



Department of the Treasury  
Internal Revenue Service  
Independent Office of Appeals  
4330 Watt Avenue  
SA 7890  
Sacramento, CA 95821-7012

Number: **202047011**  
Release Date: 11/20/2020

Date:

Person to contact:

Name:

Employee ID Number:

Phone:

Fax:

Re:

EO Examination

Tax periods ended:

Employer ID number:

Uniform issue list (UIL):

509.01-01

### Certified Mail

Dear Board of Trustees of

This is a final adverse determination regarding your private foundation classification under Internal Revenue Code (the "Code") Section 509(a). Although you are exempt under Section 501(c)(3) of the Code, you do not qualify as a public charity described under IRC Section 509(a)(3) but, rather, as a private foundation described under Section 509(a) of the Code effective .

We made the adverse determination for the following reasons:

does not meet the requirements of section 509(a)(3) of the Code; therefore, it is a private foundation. This letter modifies our letter dated July 19XX, in which we determined that was an organization described in section 509(a)(3) of the Code.

You're required to file Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation, for the tax periods shown above and for all tax years thereafter. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions.

You're subject to Chapter 42 excise taxes, unrelated business income taxes, and employment taxes (where applicable) based on your activities. Please see Publication 557, Tax-Exempt Status for Your Organization, for more details.

You can get any forms or 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 decide to contest this determination, you can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

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

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

<b>United States Tax Court</b>	<b>US Court of Federal Claims</b>	<b>US District Court for the District of Columbia</b>
400 Second Street, NW	717 Madison Place, NW	333 Constitution Avenue, NW
Washington, DC 20217	Washington, DC 20005	Washington, DC 20001

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

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

You also have the right to contact the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. 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.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

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

Sincerely,

Appeals Team Manager

Enclosures:  
Publication 892

cc:



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

Date:  
March 8, 2019  
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact:

Employee ID:  
Telephone:  
Fax:  
Address:

Manager's Contact Information:

Employee ID:  
Telephone:  
Response Due Date: April 8, 20XX

**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

Letter 3620 (Rev 9-2017)  
Catalog Number 34811R

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,



Paul Herzog  
For Maria Hooke  
Director, Exempt Organizations  
Examinations

Enclosures:  
Forms 886-A and 6018  
Publications 3498 & 892



Form <b>886-A</b> (May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanations of Items</b>	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended

The boards of the and the are appointed by the governor of . A Form 990 or a website for couldn't be located.

Form 990 Return of Organization Exempt From Income Tax lists the following board of directors: and left board replaced from through is the treasurer of ; was the chief financial officer of

of until is on the board of was a member of but not on the board. was the Center Director

Chapter of the was on the executive committee and is an Honorary Trustee. is a trustee. There are trustees, officers, and honorary trustees for the chapter; on the board. The is a national organization that has offices and divisions in the states and other countries. None of the chapters are set up as individual organizations; all fall under the one organization. The national hires the state directors and managers to run the program in the individual states.

Foundation: is listed as a director.

is a Lifetime Trustee.

The boards of the supported organizations don't have the same members.

The board of directors for meet once a year. At the meeting it discusses the financials, hears reports on the activities of the supported organizations, and decides how much to give to the supported organizations.

The supported organizations send letters to requesting money and/or reports showing what their activities were during the year and their financials.

On its Form 990 stated it wasn't a private foundation because it met the requirements of Type II Supporting Organization as defined in IRC section 509(a)(3).

**LAW:**

IRC Section 509(a)(3) provides that an organization which is organized and at all times operated for the benefit of, to perform the function of, or to carry out the purposes of one or more organizations described in IRC 509(a)(1) and (2); and it is operated, supervised, or controlled by, or in connection with, or operated in connection with one or more organizations described in

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509(a)(1) and (2); and it isn't controlled directly or indirectly by one or more disqualified persons isn't a private foundation.

Treas. Reg. 1.509(a)-4(h)(1) gives the definition of "supervised or controlled in connection with". These are referred to as Type II supporting organizations. For a supporting organization to be "supervised or controlled in connection with" one or more publicly supported organizations, there must be common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations to ensure that the supporting organization will be responsive to the needs and requirements of the publicly supported organizations. To meet such requirement, the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations.

Treas. Reg. 1.509(a)-4(h)(2) provides that an organization won't meet the definition of "supervised or controlled in connection with" if it merely makes payments (mandatory or discretionary) to one or more named publicly supported organizations even if the obligation to make the payments is enforceable under state law and the supporting organization's government instrument requires a set amount be paid out. It states such arrangements don't provide a sufficient "connection" between the supporting organization and the needs and requirements of the publicly supported organization to constitute supervisions or control in connection with such organization.

Treas. Reg. 1.509(a)-4(i) gives the requirements to meet the meaning of "operated in connection with". This is referred to as a Type III type supporting organization. To meet this type the organization must satisfy the notification requirement, the responsiveness test, and the integral part test.

The notification requirement requires that the supporting organization give the supported organization(s) a written notice describing the type and amount of all of the support it had provided in the previous year, a copy of its Form 990 *Return of Organization Exempt from Income Tax*, and a copy of its governing documents.

The responsiveness test requires that the supported organization elects one or more of the directors of the supporting organization, or that one or more of the board members of the supporting organization is also on the supported organization board, or that the supporting organization maintains a close working relationship with the supported organization, AND that the supported organization has a significant voice in the investment policies of the supporting organization, the timing of the grants, the manner of making grants, and the selection of the grant recipients.

The integral part test can be met by being functionally integrated or non-functionally integrated. Functionally integrated means the supporting organization engages in activities substantially all of which directly further the exempt purpose of one or more supported organizations, or the supporting organization is the parent of the supported organizations, or the supporting organization is supporting a governmentally supported organization. To meet the requirement of engaging in activities that directly further the exempt purposes of the supported organization the supporting organization must perform the functions of or carry out the purposes of the supported



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organization(s) and but for the involvement of the supporting organization the supported organization would normally be performing the activity.

Non-functionally integrated test requires the supporting organization to satisfy either the distribution requirement or the attentiveness requirement. The distribution requirement is that the supporting organization gives an amount that equals or exceeds distributable amount – 85% of the supporting organization's adjusted net income for the prior year.

The attentiveness requirement is that the supporting organization distributes 1/3 or more of its distributable amount to 1 or more supported organizations. The supported organization must be attentive to the supporting organization. It is attentive if at least one of the following requirements is satisfied: (1) supporting organization gives to the supported organization amounts that equal or exceed 10% of the supported organization's total support, (2) the amount is necessary for the supported organization to carry on its activity without interruption (has to be a substantial activity), or (3) based on the consideration of all of the facts and circumstances, including number of supported organizations, the length and nature of the relationship between the supported and supporting organization, and the purpose to which the funds are put, the amount of support, etc.

#### TAXPAYER'S POSITION

feels that it meets the requirements under IRC section 509(a)(3)(B)(ii) and Treas. Reg. 1.509(a)-4(h) as an organization which is "supervised or controlled in connection" with one or more such organizations. Its arguments are written to show that it meets the requirements of a Type II supporting organization.

#### GOVERNMENT'S POSITION

doesn't meet the definition of a supporting organization in Treas. Reg. 1.509(a)-4. There are three types of supporting organization: I) operated, supervised, or controlled by, II) supervised or controlled in connection with, and III) operated in connection with, one or more publicly supported organizations. A supported organization is expected to have a say in the operation of the supporting organization as to the investment policies and how the grants are made; who to and amounts.

Type I is defined in "Treas. Reg. 1.509(a)-4(g) - The relationship required under any one of these terms is comparable to that of a parent and subsidiary, where the subsidiary is under the direction of, and accountable or responsible to, the parent organization. This relationship is established by the fact that a majority of the officers, directors, or trustees of the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the membership of one or more publicly supported organizations.

Type II is defined in Treas. Reg. 1.509(a)-4(h). It requires common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organization. The last sentence of paragraph (h)(1) says, "Therefore, in order to meet such requirement, the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations."



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Type III is defined in Treas. Reg. 1.509(a)-4(i) – It requires that it meet the notification requirement, the responsiveness test, and the integral part test.

The first step to determine if an organization qualifies under IRC section 509(a)(3) is to see if it meets the definition of Type I, II, or III. has stated it feels it meets the definition of a Type II supporting organization in the aggregate.

A supported organization is expected to have a say in the operation of the supporting organization as to the investment policies and how the grants are made; amounts and who to.

As provided in Treas. Reg. 1.509(a)-4(h)(2) it is no longer enough to make payments to the supported organizations listed in the supporting organization's organizational documents. The rules were changed in . There are no grandfather rules in place.

To qualify as a Type II supporting organization the supported and supporting organizations must be controlled or managed by the same persons. Treas. Reg. 1.509(a)-4(h)(1) specifically states that in order to meet the requirement of "supervised or controlled in connection with" the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations. has board members and there are supported organizations listed in the trust document. is on the board of Foundation – it has board members. is on the board of it has board members. was managing director of and were on the board of the Chapter of the – it has on the state's board and members on the national board. is listed as a Lifetime Trustee of and an Honorary Trustee of Chapter of the . Normally, Honorary and Life Trustees don't have a vote; they don't have a fiduciary responsibility like the other trustees on the board. The control/management of the supported organizations isn't vested in the same persons that are in control/management of . Having one or two of its board members on the board of a supported organization isn't having the same board members.

states that of its board members were closely affiliated with at least one of the supported organizations. of board members were in positions of management/control of – one was the managing director and was the director. of board members was also a member of , but only being a member of an organization isn't the same as being in control or managing the organization therefore that wouldn't meet the requirements for a Type II supporting organization. works closely with , he was the former board chair, and is now listed as a Lifetime Trustee. was on the board of the Chapter of the and is listed as an honorary trustee. The organization has a close working relationship with the involvement with was involved in constructing the new visitor center at

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The fact that the board members have close working relationships with the other organizations doesn't meet the requirement of IRC 509(a)(3)(B)(ii) to be supervised or controlled in connection with one or more organizations. The board members are individually involved with the other organizations but the other organizations aren't involved with . This is contrary to what the regulations require; the supported organization is supposed to be involved in the operation of the supporting organization. board members know what the supported organizations want for support, but the supported organizations have no say in the investments or selection of recipients of the grant monies.

The examples in Treas. Reg. 1.509(a)-4(h)(3) show that the supported organization must have persons on the supporting organization's board. In example 1, the same persons are on the board of the supported organization and the supporting organization, so it meets the definition of a Type II supporting organization. In example 2, none of the people on the supported organization's board were on the supporting organization's board therefore, it didn't meet the requirements of "supervised or controlled in connection with" so it wasn't a supporting organization. In example 3, the supporting organization was set up to support a church. The trust document required that the trustees of the supporting organization had to be active members or leaders in the church. This meets the requirement of a Type II supporting organization because the trustees of the supporting organization are leaders in the supported organization. situation isn't like example 1 or 3. There isn't enough overlap of control between the supported organizations and therefore, it doesn't meet the requirements of a Type II supporting organization.

has stated that supporting multiple organizations is permitted for a Type II supporting organization and it cites General Counsel Memorandum ( ) and Private Letter Ruling (PLR) to support this. Unlike the supported organizations in the GCM and PLR were all inter-related; they were part of the same health or hospital system. The supporting organization was the parent of the others. In this case the supported organizations aren't related; the purposes are similar, but all of the supported organizations aren't working together like the organizations in the GCM and PLR. Because the supported organizations aren't related to each other or to , the relationship doesn't match that of the GCM or PLR.

points out that in the GCM a rule of thumb is given that says, "no less than a majority of the persons who control or manage the supporting organizations have the requisite commonality with persons performing the same functions for each publicly supported organization supported or benefited." Is trying to say that because a majority of its board members are on the boards of the supported organizations that it meets this criterion. But that isn't the case because the GCM is saying the majority of the board members of the supporting organization have to be on the boards of each of the supported organizations. So, having one board member on a supported organization board isn't a majority. is on the board of a supported organization that has 0 board members – this isn't a majority. is the board of a supported organization that has 0 board members – this isn't a majority. and were on the board of a state chapter that has members – this isn't a majority.

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The PLR states that the bylaws of the supporting organization are written to ensure the boards of the supporting and the supported organizations have common members. The PLR met the definition of the Type II supporting organization because the boards had a majority of common members. The supporting organizations were all affiliated. That isn't the case with .

The GCM and PLR point out that when the regulations were written Congress wanted 509(a)(3) Type II organizations to have common boards. The last sentence of Treas. Reg. 1.509(a)-4(h)(1) says, "Therefore, in order to meet such requirement, the control or management of the supporting organization must be vested in the same persons that control or manage the publicly supported organizations." clearly doesn't have the same persons in control or managing the publicly supported organizations.

As provided in Treas. Reg. 1.509(a)-4(h)(2) it is not enough to make payments to the supported organizations listed in the supporting organization's organizational documents to qualify as a Type II supporting organization. There isn't enough connection between the supporting organization and the needs and requirements of the publicly supported organization.

The supported organizations have no say in the operation of . They aren't asked for input on how to invest the money or how to distribute the earnings to the publicly supported organizations. Because there is no common board between the organizations doesn't qualify as a Type II organization. asserts that having a board member on the board of the supported organization is sufficient but it isn't; the regulation requires common boards.

Treas. Reg. 1.509(a)-4(d) does allow for more than one supported organization and to designate supported organizations by class rather than by name for Type I and Type II organizations. Before a supporting organization can use this paragraph to select which groups to donate to it has to determine if it meets the definition of a Type I under paragraph (g) or a Type II under paragraph (h). In the case of a Type I or Type II supporting organization, the supported organization(s) are in control of the supporting organization. Type I because the supporting organization is a subsidiary of the supported. Type II because the same persons control or manage the supporting and the supported organizations. By being in control the supported organizations are determining the investment policies and the amounts given and who given to; therefore, the supporting organization can't decide to give to a different organization unless the supported organization allows it. This section doesn't mean that if an organization gives to more than one organization that it meets the definition of a Type II. To be a Type II supporting organization there must be common supervision and/or control of both the supported and the supporting organizations. As shown above doesn't have common supervision or control with the supported organizations therefore, it doesn't meet the definition of a Type II supporting organization.

Type III supporting organizations as defined in Treas. Reg. 1.509(a)(4)(i) require that the supported organizations have a significant voice in the investment policy, grants being made - who to and the amounts, and when the grants are paid. To meet the definition of a type III

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supporting organization an organization must meet the notification requirement, the responsiveness test, and the integral part test.

To meet the notification requirement the supporting organization must provide a written notice to a principal officer of the supporting organization describing the type and amount of all support it provided during the preceding year, a copy of the Form 990 for the previous year, and a copy of the most recent governing documents. doesn't provide the supported organization with copies of its Form 990 or its governing documents.

The responsiveness test has two parts: relationship of the officers and significant voice. The relationship test requires that one or more officers, directors, or trustees of the supporting organization are elected or appointed by the supported organization or one or more of the governing body of the supported organization also holds important offices in the supporting organization, or the board of the supporting organization maintains a close and continuous working relationship with the board of the supported organization. And the supported organization must have a significant voice in the investment policies of the supporting org, the timing of grants, the manner of making grants, and the selection of grant recipients, and in the use of the income and assets of the supporting organization.

In this case none of the supported organizations elect or appoint persons to board and none of them know of the financials of or the decision-making process on the grants. Therefore, doesn't meet the responsiveness test.

The integral part test can be met by being functionally integrated or non-functionally integrated. To be functionally integrated the supporting organization engages in activities that directly further the exempt purpose of one or more supported organizations or that the supporting organization is the parent of the supported. Engaging in activities that further the supported organization's exempt purpose means carrying out the functions of the supported organization and without the supporting organization doing those activities wouldn't be done. doesn't engage in any activities for the supported organizations – it gives money which isn't carrying on an activity for the supported organization. Therefore, it isn't functionally integrated.

The non-functionally integrated test requires that the supporting organization meets the distribution requirement or the attentiveness requirement. To meet the distribution requirement the supporting organization needs to distribute 85% of its adjusted net income for the prior year to one or more supported organizations. The attentiveness requirement is to ensure that the supported organization is attentive to the supporting organization. To meet the attentiveness requirement the supporting organization has to give an amount to the supported organization that exceeds 10% of the total support of the supported organization or the amount given is enough to carry on an activity without interruption.

doesn't meet the definition of a Type III Supporting Organization because it doesn't meet the notification requirement or the responsiveness test. It hasn't established if it meets the integral



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part test; the amounts received by the supported organizations are less than 10% of their total support.

All types of supported organizations require that the supported organizations have a say in what the supporting organization does either by having a board member appointed by or elected by the supported organization (Type I), having common boards (Type II), or "operating in connection with" where the supported organization has a significant voice in the operations of the supporting organization (Type III).

knows what the supported organizations want and need; it receives copies of reports and requests from the supported organizations. This is opposite of what the three types of supporting organizations defined in IRC section 509(a)(3) require. Therefore, doesn't meet the definition of a supporting organization.

states that it meets the requirements of a Type II supporting organization because a majority of its trustees are board members, officers or leaders in the supported organizations, it is significantly involved, and it is responsive to the needs of the supported organizations. It says that out its -member board are in positions of control or supervision in the supported organizations. As shown above, this doesn't meet the requirements of a Type II organization in Treas. Reg. 1.509(a)-4(h). The significant involvement and being responsive to the supported organization aren't part of the Type II requirements. The requirement is that control or management of the supporting organization must be vested in the same persons that control or manage the supported organization(s). Having one board member on the board of the supported organization doesn't meet this requirement.

#### CONCLUSION

doesn't meet the requirements of IRC Section 509(a)(3) therefore, it is a private foundation. It needs to file Forms 990-PF *Return of Private Foundation* and pay the tax on its net investment income beginning with the year ending IRC section 4940 gives the definition and requirements for the excise tax on net investment income. The first year the tax would be 0% of the net investment income but in subsequent years it will be 0% if the organization continues to meet the minimum distribution requirements.