



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE – EO Mandatory Review
1100 Commerce Street, MC 4920-DAL
Dallas, TX 75242

Release Number: **200850050**

Release Date: 12/12/08

Legend

ORG = Organization name

Date: August 26, 2008

UIL: 501.03-01

XX = Date Address = address

ORG
ADDRESS

Employer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

In Reply Refer To:

TE/GE Review Staff

LAST DAY FOR FILING A

PETITION WITH TAX COURT:

November 28, 20XX

CERTIFIED MAIL – Return Receipt Requested

Dear

This is a Final Adverse Determination revoking your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

ORG has failed to provide evidence you are currently operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). You are not a charitable organization within the meaning of Treasury Regulations 1.501(c)(3)-1(d) in that you failed to establish that you were operated exclusively for an exempt purpose. You agreed with our findings and have signed Form 6018-A to relinquish your tax-exempt status.

Based upon the above, we are revoking your organization's exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code retroactively to December 2, 19XX.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax return Form 1041. These returns should be filed with the appropriate Internal Revenue Campus for the year ending December 31, 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.

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 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax exempt status was determined by calling, faxing, or writing to: Internal Revenue Service, Taxpayer Advocates Office.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals process, 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,

Vickie L Hansen
Acting Director, EO Examinations

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LEGEND

ORG = Organization name XX = Date City = city XYZ = State
Trustees = trustees Trustee-1 = 1st trustee Trustee-2 = 2nd trustee
Attorney = attorney Secretary = secretary Co-1, CO-2, CO-4, CO-4, CO-5, CO-6 & CO-7 = 1st, 2nd, 3rd, 4th, 5th, 6th, & 7th COMPANIES

PRIMARY ISSUE:

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

FACTS:

During the interview with Trustees, Trustee-1 stated that sometime prior to the creation of the ORG, he attended a seminar conducted by Attorney, an attorney from City, XYZ. The seminar covered estate planning and different ways to protect investment income. According to Trustee-1, the main focus of the estate planning consisted of creating charitable supporting trusts.

The ORG (ORG) was created with a Trust Agreement dated December 2, 19XX. Trustees and an organization referred to as the CO-1 (CO-1) were listed as the initial trustees. Pursuant to the Trust Agreement, ORG was created exclusively as a supporting organization as described under section 509(a)(3) of the Code. CO-1 was to be the supported organization and have 60% control over the activities and operation of ORG. The Trustees were to have 40% control over ORG and were acknowledged to be disqualified persons and, as such, disqualified trustees.

The Trust Agreement calls for a prohibition on political activity, inurement and private benefit. There were to be no substantial legislative activities. Additionally:

- ▶ Article 3 of the Trust Agreement states that the trustees may receive and accept property, whether real, personal, or mixed, but not if said property is conditioned in any way that would require the disposition of income to any person or organization other than a charitable organization.
- ▶ Article 4 of the Trust Agreement states that all property received by the trustees to be administered by the Trust Agreement shall be held in trust. Trustees are allowed to make payments and distributions from income and principal to or for the benefit of organizations exempt under section 501(c)(3) of the Code.
- ▶ Article 6 of the Trust Agreement states that at all times the Board of Trustees shall consist of a sixty-forty split with regard to non-disqualified and disqualified

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trustees. The article also states that a trustee may resign at any time, by written instrument, to the extent that the resignation does not cause any disqualified person to be put in control of the trust. Article 6 states further that if a non-disqualified trustee resigns, the disqualified trustee shall adhere to the procedures for the appointment of successor non-disqualified trustees as outlined in Article 12.

► Article 7 to the Trust Agreement states that the trustees are permitted to invest the principal and any income of the trust in any manner that they deem proper. Included in this article are provisions allowing investments which may not be considered proper if not for the permission granted in this article.

► Article 12 to the Trust Agreement also covers resignation and the removal or absence of non-disqualified or disqualified trustees. In the event that a non-disqualified trustee decides to withdraw or resign, the remaining disqualified trustee is not allowed to make distributions until a new qualified trustee is appointed. Disqualified trustees shall never be in control of over 40 percent of the Trust. Appointment of successor non-disqualified trustees shall be decided by the current non-disqualified trustees. If the non-disqualified trustee vacates without naming a successor non-disqualified trustee, then the disqualified trustee must appoint a new non-disqualified trustee.

ORG filed an application for Recognition of Exemption, Form 1023, on December 2, 19XX. It requested exempt status under 501(a), as an organization described in section 501(c)(3) of the Code, with a foundation status of 509(a)(3). The purposes of ORG as listed on the application were consistent with the Trust Agreement. However, the supported organizations on the application are different from the supported organization as listed in the original Trust Agreement. The Trust Agreement called for CO-1 to be the sole supported organization. The application states that CO-1 as well as CO-2 (CO-2) were to be the supported organizations.

The application for Recognition of Exemption was not accepted by the IRS Determinations Branch in December 19XX or through the years 19XX and into 20XX. ORG did not provide documentation as to why the application was rejected. When the Trust Agreement was first amended, dated March 26, 20XX, the application was accepted. The amendment added CO-2 as a supported organization and mentions that CO-1's exempt status is pending. CO-1 was never recognized as exempt.

The Trust Agreement was amended for the second time on December 8, 20XX. This amendment removed CO-1 as a supported organization and left CO-2 as the sole supported organization. The Trust Agreement was amended and restated for the third time on February 21, 20XX. This amendment and restatement was identical to the original Trust Agreement except for CO-2 being the only supported organization listed.

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Another change in the amended Trust Agreement specifically states that ORG is an organization coming under section 1.509(a)-4(g) of the regulations as "operated, supervised, or controlled by" a supported organization.

ORG was issued a determination letter and recognized as exempt under section 501(a) of the Code as an organization described in section 501(c)(3) on July 16, 20XX. The foundation status was determined to be 509(a)(3).

The Trustees stated that the Trust Agreement was amended for a fourth time, but The Trustees never received the signed amendment back from Attorney. The Trustees do not recall the specifics of what that amendment entailed, and they also can not recall the date.

The Trustees further stated that there was a proposed fifth amendment to the Trust Agreement dated sometime in 20XX. The Trustees declined to sign the amendment as they felt that Attorney was not being upfront with them. According to The Trustees, the fifth amendment would have changed the supported organization from CO-2 to CO-3

According to The Trustees, Attorney advised them that CO-2 lost its tax exempt status which created the need to amend the Trust Agreement to have a legitimate section 501(c)(3) organization as the supported organization.

In a letter from Attorney to The Trustees, dated September 10, 20XX, Attorney tried to explain the need to have CO-3 as the new supported organization. The letter also addressed the fact that "members of Attorney's Law Firm" had created CO-1 to be a supported organization. The letter further states that the Attorney Law Firm "formed a relationship with CO-2." Attorney failed to mention in that letter that the relationship he formed with CO-2 was that of promoter and organizer. Attorney further states in the letter that CO-2, "for reasons unknown," did not communicate with Attorney.

The Trustees stated that in 19XX they transferred \$ from their personal bank account to an account established in the name of the ORG. The Trustees could not produce documents that would provide detail into this transaction.

The Trustee's 19XX Form 1040, Schedule A shows that they claimed the \$ as a charitable contribution deduction, with 58% being allowed in that year, or \$.

In 19XX, The Trustees transferred \$ from their personal bank account to an account established in the name of the ORG. The Trustees' 19XX Form 1040, Schedule A shows that they claimed the \$ as a charitable contribution deduction. They also carried forward from 19XX the remaining charitable contribution deduction of \$.

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In 20XX, The Trustees transferred \$ from their personal bank account to an account established in the name of the ORG Foundation. The Trustees did not produce their 20XX Form 1040.

In the initial interview with The Trustees they admitted that during 20XX and 20XX there were no grants to an IRC section 501(c)(3) organization. They further admitted that there never were any grants from ORG to any supported organization or any public charity.

When asked why there were no grants to a section 501(c)(3) charity, The Trustees had no explanation beyond their reliance on the expertise of Attorney to run ORG.

The Trustees admitted that there were no Board of Director's minutes for any meetings, either from the non-disqualified or disqualified trustees. There are no documents explaining why grants were not made. There is no documentation detailing any transactions that were made. The Trustees admitted that they established ORG solely as a way to save money on their taxes.

According to Trustee-1, at some point after ORG received the "contributions"¹ from The Trustees, Attorney called him and requested that the money in the ORG account be transferred to Attorney. There is no written documentation to back this point.

Bank records and other supporting documents supplied by The Trustees show that the entire \$ "contributed" from The Trustees to ORG eventually went to the Attorney Law Firm. Letters from Attorney to The Trustees and other supporting documents show that the monies transferred to Attorney were subsequently invested in CO-5. Per its Form 990 for 20XX, ORG reported that it paid \$ to the CO-6 as charitable support. Pub 78 does not list any exempt organization by this name.

In a letter dated October 8, 20XX, The Trustees were advised that CO-5 transferred its (CO-5') assets to CO-7 (CO-7). Attached to that letter was a stock certificate dated August 25, 20XX showing that ORG owned 2,500 shares of common stock in CO-7. The stock certificate shows that there were 50,000,000 shares of common stock available.

An unrelated Court Case references the value of CO-7 stock and the low value that it has. The court agreed to a value of \$ per share. Therefore, the total value of CO-7 stock held by ORG has a current value of \$.

¹ "Contributions" is used for convenience to describe the transfers from The Trustees to ORG. The use of this term is not meant to imply that these were charitable contributions as described in section 170.

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Attorney is a shareholder and Chairman of the Board of Directors for CO-7. His daughter, Secretary, is the Secretary for CO-7 and her name appears on the stock certificate issued to ORG.

LAW:

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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) of the Code, the organization must be one that is both organized and operated exclusively for one or more purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

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.

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

Section 1.509(a)-4(e)(1) of the regulations addresses permissible beneficiaries in that it specifies that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations only if it engages solely in activities which support or benefit the specified publicly supported organizations. An organization will be regarded as "operated exclusively" to support or benefit one or more publicly supported organizations if it supports or benefits an organization, other than a private foundation, which is described in section 501(c)(3).

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Section 6103(h) of the Code covers the disclosure for purposes of tax administration.

6103(h)(4) — A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only —

6103(h)(4)(A) if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

6103(h)(4)(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

6103(h)(4)(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

6103(h)(4)(D) to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the United States Supreme Court held that regardless of the number of truly exempt purposes, the presence of a single substantial non-exempt purpose will preclude exemption under IRC section 501(c)(3).

American Campaign Academy v. Commissioner, 92 TC 1053 (1989): Defines private benefit as "non-incidental benefits conferred on disinterested persons that serve private interests."

CO-7 stock. Sets value of

Revenue Ruling 76-206: Service provided to a private party that they would have otherwise had to purchase.

In Rev. Rul. 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

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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 IRC section 501(c)(3).

GOVERNMENT'S POSITION:

The IRC section 501(c)(3) tax exempt status of the ORG should be revoked because it was neither organized nor operated exclusively for tax exempt purposes. The effective date for revocation should be December 2, 19XX.

In contrast to section 1.501(c)(3)-1(d)(ii) of the regulations which calls for an organization to be organized and operated for a public rather than a private benefit, ORG has indulged in substantial acts of private benefit with regard to its dealings with Attorney Attorney. The activities of ORG also stand in contrast to section 1.501(c)(3)-1(c)(1) of the regulations in that more than an insubstantial part of its activities have been for the private benefit of Attorney.

ORG has not engaged in any charitable activities and has not made any charitable grants since its inception. Trustees donated \$ to ORG over the three year period from 19XX through 20XX and received the tax benefit on their personal federal tax returns in the form of charitable contribution deductions.

The only other activity engaged in by ORG was the transfer of money from the ORG bank account to Attorney over that same time frame. This transfer of funds was accomplished not with written documentation, but by verbal approval from Trustee-1 to Attorney.

During the two year period beginning January 1, 20XX and ending December 31, 20XX, ORG did not make any grants to any IRC section 501(c)(3) organization. In fact, according to The Trustees and the bank records for ORG, there have never been any distributions for charitable purposes since ORG's inception.

ORG's funds, instead of being distributed to a legitimate and designated section 501(c)(3) charity, went to Attorney who in turn "invested" these funds in a company called CO-5., purportedly for ORG.

At some undisclosed point in 20XX, CO-5. "sold" its assets to a company called CO-7(CO-7). Attorney is a shareholder of CO-7 and has admitted to being the Chairman of the Board for CO-7. A further connection between Attorney and CO-7 is that Attorney's daughter is an officer of CO-7 where she holds the position of Secretary.

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Further evidence of the private benefit to Attorney is the fact that ORG did not distribute any funds to a supported organization during 20XX or 20XX. From the time that ORG transferred its funds to Attorney in 19XX, 20XX and 20XX, until at least sometime after the end of the tax year ended December 31, 20XX, Attorney had exclusive access to ORG's funds to "invest" or do with as he pleased. ORG, through Attorney, claims they were unable to locate and maintain a relationship with a qualified section 501(c)(3) charity to distribute money to. The record shows that the organizations ORG was supposed to support were involved with Attorney's law firm. CO-1 had been created by Attorney's law firm to be a supported organization but it failed to be recognized as exempt. Attorney's law firm then "formed a relationship" with CO-2. The Trust Agreement first specified CO-1 as the supported organization, it was amended to specify CO-1 and CO-2 as the supported organizations and then it was amended to specify only CO-2. Once CO-2 lost its exempt status in 20XX, Attorney proposed amending the Trust Document to specify another organization but The Trustees (who supposedly only had 40% of the vote) declined to amend the Trust Agreement. No grants were made to any of the specified organizations in any year. It is beyond any reasonable measure to accept as fact that ORG could not find one single qualified organization to support since ORG's inception.

As the only activity of the organization was the transfer of funds for Attorney's personal use, private benefit to Attorney made up more than an insubstantial part of ORG's activities. With the only activity of ORG being the transfer of funds to Attorney, ORG has operated more for a private rather than a public benefit.

As in the case of Better Business Bureau of Washington, D.C. v. United States, the private benefit present in this case is substantial and destroys the exempt status of ORG. The only activity and only apparent purpose of ORG was tax benefits for The Trustees and the transfer to and subsequent use of funds by Attorney for his personal gain.

As in the case of American Campaign Academy v. Commissioner, there were non-incident benefits conferred on disinterested persons that serve private interests. The benefit enjoyed by Attorney is not incidental but is more reasonably construed as a purposeful event caused by Attorney and Trustees, trustees for ORG. The benefit enjoyed by Attorney constitutes private benefit in that the public was denied the receipt of any benefit because no grants were distributed to a supported organization.

The Trustees did not sign the fifth amendment to the Trust Agreement in 20XX. This left CO-2 as the sole supported organization on paper. CO-2 had its tax exempt status revoked in 20XX, and therefore, if ORG had made any distributions, they would have been to a for-profit entity instead of supporting a qualified IRC section 501(c)(3) organization.

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As ORG is not organized and has not operated exclusively for charitable purposes and considering the extensive private benefit enjoyed by Attorney, the tax exempt status of ORG should be revoked. Retroactive revocation is appropriate. ORG has operated for the private benefit of Attorney. The application did not discuss Attorney's law firm's relationship with the organizations ORG was purportedly going to support. It did not address that ORG was going to fail to provide support to any public charity. The application did not address the transfer of the funds "contributed" to ORG to Attorney for his personal benefit.

TAXPAYER'S POSITION:

The taxpayer has agreed to revocation of the tax exempt status.

ALTERNATIVE ISSUE #1: Should the ORG be reclassified as a private foundation?

FACTS:

The ORG (ORG) was created with a Trust Agreement dated December 2, 19XX. In the Trust Agreement, Trustees and the CO-1 (CO-1) were listed as the initial trustees. Pursuant to the Trust Agreement, ORG was created exclusively as a supporting organization as described under section 509(a)(3) of the Code. CO-1 was to be the supported organization and have 60% control over the activities and operation of ORG. The Trustees were to have 40% control over ORG.

From December 2, 19XX through sometime in 20XX, the Trust Agreement was amended four times. There was a proposed fifth amendment in 20XX, but it was never signed. The fourth and last amendment signed added CO-2 as the sole supported organization.

CO-2 had its IRC section 501(c)(3) tax exempt status revoked in 20XX. With no further amendments being signed, ORG was not organized to support a public charity in 20XX and 20XX.

There were no grants made to any supported organization or to any charity in any year. There was no measure of control provided by any supported organization. There were no elections of directors by any supported organization, and there were no meetings of any kind by any of the above referenced supported organizations.

Trustee-1 has stated that at some point after he and Trustee-2 "contributed" funds to ORG, Attorney called Trustee-1 and requested that the money in the ORG account be

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transferred to Attorney. Trustee-1 complied with Attorney's verbal request and transferred all of the money in the ORG account, \$, to Attorney.

There is no written documentation of this conversation, only the written explanation provided by Attorney. In the initial interview with Trustee-1, he confirmed that the transfer of funds occurred with his permission via a telephone conversation with Attorney.

The only activity ever conducted by ORG was to transfer ORG's funds to the promoter so that he could use the funds for his personal benefit.

For additional facts, see Facts section of the primary position (revocation).

LAW:

Section 509(a)(1), Section 509(a)(2), Section 509(a)(3), and Section 509(a)(4) of the Code:

An Internal Revenue Code Section 501(c)(3) organization that cannot meet the public support test of 509(a)(1) or 509(a)(2) but wishes to be classified as other than a private foundation must meet one of the three relationship tests as a supporting organization under Internal Revenue Code Section 509(a)(3). The relationship test is the primary test and without meeting the relationship test this foundation code can not be applied. The three possible relationships are as follows:

1. Operated, supervised or controlled by (Treasury Regulation 1.509(a)-4(g))
2. Supervised, or controlled in connection with (Treasury Regulation 1.509(a)-4(h))
3. Operated in connection with, one or more publicly supported organizations: Treasury Regulation 1.509(a)-4(i)
 - 1) Operated, supervised or controlled by – The first relationship (also known as the "parent-subsidiary relationship" requires a majority of the Internal Revenue Code Section 509(a)(3) organization's governing body to be appointed or elected by the members of the Internal Revenue Code Section 509(a)(1) or (2) organization's body acting in their official capacity.
 - 2) Supervised or controlled in connection with- The second relationship (also know as the "brother-sister relationship)" requires a common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organization.
 - 3) Operated in connection with – The third relationship has a two pronged requirement:

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- a) The Responsiveness Test – The publicly supported organization must have a significant voice in the policies of the supporting organization by reason of the connection between the two organizations.
- b) The Integral Part Test – The supporting organization maintains a significant involvement in the operation of the publicly supported organization, which in turn depends on the supporting organization for the type of support it provides.

The responsiveness test:

(i) For purposes of this paragraph, a supporting organization will be considered to meet the "responsiveness test" if the organization is responsive to the needs or demands of the publicly supported organization within the meaning of this subparagraph. In order to meet this test, either subdivision (ii) or subdivision (iii) of this subparagraph must be satisfied.

(ii)

- (a) One or more officers, directors, or trustees of the supporting organization are elected or appointed by the officers, directors, trustees, or membership of the publicly supported organizations;
- (b) One or more members of the governing bodies of the publicly supported organizations are also officers, directors, or trustees of, or hold other important offices in, the supporting organizations; or
- (c) The officers, directors, or trustees of the supporting organization maintain a close continuous working relationship with the officers, directors, or trustees of the publicly supported organizations; and
- (d) By reason of (a), (b), or (c) of this subdivision, the officers, directors or trustees of the publicly supported organizations have a significant voice in the investment policies of the supporting organizations, the timing of grants, the manner of making them, and the selection of recipients by such supporting organization, and in otherwise directing the use of the income or assets of such supporting organization.

(iii)

- (a) The supporting organization is a charitable trust under State Law;
- (b) Each specified publicly supported organization is a named beneficiary under such charitable trust's governing instrument; and
- (c) The beneficiary organization has the power to enforce the trust and compel an accounting under State law.

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The integral part test 1.509(a)-4(i)(3) (i) For purposes of this paragraph a supporting organization will be considered to meet the "integral part test" if it maintains a significant involvement in the operations of one or more publicly supported organizations and that such publicly supported organizations are in turn dependant upon the supporting organization for the type of support which it provides.

There are two ways to satisfy the integral part test. Section 1.509(a)-4(i)(3)(ii) describes the first way as such: The activities engaged in for or on behalf of the publicly supported organizations are activities to perform the functions of, or to carry out the purposes of, such organizations, and, but for the involvement of the supporting organization, would normally be engaged in by the publicly supported organizations themselves.

The second method of satisfying the integral part test is described by section 1.509(a)-4(i)(3)(iii). Income Tax Regulations reads in part as follows:

- (iii)
- (a) The supporting organization makes payments of substantially all of its income to or for the use of one or more publicly supported organizations, and the amount of support received by one or more of such publicly supported organizations is sufficient to insure the attentiveness of such organizations to the operations of the supporting organization. In addition, a substantial amount of the total support of the supporting organization must go to those publicly supported organizations which meet the attentiveness requirement of this subdivision with respect to such supporting organization. Except as provided in (b) of this subdivision, the amount of support received by a
 - (b) The publicly supported organization must represent a sufficient part of the organization's total support so as to insure such attentiveness. In applying the preceding sentence, if such supporting organization makes payments to, or for the use of, a particular department or school of a university, hospital or church, the total support of the department or school shall be substituted for the total support of the beneficiary organization.

Even where the amount of support received by a publicly supported beneficiary organization does not represent a sufficient part of the beneficiary organization's total support, the amount of support received from a supporting organization may be sufficient to meet the requirements of this subdivision if it can demonstrate that in order to avoid the interruption of the carrying on of a particular function or activity, the beneficiary organization will be sufficiently attentive to the operations of

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the supporting organization. This may be the case where either the supporting organization or the beneficiary organization earmarks the support received from the supporting organization for a particular program or activity, even if such program or activity is not the beneficiary organization's primary program or activity so long as such program or activity is a substantial one.

GOVERNMENT'S POSITION:

As set forth above, it is the government's primary position that the tax exempt status of the ORG should be revoked. Alternatively, the ORG should be reclassified as a private foundation.

ORG was created in 19XX and never made grants to any qualified section 501(c)(3) supported organizations. It never made grants to a public charity in any year. None of the organizations listed to be supported during ORG's existence asked for money or made any effort to provide control over ORG. The management or control of ORG does not rest with those who manage or control any of the listed beneficiaries.

Because CO-2's exempt status was revoked in 20XX, after that date, ORG was not organized to support a public charity. Furthermore, it operated for the private benefit of Attorney and not for a public benefit.

ORG was neither operated, supervised, controlled by, nor supervised or controlled in connection with the specified beneficiary. Therefore, ORG does not meet the first two relationship tests as outlined in Treasury Regulation 1.509(a)-4(g) and 1.509(a)-4(h)).

In order for ORG to pass the third relationship test it has to pass the responsiveness and integral part tests. As a result of the examination, ORG fails the third relationship test in that it was not an integral part of any supported organization, based on the following:

The first requirement of distributing substantially all of ORG's income is not applicable because it had no income. The second test that requires the amount of support to be sufficient to insure attentiveness is not met because there were no grants to any supported organization.

The first listed supported organization, CO-1 never received tax exempt status. The second listed supported organization, CO-2 lost its tax exempt status in 20XX. For the years under examination there was no qualified supported organization.

During the examination it was determined that ORG had no contact with any beneficiary organization. There were no meetings, no elections and no support provided. In

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

addition, there was no correspondence from any named beneficiary indicating any influence over any decisions made. Per the Form 990 for 20XX and 20XX, the only trustees were Trustees. No trustees were listed on the Form 990 for 20XX.

ORG does not meet the requirements of Treas. Reg. section 1.509(a)-4(a)(2) which specifies that a section 509(a)(3) organization must be organized and at all times thereafter operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in section 509(a)(1) or 509(a)(2). The lack of distributions is indicative of an organization that is not operated in accordance with the Treasury Regulations.

ORG fails to qualify for foundation status of section 509(a)(1), (2), (3) or (4). If its exempt status is not revoked, then the ORG should be reclassified as a private foundation as they fail to qualify for any other foundation status as described in section 509(a) of the Code. The reclassification should be effective December 2, 19XX. It should be retroactive because, in its application, ORG failed to disclose that it would not be organized and operated to support specified public charities, it would not have a relationship with a specified public charity and it would be controlled by disqualified persons.

TAXPAYER'S POSITION:

The taxpayer has agreed to revocation of tax exempt status.

CONCLUSION:

The ORG does not qualify for tax exempt status under IRC section 501(a) as an organization described in section 501(c)(3) of the Code. The existence of substantial private benefit combined with the lack of proper controls and the lack of any qualified activity indicates that ORG should not be allowed to continue as a tax exempt organization. Revocation of the tax exempt status of ORG is proposed.

Alternately, The ORG should be reclassified as an organization that is a private foundation as defined in section 509(a) of the Code.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE: EO Examinations
1100 Commerce Street
Dallas, TX 75242

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

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,

Vicki L. Hansen
Acting Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination