Department of the Treasury
Internal Revenue Service
Independent Office of Appeals

Date: JAN 3 0 2024

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

Uniform issue list (UIL):
501.03-15

Release Number: 202417028
Release Date: 4/26/2024

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 made the adverse determination for the following reasons:

You have failed to demonstrate that you are operated exclusively for a charitable purpose, and that no part of your net earnings inures to the benefit of private individuals, as required by section 501(c)(3) of the Code. In addition, your activities more than insubstantially further non-exempt purposes, and your operate primarily for the private benefit of for-profit entities, controlled by a disqualified individual.

You're required to file federal income tax returns on Forms . 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** 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**.

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**; 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,

Danny Werfel
Commissioner
By

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:
03/25/2022
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:
04/24/2022

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.

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,
/s/ Ryan Johansen
for Lynn A. Brinkley
Acting Director, Exempt Organizations Examinations

Enclosures:
Forms 6018, 4621-A and 886-A
Pub 892 and 3498

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 exempt status under Internal Revenue Code (IRC) Section (Sec.) 501(c)(3) should be revoked for failing to demonstrate it operates primarily for an exempt purpose and that no part of its net earnings inures to the benefit of an individual.

FACTS:

About the Organization's History

(Organization) Articles of Incorporation state, the Organization was incorporated on , in the State of with the legal name of the corporation as The Organization was granted exemption from income tax under IRC Sec. 501(c)(3) and recognized as a publicly supported organization under IRC Sec. 509(a)(1) and IRC Sec. 170(b)(1)(A)(vi).

The Articles of Incorporation state that the Organization is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes. The specific function of this nonprofit corporation was to be charitable legal services.

The Organization's exemption was automatically revoked on as a result of not having filed a Form 990, *Return of Organization Exempt From Income Tax,* or equivalent return for consecutive years.

On , the Organization submitted Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and requested retroactive reinstatement of their exempt status. The Organization's application for retroactive reinstatement was approved under Revenue Procedure 2014-11 and the effective date of the exemption was retroactive to the date of revocation

On , the Organization's Articles of Incorporation were amended to change the specific functions from to

On , the Organization's Articles of Incorporation were amended to change the Organization's legal name from to

In response to the initial examination report, the Organization provided a document titled, *ORGANIZATION INFORMATION*. The document lays out the Organization's plans to provide

About the Organization's Activities

The Organization's activity is collecting money from individuals and in turn provide grants to for-profit entities in the field. The for-profit entities are and

According to an article published in the on the Organization had agreed to accept donations on behalf of the article and the Organization's power of attorney, , explained that individuals make donations to the Organization with the understanding that the funds will be used to help make their more readily available to purchase by individuals that cannot afford them.

On stated that the Organization provides grants to in order for patients that were unable to pay for the to receive a discount on products. However, in response to the initial examination report, the Organization explained that products are not sold at a discount but that to of all their for sale will be made available for free to the entire underserved category of the population.

During and the Organization provided $ in grants to and The Organization does not maintain control and discretion as to the use of the funds and does not maintain records to show that the funds were used for IRC Sec. 501(c)(3) purposes. The Organization does not select or screen individuals that will receive a discount or free product from the for-profit entities. The Organization does not have documentation that verifies the grants went to members of a charitable class or furthered an exempt purpose.

About the Organization's Financial Records

The table on the top of page shows the Organization's revenues and expenses for and

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

Gross Receipts	$	$
Revenues		
Contributions and grants	$	$
Program service revenue		$
Total Revenue	$	$
Expenses		
Grants to domestic organizations	$	$
Grants to domestic individuals	$	
Compensation of current officers...	$	$
Accounting	$	$
Office expenses	$	$
Depreciation	$	$
Insurance	$	
Contract labor	$	$
Communications	$	$
Fees & licenses	$	
Fundraising event		$
Other expenses		$
Total Expenses	$	$
Excess (deficit)	$	$

The table below shows the companies and amounts the Organization provided grants to during and

Grant Recipient		
	$	$
	$	
	$	
Total	$	$

During the Organization paid $ in grants to which was % of the grants paid out by the Organization for In response to the initial examination report, the Organization explained that provided to the underserved population of However, their records were disrupted by the and therefore they do not have documentation to show the recipients.

About the Organization's Insiders

The Organization's board of directors consisted of members during and and are related as and The Organization had board of director during President, according to the Form 990 for The board of director meeting minutes for a meeting held on listed and as Directors. The Organization paid $ in and $ in and paid $ to in

During a prior examination, for the tax period ended , the Organization was issued an advisory for failure to have adequate internal control procedures in place as a result of having individual board member, who controlled most of the financial transactions of the Organization.

The Organization provided copies of their board of director meeting minutes for meetings held in per an Information Document Request (IDR) for a prior examination. The minutes from a board of director meeting held on , state that was appointed as the Organization's Secretary/Treasurer and that the checking account signers were and In a subsequent meeting held on , the board removed and added as a checking account signer. During a board of director meeting held on , the board accepted the resignation of and removed him as a checking account signer. The Form 1023, filed on , shows as the primary contact (officer, director, trustee, or authorized representative). website lists as President and Chief Executive Officer.

An IDR issued to the Organization for the examination, asked the following question,

."

About the Organization's relationships with and

The Organization's power of attorney, is listed as an officer for according to its website, and according to their Form D, *Notice of Exempt Offering of Securities*, filed with the Securities and

Exchange Commission on . In response to the initial examination report, the Organization stated that is only the Form 1120, *U.S. Corporation Income Tax Return*, preparer and not an officer or an employee of However, the meeting minutes for a board meeting held on list "Treasurer " in attendance at the meeting.

Form 1120, *U.S. Corporation Income Tax Return*, Schedule G, *Information on Certain Persons Owning the Corporation's Voting Stock*, for the tax period ended indicates owns % of the corporation's voting stock. Form 1120, Schedule G, for the tax period ended indicates owns % of the corporation's voting stock.

In response to the initial examination report, the Organization provided a letter from In the letter, stated that their goal was to

Furthermore, to show where the grant funds received were spent, provided shipping records for pallets of products that were donated and shipped to the Organization. However, the delivery location is different than the Organization's address and there is no explanation as to how the pallets of product were used to further the Organization's exempt purpose.

The Organization provided a letter from that explained they have been striving to accommodate the Service's request for documentation that shows where grant moneys were spent, however, their computers were taken by during a in and of and some of their file folders were damaged or lost.

The flowchart on the next page shows the interrelated network of directors, stockholders, officers, and employees between the Organization, and

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

– $

- $
- $

- $
- $

– Director & President
– Director
POA & Form 990 Paid Preparer
– Secretary/Treasurer during & Form 1023 Primary Contact
– Behind " the Organization & introduced

President & CEO
Secretary, VP owns % stock
, Executive Officer, Accountant
Employee, Promoter

President & CEO
Secretary, owns % stock
, CFO

Contact with Donors

contacts were made during the examination to individuals who had made monetary donations to the Organization during The purpose of the contacts was to find out the purpose of the donations and if the donors received any products or services in exchange for their donation.

donor explained that they had contacted (aka with about purchasing some of their product. asked that the individual send their payment for products to the Organization. When the individual asked why the payment for the was being sent to a charity, explained it was so the individual could then take a charitable deduction on their taxes for the purchase.

A different contact who had donated to the Organization during explained that they were told by that they had a partnership with the Organization and that the individual could pay for with a donation to the Organization.

donor explained that had made separate donations to the Organization during The first donation was for $, and received of products named and donation was for $ and received of and for donation.

LAW:

Internal Revenue Code (IRC)

IRC Sec. 501(c)(3) provides for exemption from Income 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 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.

IRC Sec. 4958(c) defines the term "excess benefit transaction" as any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for performance of services unless such organization clearly indicated its intent to so treat such benefit.

IRC Sec. 4958(e) defines "applicable tax-exempt organization" as an organization described in either IRC Sec. 501(c)(3) or IRC Sec. 501(c)(4) or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction.

IRC Sec. 4958(f)(1) defines a "disqualified person" as (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, and (C) a 35% controlled entity.

Treasury Regulations (Treas. Reg.)

Treas. Reg. 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in IRC Sec. 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. Reg. 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or part to the benefit of private shareholders or individuals.

Treas. Reg. 1.501(c)(3)-1(f)(2)(ii) provides that, in determining whether to continue to recognize the tax-exempt status of an applicable tax-exempt organization (as defined in IRC Sec. 4958(e) and Treas. Reg. 53.4958-2) described in IRC Sec. 501(c)(3) that engages in one or more excess benefit transactions that violate the prohibition on inurement under IRC Sec. 501(c)(3), the Commissioner will consider all relevant facts and circumstances, including, but not limited to, the following –

A. The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;

B. The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes;
C. Whether the organization has been involved in multiple excess benefit transactions with one or more persons;
D. Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and
E. Whether the excess benefit transaction has been corrected (within the meaning of IRC Sec. and Treas. Reg. 53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.

Treas. Reg. 53.4958-1(b) defines excess benefit as the amount by which the value of the economic benefit provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person exceeds the value of the consideration (including the performance of services) received for providing such benefit.

Treas. Reg. 53.4958-1(c) states that if more than one disqualified person is liable for the tax imposed by IRC Section 4958, all such persons are jointly and severally liable for that tax.

Treas. Regs. 53.4958-3(c), (b), (d), & (e) provide that family members, 35% controlled entities, voting members of the governing body, presidents, chief executive officers, chief operating officers, or the person who founded the organization are among persons who are in a position to exercise substantial influence over the affairs of the organization.

Treas. Reg. 53.4958-4(a)(1) provides that to determine whether an excess benefit transaction has occurred, all consideration and benefits exchanged between a disqualified person and the applicable tax-exempt organization and all entities it controls are taken into account.

Treas. Reg. 53.4958-4(a)(2)(iii) provides that an applicable tax-exempt organization may provide an excess benefit indirectly through an intermediary. An intermediary is any person who participates in a transaction with one or more disqualified persons of an applicable tax-exempt organization.

Court Cases

In International Postgraduate Medical Foundation v. Commissioner, 56 T.C.M. 1140 (1989), the court ruled as non-exempt under section 501(c)(3) of the Code an organization formed to sponsor medical seminars and symposia that was founded and run by an individual who was a shareholder and officer in a for-profit travel agency that provided travel arrangement services

to the nonprofit. Finding that the nonprofit was formed to obtain customers for the for-profit's business, the court concluded that the nonprofit had, as a substantial purpose, increasing the for-profit's income. When a for-profit organization benefits substantially from the manner in which the activities of a related nonprofit organization are carried on, the court reasoned, the nonprofit organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if the nonprofit furthers other exempt purposes.

In Est. of Hawaii v. Commissioner, 71 T.C. 1067 (1979), the Tax Court held that compensation need not be unreasonable or exceed fair market value to be private benefit, stating "[n]or can we agree with petitioner that the critical inquiry is whether the payments made to International were reasonable or excessive. Regardless of whether the payments made by petitioner to International were excessive, International and EST, Inc., benefited substantially from the operation of petitioner."

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy an organization's tax-exempt status regardless of the organization's other charitable purposes or activities.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the Court upheld the denial of exemption on an organization that made grants to individuals. The organization asserted that its grants were made in furtherance of a charitable purpose: to assist the poor. The organization was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant. The court held that this information was insufficient in determining whether the grants were made in furtherance of an exempt purpose.

Revenue Rulings (Rev. Rul.)

Rev. Rul. 56-304, 1956-2 C.B. 306 states that an organization which otherwise meets the requirements for exemption from Federal income tax are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. However, organizations of this character which make such distributions should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or

trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Rev. Rul. 68-489, 1968-2 C.B. 210 holds than organization will not jeopardize its exemption under IRC Sec. 501(c)(3), even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for IRC Sec. 501(c)(3) purposes. In this ruling, an organization exempt from Federal income tax under IRC Sec. 501(c)(3) distributed part of its funds to organizations not themselves exempt under IRC Sec. 501(c)(3). The exempt organization ensures use of the funds for IRC Sec. 501(c)(3) purposes by limiting distributions to specific projects that are in furtherance of its own exempt purposes. It retains control and discretion as to the use of the funds and maintains records establishing that the funds were used for IRC Sec. 501(c)(3) purposes.

TAXPAYER'S POSITION:

Whether the Organization's exempt status under IRC Sec. 501(c)(3) should be revoked for failing to demonstrate it operates primarily for an exempt purpose and that no part of its net earnings inures to the benefit of an individual.

It is the taxpayer's position that the Organization's exempt status under IRC Sec. 501(c)(3) should not be revoked.

The Organization believes that they have acted entirely for public benefit but acknowledge that they did not have proper procedures and monitoring criteria during the years under examination.

GOVERNMENT'S POSITION:

Whether the Organization's exempt status under IRC Sec. 501(c)(3) should be revoked for failing to demonstrate it operates primarily for an exempt purpose and that no part of its net earnings inures to the benefit of an individual.

It is the Government's position that the Organization does not qualify as an organization described in IRC Sec. 501(c)(3) because it is not operated exclusively for an exempt purpose; the Organization substantially benefits private interests, and its net earnings inure to the benefit of private shareholders and individuals.

Non-Exempt Purpose

To be exempt under IRC Sec. 501(c)(3), an organization must be organized and operated for exempt purposes specified in the section. The presence of a single, nonexempt purpose, if substantial, will preclude exemption regardless of the number or importance of exempt purposes. See Better Business Bureau of Washington D.C. v. United States, 326 U.S. 279 (1945).

Here, the Organization's sole activity is collecting money from individuals and in turn paying the funds to non-charitable organizations, of which are owned by a former officer of the Organization. The Organization collected funds from individuals for the purchase of and products and from individuals who had the understanding the funds would be used to make distributions to the non-charitable organizations to make their more readily available to the public.

The Organization made distributions to non-charitable organizations – and during and The Organization is operated in a manner that substantially benefits commercial entities by providing related commercial entities with revenue. Therefore, the Organization is not operated for an exempt purpose. See International Postgraduate Medical Foundation v. Commissioner, 56 T.C.M. 1140, 1989-36 and Est. of Hawaii v. Commissioner, 71 T.C. 1067 (1979).

The Organization is unlike the organization described in Rev. Rul. 68-489. In this ruling, an exempt organization showed that they would "ensure" use of the funds it disbursed for permitted purposes by retaining control and discretion as to the use of the funds and maintaining records limiting distributions to specific projects that further its own purposes.

Here, the Organization did not maintain adequate records for the distributions that it made and did not have adequate control and discretion to ensure the furtherance of charitable purposes, rather than private interests. The records and financial materials provided for and by the Organization show that they do not maintain sufficient records and controls to detail the activities and financial transactions and, therefore, are unable to show that they exclusively further IRC Sec. 501(c)(3) exempt activities. See Church in Boston v. Commissioner, 71 T.C. 102 (1978) and Rev. Rul. 56-304, 1956-2 C.B. 306.

In response to the exam report, the Organization provided a letter from and that stated their records were during by and when returned, some of their files were damaged or lost, preventing them from timely responding to the Service's request to the Organization for records to substantiate their distributions.

Rev. Rul. 68-489 held that distributions made by an IRC Sec. 501(c)(3) organization to non-exempt organization would not jeopardize the IRC Sec. 501(c)(3) organization's exemption if it retains control and discretion as to the use of the funds and **maintains records** establishing that the funds were used for IRC Sec. 501(c)(3) purposes. Here, the Organization had months from the end of until to receive records as to how their funds were used by and This timeframe and lack of records demonstrates that the Organization did not maintain the records required by Rev. Rul. 68-489 and Rev. Rul. 56-304 in order to not jeopardize their exempt status.

Therefore, it is the Government's position that the Organization is no longer operated exclusively for charitable, religious, or educational purposes; the Organization substantially benefits private interests, and its net earnings inure to the benefit of private shareholders and individuals. The Organization does not qualify for exemption under IRC Sec. 501(c)(3).

Interaction with IRC Sec. 4958, Excess Benefit Transactions

Applicable Tax-Exempt Organization

In order for an excess benefit transaction to have occurred, the organization involved must be an "applicable tax-exempt organization".

IRC Sec. 4958(e) defines an applicable tax-exempt organization as any IRC Sec. 501(c)(3) public charity or any organization exempt under IRC Sec. 501(c)(4) or 501(c)(29), and any organization which was described under the above listed subsections at any time during the 5-year period ending on the date of the transaction.

Here, the Organization was granted exemption under IRC Sec. 501(c)(3) and has been exempt under IRC Sec. 501(c)(3) continuously during the 5-year period prior to the transactions in question. Therefore, the Organization is an applicable tax-exempt organization under IRC Sec. 4958(e).

Disqualified Persons

IRC Sec. 4958(f)(1) defines "disqualified person" as including any person who was, at any time during the five-year period ending on the date of a transaction, in a position to exercise substantial influence over the affairs of the organization.

Treas. Regs. 53.4958-3(c) & (e) provide that voting members of the governing body, presidents, chief executive officers, chief operating officers, or the person who founded the

organization are persons who are in a position to exercise substantial influence over the affairs of the organization.

Treas. Reg. 53.4958-3(b) provides that a corporation is also a disqualified person if a "disqualified person" owns more than percent of the combined voting power.

Here, was the Organization's Secretary and Treasurer from , through owned % of the voting stock of both and during Therefore, and are all "disqualified persons" of the Organization during under the 5-year lookback period.

IRC Sec. 4958 Excise Tax

The excise taxes imposed by IRC Sec. 4958 apply to each excess benefit transaction between a disqualified person and an applicable tax-exempt organization. An excess benefit is defined as the amount by which the value of the economic benefit provided by an applicable tax-exempt organization, directly or indirectly, to or for the use of any disqualified person exceeds the value of the consideration (including the performance of services) received for providing such benefits. See Treas. Regs. 53.4958-1(b) and 53.4958-4(a)(1).

Here, the Organization made disbursements during for $ to and $ to The Organization received no performance of services or any other economic benefit in return. The expenditures did not further the Organization's exempt purposes. and directly benefited from the disbursements.

indirectly benefited from the disbursements by being the stockholder and officer for and See Treas. Reg. 53.4958-4(a)(2)(iii).

The taxes imposed under IRC Sec. 4958 are payable by any disqualified person who received an excess benefit from a particular excess benefit transaction. In addition, with respect to any excess benefit transaction, if more than one disqualified person is liable for any of the section 4958 excise taxes, all such persons are jointly and severally liable for that tax. See Treas. Reg. 53.4958-1(c).

" Tier / Taxes":

IRC Sec.	Rate	Imposed on...	For...	Amount	Excise Tax
4958(a)(1)	%		Engaging in excess benefit transaction	$	$
4958(a)(1)	%		Engaging in excess benefit transaction	$	$

" Tier / Tax":

IRC Sec.	Rate	Imposed on...	For...	Amount	Excise Tax
4958(b)			If not corrected within the taxable period	$	$
4958(b)			If not corrected within the taxable period	$	$

Application of the from Treas. Reg. 1.501(c)(3)-1(f)(2)(ii)

Treas. Reg. 1.501(c)(3)-1(f)(2)(ii) states that in determining whether to continue to recognize the tax-exempt status of an applicable tax-exempt organization that engages in one or more excess benefit transactions (as defined in IRC Sec. 4958(c) and Treas. Reg. 53.4958-2) that violate the prohibition of inurement under IRC Sec. 501(c)(3), the Commissioner will consider all relevant facts and circumstances, including, but not limited to, the following:

1. The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction(s) occurred.

   Here, the Organization has not substantiated that it conducts exempt activity. The activities of the Organization, collecting donations on behalf of for-profit entities, to make their available at a price, serve the private interest of the for-profit entities and do not benefit a charitable class. Therefore, the Organization's has no regular and ongoing activities that further exempt purposes.

2. The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes.

   Here, substantially more than half of the Organization's expenditures during were excess benefit transactions at of total expenditures.

3. Whether the organization has been involved in multiple excess benefit transactions with persons.

   Here, there were excess benefit transactions with disqualified persons. The excess benefit transactions were ongoing during the periods under examination.

4. Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions.

   There is no indication that safeguards have been implemented that would prevent further excess benefit transactions. During a prior examination, for the tax period ended , the Organization was issued an advisory for failure to have adequate internal control procedures in place as a result of having individual board member, control most of the transactions of the Organization.

   Currently, still controls the financial transactions of the Organization. The Organization's Board consists of and who are related as and and is employed by

5. Whether the excess benefit transaction has been corrected, or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.

   No corrections have been made. There is no indication that the Organization has made efforts to seek correction from the disqualified persons who benefited from the transactions.

Based on the analysis from Treas. Reg. 1.501(c)(3)-1(f)(2)(ii) above, the size and scope of the inurement issues revealed by the examination show the Organization is not operated exclusively for exempt purposes and, therefore, revocation of the Organization's tax-exempt status is warranted.

CONCLUSION:

It has been determined that the Organization does not qualify as an organization described under IRC Sec. 501(c)(3) because it is not operated for an exclusive exempt purpose; the Organization substantially benefits private interests, and its net earnings inure to the benefit of private shareholders and individuals.

Application of the analysis provided by Treas. Reg. 1.501(c)(3)-1(f)(2)(ii), to determine whether to continue to recognize the tax-exempt status of a tax-exempt organization that has engaged in excess benefit transactions, weighed heavily in favor of revocation.

The Organization no longer meets the requirements to qualify as exempt from income tax under IRC Sec. 501(c)(3). Therefore, its exempt status under IRC Sec. 501(c)(3) will be revoked effective The organization should file Forms 1120 for the years and any years for which it is not exempt from income tax.