



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

Date: 12/22/2023

Taxpayer ID number (last 4 digits):

Form:

Tax periods ended:

Person to contact:

Name:

ID number

Telephone:

Fax:

Last day to file petition with United States
Tax Court: 3/21/2024

Release Number: 202414006

Release Date: 4/5/2024

UIL Code: 501.03-00

CERTIFIED MAIL - Return Receipt Requested

Dear _____ :

This is a final determination regarding your foundation classification. This modifies our letter dated _____, _____, in which we determined that you were an organization described in Internal Revenue Code (IRC) Section 501(c)(3). This letter modifies your foundation status to that of a Private Foundation described under IRC Section 509(a), effective _____, _____.

An organization qualifying for I.R.C. § 501(c)(3) tax-exempt status is considered to be a “private foundation” unless a statutory exception applies. I.R.C. § 509(a). You have not demonstrated that you meet any of the statutory exceptions. Specifically, you have not demonstrated that you are a supporting organization as described in I.R.C. § 509(a)(3) because you do not meet each of the requirements set forth in Treas. Reg. § 1.509(a)-4(i)(1).

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

We previously provided you a report of examination explaining the proposed modification of your tax-exempt status. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. You failed to respond to that report, and you did not sign and return the Form 6018, Consent to Proposed Action – Section 7428, contained therein. This is a final determination letter with regards to your federal tax-exempt status under Section 501(a).

You are required to file Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*. Form 990-PF must be filed by the 15th day of the fifth month after the end of your annual accounting periods. A penalty of \$20 a day is charged when a return is filed late, unless there is a reasonable cause for the delay; however, the maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year whichever is less. In addition, organizations with gross receipts exceeding \$1,000,000 for any year will be charged a penalty of \$100 a day when a return is filed late; however, the maximum penalty charged cannot exceed \$50,000. These penalties may also be charged if a return is not complete, so be sure your return is complete before you file it.

If you are subject to the excise taxes under IRC Sections 4941, 4942, 4943, 4944, or 4945 you must also file any returns required to report those taxes in addition to the aforementioned Form 990-PF.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of IRC Section 7428 in one of the following three venues: 1) United States Tax Court, 2) the United

States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

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

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005
uscfc.uscourts.gov

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

You may also be eligible for help from 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.

Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

You can get any of the forms or publications mentioned in this letter by calling 800-TAX-FORM (800-829-3676) or visiting our website at www.irs.gov/forms-pubs.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Lynn A. Brinkley

Director, Exempt Organizations Examinations

Enclosures:
Publication 892



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

Date:
01/20/2023
Taxpayer ID number (last 4 digits):

Form:

Tax periods ended:

Person to contact:

Name:
ID number:
Telephone:
Fax:
Hours:
Address:

Manager's contact information:

Name:
ID number:
Telephone:
Response due date:
February 20, 2023

CERTIFIED MAIL -- Return Receipt Requested

Dear _____ :

Why you're receiving this letter

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

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

If you agree

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

If you disagree

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

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

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

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

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

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

If we don't hear from you

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

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.

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,

Lynn A. Brinkley

For: Lynn A. Brinkley
Director, Exempt Organizations
Examinations

Enclosures:
Form 886-A
Form 6018

Form 886-A (May 2017)	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

ISSUE:

Whether the foundation status of _____ should be reclassified from a Type III functionally integrated supporting organization as described in section 509(a)(3) to a private nonoperating foundation within the meaning of section 509(a).

FACTS:

_____, as Settlor, and _____, N.A., as trustee, executed an Amended and Restated Agreement of Trust on _____. The Agreement stated that *“the Trustee will use the residue of trust assets to establish a perpetual trust for each of the following named organizations, in the percentages shown, subject to the Trustee’s discretion concerning the continued qualification of each organization, from time to time, to receive gifts which are deductible for federal estate tax purposes. The Trustee will distribute annually the net income from this perpetual trust to the below named organizations.”*

Organization	Percent
	%
	%
	%
	%
	%
	%
	%
	%
	%

_____ Form 1023, *Application for Recognition of Exemption*, was received _____ (postmarked _____). On _____, the IRS sent a letter requesting additional information to support the Trust’s request for foundation classification as a Section 509(a)(3). The IRS asked the Trust to explain how they meet the Responsiveness Test and the Integral Part Test under the Relationship Requirement.

The Trust responded to the request explaining that the responsiveness test was met using the **alternate** method provided by Treas. Reg. 1.509(a)-(4)(i)(2)(iii). This alternate way met the responsiveness test because of the following:

- a) the trust is a “charitable trust” under _____ Trust Code section _____;
- b) the Trust’s governing instrument specifically names its publicly supported charities as beneficiaries of the Trust under Paragraph _____ of the Trust Document;
- c) under Texas Trust Code section _____, any Charitable Beneficiary may compel an accounting; and

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d) under Trust code section , and , the Trust is subject to enforcement by any Charitable Beneficiary as jurisdiction is created by proceedings to construe the Trust's governing instrument, for determining a question arising in the administration or distribution of the Trust and for requiring an accounting by the Trustee of the Trust.

The Trust stated the integral part test was met because each of the Charitable Beneficiaries had earmarked the contributions made from the Trust for a particular and substantial activity. Such earmarking was an *alternate* way of insuring the attention of a supported organization. Treas. Reg. sec. 1.509(a)-4(i)(3)(iii)(b).

received exemption from Federal income tax under section 501(c)(3) on , . The IRS determined that the trust was not a private foundation within the meaning of section 509(a) because they were a supporting organization (SO) described in section 509(a)(3).

Form 990, *Return of Organization Exempt From Income Tax*, was received , . On Schedule A, *Public Charity Status and Public Support*, The Trust indicated that it is a Type III functionally integrated supporting organization. The form instructs the taxpayer to complete Part IV, *Supporting Organizations*, Sections A, D, and E. The responses to the questions determine whether the organization's meets all aspects of the Relationship Requirement of a Type III SO.

Section D. All Type III Supporting Organizations – The Trust responded “No” to each of the questions below:

1. Did the organization provide to each of its supported organizations, by the last day of the fifth month of the organization's tax year, (i) a written notice describing the type and amount of support provided during the prior tax year, (ii) a copy of the Form 990 that was most recently filed as of the date of notification, and (iii) copies of the organization's governing documents in effect on the date of notification, to the extent not previously provided?
2. Were any of the organization's officers, directors, or trustees either (i) appointed or elected by the supported organization(s) or (ii) serving on the governing body of a supported organization? *If “No,” explain in Part VI how the organization maintained a close and continuous working relationship with the supported organization(s).*
3. By reason of the relationship described in line 2, above, did the organization's supported organizations have a significant voice in the organization's investment policies and in directing the use of the organization's income or assets at all times during the tax year? *If “Yes,” describe in Part VI the role the organization's supported organizations played in this regard.*

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Section E. Type III Functionally-Integrated Supporting Organizations. The Trust indicated that they used the Activities Test to satisfy the Integral Part Test. They answered “No” to questions 2 (a) and (b).

2. (a) Did substantially all of the organization’s activities during the tax year directly further the exempt purposes of the supported organization(s) to which the organization was responsive? *If “Yes,” then in Part VI identify those supported organizations and explain how these activities directly furthered their exempt purposes, how the organization was responsive to those supported organizations, and how the organization determined that these activities constituted substantially all of its activities.*

(b) Did the activities described in line 2a, above, constitute activities that, but for the organization’s involvement, one or more of the organization’s supported organizations(s) would have been engaged in? *If “Yes,” explain in Part VI the reasons for the organization’s position that its supported organization(s) would have engaged in these activities but for the organization’s involvement.*

distributed \$, . to nine beneficiaries.

Organization	Percent	Payment
	%	, .
	%	, .
	%	, .
	%	, .
	%	, .
	%	, .
	%	, .
	%	, .
	%	, .
	%	, .
	%	, .

BACKGROUND:

In , six years after the enactment of **Pension Protection Act of 2006**, the IRS issued regulations to provide guidance as to how existing organizations and trusts could continue to qualify and maintain their Type III SO status. The *alternative* test that was previously available to trusts as a way of meeting the responsiveness test was removed. Trusts were now required to meet both the general responsiveness test and an integral part test.

For the responsiveness test, the Type III SO must show that it is responsive to the needs or demands of at least one supported organization. It must have (1) a specified relationship “shared governance” with the supported organization, and (2) that because of that relationship, the officers, directors, or trustees of the supported organization must be considered to have a “significant voice” in the operations of the Type III SO.

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With regard to the integral part test, the Type III SOs were split into two new categories:

1. Functionally Integrated Type III SO – engages in activities “substantially all” of which
 - Directly furthers the exempt purposes of one or more SOs by performing the functions of, or carrying out the purposes of its supported organization(s); and
 - But for the involvement of the SO, such activities would normally be conducted by the supported organization.
2. Non-Functionally Integrated Type III SO – must meet both a minimum payout requirement and an attentiveness requirement. The annual minimum distribution requirement is the greater of:
 - Distributable Amount – 85% of adjusted net income (using section 4942(f)) for the immediately preceding taxable year; or
 - Distributable Amount – 3.5% of the fair market value of its noncharitable use assets for the immediately preceding taxable year.

The following distributions made by the Type III SO is applied toward its distribution requirement:

- Amounts paid to the supported organization to accomplish the supported organization’s exempt purposes;
- Amounts paid to perform a direct activity of the supported organization to the extent that amount exceeds any income derived from the activity;
- Reasonable and necessary administrative expenses of the supported organization to accomplish its exempt purposes that are not investment-related expenses;
- Amounts to acquire an exempt-use asset; and
- Amounts set aside for a specific project that accomplishes the exempt purposes of a supported organization.

To meet the attentiveness requirement, the Type III SO must distribute at least one-third of its annual distributable amount to one or more supported organizations that are “attentive” to the operations of the Type III SO and to which the Type III SO is responsive if in that year:

- 1) The Type III SO distributes 10% or more of the supported organization’s total support received during the supported organization’s last tax year;
- 2) The amount of support received from the Type III SO is necessary to avoid the interruption of specific function or activity of the supported organization. If the support is earmarked for a specific program or activity of the supported organization and the activity is at least a substantial one; or
- 3) The length and nature of the relationship between the supported organization and Type III SO, and the purpose for the funds, the amount of support received from the Type III SO is a sufficient part of a supported organization’s total support to ensure attentiveness.

Annual Notification Requirement to Each Supported Organization:

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All Type III SOs, whether functionally or non-functionally integrated, must provide the following documents annually to each of its supported organizations:

- 1) A written notice describing the type and amount of support provided by the supporting organization to the supported organization during the SO's immediately preceding taxable year;
- 2) A copy of the SO's most recently filed Form 990 (the name and address of any contributor may be redacted from the return); and
- 3) A copy of the SO's controlling governing documents, including its articles of incorporation, unless such documents have been previously provided and not amended.

This information must be postmarked or electronically transmitted by the last day of the fifth calendar month following the close of that taxable year (May 31st for calendar tax years).

LAW:

Treas. Reg. § 1.509(a)-4 (a)(1) Section 509(a)(3) excludes from the definition of *private foundation* those organizations which meet the requirements of subparagraphs (A), (B), and (C) thereof.

Treas. Reg. § 1.509(a)-4 (a)(2) Section 509(a)(3)(A) provides that a section 509(a)(3) organization must be organized, and at all times thereafter operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a) (1) or (2). Section 509(a)(3)(A) describes the nature of the support or benefit which a section 509(a)(3) organization must provide to one or more section 509(a) (1) or (2) organizations.

Treas. Reg. § 1.509(a)-4 (a)(3) Section 509(a)(3)(B) provides that a section 509(a)(3) organization must be operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a) (1) or (2).

Treas. Reg. § 1.509(a)-4 (a)(4) Section 509(a)(3)(C) provides that a section 509(a)(3) organization must not be controlled directly or indirectly by disqualified persons (other than foundation managers or organizations described in section 509(a) (1) or (2)).

Treas. Reg. § 1.509(a)-4 (b)(1) Under subparagraph (A) of section 509(a)(3), in order to qualify as a supporting organization, an organization must be both organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of (hereinafter referred to in this section as being organized and operated to support or benefit) one or more specified publicly supported organizations.

Treas. Reg. § 1.509(a)-4 (d)(1) *Specified organizations - (1) In general.* In order to meet the requirements of section 509(a)(3)(A), an organization must be organized and operated exclusively to support or benefit one or more specified publicly supported organizations. The

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manner in which the publicly supported organizations must be *specified* in the articles for purposes of section 509(a)(3)(A) will depend upon whether the supporting organization is *operated, supervised, or controlled by or supervised or controlled in connection with* (within the meaning of paragraphs (g) and (h) of this section) such organizations or whether it is *operated in connection with* (within the meaning of paragraph (i) of this section) such organizations.

Treas. Reg. § 1.509(a)-4 (d)(4) Designated publicly supported organizations. (i) If an organization is organized and operated to support one or more publicly supported organizations and it is *operated in connection with* such organization or organizations, then, except as provided in subparagraph (2)(iv) of this paragraph, its articles of organization must, for purposes of satisfying the organizational test under section 509(a)(3)(A), designate the *specified* organizations by name.

Treas. Reg. § 1.509(a)-4 (f)(2) Types of relationships. Section 509(a)(3)(B) sets forth three different types of relationships, one of which must be met in order to meet the requirements of subparagraph (1) of this paragraph. Thus, a supporting organization may be: (i) Operated, supervised, or controlled by, (ii) Supervised or controlled in connection with, or (iii) Operated in connection with, one or more publicly supported organizations.

Treas. Reg. § 1.509(a)-4 (f)(3) Requirements of relationships. Although more than one type of relationship may exist in any one case, any relationship described in section 509(a)(3)(B) must insure that: (i) The supporting organization will be responsive to the needs of demands of one or more publicly supported organizations; and (ii) The supporting organization will constitute an integral part of, or maintain a significant involvement in, the operations of one or more publicly supported organizations.

Treas. Reg. § 1.509(a)-4 (f)(4) In the case of supporting organizations which are *supervised or controlled in connection with* one or more publicly supported organizations, the distinguishing feature is the presence of common supervision or control among the governing bodies of all organizations involved, such as the presence of common directors, as described in paragraph (h) of this section. In the case of a supporting organization which is *operated in connection with* one or more publicly supported organizations, the distinguishing feature is that the supporting organization is responsive to, and significantly involved in the operations of, the publicly supported organization, as described in paragraph (i) of this section.

Treas. Reg. § 1.509(a)-4 (h)(3)(1) General rule. For each taxable year, a supporting organization is operated in connection with one or more supported organizations (that is, is a "Type III supporting organization") only if it is not disqualified by reason of paragraph (f)(5) (relating to acceptance of contributions from controlling donors) or paragraph (i)(10) (relating to foreign supported organizations) of this section, and it satisfies -

- (i) The notification requirement, which is set forth in paragraph (i)(2) of this section;
- (ii) The responsiveness test, which is set forth in paragraph (i)(3) of this section; and
- (iii) The integral part test, which is satisfied by maintaining significant involvement in the operations of one or more supported organizations and providing support on which

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the supported organization(s) are dependent; in order to satisfy this test, the supporting organization must meet the requirements either for -

- (A) Functionally integrated Type III supporting organizations set forth in paragraph (i)(4) of this section; or
- (B) Non-functionally integrated Type III supporting organizations set forth in paragraph (i)(5) of this section.

Treas. Reg. § 1.509(a)-4 (h)(3)(2) *Notification requirement - (i) Annual notification.* For each taxable year, a Type III supporting organization must provide the following documents to each of its supported organizations:

- (A) A written notice addressed to a principal officer of the supported organization describing the type and amount of all of the support the supporting organization provided to the supported organization during the supporting organization's taxable year immediately preceding the taxable year in which the written notice is provided (and during any other taxable year of the supporting organization ending after December 28, 2012, for which such support information has not previously been provided);
- (B) A copy of the supporting organization's Form 990, "Return of Organization Exempt from Income Tax," or other annual information return required to be filed under section 6033 (although the supporting organization may redact from the return the name and address of any contributor to the organization) that was most recently filed as of the date the notification is provided (and any such return for any other taxable year of the supporting organization ending after December 28, 2012, that has not previously been provided to the supported organization); and
- (C) A copy of the supporting organization's governing documents as in effect on the date the notification is provided, including its articles of organization and bylaws (if any) and any amendments to such documents, unless such documents have been previously provided and not subsequently amended.

Treas. Reg. § 1.509(a)-4 (h)(3) *Responsiveness test -*

- (i) *General rule.* A supporting organization meets the responsiveness test if it is responsive to the needs or demands of a supported organization. Except as provided in paragraph (i)(3)(v) of this section, in order to meet this test, a supporting organization must satisfy the requirements of paragraphs (i)(3)(ii) and (i)(3)(iii) of this section.
- (ii) *Relationship of officers, directors, or trustees.* A supporting organization satisfies the requirements of this paragraph (i)(3)(ii) with respect to a supported organization only if -
 - (A) One or more officers, directors, or trustees of the supporting organization are elected or appointed by the officers, directors, trustees, or membership of the supported organization;

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(B) One or more members of the governing body of the supported organization are also officers, directors, or trustees of, or hold other important offices in, the supporting organization; or

(C) The officers, directors, or trustees of the supporting organization maintain a close and continuous working relationship with the officers, directors, or trustees of the supported organization.

Treas. Reg. § 1.509(a)-4 (h)(3)(iii) *Significant voice*. A supporting organization satisfies the requirements of this paragraph (i)(3)(iii) only if, by reason of paragraphs (i)(3)(ii)(A), (i)(3)(ii)(B), or (i)(3)(ii)(C) of this section, the officers, directors, or trustees of the supported organization have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making grants, and the selection of grant recipients by such supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

Treas. Reg. § 1.509(a)-4 (4) *Integral part test - functionally integrated Type III supporting organization -*

(i) *General rule*. A supporting organization meets the integral part test and will be considered functionally integrated within the meaning of section 4943(f)(5)(B), if it -

(A) Engages in activities substantially all of which directly further the exempt purposes of one or more supported organizations and otherwise meets the requirements described in paragraph (i)(4)(ii) of this section;

(B) Is the parent of each of its supported organizations, as described in paragraph (i)(4)(iii) of this section; or

(C) Supports a governmental supported organization and otherwise meets the requirements of paragraph (i)(4)(iv) of this section.

(ii) *Substantially all activities directly further exempt purposes -*

(A) *In general*. A supporting organization meets the requirements of this paragraph (i)(4)(ii) if it engages in activities substantially all of which -

(1) Directly further the exempt purposes of one or more supported organizations to which the supporting organization is responsive by performing the functions of, or carrying out the purposes of, such supported organization(s); and

(2) But for the involvement of the supporting organization, would normally be engaged in by such supported organization(s).

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Treas. Reg. § 1.509(a)-4 (5) Integral part test - non-functionally integrated Type III supporting organization -

(i) *General rule.* A supporting organization meets the integral part test and will be considered non-functionally integrated if it satisfies either - (A) The distribution requirement of paragraph (i)(5)(ii) of this section and the attentiveness requirement of paragraph (i)(5)(iii) of this section; or (B) The pre-November 20, 1970 trust requirements of paragraph (i)(9) of this section.

(ii) *Distribution requirement -*

(A) *Annual distribution.* With respect to each taxable year, a supporting organization must distribute to or for the use of one or more supported organizations an amount equaling or exceeding the supporting organization's distributable amount for the taxable year, as defined in paragraph (i)(5)(ii)(B) of this section, on or before the last day of the taxable year.

(B) *Distributable amount.* Except as provided in paragraphs (i)(5)(ii)(D) and (E) of this section, the distributable amount for a taxable year is an amount equal to the greater of 85 percent of the supporting organization's adjusted net income (as determined by applying the principles of section 4942(f) and § 53.4942(a)-2(d) of this chapter) for the taxable year immediately preceding the taxable year of the required distribution (immediately preceding taxable year) or its minimum asset amount (as defined in paragraph (i)(5)(ii)(C) of this section) for the immediately preceding taxable year, reduced by the amount of taxes imposed on the supporting organization under subtitle A of the Internal Revenue Code during the immediately preceding taxable year.

(C) *Minimum asset amount.* For purposes of this paragraph (i)(5), a supporting organization's minimum asset amount for the immediately preceding taxable year is 3.5 percent of the excess of the aggregate fair market value of all of the supporting organization's non-exempt-use assets (determined under paragraph (i)(8) of this section) in that immediately preceding taxable year over the acquisition indebtedness with respect to such non-exempt-use assets (determined under section 514(c)(1) without regard to the taxable year in which the indebtedness was incurred), increased by -

(1) Amounts received or accrued during the immediately preceding taxable year as repayments of amounts which were taken into account by the organization to meet the distribution requirement imposed in this paragraph (i)(5)(ii) for any taxable year;

(2) Amounts received or accrued during the immediately preceding taxable year from the sale or other disposition of property to the extent that the acquisition of such property was taken into account by the organization to meet the distribution requirement imposed in this paragraph (i)(5)(ii) for any taxable year; and

(3) Any amount set aside under paragraph (i)(6)(v) of this section to the extent it is determined during the immediately preceding taxable year that such amount is not necessary for the purposes for which it was set aside, and such amount was taken

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into account by the organization to meet the distribution requirement imposed in this paragraph (i)(5)(ii) for any taxable year.

Treas. Reg. § 1.509(a)-4 (5)(iii) *Attentiveness requirement* -

(A) *General rule.* With respect to each taxable year, a non-functionally integrated Type III supporting organization must distribute one-third or more of its distributable amount to one or more supported organizations that are attentive to the operations of the supporting organization (within the meaning of paragraph (i)(5)(iii)(B) of this section) and to which the supporting organization is responsive (within the meaning of paragraph (i)(3) of this section).

(B) *Attentiveness.* A supported organization is attentive to the operations of the supporting organization during a taxable year if, in the taxable year, at least one of the following requirements is satisfied:

(1) The supporting organization distributes to the supported organization amounts equaling or exceeding 10 percent of the supported organization's total support (or, in the case of a particular department or school of a university, hospital, or church, the total support of the department or school) received during the supported organization's last taxable year ending before the beginning of the supporting organization's taxable year.

(2) The amount of support received from the supporting organization is necessary to avoid the interruption of the carrying on of a particular function or activity of the supported organization. The support is necessary if the supporting organization or the supported organization earmarks the support for a particular program or activity of the supported organization, even if such program or activity is not the supported organization's primary program or activity, as long as such program or activity is a substantial one.

(3) Based on the consideration of all pertinent factors, including the number of supported organizations, the length and nature of the relationship between the supported organization and supporting organization, and the purpose to which the funds are put, the amount of support received from the supporting organization is a sufficient part of a supported organization's total support (or, in the case of a particular department or school of a university, hospital, or church, the total support of the department or school) to ensure attentiveness. Normally the attentiveness of a supported organization is influenced by the amounts received from the supporting organization. Thus, the more substantial the amount involved in terms of a percentage of the supported organization's total support, the greater the likelihood that the required degree of attentiveness will be present. However, in determining whether the amount received from the supporting organization is sufficient to ensure the attentiveness of the supported organization to the operations of the supporting organization (including attentiveness to the nature and yield of the supporting organization's investments), evidence of actual attentiveness by

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the supported organization is of almost equal importance. A supported organization is not considered to be attentive solely because it has enforceable rights against the supporting organization under state law.

IRC §501(c)(3) defines as tax exempt any corporation, community chest, fund, or foundation which is 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 earnings of such an organization may inure to the benefit of any private shareholder or individual. No substantial part of the activities of a 501(c)(3) organization 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.

IRC §509(a) states that for purposes of this title, the term “private foundation” means a domestic or foreign organization described in 501(c)(3) other than (1) an organization described in Code §170(b)(1)(A) (other than in clauses (vii) and (viii)); (2) an organization which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, (3) an organization which is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2); and (4) an organization which is organized and operated exclusively for testing for public safety.

TAXPAYER’S POSTION:

The taxpayer’s position is unknown.

GOVERNMENT’S POSITION:

Organizations that are exempt under section 501(c)(3) are private foundations *unless* they are any of the following:

- Churches, section 509(a)(1) and 170(b)(1)(A)(i),
- Schools, section 509(a)(1) and 170(b)(1)(a)(ii),
- Hospitals, 509(a)(1) and 170(b)(1)(a)(iii),
- Organization that’s operated for the benefit of a college or university owned or operated by a governmental unit described in 170(b)(1)(A)(iv),
- Governmental units, 170(b)(1)(A)(v),
- Organizations that normally receives a substantial part of its support from a governmental unit or from the general public, section 170(b)(1)(A)(vi),

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- An agricultural research organization described in section 170(b)(A)(ix) operated in conjunction with a land-grant college or university or a non-land grant college of agriculture.
- Organizations that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions; and (2) no more than 33 1/3% of its support from gross investments income and unrelated business taxable income from businesses acquired by the organization after June 30, 1975, section 509(a)(2),
- Organization that are organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2), see section 509(a)(3), or
- An organization organized and operated exclusively to test for public safety, section 509(a)(4).

With the enactment of the Pension Protection Act of 2006, Public Law 109.280 and the subsequent final regulations published in 2012, no longer meets the section 509(a)(3) Type III SO Relationship Requirements. The final regulations focus on the relationship test for supporting organizations that are operated in connection with one or more specified publicly supported organizations. They are required to meet a responsiveness test and an integral part test.

The Trust didn't meet the required responsiveness test. None of the supported organization's officers, directors, trustees, or members participate in regularly electing or appointing the SO's officer, directors, or trustees. The Trust has an institutional trustee. No member of the governing body of the SO is a part of the governing body of the supported organizations. The Trust's trustee doesn't maintain a close and continuous working relationship with the supported organizations. The supported organizations do not have a significant voice in the Trust's investment policies, the manner of making grants, the timing of grants, and the selection of recipients of grants. They cannot direct the use of the SO's income or assets.

doesn't meet the integral part test as a functionally integrated supporting organization. The Trust didn't engage in activities substantially all of which directly further the exempt purposes of the supported organizations. The Trust isn't the parent of each of its supported organizations and it isn't supporting a government entity.

doesn't meet the integral part test as a non-functionally integrated supporting organization. To qualify as a non-functionally integrated SO, the Trust must meet a distribution requirement and an attentiveness requirement.

The Trust did not meet the distribution requirement, which requires it to distribute to or for the use of one or more supported organizations an amount equaling or exceeding the supporting organization's distributable amount (the greater of 85 % of net income or 3.5 percent of non-exempt use assets) for the taxable year on or before the last day of the taxable year. Using

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amounts from the assets was \$, Revenue
 Expenses (,)
 Net income
 Percentage
 Distributable Amount _____ 1/3 or more

Fund balance
 Percentage
 Distributable Amount _____ 1/3 or more

The greater amount was \$, . The Trust distributed \$, to its supported organizations and didn't meet the distribution requirement.

The Trust didn't meet the attentiveness requirement. To meet this, it must have distributed one-third of its distributable amount, \$, , to one or more supported organizations that are attentive to the operations of the supporting organizations and to which the supporting organization is responsive. There was no evidence that the amount distributed to any of the supported organizations equaled or exceeded 10% of the total support of a supported organization. There was no evidence that the support distributed and received was necessary to avoid the interruption of the carrying on of a particular function or activity. There was no evidence that the support distributed and received was a sufficient part of a supported organization's total support; therefore, attentiveness was not determined.

The Trust wasn't in existence on , ; therefore, the alternative integral part test for certain trusts isn't applicable.

foundation status is being reclassified from a Type III Supporting Organization to a private nonoperating foundation beginning with the tax year ending , and each subsequent year, if due. It must file Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*. The Trust must also file Form 4720, *Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the IRC*, if applicable.

CONCLUSION:

will be reclassified from a Type III functionally integrated supporting organization as described in section 509(a)(3) to a private nonoperating foundation within the meaning of section 509(a) effective , . The Trust should submit Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation*,

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for the effective tax year and each subsequent year as required. The organization should sign Form 6018, *Consent to Proposed Action*, if it agrees with this determination. If the organization doesn't agree, it can submit a written protest in response to the 30-day letter.