



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 20, 2014

Number: 201442057
Release Date: 10/17/2014

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

UIL: 501.03-00

CERTIFIED MAIL – RETURN RECEIPT

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated June 20, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You were unable to provide documentation that would substantiate any charitable activities, or events that further an exempt purpose. Substantiation provided by you, that was to act as proof of charitable activities, could not be traced back to you. The substantiation provided traced to a for-profit corporation operated by your trustees. In addition, your general ledger does not show any expenditures related to the charitable giveaway. As such, you are not able to show any charitable activities. The absence of any charitable activities would show that your activities were undertaken for nonexempt purposes.

As such, you do not meet the operational test because you are not operated exclusively for IRC 501(c)(3) purposes as defined in Regs. 1.501(c)(3)-1(d)(1)(i). You are not operated for a charitable purpose, and have not performed any charitable activities.

In addition to not showing any charitable activities, there were loans between you and that allowed your fund balances to inure to and his family. These loans allowed a substantial portion of your fund balances to flow to and not for a charitable activity.

Also, , acting as trustee and investment advisor for you, used the investment account for personal gain that was not in furtherance of your exempt purpose. General ledger entries for the investment account show checks were issued for the payment of Long Term insurance for and his

family. Additional general ledger entries show that checks were issued for the payment of long term debts owed to . These payments jeopardized the carrying out of your exempt purpose.

Taken as a whole, you have been used to serve the private interests of rather than the public interest as prescribed in Regs. 1.510(c)(3)-1(d)(1)(ii).

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

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

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate 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. 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 may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

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

Sincerely,

Mary A. Epps
Acting Director, EO Examinations

Enclosures:
Publication 892



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

UIL 501.03-00

Date:

24 June 2013

Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Manager's name / ID number:

Manager's contact number:

Response due date:

Certified Mail - Return Receipt Requested

Dear

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

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 revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer		Year/Period Ended 20XX12 & 20XX12

Issues:

Should the IRC §501(c)(3) tax exempt status of the be revoked because it is not operated exclusively for tax exempt purposes?

Facts:

Before founding the (), was a Vice-President of at (). After leaving , along with his wife, , founded , a for-profit corporation specializing in landscape architectural services.

In addition to his architecture business also trades in futures and options. His biography on asserts that in 19XX he began studying and taking classes on trading options in the Futures Market and immediately realized that trading options had the potential to be the and thus he began his technical analysis training. This website advises that he currently specializes in trading credit spreads, calendar spreads and the . Also, he currently offers a course he developed called

The Trust Agreement was signed and notarized on 10 March 20XX. The Trust Agreement was signed by and as Trustees; acted as notary and witness to the Articles of Trust.

The primary purpose, as stated in its Trust Agreement "is to exclusively be for charitable, religious, scientific, literary, and educational purposes; including, for such purposes, the making of distributions to foundations that qualify as exempt foundations under § 501(c)(3) of the Internal Revenue Code". The Articles of Trust also set out that the trustees will "distribute the income of the for each tax year in such time and in such manner as not to become subject to tax on the undistributed income imposed by §4942 of the Internal Revenue Code". Further, the "trustees will not engage in any acts of self dealing as defined in §4941(d), nor retain any excess business holdings as defined in §4943; nor any many any investments in such manner as to incur tax liability under §4944; nor make any taxable expenditures as defined in §4945(d)".

The Trust Agreement stipulates that the trustees of the have the powers: "To invest and reinvest the principal and income of the Trust in such property, real, personal, or mixed, and in such manner as they shall deem proper, and from time to time change investments as they shall deem advisable; to invest in or retain any stocks, shares, bonds, notes, obligations, or personal or real property (including without limitation any interests in or obligation of any corporation, partnership, association, business trust, investment trust, common trust fund, or investment company)". The Trust Agreement also states that: "No principal or income, however, shall be loaned, directly or indirectly, to any Trustee or to anyone else, corporate or otherwise, who has at any time made a contribution to the ."

The submitted its original Form 1023 – *Application for Recognition of Exemption under Section 501(c)(3)*; along with its Articles of Trust to the IRS on 4 June 20XX. The Application for exemption was signed by as Trustee for the . In its determination letter dated 20 June 20XX, the was held to be exempt from federal income tax as an IRC §501(c)(3) tax exempt organization and classified as a private foundation.

In its determination letter it is noted that the organization may be liable for excise taxes on taxable expenditures, failure to distribute income, self dealing, jeopardizing investments, and excess business holdings as imposed by Chapter 42 of the Internal Revenue Code.

The is currently managed by a two-member Board of Directors; and . These individuals control 100% of the operations of the with no outside oversight or review.

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		20XX12 & 20XX12

During the audit, books and records detailing the ongoing activities of the were requested. The provided a link to as substantiation of its exempt activities in 20XX. The link provided leads to a YouTube video promoting the 20XX. This video directs viewers to . The subsequent link redirects to ; a site dedicated to credit spread trading business a for-profit company operated under . These sites do not list any affiliation to the , or contain any links to the website. The general ledger of the does not show any expenditure related to the above referenced toy giveaway.

advises that created a home study course which includes a 0-page manual, 0 DVDs and a personal trading journal. These sites insist that spent hours learning how to perform Credit Spread Trading; and with this training course, an individual could immediately overcome this training hurdle and begin trading immediately. This course is listed on this website for \$0 or free with purchase of a 0 month membership to the . On 21 December 20XX \$0 was donated to the by the . The took a charitable deduction on its' 1120s for the 20XX tax year.

During the course of the audit, a Promissory Note between the and was provided. This Promissory Note shows that on 4 Jun 20XX the entered into an agreement with for a loan totaling \$0. The terms of the loan state that the is to repay before 31 Dec 20XX. The total amount to be repaid includes principal plus four (4) percent interest charged each year the loan is outstanding. At the beginning of 20XX, the showed a remaining outstanding balance of \$0. During 20XX the following transactions were posted affecting the loan balance:

Num	Date	Type	Name	Memo	Split	Debit	Balance
Opening Balance							\$0
1017	2/6/20XX	Check			Bank	\$0	\$0
1016	2/18/20XX	Check		Health Insurance	Bank	\$0	\$0
1019	3/20/20XX	Check			Bank	\$0	\$0
1020	4/17/20XX	Check			Bank	\$0	\$0
1021	7/9/20XX	Check			Bank	\$0	\$0

Checks written by the to reduce the outstanding balance included third party payments for continued insurance for and their children. In addition, payments made by the are not made in a consistent manner to . The final payment made by the exceeded the outstanding balance of the loan and created a receivable from the to the .

A Promissory Note between , , and the was provided during the audit for the created receivables balance. The terms of the promissory note are as follows: The initial loan amount is equal to \$0; and interest will accrue on the loan at a rate of four (4) percent per year beginning 31 Dec 20XX. The loan is to be repaid in installments equaling \$0 per month starting 1 Aug 20XX; and due the 1st day of each subsequent month until the loan is paid in full.

The General Ledger for the showed that on 1 January 20XX the account, the investment account for the , had an opening balance of \$0. During 20XX the following transactions were posted to the account:

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Date	Type	Memo	Account	Split	Debit	Credit	Balance
Opening Balance							\$0
7/7/20XX	Transfer	Funds Transfer				\$0	\$0
9/24/20XX	Transfer	Funds Transfer			\$0.00		\$0
12/31/20XX	General Journal	Invested on 09/24/20XX				\$0	\$0

The largest of the transactions was a \$0 transfer to bank on 7 July 20XX; which subsequently was used to pay off the loan to . \$0 was later transferred back to the investment account so that a large options trade could be placed. On the same day as the transfer from the bank account, \$0 was invested in options. There was no related entry to increase value of securities or other tangible assets, and the options were written off to zero at the end of the 20XX tax year. On its 20XX 990-PF, Return of Private , the shows a \$0 loss for the sale of securities or other assets.

The beginning balance of the account at on 1 January 20XX was \$0 which was the closing balance of the 20XX year. During 20XX the transactions were posted to the account:

Date	Type	Memo	Account	Split	Debit	Credit	Balance
Opening Balance							\$0
1/29/20XX	Check	Outgoing Wire Ref #0		Bank	\$0		\$0
12/30/20XX	General Journal			Trading Fees		\$0	\$ -

The transfer of funds from its bank account was to fund its account; on 30 December 20XX a general entry was made reducing the account balance to zero.

The corresponding account statements provided during the audit show the following transactions occurred during 20XX:

Date	Description	Fees	Amount	Balance
Opening Balance				\$0.00
1/31/20XX	Wire Transfer - In	\$ -	\$0.00	\$0.00
2/3/20XX	BOT +5 SPX 100 JUN 10 800 PUT @0 CBOE	\$ -	\$0.00	\$0.00
5/21/20XX	SOLD -5 SPX 100 JUN 10 800 PUT @0 CBOE	\$ -	\$0.00	\$0.00
5/25/20XX	BOT +2 SPY 100 SEP 10 119 CALL @0 NYSE	\$ -	\$0.00	\$0.00
5/25/20XX	SEC/ORF Fees: May 25	\$ -	\$ -	\$0.00
6/14/20XX	SOLD -2 SPY 100 SEP 10 119 CALL @0 NYSE	\$ -	\$0.00	\$0.00
6/18/20XX	BOT +19 SPX 100 SEP 10 650 PUT @0 CBOE	\$ -	\$0.00	\$0.00
6/18/20XX	SEC/ORF Fees: June 18	\$ -	\$ -	\$0.00
8/2/20XX	Debit Interest	\$ -	\$0.00	\$0.00
9/1/20XX	Debit Interest	\$ -	\$0.00	\$0.00
9/15/20XX	Commission Adj	\$ -	\$0.00	\$ -

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Throughout the year, the _____ continued to purchase a series of options. None of these options trades are reflected in the general ledger of the _____. On its 20XX 990-PF, Return of Private _____, the _____ shows a \$0 loss for the sale of securities or other assets.

On its 990-PF for the tax year ending 31 December 20XX the _____ reported charitable contributions equaling \$0. With the addition of the loss on securities of \$0, the _____ reported gross income of -\$0. Reported expenses for the year were: \$0 for trading fees; \$0 for advertising; \$0 for depreciation; and \$0 for miscellaneous expenses. Combined the net income of the _____ was -\$0. This loss reduced the fund balances of the _____ to \$0.

On its 990-PF for the tax year ending 31 December 20XX the _____ reported charitable contributions equaling \$0. With the addition of the loss on securities of \$0 the _____ reported gross income of \$0. Reported expenses for the year were: \$0 in penalties from the IRS; \$0 for trading fees; \$0 for depreciation; \$0 for printing and publications; and \$0 for miscellaneous expenses. In total the net income of the _____ was -\$0. This loss reduced the fund balances of the _____ to \$0.

Law:

IRC § 501(c)(3) allows for the exemption from Federal income tax an organization that 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”

Treasury Regulation §1.501(c)(3)-1(a) provides, in general:

“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.”

Treasury Regulation §1.501(c)(3)-1(c)(1) provides,

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.

Treasury Regulation §1.501(c)(3)-1(c)(2) provides,

That the operational test is not satisfied where any parts of the organization’s earnings inure to the benefit of private shareholders or individuals, and where the organization serves a private rather than public interest.

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Treasury Regulation §1.501(c)(3)-1(d)(1)(ii) provides:

That an organization is not organized or operated exclusively for one or more of the purposes specified in IRC §501(c)(3) unless it serves a public rather than a private interest.

Treasury Regulation §1.501(c)(3)-1(e) provides, in general:

"An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513."

IRC § 509(b) holds:

If an organization is a private foundation (within the meaning of §509 (a)) on October 9, 1969, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after October 9, 1969, or after such subsequent date, unless its status as such is terminated under IRC §507

IRC § 4941(d)(1) Defines Self Dealing as:

Any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person; lending of money or other extension of credit between a private foundation and a disqualified person; furnishing of goods, services, or facilities between a private foundation and a disqualified person; payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person; transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation.

IRC § 4941(d)(2)(B) Sets out the following special rule:

the lending of money by a disqualified person to a private foundation shall not be an act of self-dealing if the loan is without interest or other charge (determined without regard to IRC §7872) and if the proceeds of the loan are used exclusively for purposes specified in IRC§ 501(c)(3).

Treasury Regulation § 53.4944-1(a)(2)(i) provides

that an investment is a jeopardizing investment if it is determined that the foundation managers, in making the investment, have in providing for the long- and short-term financial needs of the foundation to carry out its exempt purposes failed to exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of making the investment.

No category of investments is to be treated as a per se violation of IRC §4944; However, the following are examples of types or methods of investment which will be closely scrutinized to determine whether the foundation managers have met the requisite standard of care and prudence: Trading in securities on margin, trading in commodity futures, investments in working interests in oil and gas wells, the purchase of "puts" and "calls", and "straddles," the purchase of warrants, and selling short.

Treasury Regulation § 53.4944-1(b)(2)(i) Provides:

A foundation manager shall be considered to have participated in the making of an investment "knowing" that it is jeopardizing the carrying out of any of the foundation's exempt purposes only if:

- (a) He has actual knowledge of sufficient facts so that, based solely upon such facts, such investment would be a jeopardizing investment under paragraph (a)(2) of this section,
- (b) He is aware that such an investment under these circumstances may violate the provisions of federal tax law governing jeopardizing investments, and

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(c) He negligently fails to make reasonable attempts to ascertain whether the investment is a jeopardizing investment, or he is in fact aware that it is such an investment.

Treasury Regulation § 53.4944-1(b)(2)(ii) Provides:

A foundation manager's participation in a jeopardizing investment is willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make such participation willful. However, a foundation manager's participation in a jeopardizing investment is not willful if he does not know that it is a jeopardizing investment

Treasury Regulation § 53.4944-1(b)(2)(iii) Provides:

A foundation manager's actions are due to reasonable cause if he has exercised his responsibility on behalf of the foundation with ordinary business care and prudence.

IRC § 4946(a)(1) Defines a Disqualified individual as:

a person who is a substantial contributor to the foundation; a foundation manager (within the meaning of subsection (b)(1)), an owner of more than 20 percent of the total combined voting power of a corporation the profits interest of a partnership, or the beneficial interest of a trust or unincorporated enterprise, which is a substantial contributor to the foundation.

IRC § 4946(b)(1) Defines foundation manager as:

An officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation)

Orange County Agricultural Society, Inc. v. Commissioner of Internal Revenue 893 F.2d 529 Held

That the organization operated for substantial, non-exempt purpose sufficient for it to lose its tax exempt status through its association with another corporation formed by disqualified individuals as alter ego to operate a racetrack. Also, that the organizations unsecured, interest free loans to disqualified individuals was inurement of the organizations earnings for the benefit of private interest, causing the organization to lose its tax exempt status.

Church of Transfiguring Spirit, Inc. v. Commissioner of Internal Revenue 76 TC 1, 1981 Held:

Part of the net earnings of a religious organization inured to the benefit of a private individual within the meaning of §501(c)(3), where virtually all of the church's income was expended in years in question as housing allowances for the benefit of the President and Vice-President of the organization. The court observed that the husband and wife who served as president and vice-president together with their daughter the secretary had control not only of the expenditures and reimbursements, but also of the board of directors. Furthermore, the court said all the income for 1 year, and virtually all of its income for the next year consisted of contributions from the President and Vice-President. The court could not characterize the amounts paid by the organization to the President and Vice-President as reasonable compensation.

Kenner v Commissioner (1963, CA7) 318 F2d 632, 63-2; Held:

The court determined that the founder indiscriminately commingled his own personal funds and the fund of the hospital in the latter's bank accounts and that no systematic records of any sort were kept by the hospital. The founder withdrew from the hospital's bank account thousands of dollars, the court said, to pay for his personal and farm expenses, as well as his liquor bills, gasoline bills, and the expenses of his personal residence. The court rejected the founder's contention that his withdrawals from the hospital funds were limited to funds which he had previously lent the hospital, finding that these loans were merely devices by which the founder used the hospital's bank accounts to drain off hospital funds to pay his personal expenses.

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Effective date of revocation

An organization may ordinarily rely on a favorable determination letter received from the Internal Revenue Service. Treas. Reg. §1.501(a)-1(a)(2). An organization may not rely on a favorable determination letter, however, if the organization omitted or misstated a material fact in its application or in supporting documents. In addition, an organization may not rely on a favorable determination if there is a material change, inconsistent with exemption, in the organization's character, purposes, or methods of operation after the determination letter is issued. Treas. Reg. § 601.201(n)(3)(ii); Rev. Proc. 2008-9, Section 12

The Commissioner may revoke a favorable determination letter for good cause. Treas. Reg. § 1.501(a)-1(a)(2). Revocation of a determination letter may be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Treas. Reg. § 601.201(n)(6)(i), Rev. Proc. 2008-9, Section 1

Governments Position:

The Internal Revenue Code (IRC) states: for an organization to be exempt under §501(c)(3) the organization needs to meet both the organization and operational tests as defined in Treasury Regulation §1.501(c)(3)-1(a). In addition, IRC §501(c)(3) and Treasury Regulation §1.501(c)(3)-1(c)(2) holds that: an organization shall not be exempt if any of its earnings inure to the private benefit of any of its shareholders or individuals. Treasury Regulation §1.501(c)(3)-1(c)(1) provides: 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.

The _____ was unable to provide documentation that would substantiate any charitable activities, or events that further an exempt purpose. Substantiation provided by the _____, that was to act as proof of charitable activities, could not be traced back to the _____. The substantiation provided traced to a for-profit corporation operated by the trustee's of the _____. In addition, the _____ General Ledger does not show any expenditures related to the charitable giveaway. As such, the _____ is not able to show any charitable activities.

In Orange County Agricultural Society V. Commissioner, organization had substantial nonexempt activities and acted in a manner consistent with a for-profit business than a non-profit organization. The courts held that an organization with substantial nonexempt activities can't avoid revocation of its tax exempt status simply by paying taxes or penalties. In the case of the _____, the absence of any charitable activities would hold that the activities of the _____ were undertaken for nonexempt purposes.

As such, the _____ does not meet the operational test because it's not operated exclusively for IRC §501(c)(3) purposes as defined in Treasury Regulation §1.510(c)(3)-1(d)(1)(i). The _____ is not operated for a charitable purpose, and has not performed any charitable activities.

In addition to not showing any charitable activities, the foundation engaged in acts of self-dealing that allowed the fund balances of the _____ to inure to _____ and his family.

The _____ received a loan from _____ on 4 Jun 20XX in the amount of \$0. IRC §4941(d)(1) defines acts of self dealing to include: acts of lending of money between a private foundation and a disqualified person; payment of compensation; or payment of reimbursement of expenses by a private foundation to a disqualified person. Though IRC §4949(d)(2) sets out certain exemptions from being

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considered an act of self dealing; these exemptions do not apply to the as the loan included interest. In addition, loan payments were not paid directly to but to a third party on behalf of . Total payments on the loan exceeded the outstanding balance creating a loan payable to the . This subsequent loan created another act of self-dealing, as it also included interest. These loans allowed a substantial portion of the fund balances to flow to a disqualified individual and not for a charitable activity.

As in Orange, an organization will not qualify for tax exempt status if even a small part of its income inures to a disqualified individual. The loans between and the are acts of self-dealing, and have allowed the income of the to inure to the benefit of disqualified individual,

In Church of Transfiguring Spirit, Inc v. Commissioner, the court held that an organization was not exempt where the net earnings of the organization inured to the benefit of a private individual. Virtually all of the organization's income was expended as housing allowances for the benefit of the President and Vice-President. In addition, sole control of the organization was held by one family. As in the Church of Transfiguring Spirit, substantially all of the fund balance was expended as payments of outstanding loans to or on investments that jeopardized the ongoing nature of the

As such, the has failed to meet the requirements of Treasury Regulation §1.501(c)(3)-1(c)(2); and Treasury Regulation §1.501(c)(3)-1(d)(1)(ii) by engaging in acts of self dealing as defined in IRC §4941(d)(1). These acts allowed for the income of the to inure for the personal benefits of the trustee's and not in furtherance of an exempt purpose.

In his capacity as trustee for the made risky investments that jeopardized the ability to conduct charitable activities. These investments reduced the investment accounts to zero, and reduced its overall fund balances to near zero. He failed to exercise ordinary business care and prudence in looking out for the long term future of the and its ability to perform charitable activities. Based on facts the facts and circumstances at the time of the investments, the is not able to show that exercised his due diligence when selecting investments options for the funds. The has consistently taken substantial losses on its investments. At no time is it shown that as trustee, considered re-evaluating, changing, or reducing its exposure in the options market. As such the balance of the investment accounts at the end of the year taxable period 31 January 20XX was zero.

In addition, , acting as trustee and investment advisor for the , used the investment account for personal gain that was not in furtherance of the exempt purpose of the . General Ledger entries for the investment account show checks were issued for the payment of Long Term insurance for and his family. Additional General Ledger entries show that checks were issued for the payment of Long Term debts owned to . These investments not only jeopardized the carrying out of the exempt purpose, but were in and of themselves acts of self-dealing as defined in IRC §4941

In Kenner v. Commissioner, checks totaling \$230,000 were drawn on the bank accounts of the organization for the payment of the personal and living expenses of the founder. The court determined that the founder indiscriminately commingled his own personal funds and the fund of the organization in the latter's bank accounts and that no systematic records of any sort were kept by the organization. The founder withdrew from the organization's bank account thousands of dollars to pay for his personal and farm expenses, as well as his liquor bills, gasoline bills, and the expenses of his personal residence. As in Kenner, used checks to pay for personal expenses from the investment account. This shows that

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had no regard for the exempt purpose of the
care and prudence.

, and consistently failed to show business

Taken as a whole, the has been used to serve the private interests of its trustee's rather than public
interest as prescribed under Treasury Regulation §1.510(c)(3)-1(d)(1)(ii).

Taxpayer's Position:

The Taxpayer does not currently have a stated position.

Conclusion:

Therefore, it is the Governments position that the no longer meets the guidelines
under Internal Revenue Code §501(c)(3) and Treasury Regulation 1.501(c)(3)-1(c), as the income of the
organization inures to the personal benefit of the Trustees.

The subsequently does not meet the operational test because it is not operated
exclusively for IRC §501(c)(3) purposes as required and defied by Treasury regulation §1.510(c)(3)-1(d)(1)(i), and
has been used as a vehicle to serve the private interests of its trustees rather than public interest as prescribed under
Treasury Regulation §1.510(c)(3)-1(d)(1)(ii).

It is recommended that that exempt status of this organization be Revoked as of 1 January 20XX

As such, the organization will be Treated as a taxable private foundation as of this date until such time that the
terminates its Private status under IRC §507.