



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
4929CHI Simpson  
230 South Dearborn Street  
Chicago, IL 60604

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Number: **200634046**  
Release Date: 8/25/2006  
UIL: 501.03-04

**A=Name of Taxpayer**  
**B=Address of Taxpayer**

B

A

**CERTIFIED MAIL**

**LAST DATE TO FILE A PETITION  
IN TAX COURT**

**Date 1**

**Dear :**

**This is a final adverse determination that you do not qualify for exemption from income tax under section 501(a) of the Internal Revenue Code (I.R.C.) as an organization described in I.R.C. section 501(c)(3). Internal Revenue Service recognition of your status as an organization described in I.R.C. section 501(c)(3) is revoked, effective, date 2. Our adverse determination is made for the following reason(s):**

**You are not operated exclusively for exempt purposes within the meaning of I.R.C. section 501(c)(3). You do not have an educational or charitable program. You do not engage primarily in activities which accomplish exempt purposes as required by Treas. Reg. § 1.501(c)(3)-1(c)(1). Your charitable grants are minimal in relation to your expenses, which consist of substantial payments to for-profit professional fundraising companies. These substantial payments support our conclusion that your operations serve a private interest in contravention of Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).**

**Contributions made to you are no longer deductible as charitable contributions by donors for purposes of computing taxable income for federal income tax purposes. See Rev. Proc. 82-39 1982-2 C.B. 759, for the rules concerning the**

**deduction of contributions made to you between Date 2 and the date a public announcement, such as publication in the Internal Revenue Bulletin, is made stating that contributions to you are no longer deductible.**

**You are required to file income tax returns on Form 1120 for all years beginning after Date 2. Returns for the years ending Date 3 and Date 4 must be filed with this office within 60 days from the date of this letter, unless a request for an extension of time is granted. Send such returns to the following address:**

**Address 2**

**Tax returns for subsequent years are to be filed with the appropriate Campus identified in the instructions for those returns.**

**If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States for the District of Columbia before the 91<sup>st</sup> day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. . You may write to the Tax Court at the following address:**

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

**The processing of income tax returns and assessment of any taxes due will not be delayed because a petition for declaratory judgment has been filed under I.R.C. section 7428.**

**The last day for filing a petition for declaratory judgment is Date 1.**

**If you have questions about this letter, please write to the person whose name and address are shown on this letter. If you write, please attach a copy of this letter to help identify your account. Keep a copy for your records. Also, please include your telephone number and the most convenient time for us to call, so we can contact you if we need additional information.**

**You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above, since this person can access your tax information and can help you get answers. Or you can contact the Taxpayer Advocate office located nearest you at the address and telephone number shown in the heading of this letter.**

**Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by**

law that you have to file a petition in the United States Tax 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.

We will notify the appropriate State officials of this action, as required by I.R.C. section 6104(c).

This is a final revocation letter.

Sincerely,

**Marsha A. Ramirez**  
**Director, EO Examinations**

**Enclosures;**  
**Pub. 892**

**DEPARTMENT OF THE TREASURY**

**INTERNAL REVENUE SERVICE**

**EO 7983, MS 3000**

**24000 Avila Rd.**

**Laguna Niguel, CA 92677**

**TAX EXEMPT AND  
GOVERNMENT ENTITIES**

**DIVISION**

UIL: 501.03-05

**LEGEND:**

ORG=Name of Organization

DATE1=Date Year Ended

ORG

**DATE:**

**Form:**

990

**Tax Year Ended:**

**Person To Contact:**

**Contact Telephone Number:**

Dear :

In our phone conversations of 5/7/03, 5/20/03, 6/4/03, 6/16/03 and 6/18/03 you stated that you would provide the location for conducting the examination of the books and records of your organization. In each phone conversation, you stated that you would call the next day with the required information. In each instance, you have failed to call. In my letter dated May 21, 2003, we set the appointment to conduct the examination for July 14, 2003 with the understanding that you would within a reasonable period of time, provide the address for the examination. As of this date, I have not received the requested information.

Section 1.6033-2(i)(2) of the Internal Tax Regulation provides, in part, that every organization exempt from tax shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status. Failure to comply with our request for information could result in the loss of your tax-exempt status. Accordingly, if we do not hear from you by July 1, 2003, we will propose revocation of your current status.

If you have any questions, please contact me at the number listed above.

Sincerely yours,

Revenue Agent

Form 886-A (Rev. Nov. 1998)	<b>Explanation of Items</b>	Schedule No. or Exhibit:
Name of Taxpayer:  A.	EIN:	Year/Period Ended: Year 1 Year 2

### ISSUE

Should the A.'s (A) tax exempt status under Internal Revenue Code 501(c)(3) be revoked because it is operated for the private benefit of professional fundraising companies and not operated exclusively for charitable purposes.

### FACTS

#### **Organizing Documents**

A was incorporated in the State of Location 1 on Date 5 as the C. An amendment to the Articles of Incorporation was made on Date 6 changing its name to A. The stated purpose contained in the articles of incorporation is to do classical research primarily in the field of oceanography, tropical agriculture and other associated fields; to develop educational programs for oceanography for presentation at every appropriate educational level and to prepare and publish various textbooks and educational materials for this purpose; and to conduct classroom instruction and present seminars, not only to students but to other scientists and specialists in the field of oceanography to advance mans understanding of the oceans and their potential use in mans environment.

#### **Application for Recognition of Exemption (Form 1023)**

The Form 1023 application filed by A lists the primary source of financial support will be from the D, memberships, and solicited contributions from both business and private citizens. The application also states that the initial fundraising activities are being limited to applications for grants from federal and private foundations.

#### **Activities**

The previous officers and directors for A were Officer 1, Officer 2 and Officer 3. These officers and directors resigned on Date 7. The current President of the organization is Officer 4.

In response to question number 12 in Information Document Request (IDR) number 002, the organization stated that Officer 4 has known the founder of A, Officer 5, for approximately 30 years and that Officer 4 was asked by Officer 5 to come out of semi-retirement and take the position as president of A.

The copies of the articles of incorporation provided by the organization in response to Information Document Requests 001 and 002 were not the articles for A but for an organization named the E, and previously known as the E1. IRS records indicated that the E1. had its exempt status revoked effective Date 8.

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The corporate records from the Location 1 Department of State, show the previous officers and directors of the E, included Officer 5 as the president and Officer 4 as the secretary. In response to question number 2 in IDR 002 and question number 12 in IDR 004, Officer 4 stated that he had no relationship with the E.

The by-laws of A. as revised on Date 9 contain no stated non-profit purpose. The by-laws are set up as a stock corporation and references the issuance of shares of stock and the payment of dividends. The signature page of the by-laws references signatures of the officers of the E1.

The A maintains a WEB site where they solicit donations and represent their charitable activities. The web address is F. The site contains links for their programs, press releases, donation process and online applications for the various types of donations which they solicit. They heavily promote the bargain sale concept. The site states in one press release that A has been in business over 27 years. Location 1 Department of State records indicated that A was inactive from Date 10 until Date 11.

A's primary activity is the operation of a donation program soliciting donations of boats, vehicles, and other assets from the general public and the subsequent sales of such donated items to the general public. A utilizes a "Bargain Sales" mechanism in their donation program. For example, A will purchase a boat from a donor below its market value and the donor will claim a charitable contribution for the difference between the market value of the boat and what A paid for the boat. A then sells the boat at market value. A carries on this program utilizing professional fundraising companies which is discussed further in the financial section below of this report. This donation program is a substantial part of A activities as well as the primary activity of A.

### Financial Information

A. reported the following on their Form 990 for the years Year 1 and Year 2

	<u>2000</u>	<u>2001</u>
Gross Receipts (Includes assessed values of donated boats and vehicles)	\$13,039,575	\$23,832,592
Total Expenses	\$ 4,350,479	\$ 7,127,835

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The total expenses reported during the years Year 1 and Year 2 included the following payments as follows:

Charitable Grants	\$ 37,800	\$ 90,070
Program Services	\$ 219,745	\$ 287,933
Professional Fundraisers	\$ 4,124,609	\$ 6,768,371

The amounts paid to the professional fundraisers were 94.81% and 94.96% of the total expenses paid during Year 1 and Year 2, respectively.

The organization utilized four professional fundraising companies in Year 1 and three companies in Year 2. These companies were:

- G located in Location 1
- H located in location 2
- I located in location 3
- J located in Location 4.

The J is no longer active. The fundraising companies are also listed on A web site and on their publications. All of the professional fundraising fees and commissions were paid to these companies. Officer 5 is an officer or director for K and L. Person 1, the daughter of Officer 5 is on the board for M. Officer 4 was listed as the registered agent for J.

In response to information document requests, A has provided only one contract and it was for the I signed by Officer 5 as the president.

The Forms 990 reported Gross Sales for the years ended Year 1 and Year 2 in the amounts of \$ 8,459,860 and \$ 16,344,192 respectively. Cost of Goods Sold for the corresponding sales are \$ 8,459,860 for Year 1 and \$ 16,328,796 for Year 2. The cost of goods sold amounts are paid to the four fundraising companies utilized by A in their donations and bargain sales program.

The organization stated in response to IDR 002 that Officer 4 runs the day to day operations of A's offices in location 2, Location 3, and Location 1 and that there are no salaries paid by A except to Officer 4 and Person 2.

In response to IDR's 002 and 004, the organization stated that they had one employee in the Year 1 and currently have two employees.

The organization has no audited financial statements. Accounts are maintained at each location and a consolidation is made at their headquarters in Location 1.



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### LAW

IRC § 501(c)(3) 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, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

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

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

Regulation section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. The words "private shareholder or individual" refer to persons having a personal and private interest in the activities of the organization. The term "private shareholder or individual" is defined in regulation section 1.503(a)-1(c).

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for one or more exempt purposes 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 the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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Regulation 1.501(c)(3)-1(d)(3) defines educational, as used in section 501(c)(3), relates to: (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

Regulation 1.501(c)(3)-1(d) (5) defines scientific as, (i) Since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than a private interest, a "scientific" organization must be organized and operated in the public interest (see subparagraph (1)(ii) of this paragraph). Therefore, the term "scientific", as used in section 501(c)(3), includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "scientific"; and the nature of particular research depends upon the purpose which it serves. For research to be "scientific", within the meaning of section 501(c)(3), it must be carried on in furtherance of a "scientific" purpose. The determination as to whether research is "scientific" does not depend on whether such research is classified as "fundamental" or "basic" as contrasted with "applied" or "practical". On the other hand, for purposes of the exclusion from unrelated business taxable income provided by section 512(b)(9), it is necessary to determine whether the organization is operated primarily for purposes of carrying on "fundamental", as contrasted with "applied", research.

In Help the Children, Inc. v Commissioner, 28 TC 1128 (1957) the court held that the organization was not entitled to IRC 501 (c)(3) recognition. The court stated that the petitioner did not operate any charitable institutions. It's principal activity was the operation of bingo games on a commercial basis. Gross receipts from bingo activities was \$316,645.45 and \$ 309,973.47 with corresponding donations for its charitable programs in the amounts of \$ 2,880 and \$ 3,873.20.

In The Synanon Church v. Commissioner, 57 CCH Tax Ct. Mem. 602 (1989), the court cited Bob Jones University v. United States, 461 U.S. 574 (1983):

"When the Government grants exemptions or allows deductions all taxpayers are affected; the very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and vicarious 'donors.'

Charitable exemptions are justified on the basis that the exempt entity confers a public benefit... History buttresses logic to make clear that, to warrant

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exemption under section 501(c)(3), an institution must fall within a category specified in that section..."

The court in *Synanon Church* went on to say, "There is no similar policy supporting the exemption from tax of an organization which obtains donations by misrepresenting itself to be engaged exclusively in charitable activities when, in fact, it is engaged in profit-seeking business activities. If the character, purpose, activities or method of operation of the organization itself changes from those on which the ruling was based, the organization ceases as a matter of law to qualify as a tax-exempt organization. Its exemption, as in this case, may be revoked retroactively."

In *Better Business Bureau v. United States*, 326 U.S. 279 (1945), 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.

In *Living Faith, Inc. v. Commissioner*, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was not operated for exempt purposes. The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial business purpose, including: (1) the organization's operations were presumptively commercial, (2) the organization competed directly with other restaurants and food stores, (3) the organization used profit-making pricing formulas common in the retail food business, (4) the organization engaged in a substantial amount of advertising, (5) the organization's hours of operation were competitive with other commercial enterprises.

From *Orange County v. Commissioner*, 893 F.2d 529 (1990): "After examining all of the evidence in the record, we affirm the Tax Court's finding that the Society's involvement in the automobile racing activities exceeded the benchmark of insubstantiality." Respondent contends that because the Society received all the profits derived from the automobile races, the Society was associated in the operation of a commercial enterprise which was not in furtherance of its stated exempt purpose (i.e., to promote agriculture and horticulture in Orange County, New York). We agree. The Society further argues that the money is received from the racing activities as "rent" constitutes a "vital part of its cash flow," and if it did not receive such funds it could not

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continue to function. Again, these arguments miss the point. The fact that the racing activities provide the Society with substantial income does not make the racing activities substantially related to the Society's exempt educational purpose.

Revenue Ruling 64-182, 1964-1 CB 186 states in part that the corporation is deemed to meet the primary purpose test of section 1.501 (c)(3-1(e)(1) of the Income Tax Regulations, and to be entitled to exemption from Federal income tax as a corporation organized and operated exclusively for charitable purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, where it is shown to be carrying on through such contributions and grants a charitable program commensurate with its financial resources.

In KJ's Fund Raisers v. Commissioner, 74 CCH Tax Ct. Mem. 669 (1997), the petitioner was organized purportedly to "raise funds for distribution to charitable causes". Petitioner expects the majority of its funds to come from the sale of lottery tickets and does not plan to solicit public donations, but will accept any donations offered. There is no evidence in the record that any such donations were ever offered or received. From the proceeds of the sales of the lottery tickets, petitioner has made grants to a variety of organizations. Some of these grants have been memorialized in local newspapers. Of six clippings sent to the INS by petitioner, two have a photo of \* or \*\* in front of KJ's Place handing out a check on behalf of petitioner. One clipping notes that KJ's Fund Raisers is a new corporation located at KJ's Place. Another shows a director of petitioner presenting a check and identifies the proceeds as arising from rip-ticket sales at KJ's Place. The court ruled that the Petitioner failed to establish that it was operated exclusively for exempt purposes under section 501(c)(3) and that its operation would not result in more than incidental private benefit. Furthermore, it failed to establish that its net earnings would not inure to the benefit of private individuals. "Petitioner engaged in the exempt activity of raising money for charitable purposes. Petitioner also operated for the substantial private benefit of KJ's Place and its owners. A substantial nonexempt purpose thus characterizes its operation, disqualifying it from exemption under sections 501(a) and 501(c)(3). Better Business Bureau v. United States, 326 U.S. at 283.

In American Campaign Academy v Commissioner, 92 TC 1053, 1064 (1989) the court stated in part, "When an organization operates 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, the organization, by definition does not operate exclusively for exempt purposes. Prohibited private benefits may include an advantage, profit, fruit, privilege, gain, or interest. Thus, should an organization be shown to benefit

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private interests, it will be deemed to further a nonexempt purpose under section 1.501 (c)(3) -1(d)(ii) of the Income Tax Regulations.

In Est of Hawaii v Commissioner, 71 T.C. 1067 (1979), aff'd in an unpublished opinion, 647 F.2d 170(9<sup>th</sup> Cir. 1981) the court stated in part that several for-profit organizations that had no formal control over the nonprofit entity in question nevertheless exerted considerable control over its activities. The Tax Court found that the ultimate beneficiaries of the nonprofits activities were the for-profit corporations and that the non-profit was simply the instrument to subsidize the for-profit corporations.

In Revenue Ruling 67-5, 1967-1 C.B. 123, it was held that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities which were beneficial to them, but detrimental to the foundation. It was further held that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. Therefore, the foundation was not entitled to exemption from Federal income tax under section 501(c)(3).

### **Government Position**

For an organization to be exempt under section 501 (c)(3) of the Code, it must be organized and operated exclusively for one or more exempt purposes. A review of the documentation provided by A indicates that they meet the organizational test. The issue here is whether A meets the operational test.

A's Articles of Incorporation and their original application for exemption states that their primary purpose and activities will be for classical research in the field of oceanography and other fields; to develop educational programs; to prepare and publish various textbooks and educational materials; and to conduct classroom instruction and present seminars.

The application stated that the organization's primary source of funding would be from the D, fundraising activities limited to applications for grants and solicited contributions from businesses and private citizens. The application makes no reference to any boat solicitation program for the buying and reselling of boats and other donated items.

During the course of the examination, it was noted that the primary activity was the organizations boat donation program. A's web site provides complete details on their donations programs and promotes the bargain sales approach. A used

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four professional for profit fundraising companies to handle the donations in the name of the organization. A's charitable program consisted of providing some grants and allocations, boating programs for children and equipment for research. Actual expenditures for charitable activities noted in the financial records for the years under examination were \$ 37,800.00 for Year 1 and \$ 90,070.00 for 2001. These amounts equate to .3% of gross receipts for 2000 and .38% of gross receipts for Year 2. On the Form 990, A reported Program Service Disbursements in higher amounts which equated to 1.7% of gross receipts for Year 1 and 1.2% of gross receipts for Year 2. The total expenditures for grants, allocations and contributions equated to .9% of the total expenses for 2000 and 1.3% of total expenses for 2001. Thus A's principal activities were not in the performance of its charitable programs described in its articles of incorporation and application for exemption or for that matter engaging in any other type of significant charitable activity.

The law and court cases referenced in the law section essentially state that a qualified tax exempt organization must have a charitable activity as its primary activity. The primary activity test for a 501 (c)(3) organization is based on the facts and circumstances surrounding the organizations activities and financial resources. The activity test requires that an organization have a charitable program that is both real and taking the organizations circumstances and financial resources into account, substantial. The organization's charitable activity in relation to its available financial resources from gifts, contributions, grants, and fundraising as measured against the time and expense of the fundraising must be substantial. In this case, the facts demonstrate that A does not have a charitable program that is its primary activity.

Section 1.501 (c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather a private interest. It further states that to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized and operated for the benefit of private interests.

The facts and circumstances surrounding A activities during the examination period established that A utilized four professional for profit fundraising companies for their solicitation and donation programs. These companies are listed on A's web site and on their pamphlets and brochures. Three of the companies were owned by the same individual, Officer 5, or a family member of this individual. The fourth company which is no longer active had Officer 4, current president of A, as its registered agent. In response to an IDR question, the organization stated that Officer 4 has known the founder, Officer 5 for

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approximately 30 years and that Officer 4 was asked by Officer 5 to come out of semi-retirement and take the position as president of A.

During the years under examination, financial records and responses to IDR's report expenses for professional fundraising fees and commissions in the amounts of \$ 4,124,609.00 for Year 1 and \$ 6,768,371.00 for Year 2. These amounts equate to 94.8% of total expenses reported for 2000 and to 94.96% of total expenses reported for 2001. The professional fundraising fees and commissions were paid to the four fundraising companies in the amounts listed below. These companies are G (G) located in Location 1, H (H) located in Location 2, I (I) located in Location 3, and J (J) located in Location 4.

**2000**

<u>Company</u>	<u>Fees</u>	<u>Commissions</u>	<u>Total</u>
G	\$ 1,775,178	\$ 420,233	\$ 2,195,411
H	1,188,933	137,038	1,325,971
I	274,590	21,450	296,040
J	<u>291,187</u>	<u>16,000</u>	<u>307,187</u>
Total	\$ 3,529,888	\$ 594,721	\$ 4,124,609

**2001**

<u>Company</u>	<u>Fees</u>	<u>Commissions</u>	<u>Total</u>
G	\$ 2,658,045	\$ 738,805	\$ 3,396,850
H	1,935,921	699,631	2,635,552
I	671,355	0	671,355
J	<u>7,650</u>	<u>0</u>	<u>7,650</u>
Total	\$ 5,272,971	\$ 1,438,436	\$ 6,711,407

The examination also revealed that there is only one contract executed with I to conduct fundraising for A. This contract grants full authority to I to use A's name and authority in I's solicitations. Although there were no contracts with the other companies, they nonetheless acted with the same authority.

Private benefit may take the form of an advantage, privilege, gain or interest and may accrue to designated individuals, organizations, shareholders or persons controlled directly or indirectly by such private interests. See American Campaign Academy, supra. In this case, the facts show that the for-profit fundraising companies are the ones that are benefiting. The companies receive on average 94% of the expenditures reported by A. The facts in this case are

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also similar to the situation in *est of Hawaii, supra*, where several for profit corporations lacked structural control over the charity but were able to use the charity as an instrument to further their own for profit purpose. In this case the for-profit fundraising companies are furthering their businesses of buying and selling boats. Where it is found that the for profit companies are the controlling element in an arrangement and are merely using the charity as a vehicle to carry on their activities for their own profit, private benefit exists and denial of exemption to the charity is warranted.

### **Taxpayer's Position**

The organization has stated that the expense and gross receipts ratios used by the agent are inaccurate because the Form 990 filed for the Year 1 and Year 2 were misstated due to accounting errors of the organization. The organization provided different expense and gross receipts ratios in their Protest using corrected numbers that were different from the Form 990 originally filed.

### **Conclusion**

The ratios, as they relate to charitable expenditures, remain minimal even with the new adjustments. However, the ratios, as well as the findings of the examination, indicate that the organization is operating for the private benefit of the for-profit fundraising companies who essentially run the boat donation program. These for-profit fundraising companies receive over 90% of the expenses of the EO. The examination also indicated that there is a personal and business relationship between the principals of the EO and the for-profit fundraising companies.

Charitable exemption issues should be settled based on whether the charity was devoted to its charitable purposes as set in its articles of incorporation; whether the charity maintains a program of charitable activities that are substantial in nature; and whether a charity is operationally faithful to those stated purposes exclusively. The facts in this case show that A has failed the operational test under section 501 (c)(3) of the Code and Regulations. Therefore, it is concluded that;

1. The tax exempt status of A as an organization described in 501 (c)(3) of the Code should be revoked because it does not have a charitable program that is substantial in nature and because of the presence of private benefit to the for-profit fundraising companies, effective Date 2.