



**Department of the Treasury
Internal Revenue Service
Independent Office of Appeals**
100 First Street
Suite 2000
San Francisco, CA 94105

Date: **MAY 09 2023**

Person to contact:
Name:
Employee ID Number:
Phone:
Fax:
Employer ID number:

Release Number: 202331003
Release Date: 8/4/2023

Uniform Issue list (UIL):
501.00-00

Certified Mail

Dear :

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3) .

We have hereby revoked the favorable determination letter to you dated and you are no longer exempt under IRC Section 501(a) effective

We made the adverse determination for the following reasons:

Your organization is not operated exclusively for exempt purposes as described in IRC Section 501(c)(3) and your operations provided for more than insubstantial private benefit to an individual or shareholder.

Contributions to your organization are not deductible under IRC Section 170.

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 [IRS.gov/forms](https://www.irs.gov/forms) 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 IRC Section 6110 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 IRC Section 7428 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. You can download a fillable petition or complaint form and get information about filing at each respective court's website listed below or by contacting the Office of the Clerk of the Court at one of the addresses below. Be sure to include a copy of this letter and any attachments and the applicable filing fee with the petition or complaint.

You can eFile your completed U.S. Tax Court petition by following the instructions and user guides available on the Tax Court website at ustaxcourt.gov/dawson.html. You will need to register for a DAWSON account to do so. You may also file your petition at the address below:

United States Tax Court
400 Second Street, NW
Washington, DC 20217
ustaxcourt.gov

The websites of the U.S. Court of Federal Claims and the U.S. District Court for the District of Columbia contain instructions about how to file your completed complaint electronically. You may also file your complaint at one of the addresses below:

U.S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439
uscfc.uscourts.gov

U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
dcd.uscourts.gov

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

Taxpayer rights and sources for assistance

The Internal Revenue Code (IRC) gives taxpayers specific rights. The Taxpayer Bill of Rights groups these into 10 fundamental rights. See IRC Section 7803(a)(3). IRS employees are responsible for being familiar with and following these rights. For additional information about your taxpayer rights, please see the enclosed Publication 1, Your Rights as a Taxpayer, or visit [IRS.gov/taxpayer-bill-of-rights](https://irs.gov/taxpayer-bill-of-rights).

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps taxpayers and protects taxpayers' rights. TAS can offer you help if your tax problem is causing a financial difficulty, you've tried but been unable to resolve your issue with the IRS, or you believe an IRS system, process, or procedure isn't working as it should. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. To learn more, visit taxpayeradvocate.irs.gov or call 877-777-4778.

Tax professionals who are independent from the IRS may be able to help you.

Low Income Taxpayer Clinics (LITCs) can represent low-income persons before the IRS or in court. LITCs can also help persons who speak English as a second language. Any services provided by an LITC must be for free or a small fee. To find an LITC near you:

- Go to taxpayeradvocate.irs.gov/litcmap;
- Download IRS Publication 4134, Low Income Taxpayer Clinic List, available at [IRS.gov/forms](https://irs.gov/forms); or
- Call the IRS toll-free at 800-829-3676 and ask for a copy of Publication 4134.

State bar associations, state or local societies of accountants or enrolled agents, or other nonprofit tax professional organizations may also be able to provide referrals.

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,

Doug O'Donnell
Acting Commissioner

By

Valeria B. Farr

Valeria B. Farr
Appeals Team Manager

Enclosures:
Publication 1
IRS Appeals Survey

cc:



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

Date:
January 21, 2021
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:
Address:

Manager's contact information:

Name:
ID number:
Telephone:
Response due date:
February 21, 2021

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,

John A Matias

John A Matias

Supervisory, Internal Revenue Agent for

Sean E. O'Reilly

Director, Exempt Organizations

Examinations

Enclosures:

Form 886-A

Form 6018

Publication 892

Publication 3498

Copy of Determinations File

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

Issues:

- Whether the exempt status for _____ (henceforth referred to as "organization", "_____", or "the organization") should be revoked for failure to operate exclusively in furtherance of exempt purposes.
- Whether Organization's exempt status should be revoked retroactively to the first date that the organization failed to qualify for exemption.

Facts:

Articles of Incorporation:

The registered agent of the organization (as listed on the Articles of Incorporation filed with the application for exemption) is _____. The purpose of the organization listed in the articles is to: provide assistance to other charitable organizations and support activities described in IRC Section 501(c)(3). The articles were approved and filed with the State of _____ on _____.

Form 1023:

The F1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, was filed by the organization on _____. The primary contact listed on the F1023 is _____. The purpose of the organization as stated on the F1023 references the Articles of Incorporation.

Exemption:

The organization received L947 from the Internal Revenue Service (IRS) dated _____. The letter provides that the organization was granted exemption under Internal Revenue Code 501(c)(3). The effective date of the exemption is listed as _____.

Board:

The board of directors of the organization consists of the following offices and individuals for the year of examination:

- _____ – President
- _____ – Vice President
- _____ – Treasurer

_____ and _____ were also listed as the President and Vice President respectively for the _____ preceding years.

_____ filed Forms _____ for the tax years _____, _____, and _____:

Revenues				
Contributions and Grants	\$ _____	\$ _____	\$ _____	\$ _____
Investment Income	\$ _____	\$ _____	\$ _____	\$ _____
Other Revenue	\$ _____	\$ _____	\$ _____	\$ _____

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Total					
Expenses					
Grants					
Other Expenses					
Total					

Based on the expenses reported for grants for each year, charitable grants for the , and years were %, %, and % respectively when compared to the revenues reported by the organization.

Assets					
Cash					
Savings					
Investments – Other Securities					
Total					
Liabilities					

Based on the assets reported on the return, Investments – other securities (donated LLC interests) accounted for %, %, and % of all assets of the organization for the , and years respectively.

Cash Inflows and Outflows:

The organization provided statements (Acct. #) in response to the Government's request for the banking statements of the organization. The statements provided the following cash inflows and outflows for the year ended :

Month	Cash In	Cash Out
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Totals		

The organization reported in expenses on the Form , a figure which does not accurately reflect the amounts expended by the organization from its accounts per the account statements.

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- "We will be transferring funds to _____ from the above named _____ in the amount of \$ _____. Upon receipt of the funds, it is our wish to have checks sent to the following charities".
- "I will be transferring funds to _____ from the above named _____ in the amount of \$ _____. Upon receipt of the funds, it is my wish to have a distribution made from my donor advised fund to the following charities".
- "We have authorized a check payable to _____ in the amount of \$ _____. Upon receipt, it is our request that you send a check in the amount of \$ _____ directly to".
- "It is our wish to have a donation in the amount of \$ _____ made from XXX _____ to the following charities".

Donated LLC Interest:

The organization's primary source of revenues and assets as reported by the organization on its returns are derived from LLC interests donated to the organization. For the period ended _____, the organization has reported donated LLC interests from _____ separate and distinct entities. Of these _____ entities, _____ of the LLC interests (or approximately _____ %) were previously donated to _____ (an unrelated 501(c)(3) organization) and were subsequently assigned to the organization by the LLC managers. See the discussion on amended operating agreements below for additional detail.

How LLC Interest is Donated to Organization:

In some instances where LLC interests were donated to the organization, an assignment of the interest from the owning LLC member, to the organization was completed using an assignment agreement. In other instances, the assignment was memorialized in the operating agreement for the LLC. The following table shows the types of units issued to an LLC, the number of units "assigned" by the manager(s) of the LLC to the organization, and other information provided in the assignment agreements where applicable:

<u>Name of Partnership/LLC</u>	<u>Managing Member Units</u>	<u>General Membership Units</u>	<u>Units Assigned to</u>	<u>Date of Assignment</u>	<u>Signed by</u>

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Review of Appraisals:

The appraisals provided by the organization for the donated LLC interests were prepared by primarily by _____ (_____ or %) with the remaining appraisals prepared by _____. The method of determining the value of the donated LLC interests is the same in all of the appraisals, the appraisers reduce the "FMV" of the assets for lack of control (initial value is reduced by % (_____) or % (_____)) and lack of marketability (remaining value is reduced by % (_____) or % (_____)) in all instances. Overall, both appraisers use the same method of discounting the value of the donated interest for both marketability and control using different percentages for each method of reduction.

It is important to note that the amounts determined in both appraisals for the FMV were used in reporting the value of the assets as reported on the Form _____ of the organization for the period ended _____ even though the appraisals were not completed until _____. As such, it appears as though the appraisal amounts were determined by _____ and _____ prior to the preparation of the appraisal reports and provided to _____ for preparation of the annual Form _____ and reporting on the organizational books and records.

Form 886-A	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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Review of Operating Agreements:

The organization provided operating agreements for each of the LLCs for which it received donated interests. Of the operating agreements, the examiner identified two distinct types of agreements with identical language which the examiner named _____ and _____. Of the agreements provided, _____ agreements were _____ and the remaining _____ agreements were _____.

The _____ agreements appear to have been prepared by and/or provided by _____ and his related officials (_____) and the _____ agreements appear to have been provided or drafted by the _____ (owned in part by _____, President of _____).

Specific Language in the Operating Agreements

The following sections of the operating agreements provide insight into the operation of the LLCs and their interaction with _____:

Section _____ Company Purpose and Scope (_____)

The Company is organized as part of a charitable planned giving strategy designed to fund tax qualified charities chosen by the Manager, the initial Member, and the initial Member's successors in interest. The investments held inside of this Company including any insurance policy death benefit and/or other assets held in this Company must be distributed to one or more charities during the life or upon the death of the initial Member or his/her successor in interest until tax qualified charities have received distributions equal to the full amount of assets that the Company's non-charitable Members have contributed to the Company plus a market rate of return. For example, if the Company has been funded with \$ _____ of marketable securities and this \$ _____ value was used when a portion of the Company member interests were donated to charity at a time when the current long-term interest rates were _____%, then the Company must insure that at least the \$ _____ plus _____% per year return will be distributed to third party charities before distributions are made from the Company to any non-charitable Members of the Company. While distributions must be restricted until third party charities receive assets in the Company plus a market rate of return, the Company manager may make secured loans of Company assets to qualified borrowers. Loan security must provide assurances that loans will be repaid so that the Company can distribute funds to charity equal to asset contributed by the members plus a market rate of return. The charity must maintain control over Company interests and receive income from the interests to satisfy the substantial present economic benefit test.

Section _____ Classification of Membership Interests (_____)

The Company shall issue Voting Membership Interests to the Voting Members. The Voting Members may vote upon all matters upon which Members have a right to vote under this Agreement, in proportion to their Voting Membership Interests in the Company.

The Company may issue Non-Voting Membership Interests. Members may own Voting Membership Interests, Non-Voting Membership Interests, or both. Members who own only Non-

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Voting Membership Interests are Non-Voting Members and may not vote on any Company matters.

Voting and Non-Voting Members have identical liquidation and distribution rights unless expressly provided to the contrary in this Agreement. Voting and Non-Voting Members have the same ownership rights except for voting rights.

Section Allocating Profits and Losses ()

Subject to the provisions of Section and Section , all items of income, gain, loss, deduction, and credit, whether resulting from the Company's operations or in connection with its dissolution, must be allocated to the Members in proportion to their respective Membership Interests.

If the special allocations have substantial economic effect as required by applicable federal tax law, the Voting Members, acting unanimously, may enter into agreements providing for the special allocation of items of income, gain, loss, deduction, or credit.

The Voting Members may agree to allocate net profits and net losses in a way that conforms to adjustments made to the Percentage Interests because of:

- any loans made to the Company that have been converted to Capital Contributions;
- any distributions of cash; or
- any liquidated distributions.

If the Percentage Interest of a Member is not the same throughout a given Taxable Year, the Manager shall determine the allocation of net profits and net losses to the Members, taking into account the Members' varying Percentage Interests during the year. The Manager shall make the determination consistent with the requirements of Internal Revenue Code Section 706(d).

The Manager has the authority to change the allocation provisions of this Section if the Company's legal counsel advises the Company that this change is required under the Internal Revenue Code based on the manner in which the Members have agreed to bear losses and to share profits and distributions under this Agreement.

The operating agreements contain the general LLC language, the name of the manager(s) of the LLC, and information on ownership percentages as well as the type of ownership (Voting, non-voting, general, etc.) for each LLC.

Section Distributions to Members ()

The Company's primary intent is to retain Company funds in amounts determined in the Manager's sole and absolute discretion to meet the reasonable needs of the business or investments of the Company and other needs as provided in this Agreement. No Member may demand distributions of any Company funds or assets.

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Without the unanimous consent of all Members, the Manager may not distribute more than the Company income for the previous tax year plus % of the value of the assets of the Company on the last day of the previous calendar year in any single year.

Section Mandatory Yearly Distributions ()

The Manager shall be required to distribute, on a pro-rata basis, a substantial present economic benefit of at least percent (%) of the total assets held by the Company on a yearly basis. If the optional distributions as set forth in Section above on a yearly basis are more than percent (%) on a pro rata basis, then there shall be no mandatory distributions required under this paragraph. If the optional distributions set forth under Section above are less than percent (%) on an annual basis, then the Manager shall be required to make distributions on a pro rata basis up to percent (%) of the value of the assets on a year to year basis. For purposes of this paragraph, the percent (%) value is determined as of the value of the assets of the Company as of January 1 of each calendar year. Furthermore, this mandatory distribution requirement shall not apply to the first partial year that this Company is in existence and shall only apply to each full calendar year that this Company is in existence.

Section Distributions to members ()

It is the primary intent of the Company to retain Company funds in amounts determined in the sole discretion of the Manager to meet the reasonable needs of the business or investments of the Company and other needs as provided in this Agreement. No Member shall have the right to demand distributions of any Company funds or assets.

Section Manager's General Authority ()

Subject to the specific rights given the Voting Members in this Agreement, the Manager may make all decisions concerning any matter affecting or arising out of the Company's business conduct. The Manager has the right and authority to manage, conduct, and operate the Company business; provided, however, that the manager shall make all financial decisions only with approval from the (" ") board for as long as LLC interests are owned entirely or in part by or its successor or assign, which must be tax exempt pursuant to Internal Revenue Code, 26 U.S. Code, Section 501, and a qualified charity as defined by Internal Revenue Code, 26 U.S. Code, Sections 170(c), 2055 (a) and 2522(a).

Section Manager's Power to Amend ()

The Manager may, without the consent of the Members, amend any provision of this Agreement or the Articles of Organization and prepare and deliver any documents necessary to reflect:

- A change in the name of the Company or the location of the principal office of the Company;
- The admission, substitution, or termination of Members according to this Agreement;
- A change that the Manager in its sole discretion determines to be necessary or advantageous to qualify or to enable the Company to continue to qualify as a limited liability

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company, or a company in which the Members have limited liability under the laws of any jurisdiction, or to ensure that the tax treatment of the Company does not change, other than as provided in Article Two;

- A change that does not adversely affect the Members in any material respect or that is required or contemplated by this Agreement; or
- Any other amendments similar to the foregoing.

Any other amendments will require the written consent of % of the Voting Membership Interests unless other provisions of this Agreement require a higher percentage of the Voting Members (such as the liquidation of the Company before the expiration of its term).

Amendments:

The operating agreements were reviewed to determine the stated members and ownership percentages. In addition to the original operating agreements, amendments to the agreements were provided for the following LLCs:

- - a. First Amendment – The amendment changed the owner of the % interest in the from the () to
- - a. First Amendment – The amendment changed the owner of the % interest in the from the to
- - a. First Amendment – The amendment changed the owner of the % non-voting interest in the from to
 - b. Second Amendment - The amendment changed the owner of the % interest in the from the to
- - a. First Amendment – The amendment assigned % of the member interest in the from the to
 - b. Second Amendment - The amendment changed the owner of the % interest in the from the to
- - a. First Amendment - The amendment changed the owner of the % interest in the from the to
- - a. First Amendment – Only the last page of the amendment was provided. There was no detail on what was changed included in the amendment.
- - a. First Amendment – In the first amendment assigned his member interest in the to

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- b. Second Amendment – In the second amendment _____ resigned as manager of the _____ and named _____ as the new manager.
 - c. Third Amendment – In the third amendment _____ was removed as the investment advisor for the _____ and _____ (_____) was delegated to be the investment advisor.
 - d. Fourth Amendment – In the fourth amendment _____ transferred _____ % of its member interest in the _____ to _____.
- a. First Amendment -In the first amendment _____ assigned his member interest to the _____.
 - b. Second Amendment – In the second amendment _____ resigned as manager of the _____ and assigned _____ to act as manager of the _____.
 - c. Third Amendment – In the third amendment _____ transferred _____ % of its interest in the _____ to _____.
- a. First Amendment – In the first amendment _____ resigned as the manager of the _____ and transferred _____ % of its ownership interest in the _____ to _____ . _____ also was named as the new manager.
- a. First Amendment – In the first amendment _____ resigned as the manager of the LLC and transferred _____ % of its ownership interest in the _____ to _____ . _____ also was named as the new manager.
- a. First Amendment – In the first amendment _____ and _____ resigned as the managers of the _____ and appointed _____ as the manager. Additionally, they transferred their member interest in the _____ to _____.
 - b. Second Amendment - In the second amendment _____ resigned as the manager of the _____ and transferred _____ % of its ownership interest in the _____ to _____ . _____ also was named as the new manager.
- a. First Amendment - In the first amendment the _____ resigned as the manager of the _____ and appointed _____ as the manager. Additionally, the trust transferred its member interest in the _____ to _____.
 - b. Second Amendment - In the second amendment _____ resigned as the manager of the _____ and transferred _____ % of its ownership interest in the _____ to _____ . _____ also was named as the new manager.
- a. First Amendment – In the first amendment _____ resigned as the manager of the _____ and transferred _____ % of its ownership interest in the _____ to _____ . _____ also was named as the new manager.

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- a. First Amendment – In the first amendment _____ resigned as the manager of the _____ and appointed _____ also assigned his _____ % member interest to _____.
- b. Second Amendment – In the second amendment _____ resigned as the manager of the LLC and transferred _____ % of its ownership interest in the _____ to _____ also was named as the new manager.
-
- a. First Amendment - In the first amendment _____ resigned as the manager of the _____ and transferred _____ % of its ownership interest in the _____ to _____ also was named as the new manager.
-
- a. First Amendment – In the first amendment _____ assigned a _____ % non-Voting interest to _____.

Ownership and Changes:

The examiner reviewed the operating agreements and amendments to the agreements to determine the stated ownership of each LLC. The following information was obtained from the review:

<u>LLC Name</u>	<u>Agreement Type</u>	<u>Listed Member/Signed By</u>	<u>Ownership Percentages of Members prior to Amendments</u>	<u>Current Amended Agreement Member</u>	<u>Date Amended</u>	<u>Ownership Percentage</u>

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Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended
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According to the operating agreements and related amendments, approximately % () of the LLC interests are owned % by . Of the % owned interests or % were originally donated to prior to being transferred to . The interests transferred from to were all dated to have occurred in the month of .

Ownership Reported by other Entities:
) (A Charity which was previously run by)
 filed a Form return for the period ended . The organization reported owning member interests in the following entities (not an all-inclusive list) for the period:

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

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-
-
-
-

As such, and are both claiming ownership of the listed above for the period ended . Additionally, provided documentation showing that the member interest it received for these organizations was received from and not .

About :

During the examination the organization provided documentation which it provides to parties interested in donating LLC interest to . The documents included:

- Law Firm brochure
- Trifold
- Planned Giving Trifold
- Book on the "

All of these documents are created and provided to potential clients by through Law (DBA) and . Each of these documents outlines methodologies used by to solicit potential clients.

utilizes many forms of "tax planning" one of which is the same or substantially similar to the method used by as outlined below. received compensation from the clients for the initial setup of the structure used (formation of preparation of appraisals, etc.) and continued support to each (annual filings, gift receipts for "donations" etc.)

It is also apparent that has direct ties to as evidenced by his acceptance of interests from which was run by and the use of as an appraiser for the donated interests.

About :

On the United States of America, Plaintiff, filed a Complaint for Permanent Injunction and Other Relief against , Defendant. Per the complaint:

1. From to the present, (" ") has organized, promoted, and operated an elaborate-and bogus-charitable giving tax scheme throughout the United States. Through this scheme, creates an entity for each scheme participant and advises them to transfer assets to the new entity. then causes the participants to purportedly "donate" or "assign" an interest in these entities to charities that controls.

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then "appraises" the purportedly donated interests in a manner that fails to comply with the law and generally accepted appraisal standards. Finally, prepares the federal income tax return documents to claim the bogus charitable contribution deductions.

2. This entire tax scheme occurs only on paper. Participants never actually transfer or donate anything to purported charities. In some egregious instances, participants claim bogus charitable deductions for nonexistent, fictional assets that fabricates.
3. Regardless of the purported form, advises scheme participants to take unwarranted tax deductions for charitable donations that knows were never made, and, in some instances, for assets that did not exist. sells this scheme to the clients of financial planners and Certified Public Accountants by misrepresenting his experience, his credentials, and the merits of his charitable giving tax scheme. In return, scheme participants pay substantial fees to based on the purported value of the assets initially transferred to the entities.
4. charitable giving tax scheme has harmed the United States by depriving the government of tax revenue. The IRS has identified specific transactions that, through cost the United States Treasury more than \$ in lost tax revenue. And while the IRS has assessed and will continue to assess scheme participants with significant tax liabilities, it will likely never fully recover the monies blicked from the Treasury.
5. The United States brings this Complaint pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 to enjoin and all persons and entities in active concert or participation with from, among other things, directly or indirectly:
 - a. Making or furnishing or causing another person to make or furnish a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit, or otherwise providing tax advice, in exchange for compensation;
 - b. Preparing (or assisting others in preparing) appraisals in connection with any federal tax matter;
 - c. Acting as federal tax return preparers, or filing, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than his own tax returns; and
 - d. Organizing or assisting in the organization of a partnership or other entity, any investment plan or arrangement, or any other plan m arrangement concerning charitable contribution deductions.

The United States also seeks to disgorge the ill-gotten gains that derived from this bogus charitable giving tax scheme.

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Since [redacted] has established at least three purported charities in [redacted] : (1) [redacted] (" [redacted] "); (2) [redacted] (" [redacted] "); and (3) [redacted] (" [redacted] ") (collectively, the " [redacted] "). controlled all [redacted] purported charities and operated them in the same manner.

According to their respective Articles of Incorporation, the [redacted] were purportedly organized for charitable purposes. [redacted] submitted a Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code ("Tax Exempt Status Application"), on behalf of each of the [redacted]. The IRS granted the [redacted] tax exempt status based on the Tax-Exempt Status Applications that [redacted] submitted.

Over the years, [redacted] is listed on documents filed with the [redacted] Secretary of State's Office as an officer, treasurer, director, incorporator, or registered agent for the [redacted]. [redacted] has also attempted to avoid IRS scrutiny by affiliating his parents or other individuals with the [redacted] on filings with the [redacted] Secretary of State's Office. At all times, however, [redacted] controlled the [redacted] and was the only true officer and director. The [redacted] had no employees.

On [redacted], [redacted] executed an agreement with the IRS on behalf of [redacted] retroactively revoking [redacted] tax-exempt status as of [redacted]. The IRS concluded, and [redacted] did not dispute, that [redacted] was not engaged primarily in activities for exempt purposes, and its net earnings inured to the benefit of private individuals i.e., him and his family.

On [redacted], [redacted], on behalf of [redacted], stipulated to an entry of judgment against it in U.S. Tax Court for past due taxes for [redacted] and [redacted] owed taxes on its income because it was not a tax-exempt entity.

On [redacted], [redacted] executed agreements with the IRS on behalf of [redacted] and [redacted] retroactively revoking [redacted] and [redacted] tax exempt status as of [redacted] and [redacted], respectively, because [redacted] used [redacted] and [redacted] as tools for promoting, organizing, and executing his charitable giving tax scheme.

Transactions:

Under the first step in [redacted] scheme, [redacted] creates a partnership or limited liability company (the "Entity" or "Entities") for scheme participants. Regardless of their form, the Entities are holding companies that exist solely to facilitate [redacted] scheme. [redacted] prepares and files all paperwork necessary to create the Entities, including the partnership or LLC agreements.

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Next, the scheme participants transfer "property" to the newly formed Entities using contractual documents prepared by . Some participants, at direction, claim to transfer cash or real property to the Entities while others purportedly transfer backdated promissory notes and fabricated intellectual property. Over time, varied how he executed this scheme step, but the variations were meaningless from both economic and federal income tax perspectives.

then drafts the paperwork necessary to cause the scheme participants to "donate" or "assign" an interest in the newly created Entities to one of the .

Some participants purport to donate a % non-controlling interest in their Entity, while others a % interest. In some cases, misrepresents the "transaction" to the participants, telling such participants that they were "contributing" a % non-controlling interest, when, in fact, completed the transactional paperwork to show a % "contribution."

then causes the to send contemporaneous written acknowledgments of the purported contributions to the scheme participants.

appraises each "contribution" to facilitate the bogus charitable deductions. Not only are the appraisals baseless, but is prohibited by law from providing them.

completes, signs, and provides to each scheme participant IRS Forms 8283, Noncash Charitable Contributions ("Form 8283"), which are necessary to claim a non-cash charitable contribution of more than \$ sends the scheme participants the following instructions: "

"

In following instructions, the scheme participants then attach the prepared Form 8283 to their personal federal income tax returns to claim unwarranted charitable deductions. The Forms 8283 are based entirely on the bogus appraisals that prepares to facilitate this scheme.

On paper, it appears that the participants donate something of value to the repeatedly advises the scheme participants to take actions to give his scheme substance. This was mere window dressing, however, designed to disguise tax shelter. In reality, the scheme participants retain complete control over their Entities and their Entities' assets and continue to use the purportedly donated assets as if nothing ever happened.

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After executing the "transaction," the do not take dominion or control over the Entities or their assets. The are simply vehicles through which executes his elaborate charitable giving tax scheme.

Misrepresentation of Structure by

told potential participants that they could establish Donor Advised Funds ("DAFs") through the , but this was a false statement.

The Internal Revenue Code defines DAFs as a fund or account "(i) which is separately identified by reference to contributions of a donor or donors, (ii) which is owned and controlled by a sponsoring organization, and (iii) with respect to which a donor ... has ... advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor's status as a donor."

DAFs are not standalone entities. Each DAF is established by a sponsoring organization, which must be an Internal Revenue Code § 501(c)(3) tax exempt organization. The sponsoring organization creates a separate DAF for each donor. The donor then makes a tax-deductible charitable contribution to the donor's DAF. The donor cannot use or otherwise access the donated property because the sponsoring organization maintains complete control over the DAF and its property. The donor retains "advisory privileges" regarding future DAF distributions, but the sponsoring organization is not required to honor the donor's requests and may only distribute DAF property to other Code § 501(c)(3) tax exempt entities. After a donor makes a distribution request to a DAF, the DAF will make a distribution from the assets that the DAF controls after performing due diligence to ensure the intended recipient is a qualified charity.

By advising potential participants that they could establish DAFs through the , misrepresented the structure of his illegal tax shelter. The did not qualify or operate as sponsoring organizations, and the Entities established did not qualify or operate as DAFs.

To be a sponsoring organization, the were required to inform the IRS that they intended to be sponsoring organizations on their Tax-Exempt Status Applications. They did not. To be a sponsoring organization, the were also required to describe its DAF program and the written materials provided to donors on the Tax-Exempt Status Applications. They did not.

To be a sponsoring organization, the were required to report certain information on the annual "tax return" for tax exempt entities-Form ("Form "). They did not. Indeed, on the Forms , Part IV, Question 6, stated that the did not "maintain any donor advised

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funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts."

completed the Tax-Exempt Status Applications and Forms and knew that the did not report the required information to be a lawful sponsoring organization. Therefore, knew that the were not sponsoring organizations.

To establish a DAF, the were required to take control of the purportedly contributed Entity interests. As explained throughout this Complaint, the scheme participants never gave up control of the purportedly contributed assets, which knew. If scheme participants actually wanted to make a donation to a charity through a (which many participants did not do) required them to send to him a " along with a check made out to one of the These ' " merely gave the appearance of a valid DAF, but a valid DAF would never have required an additional check from the participant. This process shows that the never had dominion or control over any of the purported contributions.

Scheme Flagrantly Violates Internal Revenue Laws:

Some participants in tax scheme, upon advice and with his assistance, have taken out substantial loans from their respective Entities even after transferring their ownership interest to one of the . These loans are made on beneficial terms and sometimes go unpaid. testified in a deposition that most participants borrowed their Entities' assets or used the assets as collateral for some other purpose.

Consequently, participants in scheme receive a large income tax deduction and still get the use and enjoyment of the assets that generated the deduction.

Because each of scheme participants claimed non-cash charitable contributions of over \$ on their tax returns based on the purported donation of their Entity interests to the , they were required to obtain qualified appraisals of the purportedly donated Entity interests from "qualified appraisers."

In reality, performs the appraisals for the scheme participants. does not tell scheme participants that he is the appraiser prior to performing the appraisals. completed and signed the Form 8283 for each of the participants, which based entirely on the bogus appraisals he prepared. often listed the following credentials on the Form 8283 after his signature:

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claims that he "implemented and consulted on over charitable plans in States encompassing \$ since [and] performed over qualified appraisals of closely-held businesses since ."

The appraisals uses in his tax scheme are bogus because is excluded by law from preparing appraisals in connection with this scheme, the appraisals are not qualified appraisals within the definition of the Internal Revenue Code, and the appraisals are based on unreliable methods.

profits from his scheme by charging a percentage fee based on the value of the purportedly donated assets. His standard fee is " % of net assets transferred (to the) up to but not in excess of \$, plus % of net assets transferred which exceed \$."

Example of Charitable Giving Scheme:

sold his charitable giving tax scheme to -based Participant 1 through Participant 1's financial planner. Participant 1 claimed a \$ charitable contribution deduction on his federal income tax return. charged \$ for Participant 1 to participate in this scheme.

Participant 1 decided to participate in charitable giving tax scheme in used an existing LLC and illegally backdated every document he prepared for Participant 1 so that Participant 1 could claim a charitable deduction on his federal income tax return.

On , and Participant 1 completed an LLC Agreement to transfer an LLC that had previous established in to Participant 1. backdated the LLC Agreement to . Then, drafted a promissory note through which Participant 1 promised to pay his LLC \$. backdated the promissory note to . The promissory note was not secured by any collateral and charged a % interest rate on outstanding balances in and % on any outstanding balances thereafter.

also drafted an assignment agreement through which Participant 1 purported to assign % of his LLC to . backdated the assignment agreement as well to . Despite executing the assignment agreement, Participant 1 believed, based on misrepresentations, that Participant 1 only assigned a non-controlling LLC interest to .

On , Participant 1 opened a bank account in the LLC's name. Participant 1 was the only person with signature authority over this account. Participant 1 never gave or anyone at control over the account.

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Later in _____, Participant 1 transferred _____ to the LLC's bank account to "repay" the bogus note's principal. Participant 1 did not pay any interest.

_____ then prepared an appraisal report backdated to _____—more than _____ months prior to the transfer of the LLC to Participant 1—in which "appraised" Participant 1's purported gift of LLC units to _____ at \$ _____.

_____ backdated appraisal does not describe or analyze the LLC's only asset—the promissory note. Rather, _____ applied his standard _____ % discount for lack of control, despite stating that _____ owned _____ % of Participant 1's LLC, and a _____ % discount for lack of marketability. _____ provided no meaningful explanation for these discounts.

_____ then prepared an IRS Form 8283 so that Participant 1 could claim a \$ _____ charitable contribution for the purported donation to _____ on his federal income tax return.

The IRS audited Participant 1's _____ tax return and disallowed the \$ _____ charitable contribution.

In _____, after the IRS initiated the audit of Participant 1's _____ tax return, Participant 1 made _____ charitable distributions totaling \$ _____ to _____. In order to do so, Participant 1 completed _____ " _____," but also sent a check to _____ in that amount.

Additional information can be found at *United States of America, Plaintiff, v. _____, Defendant*. Case No.:

Permanent Injunction:

On _____, the United States District Court Judge (_____) issued a permanent injunction against _____ permanently barring him from directly or indirectly:

- a. Organizing (or assisting in the organization of), promoting, marketing, or selling the _____ or any plan or arrangement that is substantially similar, or participating (directly or indirectly) in the sale of any interest in the _____ or any plan or arrangement that is substantially similar;
- b. Making or furnishing, or causing another to make or furnish, any statements about the tax benefits of the _____ or any plan or arrangement that is substantially similar;
- c. Organizing (or assisting in the organization of), promoting, marketing, or selling any entity, plan, or arrangement involving charitable giving, or participating (directly or indirectly) in the sale of any interest in an entity, plan, or arrangement involving charitable contributions;

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- d. Furnishing, or causing another to furnish, tax advice regarding charitable contributions;
- e. Organizing (or assisting in the organization of), promoting, marketing, or selling any entity, plan, or arrangement involving federal taxes that relies upon, requires customers to execute, or uses a standard set (or substantially similar version or set) of transaction documents;
- f. Making or furnishing, or causing another to make or furnish, any statements about the tax benefits of entities, plans, or arrangements that rely upon, require customers to execute, or use a standard set (or substantially similar version or set) of transaction documents;
- g. Making or furnishing, or causing another to make or furnish, any statements in connection with the organization or marketing of a transaction having a significant purpose of avoidance or evasion of federal taxes;
- h. Preparing (or assisting others in preparing) appraisals in connection with any federal tax matter;
- i. Representing anyone other than himself before the IRS;
- j. Acting as a federal tax return preparer, or filing, assisting in, or directing the preparation or filing of federal tax returns, amended tax returns, or other related documents or forms for any person or entity other than his own individual tax returns (or his joint tax return);
- k. Assisting or advising individuals or entities in seeking tax-exempt status from the IRS;
- l. Advising, performing work for, or receiving compensation from
, or
- m. Advising, performing work for, or receiving compensation for work performed for individuals in connection with making assignments, donations, contributions, or transfers to
, or
- n. Referring individuals to make assignments, donations, contributions, or transfers to
, or

Law:

IRC Section 501(c)(3) provides for an exemption from tax for corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net

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earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation (Treas. Regs.) Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Regs. Section 1.501(c)(3)-1(a)(2) provides that, the term exempt purpose or purposes, as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

Treas. Regs. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Regs. Section 1.501(c)(3)-1(d)(1) provides that in general:

- i. An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:
 - a. Religious,
 - b. Charitable,
 - c. Scientific,
 - d. Testing for public safety,
 - e. Literary,
 - f. Educational, or
 - g. Prevention of cruelty to children or animals
- ii. An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In Better Business Bureau of Washington D.C. v. U. S., 326 U.S. 279 (1945), the court found that the existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test.

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The Internal Revenue Service and the Treasury Department are aware of a type of transaction, described below, in which S corporation shareholders attempt to transfer the incidence of taxation on S corporation income by purportedly donating S corporation nonvoting stock to an exempt organization, while retaining the economic benefits associated with that stock. This notice alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies these transactions, and substantially similar transactions, as listed transactions for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations and §§ 301.6111-2(b)(2) and 301.6112-1(b)(2) of the Procedure and Administration Regulations. This notice also alerts parties involved with these transactions to certain responsibilities that may arise from their involvement with these transactions.

FACTS

In a typical transaction, an S corporation, its shareholders, and an organization exempt from tax under § 501(a) and described in either § 501(c)(3) or § 401(a) of the Internal Revenue Code (such as a tax-qualified retirement plan maintained by a state or local government) (the exempt party) undertake the following steps. An S corporation issues, pro rata to each of its shareholders (the original shareholders), nonvoting stock and warrants that are exercisable into nonvoting stock. For example, the S corporation issues nonvoting stock in a ratio of 9 shares for every share of voting stock and warrants in a ratio of 10 warrants for every share of nonvoting stock. Thus, if the S corporation has 1,000 shares of voting stock outstanding, the S corporation would issue 9,000 shares of nonvoting stock and warrants exercisable into 90,000 shares of nonvoting stock to the original shareholders. The warrants may be exercised at any time over a period of years. The strike price on the warrants is set at a price that is at least equal to 90 percent of the purported fair market value of the newly issued nonvoting stock on the date the warrants are granted. For this purpose, the fair market value of the nonvoting stock is claimed to be substantially reduced because of the existence of the warrants.

Shortly after the issuance of the nonvoting stock and the warrants, the original shareholders donate the nonvoting stock to the exempt party. The parties to the transaction claim that, after the donation of the nonvoting stock, the exempt party owns 90 percent of the stock of the S corporation. The parties further claim that any taxable income allocated on the nonvoting stock to the exempt party is not subject to tax on unrelated business income (UBIT) under §§ 511 through 514 (or the exempt party has offsetting UBIT net operating losses). The original shareholders might also claim a charitable contribution deduction under § 170 for the donation of the nonvoting stock to the exempt party. In some variations of this transaction, the S corporation may issue nonvoting stock directly to the exempt party.

Pursuant to one or more agreements (typically redemption agreements, rights of first refusal, put agreements, or pledge agreements) entered into as part of the transaction, the exempt party can require the S corporation or the original shareholders to purchase the exempt party's nonvoting stock for an amount equal to the fair market value of the stock as of the date the shares are

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presented for repurchase. In some cases, the S corporation or the original shareholders guarantee that the exempt party will receive the fair market value of the nonvoting stock as of the date the stock was given to the exempt party if that amount is greater than the fair market value on the repurchase date.

Because they own 100 percent of the voting stock of the S corporation, the original shareholders have the power to determine the amount and timing of any distributions made with respect to the voting and nonvoting stock. The original shareholders exercise that power to cause the S corporation to limit or suspend distributions to its shareholders while the exempt party purportedly owns the nonvoting stock. For tax purposes, however, during that period, 90 percent of the S corporation's income is allocated to the exempt party and 10 percent of the S corporation's income is allocated to the original shareholders. The transaction is structured for the original shareholders to exercise the warrants and dilute the shares of nonvoting stock held by the exempt party, or for the S corporation or the original shareholders to purchase the nonvoting stock from the exempt party at a value that is substantially reduced by reason of the existence of the warrants. In either event, the exempt party will receive a share of the total economic benefit of stock ownership that is substantially lower than the share of the S corporation income allocated to the exempt party.

DISCUSSION

The transaction described in this notice is designed to artificially shift the incidence of taxation on S corporation income away from taxable shareholders to the exempt party. In this manner, the original shareholders attempt to avoid paying income tax on most of the S corporation's income over a period of time. The Service intends to challenge the purported tax benefits from this transaction based on the application of various theories, including judicial doctrines such as substance over form. Under appropriate facts and circumstances, the Service also may argue that the existence of the warrants results in a violation of the single class of stock requirement of § 1361(b)(1)(D), thus terminating the corporation's status as an S corporation. See, e.g., §§ 1.1361-1(l)(4)(ii) and (iii).

Transactions that are the same as, or substantially similar to, the transaction described in this notice are identified as "listed transactions" for purposes of §§ 1.6011-4(b)(2), 301.6111-2(b)(2), and 301.6112-1(b)(2) effective the date this notice was released to the public. Independent of their classification as listed transactions, transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the disclosure requirements of § 6011 (§ 1.6011-4), the tax shelter registration requirements of § 6111 (§ 301.6111-1T and § 301.6111-2), or the list maintenance requirements of § 6112 (§ 301.6112-1). Under the authority of § 1.6011-4(c)(3)(i)(A), the exempt party in the listed transaction described in this notice will also be treated as a participant in the transaction (whether or not otherwise a participant). The exempt party will be treated as participating in the transaction for the taxable year of the purported donation, the taxable year of the reacquisition, and all intervening taxable years. Pending further review and possible additional guidance, this notice does not apply

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to any investment in employer securities, as defined in § 409(l), by an employee stock ownership plan subject to the requirements of § 409(p).

Persons who are required to register these tax shelters under § 6111 but have failed to do so may be subject to the penalty under § 6707(a). Persons who are required to maintain lists of investors under § 6112 but have failed to do so (or who fail to provide those lists when requested by the Service) may be subject to the penalty under § 6708(a). In addition, the Service may impose penalties on parties involved in these transactions or substantially similar transactions, including the accuracy-related penalty under § 6662.

The Service and the Treasury Department recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

Taxpayer's Position:

1. The Taxpayer has not provided a position on the issue.
2. The Taxpayer has not provided a position on the issue.

Government's Position:

1. That the exempt status for _____ should be revoked for failure to operate exclusively in furtherance of exempt purposes.

Under IRC Section 501(c)(3) an exemption from tax is provided for organizations, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.

Treas. Regs. Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Regs. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

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Here the facts show that more than an insubstantial part of the organization's activities are not in furtherance of an exempt purpose. These activities include:

1. Participating in the S Corporation Tax Shelter Scheme
2. Operating as a vehicle to assist the promoter of the scheme () in carrying out his abusive charitable scheme

These activities disqualify the organization from exempt status under IRC Section 501(c)(3).

Discussion on the disqualifying activities

1. The organization is a participant in the S Corporation Tax Shelter Scheme.

Transactions that are the same or substantially similar to those described in Notice 2004-30 are designed to artificially shift the incidence of taxation on S corporation income away from taxable shareholders to the exempt party. In this manner, the original shareholders attempt to avoid paying income tax on most of the S corporation's income over a period of time. The shifting of taxation away from the taxable shareholders is possible due to the exempt party generally does not pay tax on its income. Since inception, has not paid any tax on its income. Notice 2004-30 designated these type of transactions as listed transactions.

In determining whether the donations of LLC membership units to the organization are the same or substantially similar to Notice 2004-30, the provisions in the Operating Agreements and other relevant facts are examined. These provisions include:

- The original shareholders donated membership units to the organization.
- The original shareholders retain control of the LLC via their holdings of exclusive management rights and/or ownership of voting units.
- The original shareholders have the power to determine the amount and timing of any distributions.
- The organization is allocated percent or more of the profit, while the original shareholders are allocated percent of the loss.
- The LLCs have the first right to purchase the organizations membership units. With the original shareholders having exclusive management right, they can issue additional shares to dilute the shares held by the organization.

Discussion of the above factors

- i. The original shareholders donated membership units to the organization.

Similar to Notice 2004-30, the original shareholders donated membership units to the organization, while retaining complete and total control over the LLC units. As the holder of membership units, the organization has no voting rights and consent right.

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- ii. The original shareholders retain control of the LLC via their exclusive management rights.

Similar to Notice 2004-30, after the original shareholders donated membership units to the organization, they still maintain complete control over the assets of the LLC. In the majority of instances (LLCs or %) where interest was donated to the organization, a % non-voting interest was donated while a % Voting interest was maintained by the original donors. As such, the original donor maintains all voting rights and management rights of the LLC. This creates a situation where the donor can take a tax deduction for a "charitable contribution" while maintaining the economic benefit and control of the donated asset.

- iii. The original shareholders have the power to determine the amount and timing of any distributions.

In Notice 2004-30, because they are the sole managers of the S Corporations, the original shareholders have the power to determine the amount and timing of any distributions.

In this case, the original shareholders, also Manager of the LLCs, have the power to determine the amount and timing of distributions. Per the Type Operating Agreements, there are no required annual distributions for organizations operating under the Type 1 agreements.

For organization's operating under Type 2 agreements, the manager shall be required to distribute, on a pro-rata basis, a substantial present economic benefit of at least percent (%) of the total assets held by the Company on a yearly basis. For purposes of this paragraph, the two percent (%) value is determined as of the value of the assets of the Company as of January 1 of each calendar year. Furthermore, this mandatory distribution requirement shall not apply to the first partial year that this Company is in existence and shall only apply to each full calendar year that this Company is in existence.

In the year of examination, some LLCs did not make any distributions to the organization . Additionally, only of the LLCs (or %) made distributions at or above the required % with LLCs making no distribution or a distribution which was less than the % required by the operating agreements. Overall, the average distribution for all LLCs was % of the value of the LLC at

Where distributions were made to charities; the timing, amount, and chosen charity were determined by the LLC manager (typically the original donor). Many of the LLCs made direct payments to their chosen charities without any notification to and simply reported the expense to at year end.

Other entities transferred funds to and also provided with payout instructions on recipients and amounts to be paid. In these instances, acted as a passthrough account with no oversight or involvement in the actual charitable giving process.

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was unable to provide any documentation or substantiation of its involvement in the charitable giving or disbursement process other than its activities as a pass-through entity for a portion of the charitable giving activities so that it can show some form of charitable activity for the year.

- iv. The organization is allocated _____ percent or more of the profit, while the original shareholders are allocated _____ percent of the loss. The Special Allocation Provisions further allocate all passive income to the organization and all active income and deductions to the original shareholders.

In this case, _____ %- _____ % of profits and losses are allocated to the exempt party and _____ %- _____ % are allocated to the original shareholders. However, none of the profits or losses are realized by the exempt party as the only funds received are the pass-through funds received as outlined in item #v above.

- v. With the original shareholders having exclusive management right, they can issue additional shares to dilute the shares held by the organization.

In these LLCs, the donors, their spouse and/or family members are the sole managers of the LLCs. They have the power to issue additional membership units within the LLC. Such issuance of additional shares may dilute the value of those share already held by the organization. Given the organization has no consent rights, there's nothing it can do to prevent the issuance of additional units.

In summary, the facts show the transactions in this case are the same or substantially similar to those described in Notice 2004-30. Therefore, it is concluded that _____ was a participant in the S-Corporation Tax Shelter scheme as described in Notice 2004-30.

2. _____ acts as a vehicle to assist the promoter of the scheme (_____) in carrying out his abusive charitable scheme.

As stipulated in *United States of America v. _____*, _____ charitable giving scheme is designed to assist his wealthy clients improperly reducing their tax liability by taking unwarranted charitable contribution deductions. Mr. _____ scheme has harmed the United States by depriving the government of tax revenue. The IRS has identified specific transactions that, through _____, cost the United States Treasury more than \$ _____ in lost tax revenue.

To facilitate his scheme, _____ needed a charity described under IRC § 501(c)(3) to take the bogus contributions, as contributions to such charity is tax deductible. In the beginning, _____ created his _____, _____, and _____ so he could facilitate his scheme. Once

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_____ scheme was exposed, the IRS revoked _____, and I _____ tax exempt status, which _____ agreed to.

Facts connecting _____ to _____ scheme included, but are not limited to:

- Approximately _____ % of the LLC interest "assigned" to _____ were originally "assigned" to _____, a charity which was involved in the _____ scheme until it was revoked by the IRS.
- _____ appraised the value of ownership interest for many of the donors who donated their interest to the organization. _____ signed many of the Forms 8283 for the appraised assets.
- _____ is the President of _____ which is named in the injunction against _____. It is clear from the injunction that _____ and _____ worked together to perpetrate the tax scheme concocted by _____ and that _____ is a promoter of the _____ scheme.

In conclusion, the facts show that the organization was operated as a vehicle of bogus charitable scheme which is being promoted and carried out by _____.

The _____ activities discussed above were more than an insubstantial part of _____ activities. These _____ activities did not further one or more exempt purposes described in IRC § 501(c)(3). Therefore, _____ exempt status under IRC § 501(c)(3) should be revoked.

2. That the Organization's exempt status should be revoked retroactively to _____, the first date that the organization failed to qualify for exemption.

_____ activities remain the same in the year of examination as they were at the inception of the federal tax exemption on _____. The organization began accepting LLC interest donations in the _____ tax year based on their Form _____ reporting. This demonstrates that _____ became a participant in the tax avoidance scheme in _____.

Therefore, it is warranted to revoke the exempt status of the organization retroactively to _____ the first date it was determined that the organization was not operated exclusively for exempt purposes.

Conclusion:

_____ is not operated exclusively in furtherance of an exempt purpose as outlined in IRC Section 501(c)(3). As such, its tax-exempt status should be revoked retroactively to _____. _____ is required to file Form 1120, *U.S. Corporation Income Tax Return*, for the tax years _____, _____, and all future years.