



**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examination

1100 Commerce Street

Dallas, Texas 75242

Date: December 13, 2013

Number: 201514009
Release Date: 4/3/2015

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

(Phone)

(Fax)

UIL: 501.03-00

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear:

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter dated March 19, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective December 21, 20XX.

The revocation of your exempt status was made for the following reasons:

IRC 501(c)(3) of the Internal Revenue Code exempts from Federal income tax: 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 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...

Treasury Regulation 1.501(c)(3)-1(d)(ii) states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator, shareholders, or persons controlled, directly or indirectly, by such private interests.

You engaged in substantial non-exempt activities in 20XX (and subsequent years) and did not satisfy the operational test prescribed by Treasury Regulations beginning with the 20XX tax year. Your activities were primarily directed towards being a donation receptacle to facilitate maximum tax benefits. Donors reaped inappropriate tax benefits in connection with your façade easement program. Any tangible benefits to the public derived from your activities are elusive at best.

You have not established that you are operated exclusively for exempt purposes described in section 501(c)(3) of the Code. Specifically, you have not shown that a substantial part of your activities does not serve the private interest of your officers and other individuals.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120. Those returns should be filed with the appropriate Service Center.

Processing of income tax returns and assessment 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, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the court at the following addresses:

United States Tax Court,
400 Second Street NW
Washington, D.C. 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

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 you have to file a petition in a United States court. The Taxpayer Advocate can, however see a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You can call 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

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

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

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Enclosure:
Publication 892

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
550 Main Street, Room 6417
Cincinnati, OH 45202-3222

Department of the Treasury

Date: July 11, 2013

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

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 December 31, 20XX December 31, 20XX

Issues:

Should the IRC § 501(c)(3) exempt status of the organization, (sometimes referred to as the "Organization" or), be revoked because the Organization operates for a substantial non-exempt purpose and serves private, rather than public interests, more than incidentally?

Should exempt status be revoked retroactively to December 21, 20XX?

Facts:

The Organization was incorporated in on December 21, 20XX. Per its Articles of Incorporation, is organized to further historic preservation, provide educational initiatives on historic preservation and to accept and hold easements, including façade easements.

It filed a Form 1023, Application for Recognition of Exemption (Form 1023) which was received by the IRS on January 11, 20XX. is listed as the power of attorney and statutory agent on the Form 1023. is listed as the president.

When Form 1023 was filed in 20XX, it listed three directors: , a real estate consultant from , and , an architect from . is an attorney who represented that he had taken a few architectural courses in college.

Per the Form 1023, represented that each of the directors would work an average of 5 hours a week for , and would perform identical activities, such as attending all board meetings, and assist(ing) in evaluating the appropriateness of donations. None are compensated as employees of . The Organization does not have dedicated office space, but shares office space with the law firm , & , (), located in . The exemption application stated that funds may change hands for ratable share of expenses incurred in the office share arrangement.

The Form 1023, Part V, disclosed that has a close relationship with the law firm, , in which is a partner, and is an employee. An additional disclosure indicated that legal services would be provided by the law firm , in which has an interest of less than 35%.

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The Form 1023 stated that it had received one donation of a façade easement as of its filing, and that it planned to continue "to acquire similar historically significant properties and maintaining the conversation [sic] features of the properties received."

The Organization received a determination letter dated March 19, 20XX, granting it exemption from income tax under section 501(a) as an organization described in section 501(c)(3) of the Internal Revenue Code. In its determination letter, the Organization was given an advance ruling (through December 31, 20XX) that it was a non-private foundation pursuant to section 509(a)(2) of the Code. The effective date of the exemption was December 21, 20XX, the date of incorporation.

The Organization, an accrual basis taxpayer with a taxable year ending December 31, filed its first Form 990 beginning with the year ending 12-31-20XX. On Forms 990, the following information appears:

Tax Year	Date Filed	Directors	Hours per Week	Return Prepared by	Returned Signed by
20XX	03-06-XX		1		
20XX	08-12-XX		1		
			.50		
			.50		
20XX	05-18-XX		1		
			.50		
			.50		
20XX	06-01-XX		1		
			.50		
			.50		
20XX	07-27-XX		1		
			.50		
			.50		
			0		
			0		

In the year 20XX, became one of the directors of . She was employed at , & when she filed the Form 1023, and is still currently an employee of the law firm. is an attorney and a Certified Public Accountant.

The Organization accepted its first façade easement donation in the year 20XX.

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The Form 990 returns reflect the following information with respect to the façade easement donations that it has received:

Tax Year	Number of Easement Donations	Fair Market Value per Balance Sheet	Facade Easements
20XX	1		
20XX	1		
20XX	1		
20XX	1		
20XX	2		

By 12-31-20XX, had received six donations of façade easements for the following properties:

The in , donated 12-28-20XX
in , (home office of), donated 12-28-20XX
in , , donated 07-25-20XX
in , , donated November 20XX
in , , donated 12-14-20XX
in , donated 12-30-20XX

All of the above facade easements that were donated to company . () , formerly known as . One of the original partners in , (a lawyer), was a friend of (President and a board member of). According to , approached him and introduced the concept of facade easements as was involved in real estate transactions. Subsequently decided to start the Organization.

changed its name to on or around the time of death which occurred in 20XX. The web site states:

FROM THE WEB SITE: WHO WE ARE

Founded in 20XX, is a strategic tax consulting firm that connects taxpayers, community stakeholders and governmental entities to maximize the returns on their investments. We do this through a socially responsible approach that leverages the tax policies and programs established by federal, state and local governments.

WHAT WE DO

Although the end objectives of government tax programs are often easy to understand, the process by which those objectives are attained can be daunting. At , we know how to structure and

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manage the process. We are embedded from start to finish, ensuring that maximum value is obtained by all parties.

, based in , represents clients or investors who are interested in obtaining a charitable contribution deduction and any tax credits (usually at the state or local level) associated with a facade easement donation or rehabilitation of historic property. The company specializes in syndicating tax credits.

With respect to facade easement transactions arranged by for its clients, the investors tentatively agree to create a limited liability company (LLC) that will purchase the property. As, some properties appear to have been purchased or owned by a partnership in which investors purchase a partnership interest in which investors in, (LLC's), purchased a partnership interest. Once a property is identified, an appraisal is done. The appraisal is paid for by the LLC or one of the investors. In the case with the donations made to , all the appraisals were performed by the same person; from , located in , .

principals themselves invested in limited liability companies in order to invest in the which is the office building where conducts business. Those LLCs donated the facade easement in the to in 20XX. The following summarizes the advertising provided to prospective investors by , in regards to the :

Two limited liability companies are formed to purchase 100% of the partnership interest of the limited partnership (Partnership) owning the . Investors taking advantage of the opportunity may purchase membership interests in Partnership in accordance with the number of investment units purchased. Partnership contributes historic facade and development rights easement to a qualified organization (not specified). In return, Partnership partners [LLCs] will receive a charitable contribution deduction equal to the fair market value of the facade and lost development rights easement. The charitable deduction is allocated according to the partner's interest in the Partnership. provides services to "vest the conservation easement." In order to complete the rehabilitation of the building, Partnership will obtain financing which will be non-recourse to the limited partners. The lender will receive a security interest in the underlying real estate and its income stream and any other required guarantees will be given by the LLCs. The mortgages on the property must be subordinated to the historic facade and lost development rights easement. Investors have a put option at fair market value at the end of year 3.

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The Organization does not require an application, such as an application for approval to contribute an easement, from prospective donors with respect to the donation of the façade easement. While arranging the package for investors, contacts to inquire if it is interested in receiving the façade easement contribution. There is no indication that the board of directors votes whether to accept or reject a proposed donation upon initial contact from or that the Organization is regularly provided with any information concerning the prospective easement donation prior to the closing of the transaction. However, a representative of provides with the one-time donation fee amount, and the amount of the yearly fee. The Organization uses the appraisal amount of the facade to determine the one time donation fee, usually a percentage of the appraised value of the easement, as well as the yearly fee.

 drafts the easement donation contract between the donor LLC and known as the . While is permitted to make corrections and or amendments if it believes they are needed, there are no records to show that it did so. The also spells out the amount of the cash donation required for acceptance of the easement donation.

If the investors are satisfied, the current owner sells the property to a partnership or LLC(s). The LLC(s) comes into existence in escrow. The donation of the facade easements occurs in escrow.

To facilitate the timely closing for the investors, routinely provided his original signature, undated, on the closing documents. None of the directors of attended the escrow closing for the façade easement transactions. employees handle the escrow and filings. Once escrow closes, and the perfected documents are returned to , the two active directors (and) notify the two inactive directors (and), and request their signature on corporate resolutions agreeing to the donation.

 stated that on two occasions, he viewed the facade easements prior to the donations. On the other occasions, he relied on the appraisal reports. There is no indication in any of files, that it had any contact with the donors prior to the donation, other than to answer a few questions posed by third party attorneys.

During the easement donation transaction in 20XX (prior to receipt of its determination letter), in order to facilitate project, changed the wording on one of its letters from, "the corporation will be a qualified 501(c)(3) organization, to "is qualified to accept historic easements".

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According to the correspondence between _____ and _____, the donation of the _____ store facade in _____ took ten days between first contact and the donation. Apparently _____ needed to close this deal before the calendar year end, and was still waiting on the appraisal. In order to facilitate the transaction, _____ did not view the facade, review an appraisal, or even ask for the upfront or yearly donation. He signed the one page signature page on the standard Easement Agreement put together by _____ and express shipped it to _____. Section 7.8 of the easement agreement did not contain any donation amount, only the wording that "the Grantee intends to make a donation..."

In one case, a _____ representative suggested that _____ eliminate codified language from one of _____ standardized donation letters, in order to facilitate the donation. _____ provided the revised letter, and _____ mailed it to the potential donor. The codified language deleted, was actually language suggested by _____, to be included in a letter to an insurance underwriter a year before, when _____ was trying to package the _____ suggested the Organization include the following language in a letter dated 08-28-20XX, to _____, CEO, _____:

_____ is classified as a publically supported non-profit organization and as such, is comfortable with their [sic] ability to meet the Public Support Test based on the donation of easements and fees associated with said easements. This determination will entail an analysis of Section 509(a)(2) of the Internal Revenue Code that will address whether any agents have received from "disqualified persons" as defined by section 4946 which will in turn require the analysis of a grantor to determine if they are properly to be labeled a "substantial contributor" as defined in section 507(d)(2).

During the _____ donation, _____ asked _____ for a copy of its "enforcement letter", which basically provided assurances that the law firm (_____) would ensure that _____ had the resources necessary to enforce the easement. At the time, _____ did not know who the donor was. _____ asked to review a draft of the letter, before _____ mailed it to the donor. The Organization complied, and suggested a few changes. One of the changes was to remove the following sentence. "This determination will entail an analysis of Section 509(a)(2) of the Internal Revenue Code that will address whether any agents have been received from "disqualified persons" as defined by Section 4946 which will in turn require the analysis of a grantor to determine if they are properly to be labeled a "substantial contributor" as defined in Section 507(d)(2)". When discussing this with _____ on 02-14-20XX, her comment was that they just allowed _____ to change it to a more generic form. "Instead of saying, the man had glasses, they just said the man".

When _____ packaged the _____ façade easement donation, _____ asked for a substantially less than usual amount for the "up front" donation fee. Based on the formula that _____ used for the prior easement donations, the "up front" donation should

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have been \$. Instead, settled for a flat fee of \$ for the "up front" donation amount. The two LLC grantors of this facade easement had previously donated a facade easement with a substantially higher donation percentage for the "up front" fee. When was asked why settled for the discounted contribution, he replied that they did this because " is our best referral source for deals."

The Organization does not have any minutes indicating that it has regular meetings. Rather, appears to "meet" approximately once a year through a unanimous consent of directors in lieu of meeting ("Consent of Directors") which reflects the corporate resolutions adopted by the board. The unanimous consent of directors in lieu of meeting is not executed simultaneously, but is dated at the top, and contains signatures of the directors (sometimes on separate, but identical signature pages). There are no dates by the signatures. The following is a summary of the consents in lieu of meeting with the corresponding resolutions that were provided during the Service's examination of books and records:

12-22-20XX

The sole incorporator, , appoints and authorizes to execute all necessary documents and accept donations.

12-28-20XX

Action by separate Unanimous Written Consent of All the Directors to accept the facade easement resolution, is dated 12-28-20XX and the facade easement, respectively. (All noted infra, these resolutions were actually signed much later than the date listed and backdated).

12-31-20XX

, and are appointed Directors. is appointed President of the corporation, is appointed Vice President, and is appointed Secretary/Treasurer.

07-17-20XX

Action by Unanimous Written Consent of All the Directors to accept the facade easement of the .

12-31-20XX

, and are appointed Directors. is appointed President of the corporation, is appointed Vice President, and is appointed Secretary/Treasurer.

12-04-20XX

Action by Unanimous Written Consent of All the Directors to accept the facade easement of the .

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12-31-20XX

Directors. is appointed President of the corporation, and are appointed
and is appointed Secretary/Treasurer. is appointed Vice President,

01-01-20XX (one day later)

, and are
appointed Directors.

12-20-20XX

Action by Unanimous Written Consent of All the Directors to accept the facade
easement of the

There was no corporate resolution in the files with respect to the donation of the façade
easement that allegedly occurred 12-30-20XX.

The two active directors, and routinely back dated documents. For
example, the Consent of Directors to Accept the facade easement resolution, is dated
12-28-20XX and the Consent of Directors to Accept the facade easement is dated 12-
28-20XX. Both Consents were emailed to the directors for their signatures on 06-26-20XX.

It appears that the reason why the Consent of Directors for the easement donation was
mailed out in 20XX is because it did not previously exist. Personnel at requested
a copy of the resolution in June of 20XX. email reply was that "it doesn't look that the
[resolution] was ever done (not every deal has requested one)."

told the revenue agent that he never met the other two directors
() and had had only occasional phone contact.

The revenue agent interviewed on two occasions. stated that his
duties as director just included signing documents sent to him. He spends about five
minutes a year on it, and he doesn't consider himself involved with . The agent
asked how he became involved with and he responded that he originally
worked for a real estate consulting firm. One of the clients of employer
was also working with recommended him to did
not participate in any of the negotiations, or review of any of the easements. He claimed
that he has never spoken to , and that he is only contacted when his
signature is needed.

The revenue agent interviewed on two occasions. described
his duties as reviewing the minutes (consents) and the tax return that the law firm sends
him. He has no other duties. He never participated in any of the negotiations or

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reviewed any of the easements. was introduced to through
, one of the partners at .

E-mail correspondence between and the Organization indicates that the two principal directors of the Organization had to contact in order to secure "contact information" as to in order to obtain their signatures.

The revenue agent was not able to locate , who served briefly as a director in the year 20XX.

and insist that no payments are made to by or that there is any remuneration from to .

During the years examined, did not have a web site, nor does it currently have a web site. It did not advertise and had no marketing materials, other than a double page pamphlet prepared by either or on an office computer. It appears that pamphlet was not widely distributed, but was primarily provided to prospective donors/clients of . There is no record of the Organization making any outreach efforts in order to solicit donations of conservation easements, including façade easements from any other sources other than . The Form 990 returns reflect no expenses for marketing or outreach. Although represented in its Articles of Incorporation that its purposes included providing education on conservation easements, it conducted no educational activities and made no expenditures for such activities from its inception through the years examined.

The Organization's files with respect to each façade easement that it holds contain only scant information and does not keep uniform records with respect to each file. With one exception, all of the files appear to contain a document entitled "Easement Agreement," the legal document that actually holds the donor responsible for retaining the original facade, and its upkeep. Not all the respective easement files containing the Easement Agreement contained a signed copy of the applicable agreement, however.

None of the files contain a baseline study or report or (other evidence of due diligence on the Organization's behalf) that describes the façade easement, the condition of the property, the potential for environmental variables, etc. as in existence immediately prior to donation. Rather, the Easement Agreement relies on the Appraisal Report as constituting the "baseline documentation." It appears that once asked for a baseline report, but rebuked request. Specifically, in one of the initial donations involving the , asked about the Baseline Documentation Report, which defines the conservation features. In an email from of to , basically dismissed the Organization's request, by stating the Baseline Documentation is included in the appraisal, and telling how proud , the appraiser, is of his work. The Organization never asked for this information again. The agent asked

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to point out the Baseline Documentation in the appraisal.
was in the appraisals.

could only say it

While most of the files contain the appraisal for the respective façade easement, the appraisal usually only contains a description of the original architecture and a picture of the building, but no close up pictures of the façade. None of the appraisals contain a description of the condition of the facade. Nor is there any mention of the presence or non-presence of other elements that may affect the facade as time goes on. For example, no mention is made if there are problems with smog, or close to industry that emits something into the air that has and/or might affect the facade over time.

It is clear from the appraisal reports that each of the properties underlying the donated easements were subject to local ordinances that preserved the subject property and restricted changes to the property. With the exception of one file, there do not appear to be Forms 8283 (Non Cash Charitable Contributions) attached to the appraisals or made a part of the each easement file. The form is required to be signed by donees who received contributed property. Several files, but not all contain a letter of acknowledgement to the donor, thanking the donor for the contribution of the façade easement.

The Service has examined several LLC entities that have donated façade easements to the Organization to determine whether improper charitable contributions deductions have been claimed. These examinations were conducted independently from the examination of . In those cases, it was determined that the charitable contribution deduction claimed by the façade easement donors were substantially overstated and that in particular, the appraisal reports did not substantiate a diminution in value for the underlying property, applied improper methodology, and that the appraisals contained substantial errors and omissions, among other things. In those examinations of the donors, the Service determined that the value of the easements contributed to was overstated by millions of dollars. In one of the cases, the Service's primary position is that the contribution of the façade easement did not meet the substantiation requirements under section 170 and the regulations and that the appraisal is not a "qualified appraisal" within the meaning of section 170(f)(11)(E) and Treas. Reg. § 1.170A-13(c). The Service further concluded that the easement was not protected in perpetuity as required by section 170(h)(2)(C) and that the easement agreement does not protect the first position of against claims of mortgage holders as required by the Treasury Regulations.

In January 20XX, the United States Department of Justice filed a complaint in the U.S. District Court for the against and his company. The complaint noted that had appraised more than 90 conservation easements for purposes of the deduction under IRC § 170(h). Shortly thereafter,

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and his company agreed to an Agreed Order of Permanent Injunction, barring him and the company from engaging in providing appraisals.¹

With regard to monitoring and enforcement activities, there is no information showing that the donated easements were inspected on an annual basis. There appears to be little to no inspection activity during the earlier years of the Organization's existence. The files contain no pictures from the inspection visits. The files do not contain any inspection reports concerning the façade easement or the present condition of the property. The Organization does not have a "template" form used for the inspections. When inspecting the properties with a façade easement held by the Organization, visited the sites as an employee of . His time, as an attorney, was first billed to the law firm. The travel expenses incurred in visiting the sites were submitted to the law firm for reimbursement under an accountable plan.

controlled when the law firm bills . The accrued legal expenses do not show up on balance sheet. Legal fees constitute the majority of the expenses on Form 990 returns. A small miscellaneous fee is normally the only other expense on the return. When the agent asked how much cash was available to defend the easements, assured the agent that the Organization had \$ in the bank, and the Organization had no accounts payable. However, at the time of the examination, owed the law firm in excess of \$ in "unbilled" legal fees.

Any service or performs is considered a legal charge on the return. This includes reviewing bank statements, reviewing easement agreements or other documents, preparing the Form 990 returns, travel for inspections, etc. The two directors bill the law firm to get reimbursed. Then, as lawyers in the law firm, they bill .

* * * *

¹ The complaint alleges that, continually and repeatedly, appraisals, *inter alia*, are unreliable due to material and substantive errors and omissions unsupported assumptions, and his failure to comply with generally accepted professional appraisal standards; substantially overstate the fair market value of the easements by hundreds of thousands, if not millions, of dollars; distort data and provide misinformation or unsupported personal opinions to achieve artificially high values that are often completely out of line with actual property values in the market area; and are riddled with problematic methodology and conclusions that lead to substantial valuation misstatements of the resulting charitable contribution deductions taken by his clients. The complaint, order and Department of Justice press release are attached hereto as Exhibit 1. Similarly, the Tax Court has found appraisals to be defective. See, e.g., Dunlap v. Commissioner, T.C. Memo. 2012-126; Friedberg v. Commissioner, T.C. Memo. 2011-233.

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The legal expenses paid each year are summarized as follows:

Tax Year	Legal Fees per Returns
20XX	.00
20XX	.00
20XX	.00
20XX	.00
20XX	.00

At the time received exempt status, it was classified as a publicly supported organization within the meaning of section 509(a)(2) of the Code. Its advance ruling period was through December 31, 20XX. The Organization reflects the easement donations as contributions at their fair market value (per the appraisals). When completing Schedule A to the Form 990, does not reflect any of the easement donations as being received by substantial contributors. Consequently, the calculation for the public support test shows 100% public support.

Law:

Section 501(a) of the Internal Revenue Code ("Code") generally exempts from Federal income taxation those organizations described in section 501(c). In order to qualify for exemption under section 501(c)(3) an organization must satisfy four criteria: (1) it must be organized and operated exclusively for certain specified exempt purposes, including charitable purposes; (2) no part of its net earnings may inure to the benefit of any private shareholder or individual; (3) no part of its activities may constitute intervention in any political campaign on behalf of (or in opposition to) any candidate for public office; and (4) no substantial part of the activities may consist of political or lobbying activities. Failure to satisfy any of these requirements bars qualification under section 501(c)(3). American Campaign Academy v. Commissioner, 92 T.C. 1053, 1062 (1989) and cases cited therein. See also Nationalist Movement v. Commissioner, 37 F.3d 216 (5th Cir. 1999), aff'g per curiam 102 T.C. 558 (1994).

The operational test focuses on how the organization is actually operated, regardless of whether it is properly organized for tax-exempt purposes. Pursuant to the Treasury Regulations, included in the requirements for an organization to meet the operational test, the organization must be primarily engaged in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3)(the "primary activities" test). Treas. Reg. § 1.501(c)(3)-1(c)(1). Additionally, the organization's net earnings must

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not be distributed in whole or part to the benefit of private shareholders or individuals (the "inurement prohibition" test). Treas. Reg. § 1.501(c)(3)-1(c)(2).

A deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a "qualified conservation contribution" if the requirements of that section are met. Section 170(h)(1) defines a "qualified conservation contribution" as the contribution (i) of a qualified real property interest (ii) to a qualified organization (iii) exclusively for conservation purposes.

(i) A qualified real property interest (as relevant here) includes a restriction granted in perpetuity on the use which may be made of the real property. Section 170(h)(2)(C).

(ii) A qualified organization (as relevant here) is defined as a public charity described in section 501(c)(3). Section 170(h)(3).

(iii) To be exclusively for conservation purposes, the conservation purpose of such a restriction must be protected in perpetuity. Section 170(h)(5). Further, for contributions made after July 25, 2006, certified historic structures such as those at issue here must meet additional requirements, including (i) restrictions preserving the entire exterior of the building and prohibiting any change inconsistent with the historical character of the exterior; (ii) a written agreement between the donor and donee that the donee is a qualified organization and has the resources and commitment to manage and enforce the restrictions; and (iii) that taxpayers claiming a deduction include several required items, including a qualified appraisal within the meaning of section 170(f)(11)(E). Section 170(h)(4)(B).

Section 1.170A-14(c) of the Regulations provides that to be considered an eligible donee under this section, an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions. A conservation group organized or operated primarily or substantially for one of the conservation purposes specified in section 170(b)(4)(A) will be considered to have the commitment required by the preceding sentence. One of the ways to be a "qualified organization" is to be a charitable organization described in section 501(c)(3) that meets the public support test of section 509(a)(2).

Substantial Non-Exempt Purpose

As noted above, an organization will not be regarded as operated for one or more exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Treasury regulations section 1.501(c)(3)-1(c)(1). "[T]he presence of a single substantial nonexempt purpose precludes exempt status for the organization, regardless of the number or importance of the exempt purposes.@ Nationalist Movement, 102 T.C. at 576, citing Better Business Bureau v. United States,

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325 U.S. 279, 283 (1945) and other cases. In Redlands Surgical Services v. Commissioner, 113 T.C. 47, 71 (1999), the court wrote:

Although an organization might be engaged in only a single activity, that single activity might be directed toward multiple purposes, both exempt and nonexempt. If the nonexempt purpose is substantial in nature, the organization will not satisfy the operational test.

(citations omitted).

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. See Better Business Bureau v. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc., v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g 39 TC 93 (1962), cert. denied, 376 US 969 (1964).

Organizations that facilitate tax avoidance schemes do not qualify for exemption under section 501(a) of the Code as organizations described in section 501(c)(3). See Church of World Peace, Inc. v. Commissioner, T.C. Memo 1994-87 (1994), aff'd, 52 F.3d 337 (10th Cir. 1995) (The Tax Court held, and the Tenth Circuit affirmed, that the church did not comply with the requirements of section 501(c)(3) because, by promoting a circular flow of funds from the donors to the church and back to the donors and facilitating improper charitable contribution deductions, the church did not operate exclusively for exempt purposes enumerated in section 501(c)(3). See also New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006) (Where an organization is actively participating in a scheme designed to facilitate tax avoidance, the organization is not entitled to exempt status because it is furthering substantial non-exempt purposes).

Rev. Rul. 80-278, 1980-2 C.B. 175 established a three-part test to determine whether an organization's activities will be considered permissible under IRC section 501(c)(3): (1) the purpose of the organization is charitable (2) the activities are not illegal, contrary to public policy, or in conflict with statutory restrictions; and (3) the activities are in furtherance of the organization's exempt purpose and are reasonably related to the accomplishment of that purpose.

Private Benefit

A basic principle of the law of charity is that the community, rather than designated individuals, is served. See IV A Scott, The Law of Trusts, sec. 375 (4th ed. 1989). Thus, an exempt charitable organization must show that it benefits a charitable class

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that is sufficiently large or indefinite so the community as a whole is benefited. In keeping with this principle, section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.² Thus, in order to meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

In American Campaign Academy v. Commissioner, 92 T.C. 1053, 1065-66(1989), the Tax Court defined prohibited "private benefits" as "an 'advantage, profit; fruit; privilege; gain; [or] interest.'" It concluded that the term private benefit included "nonincidental benefits conferred on disinterested persons that may serve private interests." Id. at 1069. When an organization provides prohibited private benefit it cannot be said to be operating exclusively for exempt purposes. Redlands Surgical Services, 113 T. C. at 74; American Campaign Academy, 92 T.C. 1065-1066. See also Old Dominion Box Co., Inc., v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973). In Redlands, the court made it clear that the proscription against private benefit encompasses not only inurement where there are benefits conferred on insiders having a personal and private interest in the organization, but also benefits conferred on unrelated or disinterested persons. Id. In Canada v. Commissioner, 82 T.C. 973, 980 (1984) an organization was revoked on the grounds that it was operated for a substantial nonexempt purpose, due to substantial private benefit, and that it violated the proscription against inurement.

An organization is not described in section 501(c)(3) if it serves a private interest more than incidentally. See Rev. Rul. 69-545, 1965-2 C.B. 117; Rev. Rul. 78-86, 1978-1 C.B. 151; and Rev. Rul. 76-152, 1976-1 C.B. 151. If, however, the private benefit is only incidental to the exempt purposes served, and insubstantial, it will not result in a loss of exempt status. See, e.g., St. Louis Union AAHP Co. v. United States, 374 F.2d 427 (8th Cir. 1967). Similarly, occasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes will not generally

* * * *

² 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 subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. We also note that the one-third support test and the not-more-than one-third support test are designed to insure that an organization which is excluded from private foundation status under section 509(a)(2) is responsive to the general public, rather than to the private interests of a limited number of donors or other persons. Treas. Reg. § 509(a)-3(a)(4).

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constitute prohibited private benefits. See Kentucky Bar Foundation v. Commissioner, 78 T.C. 921, 926 (1982).

A private benefit is considered incidental only if it is incidental in both a qualitative and quantitative sense. In order to be incidental in a qualitative sense, the benefit must be a necessary concomitant of the activity which benefits the public at large, i.e., the activity can be accomplished only by benefiting certain private individuals. To be incidental in a quantitative sense, the private benefit must not be substantial after considering the overall public benefit conferred by the activity. See American Campaign Academy, 92 T.C. at 1053, citing Columbia Park & Recreation Assoc. v. Commissioner, 88 T.C. 1, 18-21 (1987), *aff'd* without published opinion 838 F.2d 465 (4th Cir. 1988).

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), *aff'g* T.C. 1984-349, Church by Mail sent out sermons in numerous mailings. This required a great deal of printing services. Twentieth Century Advertising Agency provided the printing and mailing. Twentieth Century was controlled by the same ministers. It also employed family members. The services were provided under two contracts. The contracts were signed by the two ministers for both Church by Mail and Twentieth Century. Church by Mail business comprised two-thirds of the business of Twentieth Century. In deciding for the government, the Court made the following statement: "There is ample evidence in the record to support the Tax Court's finding that the Church was operated for the substantial non-exempt purpose of providing a market for Twentieth's services."

"Where a for-profit organization benefits substantially from the manner in which the activities of a related [exempt] organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes." International Postgraduate Medical Foundation v. Commissioner, T.C. Memo. 1989-36.

In Est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exerted significant indirect control over Est of Hawaii, a nonprofit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the nonprofit as an "instrument" to further their for-profit purposes. Neither the fact that the for-profits lacked structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts were reasonable affected the court's conclusion that Est of Hawaii did not qualify as an organization described in section 501(c)(3) of the Code.

Conservation as a Charitable Purpose

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Section 501(c)(3) of the Internal Revenue Code provides exemption from Federal income tax for organizations that are organized and operated exclusively for educational, scientific, charitable or other exempt purposes. The protection of the environment by promoting a conservation purpose as defined in section 170(h)(4) of the Code is deemed to be a charitable purpose.

As relevant here, section 170(h)(4)(A) includes in the definition of "conservation purpose" the preservation of a certified historic structure. A "certified historic structure" is defined in section 170(h)(4)(C) as either 1) a building, structure, or land area which is listed in the National Register; or 2) any building which is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district.

The Tax Court in 1982 East, LLC v. Commissioner, T.C. Memo. 2011-84, involving tax year 2004 and property in NYC, explicitly found that local law, rather than the rights provided to the conservation organization under the deed of easement, preserved the subject property. Therefore, the easement did not preserve a certified historic structure pursuant to IRC § 170(h)(4)(A)(iv).

In Herman v. Commissioner, T.C. Memo. 2009-205, the Tax Court held that the contribution of a conservation easement regarding the unused air rights over a certified historic structure (apartment building) did not preserve the certified historic structure (or historically important land area) where the easement itself did not prevent the historic structure from being altered or demolished.

In Rev. Rul. 67-292, 1967-2 C.B. 184, the Service held that an organization formed for the purpose of purchasing and maintaining a large tract of forest land to be reserved as a sanctuary for wild birds and animals and to be open to the public for educational purposes qualified as exempt under section 501(c)(3).

In Rev. Rul. 70-186, 1970-1 C.B. 128, the Service concluded that an organization formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features furthered a charitable purpose.

In Rev. Rul. 76-204, 1976-1 C.B. 152, the Service considered an organization formed by scientists, conservationists, and other community representatives for the purpose of preserving the environment. It accomplished this purpose by acquiring and maintaining ecologically significant undeveloped land such as swamps, marshes, forests, wilderness tracts and other natural areas. The organization worked closely with Federal, state, and local governmental agencies to identify ecologically significant land. The organization accomplished its conservation purpose by either maintaining the land itself or through a transfer to a governmental agency. The Service concluded that the

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organization was enhancing the accomplishment of an express national policy of conserving the nation's unique natural resources and, in this sense, was advancing education and science and benefiting the public in "a manner that the law regards as charitable".

In Rev. Rul. 78-384, 1978-2 C.B. 174, however, exemption was denied a nonprofit organization that owned farmland and restricted its use to farming or other uses the organization deemed ecologically suitable, but which did not operate for the purpose of preserving "ecologically significant" land and did not otherwise establish that its self-imposed restriction on the land resulted in any direct or significant public benefit.

Charitable Contribution Deductions

Section 170(f)(3)(B)(iii) permits a deduction for the value of a qualified conservation if certain requirements are met. Section 170(h)(1) and Treas. Reg. § 1.170A-14(a) provide that a qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. Section 170(h)(2) defines a qualified real property interest of the donor other than a mineral interest; a remainder interest; and a restriction on the use which may be made of the real property. Section 170(h)(5) requires the conservation purpose to be protected in perpetuity. Under Treas. Reg. § 1.170A-14(g)(1) a restriction granted in perpetuity on the use of the property must be based on legally enforceable restrictions that will prevent uses of the retained interest in the property that are inconsistent with the conservation purpose of the contribution.

Under section 170(h)(3) the term qualified organization includes most governmental entities and certain section 501(c)(3) public charities. Treas. Reg. § 1.170A-14(c) sets forth additional requirements that an organization must meet before a charitable contribution deduction is permitted for a conservation easement. This part of the regulation requires an organization to have a commitment to protect the conservation purposes of the donation and have the resources to enforce the restrictions.

Section 170(h)(4)(A)(iv) includes the preservation of a certified historic structure as a conservation purpose. Section 170(h)(4)(C) provides that a property will be certified as a historic structure if it is listed on the National Register or is located in a registered historic district and is certified by the by the Secretary of the Interior as being of historic significance to the district.

Treas. Reg. § 1.170A-14(g)(2) provides that "no deduction will be permitted under this section for an interest in property which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity."

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Treas. Reg. § 1.170A-14(g)(5), to prevent potential impairment to the conservation purpose of the easement, contemplates that the donor will provide the qualified organization sufficient documentation to establish the condition of the restricted property. The documentation is designed to protect the conservation purpose in perpetuity where the owners continued use of the underlying property could impair the conservation purpose. The regulation also requires a donor to give the qualified organization the right to: (1) monitor the property for the purpose of determining whether property owner is complying with the conservation easement's restrictions and (2) enforce the conservation restrictions by appropriate legal action.

Under Treas. Reg. § 1.170A-14(h)(3)(i), the value of a the contribution of a perpetual conservation restriction on a given property is its fair market value as of the date of the contribution, as determined by an appraisal performed by a qualified appraiser. The regulation also provides:

If there is a substantial record of sales of easements comparable to the donated easement (such as pursuant to a governmental program), the fair market value of the donated easement is based on the sales price of such comparable easements. If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before granting the restriction and the fair market value of the encumbered property after granting the restriction.

If, as a result of the contribution of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section.

In addition, Treas. Reg. § 1.170A-14(h)(3) provides that easement's fair market value must take into account "how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use." The regulation goes on to provide "there may be instances where the grant of a conservation restriction may have no material effect on the value of the property," in which case "no deduction would be allowable."

Section 1.170A-14(a) of the Income Tax Regulations provides rules concerning "qualified conservation contributions". A deduction under section 170 is generally not

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allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (see §1.170A-6 relating to charitable contributions in trust and §1.170A-7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met. A qualified conservation contribution is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under this section, the conservation purpose must be protected in perpetuity. See §1.170A-14(b)(2) and §1.170A-14(g).

Effective Date of Revocation

Section 12.01 of Rev. Proc. 2013-9, 2013-2 I.R.B. 255 provides that the revocation of a determination letter recognizing exemption may be retroactive if there has been a change in the applicable law, the organization omitted or misstated a material fact, or operated in a manner materially different from that originally represented. Further, subsection 1 of that section states that where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation will ordinarily take effect as of the date of such material change.

Discussion

no longer qualifies as an organization described in section 501(c)(3) and its exemption from taxation under section 501(a) should be revoked because:

(1) has furthered a substantial nonexempt purpose by facilitating improper charitable contribution deductions.

It is well settled that an organization is not entitled to exemption if it has a single substantial nonexempt purpose. Better Business Bureau v. United States, supra; Airlie Foundation, Inc. v. United States, 92-2 USTC ¶50,462 (D.D.C. 1992). In determining whether, for purposes of the operational test, has a substantial non exempt purpose the critical inquiry is on the actual purposes advanced by its activities. Redlands Surgical Services v. Commissioner, supra; American Campaign Academy v. Commissioner, supra. Cases involving hidden nonexempt purposes have concentrated on the manner in which an organization conducted its activities. See, e.g., Living Faith, Inc. v. Commissioner, 956 F.2d 365 (7th Cir. 1991); Nonprofit Insurance Alliance of California v. United States, 94-2 USTC ¶ 50,593 (Fed. Cl. 1994).

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played an integral role in facilitating grossly overstated tax deductions for limited liability companies who invested in historic properties, investment deals that were planned, marketed and executed by . By being the vehicle for accepting façade easement donations, only from clients/donors, never questioning the fact that each and every donation package had been appraised by the same appraiser selected by , was a willing participant in facilitating grossly overstated charitable contribution deductions in connection with its façade easement program. Like the New Dynamics case, activities consist of helping its donors avoid taxes by claiming grossly overstated deductions. Additionally, had an economic incentive for itself in facilitating façade easements and because its fees depended on the appraisal amounts, it benefitted from high valuations.³ Thus, furthered a substantial non-exempt purpose and is not an organization described in section 501(c)(3).

The activities of are distinguishable from those conducted by the organizations described in Rev. Rul. 68-14, 66-358, and 70-186 since the activities conducted by primarily served the private interests of its donors, a group that does not constitute a charitable class. The benefit conferred by to its donors is more than incidental from both a qualitative and quantitative sense. See American Campaign Academy v. Commissioner, supra. By operating for the benefit of its donors, furthered a substantial non-exempt purpose. See Old Dominion Box Co., Inc., v. United States, supra.

(2) operated primarily for private interests, rather than for public purposes in that its activities substantially benefitted the donors and the for-profit entity

In determining whether an organization qualifies or continues to qualify for exemption under section 501(c)(3), we must examine the activities conducted by the organization and determine whether such activities benefit the public, private interests, or both. In the case of an organization that benefits both public and private interests, the organization must establish that it is operated primarily for public interests and that any private benefit is incidental in both a qualitative and quantitative sense. See section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. See also American Campaign Academy v. Commissioner, supra.

records show that the organization's activities were primarily directed towards being a donation receptacle to facilitate maximum tax benefits for customers, donors. The Service believes that all the donors reaped inappropriate tax benefits in connection with façade easement program. Any tangible benefits to the public derived from activities are elusive at best, especially when substantially all of

* * * *

³ Accord, Kaufman v. Commissioner, 687 F.3d 21 (1st Cir. 2012).

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easements are subject to preservation laws regulating the maintenance, repairs, and/or restoration of the facades.

Although [redacted] did not directly "control" [redacted], nearly all of its directors had a close association with [redacted] ([redacted] who founded [redacted] after learning about conservation easements from his friend, [redacted] principal [redacted] who was actively involved in real estate deals) and [redacted] and [redacted], both of whom came to the [redacted] board through [redacted]. Records show that [redacted] Board of Directors performed virtually no oversight with respect to [redacted] activities but simply yielded to every request made by [redacted]. [redacted] structured each transaction and [redacted] accommodated [redacted], including rushing to accept façade easement donations at the end of the year in order to facilitate last minute tax strategies for [redacted] clients. The Organization, when rebuffed by [redacted], did not require the donors to provide baseline studies with respect to the façade easements; moreover, it did no due diligence of its own. [redacted] so dominated [redacted] operations that it abused the tax-exempt status of [redacted] to serve its own interests and the private interests of clients and [redacted] donors at the expense of the general public. In Est of Hawaii, the Tax Court concluded that for-profit corporations were able to use the nonprofit as an "instrument" to further their for-profit purposes. Like the for-profit organizations in Est of Hawaii, [redacted] uses [redacted] as an "instrument" to further its for-profit tax consulting purposes which are designed to maximize the return on its clients' investments and achieve tax savings. Like the est organizations described in EST of Hawaii, [redacted] substantially benefits from [redacted] existence by using [redacted] to further its business objectives and those of its clients. This causes a private benefit to be served. See also Church by Mail and International Postgraduate Medical Foundation, supra.

That [redacted] was created and operated to benefit [redacted] and its clients is also demonstrated by the fact that [redacted] never made any effort to obtain façade easements from sources other than [redacted]. [redacted] was not just [redacted] best source of referrals of donations, it was its only source. The Organization's so-called "marketing materials" were distributed solely to prospective donors/ clients of [redacted]. The Organization conducted no outreach or educational activities which could have been a source for obtaining donations of façade easements from donors other than [redacted] clients. It never solicited easements; rather it served solely an acceptance vehicle for structured real estate transactions whereby donors could also gain conservation easement donations. Principals of [redacted] who were investors in the [redacted] personally benefited from [redacted] existence as they took deductions for a charitable contribution with respect to the façade easement that was donated to [redacted]. The Service has determined that particular façade easement was not a qualified conservation contribution because there was no qualified appraisal and that the conservation purposes of the property were not protected in perpetuity and alternatively, the easement was substantially overvalued.

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The examination of shows that its operations serve private, rather than public interests within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Accordingly, we have determined that is not operated exclusively for exempt purposes.

(3) did not engage primarily in exempt activities such as those that accomplish charitable conservation purposes.

 has not engaged primarily in activities that accomplish charitable or other exempt purposes described in section 501(c)(3). Thus, is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) and Treas. Reg. § 1.501(c)(3)-1(c)(1) and, as such, fails to qualify for exemption under section 501(c)(3).

While may be organized for a charitable purpose, the preservation of historic properties, it is not operated for one within the meaning of section 501(c)(3). The Organization's primary activity is the operation of a facade easement donation program. The Organization has few to no policies or procedures in place to ensure that it furthers a conservation purpose under section 501(c)(3) when it accepts an easement and holds easements. As a general rule, prior to accepting an easement donation, no one from inspects the property, takes photographs or provides with a written report detailing the condition of the property. does not require a donor to provide a baseline study detailing the property's condition at the time of the donation and how the easement donated will serve a conservation purpose under section 501(c)(3). None of the directors have any significant experience in fields related to conservation. Moreover, as discussed below, does not have policies for inspecting the property and monitoring the property once the property is donated.

An organization is eligible to accept tax deductible facade easement donations on qualifying historic properties if it is a qualifying organization under section 170(h)(3). See I.R.C. § 170(h)(1) and (4)(A). However, the easements accepted did not provide any additional significant conservation restrictions on the underlying properties than those that already existed under local laws. The properties for which the holds easements are already subject to strict local ordinances. The deed of easement utilized by the imposes no additional restrictions on property owners. Research shows that properties already subject to strict local preservation laws would suffer little or no loss in value when subject to an easement that imposes no additional restrictions on the property owner.

The Tax Court in 1982 East, LLC v. Commissioner, T.C. Memo. 2011-84, involving tax year 2004 and property in NYC, explicitly found that local law, rather than the rights provided to the conservation organization under the deed of easement, preserved the subject property. Therefore, the easement did not preserve a certified historic structure pursuant to IRC § 170(h)(4)(A)(iv).

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Further, it does not appear that _____ directors reviewed (or engaged those experienced with conservation issues to review) any of the easement agreements with a critical eye. As noted, in at least one of the agreements, the document allows to permit changes to the façade that are not in compliance with the conservation purpose because there are no consequences should _____ fail to fulfill its rights and obligations under the document and the easement agreement contains no provisions that would bind a successor in interest to _____ to the conservation purpose in perpetuity. Similarly, _____ did not appear to raise any objections to the language pertaining to subordination such that _____ rights on extinguishment of the easement are not protected.

Finally, an organization with a conservation purpose is required to monitor the underlying properties to ensure that the easement restrictions are complied with and take action to enforce them when the underlying property owners are not complying with the restrictions. The Organization cannot demonstrate that it has a significant monitoring and enforcement program. Simply put, the _____ did not operate in a manner that accomplished a charitable conservation purpose as contemplated by sections 170(h) and 501(c)(3).

The Organization has represented that monitoring and enforcing the historic preservation easements is its primary exempt activity. The _____ claims that its maintenance of the stewardship fund demonstrates that engages in significant easement monitoring activities and activities to cure easement restriction defaults. However, _____ devoted minimal time to these activities, and the facts show that the _____ also failed to monitor the properties in any meaningful manner to see if the property owners were complying with the terms of the easements.

To establish that it operates exclusively for conservation purposes under section 501(c)(3), an organization must do more than merely accept and hold easements for which donors are claiming charitable contribution deductions under section 170(h). The organization must establish that any accepted easements serve a conservation purpose. The organization must also operate as an effective steward to ensure that the easement continues to further a conservation purpose. The easement is a set of legal rights. It can serve conservation purposes only if enforced where necessary. The need for enforcement can be determined only through monitoring. The extent of an organization's due diligence and monitoring activities, combined with its capacity for and commitment to enforcement when necessary becomes highly significant in determining whether accepting and holding easements actually furthers a conservation purpose. See Treas. Reg. §1.501(c)(3)-1(c)(1) (noting that an organization qualified for exemption under section 501(c)(3) "only if it engages primarily in one or more purposes specified in section 501(c)(3)"); see also *Christian Manner International Inc. v. Commissioner*, 71 T.C. 661, 668 (1979); *cf* Treas. Reg. Section 1.170A-14(c)(1) (to be an eligible donee of a conservation easement, an organization must have a

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commitment to protect the conservation purposes of the donation, and the resources to enforce the restrictions).

To pass the operational test an organization must show that it primarily engages in activities that accomplish its exempt purpose. The facts and records show that the was more concerned with accommodating , its customers/donors than it was with advancing a conservation purpose. Accordingly, the has not shown that it engages primarily in activities that accomplish a charitable purpose.

should be revoked retroactively to 20XX.

Beginning from incorporation date in 20XX, and its clients, benefitted more than incidentally from the entity's arrangement with . The Service has determined that engaged in substantial non-exempt activities in 20XX and did not satisfy the operational test prescribed by Treasury Regulations beginning with the 20XX tax year. Therefore, exempt status should be retroactively revoked effective December 21, 20XX, in accordance with Rev. Proc. 2013-09, supra.

Taxpayer's Position:

Unknown at this time.

CONCLUSIONS:

The Service has determined that the no longer qualifies for exemption from Federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3). The Service also determined that the engaged in substantial non-exempt activities in 20XX (and subsequent years) and did not satisfy the operational test prescribed by Treasury Regulations beginning with the 20XX tax year. Accordingly, the Service proposes revocation of the exempt status effective December 21, 20XX.