the Form 990-T, a General Business Credit carryforward was given, but no required detail was provided. This General Business Credit is a credit from a passive activity.

An analysis of how operates is more descriptive of purpose and motivation than the assertions made in the organizational documents (or in any other document) (Historic Boardwalk (IBID), BSW Group (IBID)). A substantial causal relationship must exist between the conduct of the organization's trade or business activities that generated the income, and the achievement of the organization's exempt purposes (Treasury Reg. §§ 1.513-1(b), 1.513-1(d)(2), 1.501(c)(3)-1(e)(1); IRC §§ 511, 512, 513). The organization must demonstrate that it is not organized or operating for the benefit of private interests (including organizations controlled

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directly or indirectly by such private interests) (Treasury Reg. §1.501(c)(3)-1(d)(1), *Harding Hospital Inc. v U.S.* (505 F2d 1068, 1071 (1974))).

Operationally, has no volunteers. and are located at the same location, and use common employees. At an organizational level, works for at and is President of . As Chairman of the Board, is issued a Form W-2 and supervises the employees at . Based on their job titles, all of employees work for doing essentially the same duties at as at .

Because activities are carried out by common employees, an analysis of these employee's work is necessary to demonstrate that is operating for an exempt purpose and not operating for the private benefit of the partnerships is a part of ((IRC § 6033, *Harding Hospital v United States* (IBID), *Arlie Foundation* (IBID))).

provided substantiation that spent an estimated 0 hours and 0 hours in 20XX and 20XX respectively attending meetings on behalf of . The operational purpose of these meetings was not provided. The written assertion that the employees provide advice on issues is vague and is not substantiation of exempt activity (as required by IRC §6033). For this reason, did not establish a substantial causal relationship between the work performed by the employees and s claimed exempt activities. These employees could just as easily have been doing work for, and on behalf of their other employer,

Because of the interrelationship between and , the only conclusion is that is so intertwined with as to be functionally inseparable from them. is operating for the benefit of and indirectly for the benefit of (P.L.L Scholarship (IBID)). As such, is an instrument that serves the private interests of and , and as such does not qualify for exempt status (Est. of Hawaii v Commissioner (IBID)).

An organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. The payment of expenses and expenditures on behalf of a private person is also prohibited inurement (*Founding Church of Scientology v United States* (IBID)). If didn't pay these common employees, then would have to pay them out of funds.

The payment of employee wages of \$0 in 20XX and \$0 in 20XX benefits and indirectly benefits its 0% owner, . This indirect benefit is prohibited inurement (Treasury Reg. §§1.501(c)(3)-1(e)(1), §1.501(c)(3)-1(c); *Founding Church of Scientology v U.S.* (IBID)). The prohibition against inurement is absolute; the organization loses its tax-exempt status if even a small percentage of income inures to a private individual (*Church of Scientology of California* (IBID)).

Operationally, sells tax credits and--as its website maintains--competes with for-profit entities. With regards to the sale of tax credits, because is competing with commercial organizations that sell tax credits, is providing commercial services of the sort ordinarily carried out by commercial ventures and so is operating in a commercial fashion. For this reason, does not qualify for exempt status (*Arlie Foundation* (IBID), *BSW Group* (IBID)).

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As of mid _____, _____ stated that it has 0 partnerships, of which 0 belong to _____. The only reason _____ knows what the activities are of these 0 of the partnerships is because of _____ close relationship with _____. _____ doesn't know what the other 0 partnerships do.

Plumstead Theatre Society Inc. v CIR (IBID) clearly illustrates how the exempt organization is to operate in a partnership, and how that partnership is to assist the exempt organization in carrying out its exempt purpose. In Plumstead Theatre Society, the exempt organization was in charge of the partnership's day-to-day operations in order to carry out theatre presentations. The non-exempt entities provided funds so that Plumstead could carry out this exempt activity. Plumstead retained its exempt status because it was harnessing the funds of the non-exempt entities in order to carry out an exempt activity. The same cannot be said of _____.

Included in the partnership agreement provided in support of the Form 1023, Section 4.02 states that "except as otherwise provided in this agreement..." _____ has the power to enforce and protect the historic features of the historic property. Section 5.01 gives the for-profit entity complete control over the partnership. The operational agreements in force do not explicitly state what _____ can do to protect the historic features. We are left with _____ only having the ability to act in a very limited fashion. Operationally, _____ resembles St. David's, and like St. David's _____ cannot ensure that any partnerships will take new action that furthers charitable purposes (St. David's (IBID)).

_____ does not materially participate in a regular, continuous or substantial manner in the operations of the partnership. While _____ can veto partnership actions (such as a reorganization), _____ cannot initiate action without the consent of the non-exempt day-to-day manager(s). _____ doesn't take care of the books and records for these partnerships, is not in charge of the day-to-day operations of the partnerships, doesn't know what 0 out of 0 partnerships do, has no way to know, determine, and demonstrate how 0% of the invested money is being spent, and can be bought out by the partnership using a fraction of the funds invested.

The general manager in charge of the day-to-day operations of the partnership has complete control over all aspects of the partnership, including funds reserved for _____ monitoring of historic features. _____ has effectively ceded complete control of the partnerships to the non-exempt entities thereby conferring impermissible private benefit to these non-exempt entities and their day-to-day operational managers, and for that reason doesn't qualify for exempt status (see Redlands Surgical Services (IBID)).

The term "General Partner B" (or any other term signifying that _____ is a general partner) has no operational meaning or impact on how the partnerships operate. _____ duties are restricted to selling tax credits generated by the property owners, and performing inspections of the historic property owned by the property owner. Taken as a whole, the operations of _____ supports the non-exempt activities of the partnerships which—in turn—supports the substantial non-exempt activities of the non-exempt property owners.

Because of _____ lack of control over the partnerships, the investments into these partnerships is problematic. An organization is not organized exclusively for exempt purpose(s) unless its assets are dedicated to an exempt purpose (Treasury Reg. §1.501(c)(3)-1(b)(4)). An absolute

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dedication of assets to exempt purposes is a precondition for exemption under IRC §501(c)(3) (Treasury Reg. §1.501(c)(3)-1(b)(4)).

needs to substantiate that the assets it invests into the partnerships are absolutely dedicated to an exempt purpose (IRC §6033). has entirely failed to do this. The extent of this failure is made clear by looking at the net assets compared with the investments in partnerships. This information is summarized below:

	20XX	20XX
Net Revenues	\$ 0	\$ 0
Investment in Partnerships	\$ 0	\$ 0

Since these years may not be a clear indication of what does with its money, the net assets, book value of the partnerships, and amounts invested in were compared.

	20XX	20XX	20XX
Ending Net Assets	\$ 0	\$ 0	\$ 0
Ending amount Invested in Partnerships	0	0	0
Ending Net assets not in Partnerships	\$ 0	\$ 0	\$ 0
Percent of net assets not in a partnership	0%	0%	0%
Percent of net assets in a partnership	0%	0%	0%

This information clearly illustrates that has a substantial amount of its net assets invested into for-profit entities that, for 0% of them, doesn't know what the partnership is doing.

Unlike St. David's Health Care Systems (IBID), doesn't know what all the partnership activities are. Like St. David's Health Care Systems, supports the non-exempt activities of the non-exempt entities to a more than insubstantial degree, and like St. David's, doesn't qualify for exempt status.

Like Housing s v CIR (IBID), deals with state tax credits for the benefit of non-exempt partnerships. Unlike Housing s, cannot claim that it operates for the benefit of a charitable class when doesn't know what 0% of the partnership's principle activities are. Like the exempt organization in Housing s, operates to benefit the non-exempt partnerships to a more than insubstantial degree, and so doesn't qualify for exempt status.

By investing 0% of the funds raised by the sale of tax credits, is an instrument that advances the private interests of these partnerships to a more than insubstantial degree. For this reason, doesn't qualify for exempt status (Est of Hawaii v Commissioner (IBID), P.L.L. Scholarship v Commissioner (IBID)), Treasury Reg. §§ 1.501(c)(3)-1(c)(1), and 1.501(c)(3)-1(c)(2)). Operating in a commercial fashion in order to provide private benefit and inurement to the non-exempt partnerships constitutes 0% of net assets and almost all of employee's time. Operating in a commercial fashion in order to provide private benefit is

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most substantial activity. In fact, operating in a commercial fashion in order to benefit private interests was the motivating reason for starting

doesn't know how these invested funds are used, and so cannot say that these funds were used to further a charitable purpose, or that these invested funds were absolutely dedicated to an exempt purpose. For this reason, and based on the desired commercial activity that motivated to be organized, has never operated in a charitable fashion. This is a firm basis for retro-active revocation of exempt status.

If an activity is substantial in nature and is not carried out for an exempt purpose, then no matter how many other exempt purposes are being carried out, the organization's exemption can be lost (Treasury Reg. §§ 1.501(c)(3)-1(c)(2), 1.501(c)(3)-1(d)(1)). Like the organization in Better Business Bureau (IBID)), is dedicated to a commercial non-exempt business, and like that organization doesn't qualify for exempt status.

This leads to an analysis of 's subsequent operational activities. In 2012, the Historic Boardwalk Hall LLC v CIR (IBID) case came out. In this case, the court stated that the sale of tax credits by a limited partner is a disguised sale. Because of this court case, changed how it operated starting in . In contracts were signed that outlined how the new relationships would work.

Instead of being the partner who receives the tax credits, entered into the partnerships and received the tax credits. Then, would donate the tax credits to . signed the donation contracts as the designated member on behalf of

is contractually required to sell the tax credits and loan the tax credit proceeds back (less a 0% fee) using a mortgage loan. The loans are interest free loans for 0 years with the property as collateral. After 0 years, the property owner is to pay a lump sum or surrender the property to

The proceeds of the loan can be used for any purpose(s) that the non-exempt partnership desires. In applying the same substance over form doctrine used by the court in Historic Boardwalk (IBID), is still involved in the disguised sales of the tax credits, and—for reasons already discussed—is operating in a commercial fashion in subsequent time periods for the private benefit of the non-exempt partnerships. For this reason, does not qualify for exempt status in subsequent time periods.

As already discussed, s assets have to be irrevocably dedicated to charitable purposes. By contractually being required to sell the donated assets and loan the proceeds back to the donor, the asset is not irrevocably dedicated for charitable purposes. For this reason, is not organized for an exempt purpose and does not qualify for exempt status.

By participating in this loan-back activity, is facilitating a tax avoidance scheme, and as such does not qualify for exemption in subsequent time periods (Church of World Peace Inc. v Commissioner (IBID)). This loan-back activity is problematic in other ways.

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The donation value to the property owner is the amount of the tax credit proceeds it receives less the amount loaned back (IRC §170(c)(1)(C), Revenue Ruling 76-151 (IBID), DeJong v Commissioner (IBID), Mason v U.S (IBID)). Because the donor has not given up control over the property, the donation is not a gift and so is not a donation (Davis v CIR (IBID)). Because the 0% fee constitutes payment for services, this amount is a quid pro quo payment and is not a tax-deductible donation (IRC §§ 170(a)(1), 170 (c); and Hernandez v Commissioner (IBID)).

In its initial application, made it appear that it would essentially be operating like Plumstead Theatre (IBID) in that would use commercial funds to carry out exempt purposes. listed several exempt activities that it would carry out. The IRS granted exempt status because represented that, taken as a whole, like Plumstead Theatre it would operate to carry out an exempt activity.

For this reason, all of activities are unrelated business activities that produce unrelated business income (under IRC §§ 511, 512 and 513), and are taxable as such. If had passive income, then any tax due at the time of those filings would have been offset by the passive General Business credits earned during those same time periods. The selling of tax credits is not a passive activity. For that reason, the passive General Business Credits reported on the Form 990-T cannot be used to offset income.

Conclusion:

The representations made by in its Form 1023, and subsequent correspondence with the IRS, made it sound like would operate like the exempt organization did in Plumstead Theatre Society (IBID). Plumstead controlled the partnerships so that Plumstead's exempt activities were carried out. Control over the activities of the partnerships was the principle IRS issue at the time the Form 1023 was being worked by the IRS. represented that it would control the activities of the partnerships in order to carry out its exempt activities.

uses the same workers at the same location as could not substantiate how much time it spent on various activities, so the only measurements that can be used are how uses its resources, what the partnerships do, and control over these partnerships (see Arlie Foundation (IBID)). Because 's activities are not distinguishable from activities, activities support the commercial activities of

The partnership activities, and who controls the partnerships, cannot simply be ignored. Who is supporting whose activity is the determining factor in why so many other exempt organizations lost their exempt status (see Est. of Hawaii (IBID), St. David's Health Care System (IBID), Housing (IBID), and Redlands Surgical Services (IBID)), and why Plumstead Theatre (IBID) retained its exempt status.

Instead of being in a dominant role in the partnerships so that its exempt activities can be carried out like the exempt organization was in Plumstead Theatre (IBID), is not in charge of any of the historic rehabilitation of the buildings, is not the day-to-day partnership operational manager, is not the tax matters partner, doesn't know what 0% of the partnerships do, and could be cashed out of the partnerships by being paid the capital amount it owns (which is a fraction of the funds invested into the partnerships), and 0% of the funds derived from the

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sale of the tax credits could be used for anything the day-to-day partnership manager wants to spend the funds on.

Whether is present or absent in the partnership, would not have an effect on the operations or activities of the partnerships. With approximately 0% of its net assets invested in these partnerships, is not organized for any exempt purposes, and does not support activities that can be described under IRC §501(c)(3). supports the activities of for-profit entities to a more than insubstantial degree.

With less than 0% of the net assets used for claimed charitable activities, the claimed exempt activities can only be described as insubstantial activities. Because these insubstantial activities account for less than one-hundredth of total activities, any analysis of them would not have changed the conclusions of this case: does not qualify for exempt status (see Better Business Bureau (IBID)).

Starting in 20XX, claimed to have changed how it operates. The applicable contracts demonstrate that the tax credits would be donated to provided that would then sell the tax credits and loan 0% of the proceeds back to the donors for 0 years with no interest charged during that time. In essence, only made cosmetic changes in how it operated, which have little bearing on the relationship between and the partnerships. The contracts used are mere constructions and can be ignored (see Historic Boardwalk (IBID)).

The substance of the transactions and relationships between and the partnerships remain unchanged (see Historic Boardwalk (IBID)). still doesn't know what the partnerships do, still has no control over how 0% of the funds from the sale of the tax credits are spent and still essentially has little or no control over the partnerships, and the activities thereof.

It is evident from methods of operations that the purpose for being formed was so that could operate in a competitive commercial fashion to sell tax credits in order to raise funds for the benefit of for-profit partnerships, and provide additional services to those for-profit partnerships. provides so much private benefit to the partnerships it is involved with, that it does not qualify for exempt status under IRC §501(c)(3).

It is clear from the facts of this case that materially misrepresented how it would operate on the Form 1023. For these reasons exempt status should be retroactively revoked effective its inception of August 7, 2008 (see Treasury Reg. §601.201(n)(6)). The 20XX and 20XX Form 990s and Form 990-Ts returns will be converted to Form 1120 returns.

ALTERNATIVE POSITION

If the primary position is not upheld, then the alternative position is that the effective date of revocation is the first day of the first year under examination which is January 1, 20XX. As stated in the primary position conclusion, 20XX and 20XX Form 990s and Form 990-Ts returns will be converted to Form 1120 returns.

Attachment 1

Deleted Taxpayer Identifying Information

Attachment 2

Deleted Taxpayer Identifying Information

Attachment 3

Deleted Taxpayer Identifying Information

Attachment 4

Deleted Taxpayer Identifying Information

Attachment 5

Deleted Taxpayer Identifying Information

Attachment 6

Deleted Taxpayer Identifying Information