



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75424

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Number: **200803023**

Release Date: 1/18/2007

October 26, 2007

ORG – Name of Organization

UIL: 501.03-01

CERTIFIED MAIL – RETURNED RECEIPT

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: _____

Dear :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective October 1, 20XX.

Our adverse determination was made for the following reasons:

You are not organized exclusively for an exempt purpose as required by Treasury Regulations section 1.501(c)(3)-1(b). Your Articles of Organization do not limit the purpose of your organization to one or more exempt purposes. You have not been operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3) and Treas. Reg. section 1.501(c)(3)-1(a). You have not demonstrated that you primarily engage in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) as required by Treasury Regulations section 1.501(c)(3)-1(c)(1). Furthermore, you have failed to timely file annual returns as required by section 6033 of the Internal Revenue Code.

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. These returns should be filed with the appropriate Service Center for the fiscal year ending September 30, 20XX, and for all years thereafter.

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.

1100 Commerce Street Dallas, TX 75242

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

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.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling:

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 section 6104(c) of the Internal Revenue Code.

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

Sincerely yours,

Marsha A. Ramirez
Director, EO Examinations



DEPARTMENT OF THE TREASURY

Internal Revenue Service

WASHINGTON, DC 20224

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

May 18, 2007

ORG

Certified Mail – Return Receipt Requested

Dear _____,

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us, a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals Office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

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

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,



Marsha A. Ramirez,
Director, EO Examinations

ENCLOSURES:

Publication 892

Publication 3498

Report of Examination: Form 4621, Form 886-A, Form 6018

EXPLANATION OF ITEMS

Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
ORG	EIN	09/ 30/ 20XX 09/ 30/ 20YY	Mm/dd/yy

LEGEND:

ORG - Name of Organization XYZ - State Officer1 - Chairmen of Board
City - Name of City TUV - District Officer2 - Executive Director
Members - Name of Group EIN - TIN Officer3 - Chief Financial Officer

ISSUE:

Whether ORG is operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code when it fails to provide records to substantiate that it is engaged primarily in activities that accomplish an exempt purpose.

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EXPLANATION OF ITEMS

Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
ORG	EIN	09/ 30/ 20XX 09/ 30/ 20YY	Mm/dd/yy

FACTS:

An audit of ORG. (hereinafter ORG) was conducted for the tax year ending September 30, 20XX and September 30, 20YY.

A copy of ORG' Articles of Incorporation obtained from the Government of XYZ, Department of Consumer and Regulatory Affairs, Corporations Division shows that it was filed with the Government of XYZ's Recorder of Deeds, Corporate Division on June 24, 19AA, under the Non-profit Corporation Act.

The Articles state that it is "to serve senior citizens (persons 55 years and older) in all areas of Metropolitan City who are a.) physically disabled, b.) homebound and c.) transportation problems." It will provide these individuals with counseling and social work services, to assist in preventing institutionalization, assist in grocery shopping, act as a proxy to obtain food stamp assistance, pick-up and deliver prescription medication to sick clients, assist with applying for Medicaid, Public assistance and Veterans' benefits, and to provide emergency assistance when needed.

The Articles also contain a statement prohibiting certain activities as required by Statutes, a dissolution clause, identifying the initial two (2) classes of membership and setting the number of Directors of ORG as three (3) who are to serve until their successors are elected. No amendments to these filed Articles of Incorporation has been evidenced.

A copy of ORG' Bylaws, do not indicate the date they were adopted, lacked page numbers and appears to be missing at least one page.

The statement of purpose in Article 3 of the By-laws states that its primary objective shall be to assist and support senior citizens in the areas of social and physical services utilizing resources from Federal and Local government, private industry and philanthropic agencies by developing programs that answer the needs of the elderly.

Article 4 of the By-laws states the Board of Directors shall manage the affairs of ORG. The number of Board members is indicated to be eleven (11) and shall serve for a term of one (1) year and are permitted to succeed themselves. While it is not required that a Director be a resident of XYZ, the majority of the Directors shall be residents of the community of TUV .

The Board shall establish all policies and control all affairs and property of ORG. They shall have the authority to hire the Executive Director only. The Executive Director will be a member of the Board of Directors and serve as liaison between the staff and the Board. The Executive Director's responsibilities shall include the management of personnel, administrative policies and financial matters in compliance with the directives of the Board.

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A simple majority of Board members shall constitute a quorum to conduct meetings and approval by a majority of the members present shall qualify as an act of the Board.

The Executive Committee will include the Chairman of the Board, Vice-president, Secretary and Treasurer. The Board may also elect or appoint other official positions it deems necessary. No amendments to the By-laws have been evidenced.

Minutes of meetings were requested with Form 4564, Information Document Request, (IDR) numbered ORG-003, dated March 24, 20ZZ. ORG failed to respond to this request. A second request was made with IDR numbered ORG-004, dated July 06, 20ZZ. ORG' response to this request was that it lacked any of the items being requested.

APPLICATION FOR RECOGNITION OF TAX EXEMPT STATUS

ORG' Form 1023, Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code (Application), was unable to be located by the Service's Records Unit staff. The Service requested a copy of ORG' exemption letter in both IDR #003 and #004. ORG' response indicated that it lacked any of the items being requested.

The documents that were retrieved from the Service's Records Unit are limited to ORG' correspondence regarding its sources of financial support submitted at the conclusion of its advance ruling period. This includes a Form 8734, *Support Schedule for Advance Ruling Period*, and ORG' statement that it did not have any records from the 4 year look-back period because they were either destroyed by a fire or stolen in a robbery; however all of its income was derived exclusively from Governmental grants. Based upon this information, Letter 1050, *Final Determination of Foundation Status*, dated April 16, 1986 was issued classifying it as an organization which was not a Private Foundation because it was of the type described in Internal Revenue Code (IRC) sections 509(a)(1) and 170(b)(1)(A)(vi).

FORM 990 FILING COMPLIANCE

The Service's records, as of the date of this report, show that ORG has not filed a Form 990, *Return of Organization Exempt from Income Tax*, for each of the Fiscal years ended September 30, 20XX, September 30, 20YY, September 30, 20WW or September 30, 20VV.

The Service requested on February 02, 20ZZ with Form 4564, Information Document Request, (IDR) numbered ORG-001 that each of these returns be filed immediately with the examining Revenue Agent by 2/ 22/ 20ZZ. The request included Internal Revenue Code (IRC) citations setting forth ORG' requirement to file returns and advised of the applicable penalties for the failure to comply with the request. Although the certified mail receipt was returned acknowledging that the notification was received, ORG failed to submit completed returns.

Form 886-A (Rev. January 1994)	EXPLANATION OF ITEMS		Schedule Number or Exhibit
Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
ORG	EIN	09/ 30/ 20XX 09/ 30/ 20YY	Mm/dd/yy

After ORG' failure to file the overdue Form 990 returns, a letter was sent on March 1, 20ZZ, to Mr. Officer1, the Chairman of the Board of Directors, informing him of the problem and requesting that he intercede to resolve it. He responded with a telephone call and promised that the returns would be filed with-in 60 days. The returns have yet to be submitted.

A second request was made in IDR numbered ORG-004, issued July 06, 20ZZ. ORG failed to respond. As of the date of this report, ORG has not submitted any of the requested Form 990 returns nor has it filed a return for Fiscal year ended September 30, 20ZZ.

OTHER TAX FORM FILING COMPLIANCE

ORG has also ceased filing Form 941, Employer's Quarterly Federal Tax Return. The last period for which it filed this employment tax form was for the Quarter ending December 31, 20XX. It has not filed a Quarterly report for any subsequent period. However, it did submit, *W-2, Wage and Tax Statements*, reporting the wages paid to employees during 20YY and 20WW.

Also, ORG has failed to file its Annual reports with the Government of XYZ's Department of Consumer and Regulatory Affairs office (CITYRA) which has resulted in ORG' registration to do business in the city to be revoked.

ACTIVITIES:

ORG was notified by Letter 3611, Notification of Examination, dated February 02, 20ZZ that a Revenue Agent would be at their business location on Wednesday, February 22, 20ZZ at 8:30 am. This letter instructs the recipient to contact the examining employee with any questions or to reschedule the assigned appointment. While ORG did send a fax to request that the appointment be rescheduled, it was sent after the close of business on Tuesday, February 21, 20ZZ.

Upon arrival at ORG' facility, the examiner was informed that the Executive Director, Ms. Officer2, was not in nor was she expected until later that afternoon. The acting site manager made several unsuccessful attempts to contact OFFICER2 at both her residence and mobile phone numbers. While waiting, the examiner noted that there were about 15 senior citizens in attendance. The facility is located in an end unit of a cluster of six (6) commercial use store fronts and is across the street from a community shopping center. ORG' space is comprised of a large community room with folding tables and chairs, a backroom, which appeared to be a kitchen facility, a walled in corner used as an office. At the entrance sat an individual who performed duties of a receptionist by greeting entering patrons, answering the phone, accepting the mail, etc.

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During the short time the Members, who were assumed to be clients, were observed they were merely sitting at various tables, drinking coffee/tea and socializing and did not appear to be engaged in any specific group activity.

OFFICER2 made contact later that day to explain that she does not have the records, but the chief financial officer, Mr. Officer3 is in possession of them. I clarified that OFFICER3 is merely a contractor in ORG' employ and as such a Form 2848, Power of Attorney and Declaration of Representative would be required. OFFICER3 was contacted after a properly completed F-2848 was received. Although OFFICER3 made assurances, on several occasions, that he would be able to provide copies of the requested records, he always needed to cancel each scheduled appointment and therefore, never submitted any records.

OFFICER3 is an un-enrolled preparer. As such, he may only represent a taxpayer in matters before the Service involving returns he prepared. Since returns were never filed, he is ineligible to represent ORG. ORG was notified by certified mail on October 5, 20ZZ of the decision to no longer recognize OFFICER3 as their representative.

Summonses were issued on April 18, 20ZZ to obtain ORG' banking records.

An Analysis of the items deposited into the accounts during FYE Sept 30, 20XX indicates that revenues were derived primarily from the following activities:

Activity	FY Sept 30, 20XX Revenue	% of Total Revenue
Travel Services		%
Day Care Services		%
Meal Services		%
Unidentified		%
Total Deposits		

ORG annually entered into contracts with the CITY Department on Aging to provide meals, daycare, medical and transportation services to residents of Ward who were 55 years of age or older. The recorded deposits show that \$ was received from the CITY Dept on Aging and that Medicaid paid out \$. However, these deposits did not have any designation to identify a specific activity or reason for the payment.

Information was not obtained to perform a detailed analysis to determine the nature of ORG' expenditures.

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LAW:

Section 501(c)(3) of the 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 to foster national or international amateur sports competition, 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 any political campaign on behalf of any candidate for public office.

Section 6001 of the Code provides that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

The term charitable includes relief of the poor and distressed. Income Tax Regs. Section 1.501(c)(3)-1(d)(2).

Section 1.501 (c)(3)-1 (a)(1) of the Regulations 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.

Section 1.501 (c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that 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. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of City. D.C. v. U.S., 326 U.S. 279 (1945).

In Better Business Bureau of City D.C.. Inc. v. United States, supra, The Court found that the organization had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

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An organization must establish that it serves a public rather than a private interest and "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." Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Prohibited private interests include those of unrelated third parties as well as insiders. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign. Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; fruit; privilege; gain; [or] interest." Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

Counseling of the individual has, in a number of instances, been held to be a tax-exempt charitable activity.

Revenue Ruling 68-71, 1968-1 CB 249 (career planning education through free vocational counseling and publications sold at a nominal charge).

Revenue Ruling 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs);

Revenue Ruling 70-640, 1970-2 CB 117 (free marriage counseling);

Revenue Ruling 73-569, 1973-2 C.B. 179 (free counseling to pregnant women);

Revenue Ruling 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants);

Revenue Ruling 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows);

Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

Providing services that address the special needs of senior citizens have been held to qualify as an exempt activity.

Revenue Ruling 75-198, 1975-1 CB 157 (facility for specialized recreation for a particular community's senior citizens);

Revenue Ruling 77-246, 1977-2 CB 190 (Low cost Bus transportation for senior citizens and handicapped);

Revenue Ruling 81-61, 1981-1 CB 355 (Senior citizens' center operation of a beauty shop and barber shop).

Revenue Ruling 59-95, 1959-1 CB 627, held that an organization's failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of its exempt status, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

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DISCUSSION and ANALYSIS:

A determination of an organization’s exempt status as an organization described in §501(c)(3), is based on both its stated exempt purposes and its methods of operating to accomplish its purposes. These are both factual determinations. The burden of demonstrating its continued entitlement to recognition under §501(c)(3) lies with ORG.

The first requirement of Treasury Regulation Section 1.501 (c)(3)-1 (a)(1) is the organizational test. Although ORG did not directly provide a copy of its Articles of Incorporation, two versions were obtained. One was a copy originally document filed with the Government of XYZ’s Department of Consumer and Regulatory Affairs (CITYRA) in 19AA. CITY records do not contain any amendments having been adopted by ORG. This document meets the organizational test in limiting ORG’ activities to those permitted by IRC §501(c)(3).

The other version, while undated, does have a date stamp of October 18, 20TT, the day it was faxed to the recipient. The organization’s legal name on this document is different from that of the original document. The name is “ORG, Incorporated”. Article Three of this document states The ORG Inc.’s purposes are “to promote the general interest and welfare of the aged and to give emphasis to those activities which improve the quality of life of the aged.” In section (2) of this Article, ORG adds that it “shall promote the business interest of the senior organizations and all other businesses not inconsistent with law....” Both of these stated purposes are too broad and fail to limit ORG’ activities to exempt purposes. Thus this version would not satisfy the organizational test.

ORG did not make any statement to clarify when this alternate version was adopted. However, this document has been used by ORG on several occasions. The first use was, when it registered with the Department of Assessments and Taxation as a foreign organization doing business in the State on April 17, 20RR and again on August 27, 20YY when it revived its registration, which had been forfeited as a result of its failure to file an Annual Property Tax Return for 20TT. The second use was to obtain a bank loan in October of 20TT.

In light of the continuous use of this document, it can only be determined that ORG has not been properly organized for 501(c)(3) purposes since at least April 17, 20RR.

The second requirement of Treasury Regulation Section 1.501 (c)(3)-1 (a)(1) is the operational test. An organization must establish that it operates for a qualified public purpose rather than for the benefit of private interests.

ORG failed to provide any documents to establish that it was operating in furtherance of any exempt purpose. However, through the use of summonses and third party contacts

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information about ORG' activities were developed sufficiently to show that its purposes are not exclusively charitable.

ORG on both its website and other public documents states that it provides extensive services to senior citizens located in Ward . Such as meal deliveries, an Adult Daycare center, Medical screenings, nutrition counseling and assistance with applying for benefits from Social Service agencies. ORG did not provide any information or other documents to establish that its services were limited to the specific demographic population.

The CITY Department on Aging has raised concerns over ORG program operations. It made allegations that ORG was ordering extra meals and selling them to member of the general public who were unqualified for program participation. Meals were to be provided to qualified individuals free of charge. It was ORG practice to ask Members in attendance at the center to pay \$1 and they were then given a ticket to submit in exchange for their meal. Meals were only given to individuals with a ticket. For those clients whose meals were delivered to their residence, OFFICER2 would provide a monthly statement assessing this charge. This practice created a dispute as to whether the \$1/meal charge imposed by ORG on Members is a required payment or a voluntary donation. In a survey of meal recipients, most believed that the charge was a fee that if unpaid, a meal would not be provided.

The summonsed bank records show that ORG received over \$ in payments during FY 20XX from the Government of XYZ Department on Aging and the Medicaid program for these services. However, this claim has been challenged by CITY's Office of the Attorney General in a lawsuit it filed against ORG seeking the repayment of \$ of the \$ it was paid because ORG is unable to provide adequate documentation to establish that the funds were spent for authorized purposes.

The bank records also indicate that ORG was leasing out its fleet of vehicles as a chartered transportation business and for travel tour excursions. ORG did not provide any documents or information to show that such rentals were limited to periods that the vehicles were not needed or used to perform other senior services. Nor to show that such activity was in furtherance of an exempt purpose.

While there have been numerous revenue rulings which have determined that providing either counseling services or services that meet the special needs of senior citizens may qualify for exemption, ORG has failed to present any validation to support any claim that qualified services have been provided qualified recipients.

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Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
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TAXPAYER'S POSITION:

ORG' Executive Director, OFFICER2 disagrees that revocation is appropriate. She feels that the organization provides important and necessary services to a segment of society that is located in an underserved neighborhood of XYZ that results in their dire need of help. Without ORG' services many Members will be unable to get nutritious meals, medical services, mental health counseling or social work assistance in navigating the complex procedures to obtain such benefits.

Rebuttal

The Service's proposal for revocation is based entirely upon the actions and inaction of ORG' leadership to establish both policies and procedures that fulfill its stated purposes while being compliant with all laws and regulations in connection with its chosen activities. ORG' lack of supporting records fails any method of testing that it is operating for the good of its community.

CONCLUSION:

As a result of ORG' inability to substantiate in any material way that it is both organized and operated exclusively for charitable and educational purposes within the purview of §501(c)(3), its exemption status shall be revoked as of October 1, 20TT, the first day of the period under examination.