



Department of the Treasury
Internal Revenue Service

Date: **SEP 14 2021**

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

Number: **202149015**
Release Date: 12/10/2021

Uniform Issue list (UIL):
0501.03-00

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) 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 have not established that you are operated exclusively for exempt purposes as required by section 501(c)(3) of the Code. Although your stated purposes include the preservation and memorialization of the history and architecture of _____, your operations have instead been focused on the renovations of a single building that is owned and occupied by a related social club and used primarily by its members. As such, you are operated primarily for the non-exempt purpose of maintaining a building for the private interests of the social club and its members, rather than for the public. You have therefore not established that your operations do not more than insubstantially serve the private interests of your members or other designated individuals or that your net earnings do not inure to the benefit of private shareholders or individuals.

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).

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 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:

United States Tax Court	US Court of Federal Claims	US District Court for the District of Columbia
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.

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 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,

Charles P. Rettig
Commissioner
By

Enclosure: Publication 892

cc:



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

Date: November 5, 2019

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact:

Employee ID:

Telephone:

Fax:

Manager's Contact Information:

Employee ID:

Telephone:

Response Due Date:

CERTIFIED MAIL – Return Receipt Requested

Dear _____ :

Why you're receiving this letter

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

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 adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

After we issue the final adverse determination letter, we'll announce that your organization is no longer eligible to receive tax deductible contributions under IRC Section 170.

If you disagree

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

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the

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

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

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

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

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final adverse determination letter.

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 or call 877-777-4778.

For 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 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,



Maria Hooke
Director, Exempt Organizations
Examinations

Enclosures:
Form 4621-A
Form 886-A
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended August 31, 20XX

Issues:

- (1) Does the _____ (hereafter "the Foundation") qualify for exemption under Internal Revenue Code (IRC) § 501(c)(3)?
- (2) If the Foundation doesn't qualify for exempt status, what is the effective date of revocation?

Facts:

The _____ is a corporation located at _____ that effective December 12, 20XX was recognized as exempt under IRC § 501(c)(3) as further described under IRC § 170(b)(1)(A)(vi).

The Foundation is located at the same address as the _____ (hereafter "the _____"). The _____ was recognized as exempt under IRC §501(c)(7) in August 19XX. The Foundation's books and records are maintained by the _____ accounting department, the Foundation's books and records are included in the _____ books and records, and the Foundation is included as part of the _____ external audit.

Foundation Application Form 1023 and Organization

Form 1023, *Application for Recognition of Exemption under § 501(c)(3) of the Internal Revenue code*, received by the IRS on May 15, 20XX. The Form 1023 was signed by _____ on May 3, 20XX.

In Part I of the Form 1023, Line 11, the Foundation was incorporated on December 12, 20XX. In Part V of the Form 1023, the original Board of Directors were:

Name	Title	Mailing Address
	Director / President	
	Director / Vice President	
	Director / Secretary	

The Form 1023 was analyzed. Below is a summary of the relevant parts of this analysis:

- In Part VI, Line 1b, the Foundation would provide goods, services or funds to organizations and the Foundation provided an attached explanatory summary.
- That summary states that the Foundation will provide grants to the _____ for the purpose of preserving the historic building and to provide funds for the preservation of other historic buildings in the future.
- In Part VIII, Line 13a, the Foundation indicated that it would make grants, loans or other distributions to organizations, that the Foundation would have a contract with each of those organizations, and that the Foundation required a grant proposal. The Foundation provided an attached explanatory summary.

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- That summary states that the Foundation will operate with the principle purpose of preserving the historical and architecturally significant building and other similar structures. Grants will be made to the to preserve and protect the Building. There may be foundation grants of similar nature in the future
- In Part VIII, Line 15, The Foundation stated that the has the authority to appoint the Foundation's Board of Directors. The will apply for grants for the preservation of the building. The officers of the will be elected by the Foundation Board and will work with of in maintaining its independence.

Included with the Form 1023 was a copy of the Articles of Incorporation. These articles were analyzed. Article Four states in relevant part, that the Foundation is organized and operated with particular focus on the building occupied by the and the downtown Area.

Included with the Form 1023 was a copy of the bylaws. These bylaws were analyzed. Below is a summary of the relevant portions of these bylaws:

- In § , the affairs and business of the Foundation shall be managed by a Board of Directors. This board shall have at least 0 directors and no more than 0 directors. The directors are appointed by the Board of Governors of the . The directors must be members of the .
- In § of the bylaws, part , the Foundation may (but is not obligated to) conduct educational programs and tours of the , for which a fee no greater than necessary to defray event expenses may be charged.
- In § of the bylaws, part , any action in furtherance of the purposes set forth in these Articles that relates to the exterior and interior structural architecture of the building occupied by the , shall be taken only after consultation with—and the approval of—the appropriate officials of the (or lacks jurisdiction, then after the consultation with—and approval of—officials of any other organization that is an authority on the preservation of the architecture of the building and the area).

Narrative Description of Activities

Attached to the Form 1023 was a narrative description of activities labeled as Part IV. This narrative was analyzed. Below is a summary of the relevant parts of that analysis:

- On Page 1, the building has been listed on the by the as of April 16, 20XX. All work on the exterior of the building must be reviewed and approved by the of the , pursuant to standards established for the
- The building (also called "the Building") is located in downtown on public streets with its architecture visible to the public. There are numerous events held at the Building during the year to which non-members of the general public are invited to attend. During the past months, the estimates that more than 0 non-

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members attended such events in the Building and had the opportunity to enjoy the interior architecture of the Building.

- On Page 3, in the first full paragraph, any proposed preservation or repair projects by the Foundation must be first reviewed and approved by _____ of _____ (hereafter "_____"). No projects shall be undertaken by the Foundation unless approved by _____. All projects shall be pursuant to a contract between the Foundation, the _____ and _____.
- The Foundation intends to conduct two principle activities: (i) review proposals and fund projects to preserve the historic building, and (ii) raise funds to support these preservation projects. The _____ will identify preservation projects needed by the Building and submit proposals to the Foundation. If the project is approved, the Foundation will fund all or a portion of the project. The Foundation expects to spend 0% of its time engaged in this activity. The other 0% of the time will be spent in fund raising activities.

Argument for Foundation Exemption and

Agreement

Attached to the Form 1023 is a letter from _____ dated May 15, 20XX and signed by _____ that summarizes the legal argument for why the Foundation should be exempt under IRC § 501 (c)(3). The legal argument is summarized below:

- Organizations that preserve one particular structure or several structures in a historically significant area have both been recognized as exempt (Revenue Ruling 86-49, 1986-1 C.B. 243; Revenue Ruling 75-470, 1975-2 C.B. 207).
- In order to ensure that all Foundation activities and expenditures advance its exempt purpose, the Foundation and the _____ have executed a contract with _____ to review and approve all preservation activities and expenditures.

Included with the Form 1023 was the agreement dated April 19, 20XX between _____, the _____ and the Foundation. The following is a summary of that agreement:

- _____ agrees to review any project involving the _____ Building that is proposed to be undertaken by the Foundation.
- _____ shall evaluate the proposals against the Secretary of the Interior's Rehabilitation Stands for Preservation Projects, however _____ may approve a proposal even if it does not comply in all respects with such standards.
- The Foundation shall not undertake any project unless _____ certifies that the project work is important to the historic preservation of the _____ Building.
- The Foundation need not comply in all respects to all standards in every situation.
- The Foundation will reimburse _____ at the market rate for architectural reviews by a principle architect in the _____ area plus a percentage for overhead.
- The Foundation agrees to prepare a baseline report of the existing conditions of the exterior and interior structures of the _____ Building.

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- The duration of the agreement is _____ years from the date of the agreement execution. This agreement will automatically renew for subsequent terms of _____ years unless notice is given in writing by one of the three parties.
- The agreement can be terminated with a 90-day written notice by any of the three parties.

Because of the references to the _____ of _____, the website for _____ of _____ was analyzed. The information from this website is summarized below:

- _____ is a _____ entity organized in 19XX and incorporated as a non-profit in 19XX
- _____ is a membership organization with over 0 members that is the primary advocate for the preservation of the region's historic structures
- _____ advocates the use of historic tax credits to fund historic preservation
- On its website, _____ does not claim to be an exempt organization described in IRC § 501(c)(3)

Form 990 Summary

The Form 990, *Return of Organization Exempt From Income Tax*, for the years ended 8/31/20XX and 8/31/20XX were analyzed. Both years are, in relevant part, summarized below:

	8/31/20XX	8/31/20XX
Part I Summary		
Line 8 Contributions	0	0
Line 10 Investments	0	0
Line 11 Other Revenue	<u>0</u>	<u>0</u>
Line 12 Total Revenue	0	0
Line 13 Grants paid	0	0
Line 17 Other Expenses	<u>0</u>	<u>0</u>
Line 18 Total Expenses	0	0
Line 20 Total Assets	0	0
Line 21 Total Liabilities	<u>0</u>	<u>0</u>
Line 22 Net Assets	-0	-0

Part IX Statement of Functional Expenses

Line 1 Grants	0	-0
Line 11g Other expenses	0	0
Line 20 Interest	0	0
Line 24a Project Costs	0	0

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Part X, Balance Sheet	8/31/20XX	8/31/20XX
Line 1 Cash (non-interest)	0	0
Line 2 Savings	0	0
Line 3 Pledges	0	0
Line 4 Accounts Receivable	0	0
Line 16 Total Assets	0	0
Line 17 Accounts Payable	0	0
Line 25 Other Liabilities	0	0
Line 27 Unrestricted net assets	-0	-0
Line 33 Total Net Assets	-0	-0
Line 34 Total Net liabilities & net assets	0	0

For the year ended 8/31/20XX, the board officers are _____ (President), _____ (Vice President), _____ (Secretary), _____ is the CEO and _____ is the CFO.

Initial Interview and Tour

On May 2, 20XX the _____ was toured and an initial interview was performed. Those attending the interview were _____ (Chief Finance Officer), _____ (Prior CFO) and _____ (examiner).

When examiner arrived for the interview, examiner didn't get more than a few feet inside the building before the _____ staff stopped examiner. Non-members cannot wander freely around. At the time of the interview, according to _____, the Foundation preserves historic structures, principally the _____ building. The Foundation doesn't own the _____ building and there are no façade conservation easements on the building. The _____ approves all projects carried out by the Foundation.

There are no public tours provided to the public. The principle people seeing the interior of the building are the members and their guests. At the time of the tour, one large room was carrying out an activity sponsored by a member. That member had several guests that were attending a lecture. The staff made sure that those guests could only use the room and the bathrooms. The rest of the _____ facilities and building were not open to the guests to use.

Information Document and Request

On June 6, 20XX the IRS examiner asked for the following information:

- Minutes of meetings for the fiscal years ended 8/31/20XX and 8/31/20XX
- The Chart of Accounts for the fiscal years ended 8/31/20XX

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- A copy of the account summaries and accounting worksheets used that connects the books and records to the Form 990 returns
- An explanation of any allocated expenses for overhead
- A copy of the contract
- Substantiation that non-members attended events in the building for the fiscal year ended 8/31/20XX that includes—but is not limited to—what these events were, how many attended, the purposes of the events and if these individuals were guests of a member or members
- Substantiation that demonstrates that the Foundation is carrying out charitable activities

The response dated August 16, 20XX was analyzed. The response consists of a cover letter from [redacted]. The summary of this letter is given below:

- Foundation board minutes for August 31, 20XX and August 31, 20XX is included
- Foundation chart of accounts
- Reconciliation of the books and records to the Form 990
- \$0 of the Foundations' directors' expenses are allocated percent of the director's compensation
- Certification that the building is listed in the [redacted] agreement. This certification provides, in large part, the basis for the IRS approving the Foundation's application for tax-exemption under IRC § 501(c)(3).
- The purpose of the agreement is for [redacted] to review any project involving the building to determine whether the project, or aspects of it, are for historic preservation of the building.
- With regards to IDR Item #6, it is important to note that the public benefit and purpose for exemption, generally speaking is not due to the public use of the building but is due to the maintenance, restoration and overall ability of the Foundation to preserve the building so that the public can view the architectural significance of the building.
- A letter from [redacted], the attorneys who handled the original Form 1023 application for the Foundation. The memorandum clearly identifies the basis for which the IRS awarded the Foundation its tax-exemption.

Each portion of the response was analyzed. In the October 18, 20XX minute. The relevant parts of the minute and CFO report is summarized below:

- The loan will be fully dispersed in 0 to 0 days and will have a principle balance of \$0
- The principle and interest payments will be \$0 per month or \$0 per year
- The loan is a 0-year loan with a fixed interest rate of 0%
- When the Foundation makes disbursements to [redacted], it is accounted for in the program services line. It doesn't get capitalized on the [redacted] or the Foundation's books. This is typical of 501(c)(3).

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- There are four avenues for fund-raising: (1) annual events such as the and the (2) annual giving and one-time gifts; (3) reaching out to corporations who are not members; (4) planned giving
- The planning meeting determines what is done at the
- The Foundation ensures that Foundation money is spent on preservation initiatives for the downtown clubhouse
- When the Board approved the project, the understanding was that the Foundation would carry the obligation for the note to fund the project
- The project knocked out \$0 in infrastructure that had been looming for many years. There is a comprehensive list that is being updated consistently
- How can the Foundation raise additional funds to allow for more progress to be made? A suggestion was to have a Foundation director sit on the planning committee
- How can the Foundation help the event? Put the word out and encourage sponsorships.

The November 29, 20XX minute is summarized below:

- The main sources of revenue have been the a event every other year and the program
- We count on \$0 to \$0 from the
- The main focus is to raise funds to pay for the project, which was \$0
- The debt service is \$0 per year for this project
- The loaned the funds to the Foundation for the project
- The expense relates to the HVAC loan from the

The Chart of Accounts shows the following accounts:

- Account Note Payable – HVAC at \$0
- Account shows \$0 retained earnings
- Account shows interest expense of \$0
- Account shows charitable donations of \$0

The Trial Balance is cross referenced to Parts VIII, IX and X of the Form 990 for the fiscal year ended 8/31/20XX.

The (in) has been listed in the (on) April 16, 20XX. The agreement between of the and the Foundation is the same agreement that was attached to the Form 1023.

Because of the reference in the minutes to the event, the website was analyzed. In relevant part, the event is for members and their guests to gather for an elegant evening of entertainment, food, drink, socializing, and bidding on auction items in support of the three foundations: the Foundation, the Foundation and the Foundation.

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The _____ consists of 0 business, professional and civic leaders and their families. The _____ has 0 " _____ " that carry out a variety of activities and invite guests to participate with the members and their families in their activities. The _____ hosts an annual commemoration banquet and invites non-members to this activity.

According to _____ (see Attachment One) HVAC stands for Heating, Ventilation and Air Conditioning. It's a whole system with the sole purpose of making the indoor environment comfortable.

_____ and Foundation Promissory Notes

The promissory note between the _____ and _____ (see Attachment Two) was analyzed. The terms of the note are summarized below:

- This is a commercial note between the _____ and _____ with a principle amount of \$0
- The date of the note is June 12, 20XX, the interest rate is 0% and the maturity date is June 12, 20XX
- Article Two, the _____ promises to pay the amounts advanced up to the maximum principle balance of \$0
- Article Seven: the _____ agrees to make 0 payments of \$0 beginning on February 12, 20XX with payments thereafter due on the 12th of each month and the unpaid principle and interest due on June 12, 20XX
- Article Nine: the loan purpose is to pay for zero component projects at the downtown clubhouse
- Article Ten: the _____ pledged its fine arts collection as collateral
- Article Nineteen: _____ obligation to pay the loan is independent of any obligation of any other person who has agreed to pay the loan
- Article Twenty: the note cannot be amended unless made in writing between _____ and _____
- Article Twenty-Seven: _____, Chief Finance Officer, signed the note on behalf of the _____

On the same date as the loan between _____ and the _____ was completed, the _____ loaned the money to the Foundation (see Attachment Three). The terms of the note are summarized below:

- The principle amount of the loan is \$0
- The interest rate is 0% with a maturity date of June 12, 20XX
- Article Five states that during phase 1 of the loan, 7 payments of accrued interest will be made beginning July 12, 20XX, thereafter there are 0 payments of \$0 beginning on February 12, 20XX with the final payment being due on June 12, 20XX
- Article Seven states that the purpose of the loan is to provide funds for zero component projects at the downtown clubhouse
- Article Seventeen: _____, President, signed the note on behalf of the _____

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Name of Taxpayer		August 31, 20XX

Law:

Organizations organized substantially for pleasure, recreation, and other non-profitable purposes, or to support such purposes, are exempt under IRC §501(c)(7). The exemption of social clubs is based on the logic of allowing members to pool their funds for recreational purposes, rather than for a compelling public benefit. Congress granted exemption so that these membership pools would not be taxed twice (at the member level and at the organizational level) (see *Portland Golf Club v C.I.R.* 497 U.S. 154, 110 S. Ct. 2780 (1990)).

Exempt function income means the gross income paid by members of the organization, their dependents and guests goods, facilities or services in furtherance of the purposes constituting the basis for exemption of the organization (IRC Section 512(a)(3)(B)). The term "unrelated business taxable income" refers to gross income derived from any trade or business unrelated to the purposes for which the organization is exempt (IRC Section 512(a)(1)). With regards to unrelated business taxable income, there are special rules applicable to organizations described in IRC Section 501(c)(7) (IRC Section 512(a)(3)(A)).

Rev. Proc. 71-17, 1971-1 C.B. 683, sets forth guidelines for determining the effect gross receipts derived from use of a social club's facilities by the general public have on the club's exemption from federal income tax under section 501(c)(7) of the Code. The procedure defines the term "general public," as persons other than members of a club or their dependents or guests.

Exemption under IRC § 501(c)(3) is provided for organizations that are organized and operated exclusively for charitable, religious and educational purposes with no part of the net earnings inuring to the benefit of any private shareholder or individual (IRC § 501(c)(3)). 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).

Charitable purposes are: Religious, Charitable, Scientific, Testing for Public Safety, Literary, Educational or prevention of cruelty to children or animals (Treasury Reg. § 1.501(c)(3)-1(d)(1)(i)). The term "charitable" as used in IRC § 501(c)(3) is used in its generally accepted legal sense (Treasury Reg. § 1.501(c)(3)-1(d)(2)). The Historic Preservation Act of 1966 (16 U.S.C. §§ 461, 470) provides that it is a national policy to preserve the public use of historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States.

"Conservation Purpose" means the preservation of an historically important area or a certified historic structure (IRC § 170(h)(4)(A)(iv)). A certified historic structure means any building, structure or land which is listed in the National Register (IRC § 170(h)(4)(C)). In order to be

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considered to be exclusively for conservation purposes, the interest must have written restriction(s) or written equitable servitude(s) that limits the use of the property (Belk v CIR, 140 T.C. No. 1 (2013) aff'd Belk v CIR, 774 F.3d 221 (2014)) and prohibits any change in the exterior of the building which is inconsistent with the historical character of the property (IRC §170(h)(4)(B)(ii)(I)) in perpetuity (IRC § 170(h)(5)). The organization enforcing these restrictions must have the resources to manage, and authority to enforce, the restrictions (IRC §170(h)(4)(B)(ii)(I)).

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)).

An organization formed to promote an appreciation of history through the acquisition, restoration and preservation of buildings having special historical or architectural significance, and after the building is restored opening the structures for viewing by the general public with its operations financed from admission fees to the restored buildings and from contributions from the public is educational and charitable within the meaning of IRC § 501(c)(3) because it is operated like a museum (Revenue Ruling 75-470, 1975-2 C.B. 207, 1975).

An organization formed for the purpose of preserving the historic or architectural character of a community through the acquisition and occasional restoration of historically or architecturally significant properties, and subsequent disposition of those properties subject to restrictive covenants that generally restrict the use and enjoyment of the property granted in perpetuity by controlling its physical or visual aspects to such a degree that the organization has the right to bar any interior or exterior alterations without the consent of the organization is educational within the meaning of IRC § 501(c)(3). These restrictive covenants preserve the designated properties in their historical state for the benefit of the public, rather than merely ensuring their conformity to locally imposed standards. (Revenue Ruling 86-49, 1986-1 C.B. 243).

An organization will not be regarded as exempt under IRC § 501(c)(3) if more than an insubstantial part of its activities is not in furtherance of an exempt purpose (Treasury Reg §1.501(c)(3)-1(c)(1)). The purposes toward which an organization directs its activities, and not the nature of the activities themselves, determine whether the organization meets the operational test (B.S.W. Group Inc v Commissioner, 70 T.C. 352, 356-357 (1978)). The requisite purpose for tax-exempt status under IRC Section 501(c)(3) does not simply consist of a charitable motive, but rather requires that the organization is operated to accomplish that purpose (Partners in Charity Inc v C.I.R., 141 T.C. No. 2 (2013)).

An organization is not organized and operated exclusively for one or more charitable purposes unless it serves a public rather than a private interest (Treasury Reg. § 1.501(c)(3)-1(d)(1)(ii)). An organization is not dedicated to one or more exempt purposes if its assets are not dedicated to an exempt purpose (Treasury Reg. § 1.501(c)(3)-1(b)(4)). An organization is required to keep records, substantiate its activities and reflect those activities in its returns (IRC §§ 6001, 6033).

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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 (Founding Church of Scientology v United States, 188 Ct. Cl. 490, 412 F. 2d 1197 (1969)). Upon a conclusion that relevant facts reveal private benefit, the organization will not qualify as operating primarily for exempt purposes absent a showing that no more than an insubstantial part of its activities further the private interests or any other nonexempt purposes (see American Campaign Academy v C.I.R., 92 T.C. 1053, 1066 (1989)).

For purposes of determining tax-exempt status, factors indicating prohibited inurement and private benefit includes control by the founder over the entity's funds, assets and disbursements, use of entity moneys for personal expenses, and loans to the founder showing a ready private source of credit (Treasury Reg. § 1.501(c)(3)-1(d)(ii)).

A nonprofit organization formed to dredge a navigable waterway fronting the properties of its members does not qualify for tax exemption under IRC § 501(c)(3) because the waterway was little used by the general public, but its navigability greatly affected the value of the members' properties. The Court held that because the benefit to the general public was incidental and the organization was using its funds to foster private interests the organization was serving private interests and so was not charitable (Benedict Ginsberg v Commissioner (48 T.C. 47 (1966))).

An organization that has educational aspects because of its close relationship to education and training of apprentices is still not organized and operated exclusively for educational purposes because providing education is not its primary purpose or function. The primary purpose or function was improving working conditions of a group of laborers, and the educational aspects are incidental to that primary purpose (Revenue Ruling 59-6, 1959-1 C.B. 121).

An organization formed to organize, host, conduct and sponsor educational and other charitable activities in its facilities was found to not be exempt. While the organization carried out a few charitable and educational activities, these were incidental to its primary activities of operating a commercial conference center (Arlie Foundation v IRS, 283 F. Supp. 2d 58 (D.D.C. 2003)).

Because the chapter house also serves as a center for the social activities of its members and is not under an integral part of the college or under direct control of the college, a college fraternity that maintains a chapter house for active members who are students of the school is not exempt under IRC § 501(c)(3) but is exempt under IRC § 501(c)(7) (Revenue Ruling 69-573, 1969-2 C.B. 125).

A donation is a gift defined as a voluntary transfer of property to another without consideration (Seed v Commissioner, 57 T.C. 265, 275 (1971)). If the amount of the donation does not exceed the benefit received by the donor then no charitable contribution has been made (DeJong v C.I.R., 36 T.C. 896 (1961)). Payments for services received are not charitable donations (Hernandez v C.I.R. 490 U.S. 680, 109 S. Ct. 2136 (1989)). By retaining control and deriving personal benefit from the transferred property, no gift has been made (Davis v C.I.R., 81 T.C. No. 49, 81 T.C. 806 (1983)). 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

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donations to the church. The church returned the funds in the form of tax-free "housing allowances".

The presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes (Better Business Bureau of Washington D.C. Inc. v United States, 326 U.S. 270, 283 (1945)).

An exemption ruling or determination letter may be revoked or modified retroactively if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented to the IRS (Treasury Reg. § 601.201(n)(6), see Partners in Charity v C.I.R. (IBID)).

Taxpayer Position:

The letter from _____ dated August 15, 20XX signed by _____ provides the basis for the Foundation's argument that the Foundation qualifies for exemption under IRC § 501(c)(3) (see Attachment Four). The letter is summarized below.

- As set forth in the Form 1023, the Foundation's organizational and operational purposes are the preservation of the history and architecture of _____ with particular focus on the building occupied by the _____ ("the building").
- The building is a designated city landmark that has been enjoyed by locals and tourists on a daily basis.
- As the driver crosses the _____, the building is the first building seen when using the _____ bridge and traveling into _____.
- The term charitable is used in its generally accepted legal sense (Treasury Reg. Section 1.501(c)(3)-1(d)(2)).
- Through the National Historic preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq)("the act"), the preservation of historic buildings and education of the public about the historical and architectural significance of structures qualify as charitable and educational purposes (see Revenue Ruling 75-470, 1975-2 CB 207; Revenue Ruling 86-49, 1986-1 CB 243).
- The act declared it a national policy to preserve for public use historic sites, buildings and objects of national significance and authorized the Secretary of the Interior to contract with states, municipal subdivisions, businesses and individuals to restore, reconstruct, rehabilitate, preserve and maintain historic sites.
- Revenue Ruling 86-49 (IBID) involved an organization formed to preserve the historic and architectural character of its community through acquisition, occasional restoration and subsequent sale of the property with restrictive covenants on the property in order to preserve the historic or architectural significance of the properties.
- Revenue Ruling 75-470 (IBID) concluded that a non-profit formed to acquire, restore and preserve buildings having historic or architectural significance and to open such buildings for viewing by the general public qualifies the organization for exemption under IRC Section 501(c)(3).

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- Every year, there are some events held at the building which are attended by members of the public who are not members of the (such as the celebration for all in the area).
- Pursuant to the Act the created and maintains the . The building has been in since April 16, 20XX.
- All projects funded by the Foundation must be independently reviewed by the must confirm that any Foundation proposed project is consistent with the Foundation's exempt purpose.
- The agreement between the Foundation, the and was included in the Information Document Response dated August 15, 20XX.
- The agreement provides that projects funded by the Foundation will be limited to preservation and repair of the building exterior, and to the interior to the extent necessary to preserve the building and its structural integrity.
- The Foundation has operated consistent with and in furtherance of its charitable purpose.
- The Foundation shepherded the building's application for recognition on the and has supported various projects to preserve and maintain the building.
- Various projects included wall and exterior wall repairs, roof replacements, lining roof drains, plumbing repairs and upgrades throughout the interior walls and repair of the main sewer drain and lateral sewer lines.
- The Foundation is currently doing fundraising to support a \$0 exterior restoration project.
- These projects benefit the public by preserving the historic building.
- In their agreement, the and the Foundation have agreed with that if the building is ever sold or the is dissolved, the depreciated value of the preservation projects funded by the Foundation must be repaid by the to the Foundation so that such funds can be used for other IRC Section 501(c)(3) activities.

Government Position:

In order to qualify for exemption under IRC § 501(c)(3), the Foundation must be operated exclusively for charitable purposes (IRC § 501(c)(3), Treasury Reg. § 1.501(c)(3)-1(d)(i)). The purposes toward which an organization operates determine whether the Foundation meets the operational test (B.S.W. Group v Commissioner (IBID)).

The Foundation's governing body is appointed by the governing body of the . The Foundation's governing body have to be members of the . The Foundation is located at the same address as the , its activities are accounted for by the accounting department and its activities are included in the books and records.

While the Form 1023 asserts that the building is open for the public use of thousands of people and the letter dated August 15, 20XX asserts that use the club on , the Foundation did not provide any substantiation of this alleged use even when asked for it. At the time of the initial interview, the facilities are available for the members to use and invite

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guests to attend. The website states that non-members are invited to participate in activities. These non-members are guests of the and so are not members of the general public (IRC Section 512(a)(3)(B), IRC Section 512(a)(1), Rev. Proc. 71-17, 1971-1 C.B. 683). Absent substantiation of the public use of the building (as required by IRC § 6001), the conclusion is that there is no public use of the building. Because it is not open for public use, unlike the organization described in Revenue Ruling 75-470 (IBID), the building is not operated by the Foundation or anyone else like a museum.

The historic building owned by the is in the and so is a certified historic building as defined in IRC § 170(h)(4)(C), and the preservation thereof is a conservation purpose (IRC § 170(h)(4)(A)(iv)) if there are written restrictive covenants (Revenue Ruling 86-49 (IBID), Belk v Commissioner (IBID)). At the time of the initial interview, it was stated that there is no façade conservation easement on the building.

The Foundation asserts that the has some form of expenditure control, or an enforceable approval process that prevents the Foundation or the from doing routine maintenance, interior decoration or other improvements to the interior of the building. A review of that agreement shows that the doesn't have to comply with the Department of Interior's required preservation practices, and the Foundation doesn't have to abide by a decision made by the . These are not restrictive covenants. For that reason, this agreement is not substantiation of any written restrictions (as required by IRC § 6001 and Belk v CIR (IBID)).

Because the and the Foundation can ignore the recommendations made by the even if there were restrictions, they are not granted in perpetuity (IRC Section 170(h)(5)), the doesn't have the written authority to enforce any restrictions that exists (IRC Section 170(h)(4)(B)(ii)(II)), and the relationship between the and can be terminated with a 90 day notice (which is evidence of a lack of perpetuity of the implied restriction(s)). The below facts further illustrate this issue.

The borrowed funds from in order to pay for an HVAC system. On the same day, the Foundation borrowed the same amount of funds from the . The Foundation pays the same amount to the as the is responsible for paying to its creditor. According to its books and records, the Foundation is paying for an HVAC system.

The implementation of an HVAC system paid for by the Foundation effectively eliminates the argument that the agreement with disallows the Foundation from doing any improvements to the interior of the building. Obviously, this agreement has no effect on the activities of the Foundation.

In conclusion, this agreement is not substantiation that any enforceable restrictive covenants in place in perpetuity by (or anyone else) to enforce restrictive covenants (see IRC §§ 6001). Because of these failures, the activities paid for by the funds obtained by the from are not considered to be activities carried out for a conservation purpose (Belk v Commissioner (IBID)). Without a conservation purpose, the Foundation is not

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operating like the organization described in Revenue Ruling 86-49 (IBID) wherein restrictive covenants were used to preserve and protect historic buildings.

That the historic building can be seen by the public is not enough to qualify the Foundation for exempt status, the Foundation's principle activity has to consist of charitable purposes which, in this case, includes preserving the historic building for the public benefit (see National Preservation Act of 1966 (IBID), IRC § 501(c)(3), Treasury Reg. §§1.501(c)(3)-1(d)(1)(i) and 1.501(c)(3)-1(c)(1); Revenue Ruling 59-6 (IBID) and Arlie Foundation (IBID)).

The Form 1023 stated that the would propose restoration projects to the Foundation for the Foundation to approve. The Form 1023 states that this comprises an estimated 0% of the Foundation's activities. The other 0% of activities consisted in carrying out fundraising.

In the October 20XX minute, the planning committee decides what is done with the building. From this minute, it is clear that the Foundation doesn't have a director that sits on that planning committee. The put up collateral and obtained a loan. These loan proceeds were then given to the Foundation as a loan to pay for the HVAC system.

There is no substantiation that the projects were provided to, or approved by, the Foundation. There is no substantiation that the Foundation obtained the funds, decided how those funds were to be used or had any part in the approval process that outlined the use of those funds (see IRC § 6001). While the loan amount was reported on the Foundation's Form 990 in the total liabilities, the HVAC asset value was not reported on the Foundation's Form 990 in the balance sheet.

The only conclusion that can be reached is that the Foundation does not own the HVAC system that it is paying for. While the HVAC system may not be seen by the members, these members certainly benefit more from the presence of the HVAC system in the building than does the general public (who has no access to the building). Because this activity serves a private interest more than a public interest, this activity is not a charitable activity (IRC § 501(c)(3), Treasury Reg. §1.501(c)(3)-1(d)(1)(ii)).

Payment for the HVAC means that the assets of the Foundation are not dedicated for a charitable purpose (in violation of Treasury Reg. §1.501(c)(3)-1(b)(4)). For this reason, the Foundation does not qualify for exempt status (Treasury Reg. § 1.501(c)(3)-1(b)(4)).

From the board minutes, the Foundation obtains from the a listing of repairs the desires to have completed and raises funds to pay for those repairs. It is clear that operationally the primary purpose of the Foundation is to support the in carrying out activities (see B.S.W. Group Inc v Commissioner (IBID), Partners in Charity v C.I.R. (IBID)). Operationally, the Foundation is an instrument of the that operates to further the non-charitable purposes of the (see Est of Hawaii v C.I.R. (IBID)).

Just because the is an exempt organization under IRC § 501(c)(7) does not mean, or imply, that its activities are to benefit the public interest. The purpose for organizations like the being granted exemption was to preclude double taxation on the same money (see

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Portland Golf Club v C.I.R. (IBID)). While the is not prohibited from doing charitable activities directly or indirectly through the Foundation, the Foundation has to demonstrate that these activities are charitable activities that benefit the general public (IRC §§ 501(c)(3), 6001).

The Foundation is using donations (primarily from the members of the) to support the exempt activities of the . A donation is a gift defined as a voluntary transfer of property to another without consideration (Seed v Commissioner, 57 T.C. 265, 275 (1971)). If the amount of the donation does not exceed the benefit received by the donor then no charitable contribution has been made (DeJong v C.I.R., 36 T.C. 896 (1961)). Payments for services received are not charitable donations (Hernandez v C I R 490 U.S. 680, 109 S. Ct. 2136 (1989)). By retaining control and deriving personal benefit from the transferred property, no gift has been made (Davis v C.I.R., 81 T.C. No. 49, 81 T.C. 806 (1983)).

Not only does the benefit, but the members who make these donations benefit. Instead of paying dues or other charges that are not tax deductible to make these repairs, the donating members receive tax deductible donations that provide repairs to the thereby indirectly benefiting themselves. Ordinarily, the actual value of the member's donation to the Foundation should be reduced by the amount of benefit the member receives. However, because of the circular benefit provided, this is a tax scheme and the amount of donation made by a member should be reduced to zero (see Church of World Peace Inc. v Commissioner). Because this tax scheme provides private benefit to the foundation members, the Foundation doesn't qualify for exempt status

Based on the facts of this case, this case is an example of an organization serving a private interest more than serving a public interest (see Founding Church of Scientology v United States (IBID), American Campaign Academy v C.I.R. (IBID)). Unlike the organization described in Revenue Ruling 86-49 (IBID) (which carried out, and supported projects, that benefited the general public's viewing of the historic features of the buildings more than they provided benefit to private interests) the Foundation operationally supports the activities of the thereby violating Treasury Reg. § 1.501(c)(3)-1(d)(1)(ii). The Foundation failed to substantiate any charitable activities or purposes.

While the Foundation may well qualify for exemption under IRC § 501(c)(7), it doesn't qualify for exemption under IRC § 501(c)(3) (Revenue Ruling 69-573 (IBID)). Like the organization in Benedict Ginsberg v Commissioner (IBID) the Foundation's activities benefit the and its members, and does not qualify for exempt status under IRC § 501(c)(3) (see IRC § 501(c)(3), Treasury Reg. §§ 1.501(c)(3)-1(c)(1), 1.501(c)(3)-1(d)(1)(i) and 1.501(c)(3)-1(c)(1), Better Business Bureau of Washington DC v United States (IBID)).

Conclusion:

The Foundation portrayed and implied in its Form 1023 that it would operate independently and separate from the to carry out the charitable purpose of preserving the historic features and architecture of the building and other historic buildings in the downtown area. However, based on the facts of this case, operationally it is not distinguishable from the and the activities thereof.

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For the reasons expressed in the government position, the Foundation materially misrepresented how it would operate and the purposes for which it would operate. The Foundation was organized and operated to further the exempt purposes of the and the members thereof to such an extent that the Foundation operationally is not separate from, or independent of, the

For this reason, the primary government position is that revocation of exempt status should be retroactively applied and be effective December 12, 20XX (Treasury Reg. § 601.201(n)(6)).

The alternative position is that the exempt status of the Foundation should be revoked effective the first day of the year under examination: September 1, 20XX.

Because the Foundation is no longer an exempt organization, the organization needs to file a Form 1120, *U.S. Corporate Income Tax Return*, instead of a Form 990. Because there is no tax affect from the revocation, the Foundation will need to file the Form 1120 in subsequent time periods.