



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

MC:4929CHI Battle
230 South Dearborn Street
Chicago, IL 60604

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

October 31, 2007

UIL: 501.03-01

Number: **200805024**
Release Date: 2/1/2008

LEGEND:

ORG = Name of ORG

City = City Name

Date = 20XX/19XX

ORG
Address

Employer Identification #

Person To Contact/ID#:
Contact Telephone Number
Taxpayer Advocate's Office, Address,
Telephone Number:
Taxpayer Advocate
Telephone:
Fax:

CERTIFIED MAIL

LAST DATE TO FILE A PETITION
IN TAX COURT

January 29, 20XX

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. § 501(c)(3). In addition, you do not qualify as an organization described in I.R.C. § 509(a). Internal Revenue Service recognition of your status as an organization described in I.R.C. section 501(c)(3) is revoked, effective January 1, 20XX. Our adverse determination is made for the following reason(s):

You have not established you operated exclusively for exempt purposes within the meaning of I.R.C. § 501(C) (3). You failed to provide adequate documentation to confirm the organizations exempt activities.

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 the exempt purposes specified in IRC §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. Your organization has not provided any evidence you engaged in any activities that furthers your exempt purposes.

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 January 1, 20XX 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 and Form 1041 for all years beginning after January 1, 20XX. Returns for the years ending December 31, 20XX, December 31, 20XX, December 20XX, and December 31, 20XX 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:

Send such returns to the following address:

Internal Revenue Service

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 91st 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,

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 January 29, 20XX.

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,

Lois G. Lerner
Director, Exempt Organizations

Enclosures;
Pub. 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
1100 Commerce Street
Dallas, TX 75242

Taxpayer Identification Number:

Form:

990-PF

Tax Year(s) Ended:

December 31, 20XX

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Organization

Organization address

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:

Taxpayer Advocate

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

LEGEND:

ORG = Name of ORG	City = City Name	Date = 20XX/19XX
Company = Initial Org Name	Founder = Founder Name	XYZ = State
Organization = Second Organization	CO = Third Organization	CFO = Chief Financial Officer

Issue

SHOULD THE ORG'S EXEMPT STATUS BE REVOKED?

- 1) Whether the Company has violated §4941 of the provisions of Chapter 42 by participating in acts of self dealing.
- 2) Whether Founder, who is a disqualified person as to ORG, participated in acts of self-dealing under §4941(d)(1)(A) and §4941(d)(1)(E) of the Code, where Founder, as the Company's trustee invested all of the ORG' s cash assets into Organization, an ORG for which Founder acts as CEO.
- 3) Whether the acts of self-dealing, if any, were corrected within the meaning of §4941(e)(3) of the Code.
- 4) Whether the Company has violated §4942 of the provisions of Chapter 42 by failing to make qualifying distributions.
- 5) Whether the Company made jeopardizing investments as prohibited under §4944 when Founder invested all of the Company's assets into Organization.
- 6) Whether Founder, who is a disqualified person as to ORG, made a jeopardizing investment when Founder, as the Company's trustee invested all of the ORG' s cash assets into Organization, an ORG for which Founder acts as CEO.
- 7) Whether the investments were removed from jeopardy within the meaning of §4944(e)(2) of the Codes.
- 8) Whether the Company's violations, if any, of the provisions of Chapter 42 are a basis for involuntary termination of private Company status under §507(a)(2) of the Code.

Facts

The ORG is a private Company created for the purpose off funding research. It is recognized as exempt under IRC Section 501(c)(3) of the Internal Revenue Code.

Founder of the Company, a substantial contributor to the Company and the Company's sole trustee, is a disqualified person as defined in Section 4946 of the Code as to the ORG.

Organization is a for-profit corporation, which Founder purchased from CO, and in which others invested in.

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

LEGEND:

ORG = Name of ORG City = City Name Date = 20XX/19XX
Company = Initial Org Name Founder = Founder Name XYZ = State
Organization = Second Organization CO = Third Organization CFO = Chief Financial Officer

The year under examination is the period ending December 31, 20XX. Form 990-PF was not filed for 20XX. According to Founder, the Company has been inactive for the past two and a half (2.5) years. Founder has not maintained any records for the Company. According to Founder, a general ledger has not been maintained for the past ten years. The Company has not been able to provide any evidence of its past or current financial situation.

Based on Forms 990-PF retrieved from GuideStar (for the years ending December 31, 19XX, 20XX, and 20XX), it has been confirmed that the ORG has not made any distributions since 19XX. All years prior to 19XX could not be determined.

The Company's sole activity, verifiable from 19XX forward, is its investment in Organization. Based on information retrieved from the return, it appears that the Company ceased activity and has not served its exempt function since 19XX

Excess distributions from 19XX recorded in corpus:
Excess distributions 19XX-19XX: \$

Distributable amount in 19XX: \$
Distributed in 19XX (in the form of expenses): \$
Distributed in 19XX (from corpus): \$

Distributable amount in 19XX: \$
Distributed in 19XX (in the form of expenses): \$
Distributed in 19XX (from corpus): \$

Distributable amount in 20XX: \$
Distributed in 20XX (in the form of expenses): \$
Undistributed income due in 20XX: \$

Distributable amount in 20XX: \$
Distributed for 20XX (in the form of expenses): \$
Undistributed income from 20XX: \$
Undistributed income due in 20XX: \$

According to Founder, distributions were not made because he did not find any research project that he felt was worth investing in at the time; therefore, he decided to place the Company's money into an investment, in the meantime, while waiting for something worthy to surface.

The initial investment date cannot be confirmed because Founder has not maintained any records and has forgotten when he made the investment. Over the duration of the investment that may be confirmed, the exempt ORG has not received any dividend or other types of payments from Organization indicating a profitable investment.

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

LEGEND:

ORG = Name of ORG City = City Name Date = 20XX/19XX
Company = Initial Org Name Founder = Founder Name XYZ = State
Organization = Second Organization CO = Third Organization CFO = Chief Financial Officer

Form 990-PF 20XX

Total Assets: \$
Savings: \$
Accounts Receivable: \$
Investments: \$

Although records were not provided, in a letter dated September 30, 20XX, Founder explained that aside from a very small amount of funds donated by others to the Company right after the death of his first wife in 19XX, he contributed all of the funds to the Company. Founder stated that he did not think he was mentally incompetent at the age of 82. He contended that the technology research and development pursued by Organization is gaining worldwide interest.

The minimal cash left in the Company's bank account was exhausted by bank maintenance charges, and eventually, the account was terminated in 20XX. In his letter dated December 20, 20XX, Founder recalled that the ORG once containing substantial funds in its account exceeding \$, which primarily stemmed from funds he had contributed after he sold a hotel he owned in the XYZ at a loss. These were the same funds that he invested, in increments, to Organization at a high interest rate. Founder could not explain what the \$ in accounts receivable represented.

In a letter to the IRS dated December 20, 20XX, Founder stated that he was the unpaid CEO of Organization ("in the years after 19XX"). Founder was 69 years old when he became the CEO of Organization and hoped to retire with the employees taking on the company, but no employees had sufficient experience to pursue the parties who were infringing upon the Company's patents.

Founder admitted that he made a bad mistake in loaning Company funds to Organization. The ORG had funds on reserve since Founder did not find any projects worth investing in. In order to maximize funds for the Company, he invested them in Organization. Organization committed to a higher interest rate than anywhere else and did not appear to be a risk investment. At the time in which the loan was made, a key patent was issued to Organization, and a law firm had taken on the case of suing the infringers on a contingency basis. This was expected to bring in substantial royalties.

Around the same time, the ORG's CFO, CFO mysteriously abandoned the ORG's books with one of the employees. After he left, review of the books showed that he was paying himself unauthorized checks for over eight months from various accounts. Funds that were stolen totaled about \$. These checks made the ORG appear as if it was gradually incurring a loss, and total funds embezzled made up virtually all of the ORG's cash assets.

Upon discovery, Organization reported the issue to the XYZ County District Attorney's office. The District Attorney brought CFO in for questioning. He provided an old document promising

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

LEGEND:

ORG = Name of ORG
Company = Initial Org Name
Organization = Second Organization
City = City Name
Founder = Founder Name
CO = Third Organization
Date = 20XX/19XX
XYZ = State
CFO = Chief Financial Officer

compensation that he claimed he had not received. The District Attorney decided not to prosecute without verifying the validity of the document in spite of the fraudulent book entries that were previously presented. She said that the case was getting too complicated to assure a guilty verdict. She suggested that Organization sue CFO, but he had left XYZ and probably didn't have the funds to repay them.

Organization has not been officially terminated due to the patent infringements that Founder still wishes to find support to pursue. Even after letting all of the Organization employees go and incurring personal debt to maintain it, Founder stated that he and the investors (all friends of his) decided not to officially close down Organization. They do not have the substantial funds necessary to sue the infringers, and unless they somehow raise the funds to do so, Organization may eventually have to close down due to lache patent considerations.

Upon initial contact, Mr. Founder had requested voluntary termination of the private Company's exempt status due to lack of activity and insolvency.

Law

Chapter 42, §4946(a)(1)(A) defines, in part, a disqualified person with respect to a private Company as a person who is a substantial contributor to the Company.

Chapter 42, §4946(a)(1)(B) defines, in part, a disqualified person with respect to a private Company as a person who is a Company manager.

Chapter 42, §4946(a)(1)(E) defines, in part, a disqualified person with respect to a private Company as a corporation of which persons described in subparagraphs (A), (B), (C), and (D) own more than 35 percent of the total combined voting power.

According to IRC §6501(e)(3), any excise tax transaction imposed under a provision of Chapter 42 that is not disclosed would be considered 100 percent underreported and would automatically activate the six-year statute.

Treas. Reg. §301.6501(n)-1(a)(1) explicitly provides that for purposes of determining the statute of limitations under IRC Section 6501, the return of the private Company is considered the return of all persons required to file a return with respect to any Chapter 42 tax, even if all those persons did not sign the return, and even if the Company (in good faith) incorrectly answers the questions pertaining to liability under Chapter 42.

IRC §6033(a)(1) requires any ORG exempt from tax under IRC §501(a), to file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purpose of carrying out the internal revenue laws by forms or

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

LEGEND:

ORG = Name of ORG	City = City Name	Date = 20XX/19XX
Company = Initial Org Name	Founder = Founder Name	XYZ = State
Organization = Second Organization	CO = Third Organization	CFO = Chief Financial Officer

regulations prescribed and to keep such books and records as are necessary to substantiate such information.

Treas. Reg. §1.6033-2(1) and (2) provides, in part, that every ORG which is exempt from tax, whether or not it is required to file an annual information return, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status and administering the provisions of subchapter F, chapter 1 of subtitle A of the Code, IRC §6033, and chapter 42 of subtitle D of the Code.

Revenue Ruling 59-95, 1959-1 C.B. 627, provides that failure to file an information return or otherwise to comply with the provision of §6033 of the Internal Revenue Code may result in the termination of the exempt status of an ORG on the grounds that the ORG has not established that it is observing the conditions required for the continuation of its exempt status.

Chapter 42, §4941(a)(1) imposes a tax on each act of self-dealing between the disqualified person and a private Company.

Chapter 42, §4941(d)(1)(B) provides, in part, that self dealing means any direct or indirect lending money or other extension of credit between such a private Company and a disqualified person.

Treas. Reg. 53.4941(d)-2(c)(2) provides that the lending of money or extension of credit by a disqualified person to a private Company will not be considered self dealing if the loan or other extension of credit is without interest or other charge.

Treas. Reg. 53.4941(d)-2(c)(3) provides the making of a promise, pledge or similar arrangement to a private Company by a disqualified person, whether evidenced by an oral or written agreement, a promissory note, or other instrument of indebtedness, to the extent motivated by charitable intent and unsupported by consideration, is not an extension of credit before the date of maturity.

Treas. Reg. 53.4941(d)-2(c)(4) provides the performance by a bank or trust company which is a disqualified person of trust functions and certain general banking services for a private Company is not an act of self-dealing, where the banking services are reasonable and necessary to carrying out the exempt purposes of the private Company, if the compensation paid to the bank or trust company, taking into account the fair interest rate for the use of the funds by the bank or trust company, for such services is not excessive.

Treas. Reg. §53.4941(e)-(1)(c) provides that to the extent possible, the transaction must be undone and the Company restored to a financial position no worse than what it would have been had the disqualified person been dealing on the highest fiduciary standards.

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

LEGEND:

ORG = Name of ORG
Company = Initial Org Name
Organization = Second Organization
City = City Name
Founder = Founder Name
CO = Third Organization
Date = 20XX/19XX
XYZ = State
CFO = Chief Financial Officer

Treas. Reg. §53.4941(e)-(1)(e)(1) provides that if a transaction between a private Company and a disqualified person is determined to be self dealing, for purposes of section 4941, there is generally one act of self dealing. If, however, such transaction relates to the leasing of property, the lending of money or other extension of credit, other use of money or property, or payment of compensation, the transaction will generally be treated as giving rise to an act of self dealing on the day the transaction occurs plus an act of self dealing on the first day of each taxable year or portion of a taxable year which is within the taxable period and which begins after the taxable year in which the transaction occurs.

Chapter 42, §4942(a) provides, in part, that there will be a tax imposed on the undistributed income of a private Company for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period). The tax will equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year.

Chapter 42, §4942(b) provides that in any case in which an initial tax imposed under subsection (a) on the undistributed income of a private Company for any taxable year, if any portion of such income remains undistributed at the close of the taxable period, there is imposed a tax equal to 100 percent of the amount remaining undistributed at such time.

Chapter 42, §4942(c) defines undistributed income for any taxable year as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made before such time out of such distributable amount.

Treas. Reg. §53.4942(a)-2(a) describes undistributed income, with respect to any private Company for any taxable year as of any time, as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made.

Treas. Reg. §53.4942(a)-2(b) defines the distributable amount for the purposes of paragraph (a) as an amount equal to the sum of the minimum investment return reduced by the sum of the taxes imposed on such private Company for the taxable year under subtitle A and §4940 plus the amount described in subparagraph (2) of this paragraph (pertaining to certain trust amounts).

Treas. Reg. §53.4942(a)-2(c) Minimum investment return per is 5 percent of the excess of the aggregate fair market value of all assets of the Company, other than those which are used (or held for use) directly in carrying out the Company's exempt purpose, minus the acquisition indebtedness with respect to such assets.

Treas. Reg. §53.4942(b)-1(i) provides that the initial tax imposed by section 4942(a) shall not apply to the undistributed income of a private Company for any taxable year for which it is an operating Company as defined in section 4942 (j)(3).

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

LEGEND:

ORG = Name of ORG	City = City Name	Date = 20XX/19XX
Company = Initial Org Name	Founder = Founder Name	XYZ = State
Organization = Second Organization	CO = Third Organization	CFO = Chief Financial Officer

Treas. Reg. §53.4942(b)-1(ii) provides that the initial tax imposed by section 4942(a) shall not apply to the undistributed income of a private Company to the extent that the Company failed to distribute any amount solely because of incorrect valuation of assets under paragraph (c)(4) of §53.4942(a)-2 if (a) the failure was not willful and was due to reasonable cause (b) such amount is distributed as qualifying distributions by the Company during the allowable distribution period, (c) the Company notifies the Commissioner that such amount has been distributed to correct such failure and (d) such distribution is treated under paragraph (d)(2) of §53.4942(a)-3 as made out of the undistributed income for the taxable year for which a tax would have been imposed by section 4942.

Chapter 42, IRC §4944(a)(1) provides that if a private Company invests any amount in such a manner as to jeopardize the carrying out of any of its exempt purposes, there is hereby imposed on the making of such investment a tax equal to 5 percent of the amount so invested for each year (or part thereof) in the taxable period.

Chapter 42, IRC §4944(a)(2) provides that in any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any Company manager in the making of the investment, knowing it is jeopardizing the carrying out of any of the Company's exempt activities, a tax equal to 5 percent of the amount so invested for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause.

Chapter 42, IRC §4944(b)(1) provides that in any case in which an initial tax is imposed by subsection (a)(1) on the making of an investment and such investment is not removed from jeopardy within the taxable period, there is hereby imposed a tax equal to 25 percent of the amount of the investment.

Chapter 42, IRC §4944(b)(2) provides that in any case in which an additional tax is imposed by paragraph (1), if a Company manager refused to agree to part or all of the removal from jeopardy, there is hereby imposed a tax equal to 5 percent of the amount of the investment.

Chapter 42, IRC §4944(c) provides that for purposes of this section, investments, the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B), and no significant purpose of which is the production of income or the appreciation of property, shall not be considered as investment which jeopardize the carrying out of the exempt purposes.

Chapter 42, IRC §4944(d)(2) provides that with respect to any one investment, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed \$10,000.

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

LEGEND:

ORG = Name of ORG
Company = Initial Org Name
Organization = Second Organization

City = City Name
Founder = Founder Name
CO = Third Organization

Date = 20XX/19XX
XYZ = State
CFO = Chief Financial Officer

Treas. Reg. §53.4944(a)(2)(i) provides that except as provided in section 4944(c), §53.4944-6(a), and subdivision (ii) of this paragraph, an investment shall be considered to jeopardize the carrying out of the exempt purposes of a private Company if it is determined that the Company managers, in making such investment, have failed to exercise ordinary business care and prudence, under the facts and circumstances prevailing at the time of making the investment, in providing for the long and short-term financial needs of the Company to carry out its exempt purposes. In the exercise of the requisite standard of care and prudence, the Company managers may take into account the expected return, the risks of rising and falling price levels, and the need for diversification within the investment portfolio.

IRC §507(a) provides that a private Company shall be terminated only if such ORG notifies the Secretary of its intent to accomplish such termination or if there have been either willful repeated acts (or failures to act) or a willful or flagrant act (or failure to act) giving rise to liability for tax under Chapter 42. Upon termination, the ORG becomes liable for tax under subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g).

Treas. Reg. Section 1.507(c)(1) provides for the involuntary termination under Section 507(a)(2). For purposes of section 507(a)(2)(A), the term "willful repeated acts (or failures to act)" means at least two acts or failures to act both of which are voluntary, conscious, and intentional.

Treas. Reg. Section 1.507(c)(2) provides that a "willful and flagrant act (or failure to act)" is one which is voluntarily, consciously, and knowingly committed in violation of any provision of Chapter 42 and which appears to a reasonable man to be a gross violation of any such provision.

IRC §507(b)(1) provides for the voluntary termination of an ORG's private Company status with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42.

IRC §507(c) imposes a tax on each ORG which is referred to in subsection (a) a tax equal to the lower of 1) the amount which the private Company substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from section 501(c)(3) status of such Company, or 2) the value of the net assets of such Company.

IRC §507(d)(1) provides that for the purpose of subsection (c), the aggregate tax benefit resulting from the section 501(c)(3) status of any private Company is the sum of (A) the aggregate increases in tax under Chapter 1, 11, and 12 (or the corresponding provisions of prior law) which would have been imposed with respect to all substantial contributors to the Company if deductions for all contributions made by such contributors to the Company after February 28, 1913, had been disallowed, (B) the aggregate increases in tax under chapter 1 (or

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

LEGEND:

ORG = Name of ORG
 Company = Initial Org Name
 Organization = Second Organization
 City = City Name
 Founder = Founder Name
 CO = Third Organization
 Date = 20XX/19XX
 XYZ = State
 CFO = Chief Financial Officer

the corresponding provisions of prior law) which would have been imposed with respect to the income of the private Company for taxable years beginning after December 31, 19XX, if (i) it had not been exempt from tax under section 501(a) (or the corresponding provisions of prior law), and (ii) in the case of a trust, deductions under section 642(c) (or the corresponding provisions of prior law) had been limited to 20 percent of the taxable income of the trust (computed without the benefit of section 642(c) but with the benefit of section 170(b)(1)(A)) and (C) interest on the increases in tax determined under subparagraphs (A) and (B) from the first date on which each such increase would have been due and payable to the date on which the ORG ceases to be a private Company.

IRC §507(e) provides that for the purposes of subsection (c), the value of the net assets shall be determined at whichever time such value is higher:

- (1) the value on the first day action was taken to terminate private Company status, or
- (2) the value on the date the ORG ceased to be a private Company

Service's Position

During the course of the examination, the Company has not been able to provide the Service with any records as required by §6033 of the Internal Revenue Code. Under these circumstances, the Service makes the determinations set forth below with information provided by the Company's trustee (Founder) and as provided on the returns.

§4941

Analysis of the ORG's returns revealed that the Company made an unidentifiable investment at an undeterminable date in the amount of \$. Upon communication with Founder, it was verified that the investment involved a loan made by the Company to Organization.

As provided by §4941(d)(1)(B), a loan between the Company and a disqualified person constitutes the direct lending of money that is a prohibited act of self dealing. The legitimacy of the loan could not be determined. Since the Company has not maintained any records of its activities, loan documents were not available for review; and even if it was a valid loan, it appears that an act of self dealing has occurred. Even if used to maximize funds for the Company's exempt purpose and even if the interest rate and terms are far more favorable than could be obtained from other sources, the self dealing transaction that occurred between the two parties does not fit into any exceptions as provided by Treas. Reg. 53.4941(d)-2(c)(2), (3) and (4). Additionally, motion to correct the self dealing transaction has not occurred & is not expected to occur. Therefore, as provided by Treas. Reg. §53.4941(e)-(1)(e)(1), the self dealing transaction would be considered a new act of self dealing every year from 19XX until the present.

However, upon further discussion subsequent to the Service's letter dated February 23, 20XX, Founder declared that he had an estimated 30 percent of the voting rights in Organization. He

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

LEGEND:

ORG = Name of ORG
 Company = Initial Org Name
 Organization = Second Organization
 City = City Name
 Founder = Founder Name
 CO = Third Organization
 Date = 20XX/19XX
 XYZ = State
 CFO = Chief Financial Officer

stated that nothing short of a court case could determine the actual division of voting rights among the company's investors. IRC §4946(a)(1)(E) defines, in part, a disqualified person with respect to a private Company as a corporation of which persons described in subparagraphs (A), (B), (C), and (D) own more than 35 percent of the total combined voting power. Accordingly, it could not be determined whether or not Organization is, in actuality, a disqualified person. The lack of documentation to substantiate an actual percentage of voting rights provides ambiguity of evidence that pinpoints an actual self dealing transaction.

§4942

Based on the information provided on the return, it may be determined that the Company has not made any distributions since before 19XX. In 19XX, the Company distributed income from corpus that originated from 19 to cover the distributable amount. In the following years, the Company did not make any distributions, nor did it have any remaining prior excess distributions to offset the required amounts. Accordingly, it appears that the Company has violated Section 4942 by failing to distribute income as is required to meet its exempt purpose and should be penalized.

However, the lack of documentation to substantiate the actual date of the donation (which, according to Founder, was made in increments), the date of the investment and the actual value of the investment provides ambiguity in the calculation of §4942 taxes. Based on the 20 return, the ORG's assets were exhausted by the end of the tax year. Accordingly, it could not be accurately determined whether or not the ORG has, in actuality, violated §4942 of the Internal Revenue Code.

§4944

In his letter dated September 30, 20XX, Founder stated that he did not think he was mentally incompetent at the age of 82. He contends that the technology research and development pursued by Organization is gaining worldwide interest. In his letter dated December 20, 20XX, he recalled the ORG once containing substantial funds in its account exceeding \$ which primarily stemmed from funds he had contributed to after he sold a hotel he owned in the at a loss. These were the funds that he invested, in increments, to Organization at a high interest rate when it was clear that the Company had patents which were being infringed upon and which would be in substantial royalties.

Based on the return, it may be confirmed that all of the Company's cash assets were invested into Organization as of December 31, 19XX. As explained by Founder, CFO embezzled about \$ an amount that made up practically all of Organization's assets. As may be confirmed by the return, \$ (85 percent) of that was from the Company. This amount made up virtually all of the Company's assets.

Organization is a private company that separated from CO. It was purchased by Founder around 19XX. At the time of the investment, Organization was undergoing court proceedings in

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

LEGEND:

ORG = Name of ORG
Company = Initial Org Name
Organization = Second Organization

City = City Name
Founder = Founder Name
CO = Third Organization

Date = 20XX/19XX
XYZ = State
CFO = Chief Financial Officer

hopes of obtaining compensation for infringement of its patents. Although Founder claims that he made the investment under circumstances that did not suggest high risk, it appears that the Company made an investment into a company that was not stable. To any reasonable man, investing into a company that is undergoing a court proceeding for patent related issues provides uncertainty and does not suggest a no risk and attractive business transaction. Furthermore, it appears the Organization lacked funds in order to pursue the lawsuit, and the loan was made in order to help Organization finance the court case.

At the same time, the ORG' s CFO was embezzling money until he exhausted all funds and abandoned the company. The fact that he was able to steal funds for over eight months without detection reveals that Organization' internal controls were unsatisfactory. With the proper internal controls, such theft could have been avoided.

It appears that Founder invested the Company's assets into Organization for the purpose of financing the ORG' s lawsuit. Even after letting all of the Organization employees go and incurring personal debt to maintain the ORG, Founder stated that he and the investors (who are all friends of his) decided not to officially close it down. They do not have the funds necessary to sue the patent infringers, and unless they somehow get substantial funds to do so, Organization may eventually have to close down due to laches considerations involving the patents.

Because it was his own company, Founder did not consider the risks involved. By failing to exercise ordinary business care and prudence, Founder placed the Company's assets in jeopardy. By investing all of the Company's assets into Organization, an ORG that could be described as having difficulties, it is evident that Founder was not intending to make any distributions on a short-term basis. And if planning for the Company's long-term operations, he failed to take into account the need to diversify the Company's investments in order to protect it from bankruptcy. Accordingly, it appears that the Company and Founder, as the Company's trustee, have violated the provisions of IRC §4944.

However, according to Founder, the total donations to Organization were made in increments. Consequently, it could not be determined when each transaction occurred. Although it appears that the Company's assets were placed into jeopardy, there is evidently a lack of firm evidence to confirm the suspicion. Furthermore, the lack of documentation to substantiate the actual date of the donation, the date of the investment and the actual value of the investment provides ambiguity in the calculation of §4944 taxes. Additionally, the ORG' s assets were exhausted by the end of the 20XX tax year and could no longer be removed from jeopardy.

§507

Upon initial contact, Founder requested voluntary termination of the private Company's exempt status due to lack of activity and insolvency. IRC §507(b)(1) provides that the status of a private Company of any ORG, with respect to which there have not been either willful repeated

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

LEGEND:

ORG = Name of ORG
Company = Initial Org Name
Organization = Second Organization

City = City Name
Founder = Founder Name
CO = Third Organization

Date = 20XX/19XX
XYZ = State
CFO = Chief Financial Officer

acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under chapter 42, shall be terminated under the provisions of IRC Section 507(b)(1)(A) or (B).

Upon review of the previously discussed violations of §§4941, 4942 and 4944, the lack of evidence to substantiate what appears to be the ORG's repeated violations of the provisions of Chapter 42 causes the inability to validate the involuntary termination of the ORG's exempt status under §507(a)(2), subjecting it to the taxes imposed under IRC §507(c). Additionally, Founder claimed that he did not take any deductions when he made the donations to the Company. The lack of documentation to substantiate such claims also serves as the lack of evidence to prove that deduction benefits under IRC §170 have been taken. Consequently, the lack of evidence relieves the Company from the taxes that would be imposed under Chapter 42 of the Internal Revenue Code and IRC §507(c).

Revocation

An ORG 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 the exempt purposes specified in IRC §501(c)(3). An ORG will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Since its investment in Organization, the Company has not engaged in any activities that furthers its exempt purposes.

Based on the limited information available, the Company's tax exempt status should be revoked under the voluntary termination provisions set forth under §507. IRC §507(a) provides that upon termination, the ORG becomes liable for tax under subsection (c) (or any portion not abated under subsection (g)) or the entire amount of such tax is abated under subsection (g). Subsection (c) provides for the imposition of tax equal to the lower of the amount which the private Company substantiates by adequate records or other corroborating evidence as the aggregate tax benefit resulting from section 501(c)(3) status of such Company or the value of the net assets of such Company.

Although the ORG has provided no evidence to substantiate the claim that Founder did not take any deductions when he made the donation in the first place, there is also a lack of evidence to prove otherwise, in which case, it cannot be determined whether the ORG has benefited from the deductions allowed under IRC §170. Consequently, it cannot be determined whether such transactions have caused the government any substantial losses. Additionally, since the ORG has become insolvent, the value of the net assets of the Company is \$.

Taxpayer's Position

According to Founder, ORG was established around 19XX when his wife died from . For years, he simply donated funds from the ORG to the Research Institute in xyz when no projects of special interest came along.

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

LEGEND:

ORG = Name of ORG
Company = Initial Org Name
Organization = Second Organization

City = City Name
Founder = Founder Name
CO = Third Organization

Date = 20XX/19XX
XYZ = State
CFO = Chief Financial Officer

Organization (ORGANIZATION) is a division of the CO that Founder purchased. He decided to invest the exempt ORG's reserved funds into Organization because the interest rate was higher than any other investment at the time, and it did not appear to be a risk investment. However, over time, Organization' CFO, stole funds from the ORG. Organization was unable to pursue the subject any further because they lacked the money to establish a lawsuit. Although Organization is no longer an active ORG, the ORG decided not to dissolve because they have valid patents that are currently being infringed upon, but they have no funds to establish a case. Consequently, Organization does not have the funds to repay the Company.

Due to the exempt ORG's inability to continue operations because of its lack of funds, Founder requests termination. Although all of the ORG's funds were lost, he asks that the Service considers allowing him to terminate the ORG without further pursuing the subject since the original funds were all contributions made by him.

Conclusion

Where evidence is lacking to prove that violations of Chapter 42 provisions have occurred and statements provided by the trustee prove to be an insufficient source of information, it could not be ascertained that the Company's actions have caused the government any harm.

The Company's exempt status will be revoked under the voluntary termination procedures of IRC §507. Due to the lack of evidence, penalties will not be assessed.