



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
1100 Commerce Street  
Dallas, TX 75242

501.03-00

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: Aug. 16, 2012

Number: **201252028**  
Release Date: 12/28/2012

LEGEND

ORG - Organization name  
XX - Date Address - address

**Person to Contact:**  
**Badge Number:**  
**Contact Telephone Number:**  
**Contact Address:**  
**Employer Identification Number:**

ORG  
ADDRESS

**CERTIFIED MAIL**

Dear

This is a final notice of adverse determination that your exempt status under section 501(c) (3) of the Internal Revenue Code is revoked. Recognition of your exemption under Internal Revenue Code section 501(c)(3) is revoked effective January 1, 20XX for the following reason(s):

You are not operated exclusively for an exempt purpose as required by Internal Revenue Code section 501(c)(3). You are not and have not been engaged primarily in activities which accomplish one or more exempt purposes. You are not a charitable organization within the meaning of Treasury Regulation 1.501(c)(3)-1(d); rather, your activities further a substantial nonexempt commercial purpose and serve private rather than public interests.

You have failed to produce documents to establish that you are organized and operated exclusively for exempt purposes within the meaning of IRC section 501(c)(3) and that no part of your net earnings inures to the benefit of private shareholders or individuals. Also, you have failed to keep adequate books and records as required by IRC sections 6001 and 6033, and the regulations there under.

In our letters dated June 1, 20XX and September 28, 20XX, we requested information necessary to conduct an examination of your Forms 990 for the years ending December 31, 20XX and December 31, 20XX, respectively. We have not received the requested information.

Section 1.6033-2(h)(2) of the Income Tax Regulations provides, in part, that every organization that is exempt from tax shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status.

Contributions to your organization are no longer deductible.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for all years beginning on or after January 1, and for all the tax years thereafter in accordance with instructions of the return.

It is further determined that your failure to file a written appeal constitutes a failure to exhaust your available administrative remedies. However, 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 Claims Court, or the district court of the United States for the District of Columbia before the (ninety-first) 91st day after the date that this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. To secure a petition form, write to the following address:

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

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 the Taxpayer Advocate assistance or you can contact the Advocate from the site where this issue was determined by writing to:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in 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.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892

**Internal Revenue Service**  
**Tax Exempt and Government Entities Division**  
Exempt Organizations: Examinations  
Attn: A.C. M/S O540  
100 SW Main Street, STE 1200  
Portland, OR 97204

**Department of the Treasury**

Date: November 16, 2011

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,

Nanette M Downing  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer  ORG	Tax Identification Number  EIN	Year/Period ended December 31, 20XX, December 31, 20XX

**LEGEND**

ORG - Organization name      EIN - EIN      XX - Date      City - city      State - state  
 motto - motto      Event-1 through Event-4 - 1<sup>st</sup> through 4<sup>th</sup> Events      President -  
 president      Secretary - secretary      Vice-President - vice president      President-2  
 - 2<sup>nd</sup> President      Secretary-2 - 2<sup>nd</sup> Secretary      Founder-1 through Founder-5 - 1<sup>st</sup>  
 through 5<sup>th</sup> Founders      RA-1 & RA-2 - 1<sup>st</sup> & 2<sup>nd</sup> RA      CO01 through CO-5 - 1<sup>st</sup> through  
 5<sup>th</sup> COMPANIES

**Issue:**

Whether ORG's 501(c)(3) status should be revoked on the grounds that its net earnings inured to the benefit of its President, President.

**Facts:**

ORG ("ORG"), Taxpayer Identification Number EIN, was recognized as an organization exempt under IRC section 501(c)(3) on March 12, 19XX. On September 24, 20XX the organization was issued a letter that modified the letter dated March 12, 19XX. The organization remained exempt under IRC section 501(c)(3) but the organization was determined to be a publicly supported organization described in IRC section 509(a)(2) instead of IRC sections 509(a)(1) and 170(b)(1)(A)(vi).

**Governance**

According to the Articles of Incorporation, ORG was incorporated on July 2, 19XX as the CO-1. Amended articles were filed on July 15, 20XX to change the name of the organization to ORG. The officers listed on the State's Department of Commerce & Consumer Affairs website are President, President, Vice-President, Vice-President/Treasurer and Secretary, Secretary.

The organization's Articles provide that the purpose of the organization is "For the lawful purpose to provide education, information and personal assistance to parents of minor's, teachers, public officials and approximately 3500 mottos, of these, more than 800 are elementary and secondary school children that reside in the County of City, at a minimum or no cost."

ORG filed Form 1023, *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*, on November 12, 19XX. In Part II of the Form 1023, ORG described their intended activities as follows:

1. To sponsor seminars and other educational events where the foundation can give lectures and conduct study sessions on                      and seizure-prone children to exchange ideas, listen to health care providers, suggest solutions and implement strategies to protect children in public and private environments.
2. To maintain a neurological physician's referral listing containing patient evaluation of physicians practicing in City and the State of State.
3. To publish a monthly newsletter containing information on current research and Motto health issues.
4. To establish a clinic in City specializing in neurological/neurosurgery research to serve the ever-growing and existing (1000) children and the over three thousand (3000) adult mottos that currently reside in City County.

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5. To expand and re-define the Foundation's educational programs that deal with instructions to teachers, parents and public officials on how to detect a child or adult who is having an motto seizure what action the teacher and/or parent or public official, should or should take or not take, in order to save the person's life.
6. To maintain a 24-hour hotline available to everyone for emergency epilepsy treatment and advice and a 24-hour mobile unit for hands on counseling and care for parents, loved ones, teachers and public officials.

President co-founded ORG along with his Mother, Founder-2. The organization provided that its Board of Directors for 20XX consisted of President, President-2, Secretary, Secretary-2, Founder-3, Founder-4, Founder-5, Founder-2. President was listed as the CEO. President also provided that director, Founder-2 passed away March 8, 20XX.

The organization held a board meeting on March 18, 20XX where it was decided to move forward with the production of a "Video" video to be produced. The next documented board meeting was held on July 18, 20XX. The meeting discussed which bank the organization would be using and new board members. No other business was discussed. These are the only minutes provided by the organization.

#### Form 990

For the tax year ended December 31, 20XX and December 31, 20XX, the organization filed Form 990-N (Electronic Notice), stating that their revenue was less than \$. During the examination, it was determined that the organization income was above \$25,000 and that the organization should have filed a Form 990 or 990-EZ for each year. On October 20, 20XX, ORG provided Form 990-EZ for the year ended December 31, 20XX. To date, ORG has not provided a Form 990 or 990-EZ for the tax period ended December 31, 20XX. The following revenues and expenditures were reported on the 20XX return.

#### Revenue

Contributions, gifts, grants, and similar amounts received:

Gross amount from sale of assets other than inventory: \_\_\_\_\_

#### **Total Revenue**

#### Expenses

Professional fees and other payments to independent contractors:

Occupancy, rent, utilities and maintenance:

Printing, publication, postage and shipping:

Travel:

Meals and Entertainment:

Conferences, Conventions and Meetings:

Depreciation, depletion, etc.:

Supplies:

Telephone:

Auto Expenses:

Bank Charge:

Charitable Contributions:

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Cleaning:  
 Internet Expense:  
 Liability Insurance:  
 Office Supply:  
 Repairs:  
 Service Charge:  
 Student Shelter Fee:  
 Subscriptions:  
 Training:  
 Training Materials: \_\_\_\_\_

**Total Expenses:**

The following items were reported on the balance sheet of the Form 990-EZ for 20XX:

<b>Assets:</b>	<u>Beginning of year</u>	<u>End of year</u>
Cash, savings, and investments		
Computer		
Printer		
Desk		
Office Furniture		
Owners Capital		
Automobile		
<b>Total Assets</b>		

**Total Liabilities**

**Net Assets or fund balances**

**Bank Records**

The records from the organization's checking account were obtained from CO-2 for the 20XX tax period. The following provides a summary by month of the deposits and withdrawals from the account.

Bank Name	CO-2
Account Number	#
Account Title	Business Checking
Year Ending	12/31/20XX

	Deposits	Interest	Checks	Fees	Balance
Beginning Balance					
January 20XX					
February 20XX					
March 20XX					
April 20XX					

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May 20XX  
June 20XX  
July 20XX  
August 20XX  
September 20XX  
October 20XX  
November 20XX  
December 20XX

Totals

Ending Balance

Exhibit A provides a list of transaction that were present in the CO-2 records but that the organization did not include on the Form 990 or in the profit and loss detail. Exhibit B provides a list of transactions per revenue and expense category as provided by ORG. ORG did not provide any documentation to show whether the expenses were business related or personal expenses of the President.

For the 20XX tax period, bank records were obtained from CO-2 and CO-3. The organization's bank records only show transactions between July 1, 20XX through December 31, 20XX. No further bank records were available from the two banks used by the organization. The only transactions provided by CO-2 were the banks closing of the organization's account in January 20XX. There were no transactions made by the organization during the period. The following provides a summary by month of the deposits and withdrawals from the accounts.

Bank Name            CO-3  
Account Title        Checking  
Year Ending           12/31/20XX

Deposits            Interest            Checks            Fees            Balance

Beginning Balance

January 20XX  
February 20XX  
March 20XX  
April 20XX  
May 20XX  
June 20XX  
July 20XX  
August 20XX  
September 20XX  
October 20XX  
November 20XX  
December 20XX

Totals

Bank Name            CO-3



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Account Title Year Ending	Savings 12/31/20XX	Deposits	Interest	Checks	Fees	Balance
Beginning Balance						
January 20XX						
February 20XX						
March 20XX						
April 20XX						
May 20XX						
June 20XX						
July 20XX						
August 20XX						
September 20XX						
October 20XX						
November 20XX						
December 20XX						
Totals						

Below shows the deposits and withdrawals less the transfers between the checking and savings accounts during the 20XX year.

	Deposits	Interest	Withdrawals	Fees
Checking				
Savings				
Total				
Less Transfers				
Total less Transfers between Accounts				

Exhibit C provides a list of transactions from CO-3 as summarized above. ORG did not provide any documentation to show whether the expenses were business related or personal expenses of the President.

**Activities**

The organization was operated out of the home of President and his mother, Founder-2. The Form 990 reported \$ compensation to President and no Forms W-2 or 1099-MISC were issued to President for compensation.

According to President, the activities of the organization consist of providing free awareness and First Aid Training to government agencies, schools and corporations on the Island of City. The organization only provided documentation for the following events during the period beginning January 1, 20XX through December 31, 20XX.

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Date	Event	Location
June 24, 20XX	Event-1	City, State
February 20, 20XX	Event-2	City, State
February 16, 20XX	Event-3	Location not provided
January 16, 20XX	Event-4	City, State

### Correspondence

In correspondence received on October 20, 20XX, President provided that he did not maintain a separate bank account between all ORG business and his personal financial activities. He also provided that some deposits were from his social security checks and his mother's pension checks and that they both withdrew and deposited money for personal use.

Additional information was requested from the organization on March 3, 20XX. President provided partial responses in two separate correspondences. On March 18, 20XX, President provided the first response to the March 3, 20XX request for information, which provided the following.

- a. The organization has a checking account at CO-4. The bank statements, deposit items and cancelled checks were not provided as requested.
- b. Assets sold by the organization during the 20XX tax period were furniture items donated by CO-5.
- c. The organization only had one debit card issued for their account at CO-2. The name on the card was ORG and President was the only authorized user of the card.
- d. The discrepancy between the ending balance on the bank statements at 12/31/20XX and the organization's balance sheet for the same period was due to the organization closing their account at CO-2 and transferring the funds to a new bank.
- e. For the balance sheet account "Owner Withdrawal" was meant to depict the "authorized signer" President. The organization did not provide details of the transactions in the account as requested.
- f. The organization provided that the automobile owned by the organization during 20XX was used exclusively for organization business by the staff. The automobile was a 19XX Toyota, which was junked due to non-function. No other information was available about the automobile due to records being lost because of a computer crash.
- g. President provided that all checks written to RA-1 were for rent and security deposit of living facility including temporary office space with his home. He also provided that Check #, which was for \$, included \$ to replace lost keys.
- h. Payments made to RA-2 to escort an motto student to classes at the University of State, City campus because the instructor would not let the individual attend classes without an escort.
- i. President provided that no personal income or expenses was incorporated or utilized with the

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ORG account. He provided the Founder-2 was a contributor and signer on the bank account and that she donated a portion of her retirement checks.

On March 28, 20XX, President provided additional information in response to the request dated March 3, 20XX. The following information was provided.

- a. President provided that he was sending information relating to a bank account at CO-4 but there was no records attached or included with the response.
- b. President also provided bank records for transfers between the organization bank account and his personal account. This included records from President's personal savings account at CO-2 from February 5, 20XX through December 31, 20XX.

Additional requests for information were sent to the organization on May 19, 20XX and September 28, 20XX. To date, no information has been provided by the organization in response to the letters.

**Law:**

**Internal Revenue Code**

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 (but only if no part of its activities involve the provision of athletic facilities or equipment), 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 (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 6033(a)(1) of the Code provides, except as provided in section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 6043(b) of the Code provides that every organization which for any of its last 5 taxable years preceding its liquidation, dissolution, termination, or substantial contraction was exempt from taxation under section 501(a) shall file such return and other information with respect to such liquidation, dissolution, termination, or substantial contraction as the Secretary shall by forms or regulations prescribe.

**Income Tax Regulations (regulations)**

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Section 1.501(c)(3)-1(b)(4) of the regulations provide that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Section 1.6001-1(a) of the regulations in conjunction with section 1.6001-1(c) provides that every organization exempt from tax under section 501(a) of the Code and subject to the tax imposed by section 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by section 6033.

Section 1.6001-1(e) of the regulations states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Section 1.6033-1(h)(2) of the regulations provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and section 6033.

Section §1.6033-2(i)(1) of the regulations provides that an organization which is exempt from taxation under section 501(a) and is not required to file annually an information return required by this section shall immediately notify in writing the district director for the internal revenue district in which its principal office is located of any changes in its character, operations, or purpose for which it was originally created.

Section §1.6033-2(i)(2) of the regulations provides that every organization 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 (section 501 and following), chapter 1 of subtitle A of the Code, section 6033, and chapter 42 of subtitle D of the Code.

Section §1.6033-2(i)(3) of the regulations provides that an organization which has established its exemption from taxation under section 501(a), including an organization which is relieved under section 6033 and this section from filing annual returns of information, is not relieved of the duty of filing other returns of information.

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

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organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

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 of the purposes specified in that section.

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(d)(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 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the promotion of education.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. Better Bus. Bureau v. United States, 326 U.S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); Am. Campaign Acad. v. Commissioner, 92 T.C. 1053, 1065 (1989); see also Old Dominion Box Co., Inc. v. United States, 477 F.2d. 340 (4<sup>th</sup> Cir. 1973), cert. denied, 413 US 910 (1973) ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. Am. Campaign Acad. v. Commissioner, supra at 1065-1066.

In Rev. Rul. 81-94, 1981-1 C.B. 330, provided that a "Church" that was formed by a professional nurse (who is also the "church's" minister, director, and principal officer) and that is used primarily as a vehicle for handling the nurse's personal financial transactions is not exempt from tax under section 501(c)(3) of the Code.

In Rev. Rul. 69-266, 1969-1 C.B. 151, An organization formed and controlled by a doctor of medicine, "hired" to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered, is not exempt under section 501(c)(3) of the Code.

In Rev. Rul. 71-395, 1971-2 C.B. 228, a cooperative art gallery was formed by a group of artists to exhibit and sell their works. Additional artists were admitted to membership only on approval of existing members. All works displayed at the gallery could be purchased by the public and many could also be rented. The gallery retained a commission from the sales and rentals to cover its cost of operation. In concluding that the art gallery was not entitled to recognition of exempt status, the ruling emphasized that the gallery was a vehicle for advancing the careers of its members and for promoting the sale of their work. As such, it

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"serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects."

In Rev. Rul. 76-152, 1976-1 C.B. 151, a group of art patrons formed an organization to promote community understanding of modern art trends. Its sole activity was the selection of modern art works of local artists for exhibition and for possible sale at its gallery, which was open to the public. A modern art work of any local artist was eligible for consideration for exhibition and, if selected, the artist's work was displayed on a consignment basis with the artist setting the selling price. The artists had no control over the organization or its selection process. The organization kept a ten percent commission on sales. On these facts, the Service ruled, as in Rev. Rul. 71-395, that the artists were being directly benefited by the exhibition and sale of their works with the result that a major activity of the organization was serving the private interests of those artists whose works were displayed.

**Court Cases:**

In John Marshall Law School v. The United States, 1981 WL 11168, it was held that the organization was not exempt under Section 501(c)(3) of the Code on the grounds that a portion of their net earning had inured to the benefit of Theo. Fenster, Martin Fenster, and their families. Payments had been made on behalf of or for the benefit of the Fenster families. Payment included items for automobile, educational and travel expenses, insurance policies, basketball and hockey tickets, membership in a private eating establishment, membership in a health spa, interest-free loans, home repairs, personal household furnishings and appliances and golfing equipment.

In Bubbling Well Church of Universal Love, Inc. v. C.I.R., 670 F.2d 104, the organization was denied exempt status under section 501(c)(3) because it could not show that no part of its net income inured to the benefit of private individuals. The organization was controlled by members of the Harbert's family and a substantial amount of the organization's net income was paid for the benefit of the Harbert family. The organization did not provide evidence which showed that the income did not inure to the benefit of the Harbert family.

In Kenner v. C.I.R., T.C. Memo. 1961-37, and affirmed by Kenner v. C.I.R., 318 F. 2d 632, it was determined that Kenner Charitable Hospital was not exempt from corporate income taxes under IRC Section 501(c)(3) because it could not show that no part of its net earnings inured to the benefit of private individuals. The organization was founded and controlled by William Kenner and members of his family. It was shown that substantial amounts were paid to or on the behalf of Mr. Kenner for personal and private uses not related to the operation of the organization. Although testimony given by Mr. Kenner provided that money paid on his behalf was repayment for loans, the court determined that the testimony was not adequate to refute the argument and evidence that the payments inured to the benefit of Mr. Kenner.

**Taxpayer's Position:**

The agent has tried to make contact with the taxpayer to determine their position but has not been able to reach the taxpayer since April 29, 20XX.

**Government's Position:**

Form <b>886-A</b> (Rev. January 1994)	<b>EXPLANATIONS OF ITEMS</b>	Schedule number or exhibit
Name of taxpayer  ORG	Tax Identification Number  EIN	Year/Period ended December 31, 20XX, December 31, 20XX

As provided in section 501(c)(3) of the Code, for an organization to be tax exempt no part of its net earnings may inure to the benefit of any private shareholder or individual. Section 1.501(a)-1(c) of the regulations provides that the words 'private shareholder or individual' in section 501 of the IRC refer to persons having a personal and private interest in the activities of the organization.

President, being the Executive Director/President and the dominant individual controlling the affairs of ORG, is a 'private shareholder or individual' within the intent of those terms. The following is a discussion of items determined to be inuring to the benefit of President and/or members of his family.

Payments were made from the organization's checking account directly to President as well as for expenses that were not documented as being business related expenses. President provided in a letter received by the IRS on October 10, 20XX that personal expenses were paid out of the organization's bank account. Also in correspondence dated March 18, 20XX, President provided that he was the only individual that used and had access to the organization's debit card connected to their checking account. Attached in Exhibit C, are a list of checks made out to President as well as ATM withdrawals and other personal expenses paid using the organization debit card or by check. Below is a total of the funds provided to or on behalf of President.

<b>Tax Year ended:</b>	<u>12/31/20XX</u>	<u>12/31/20XX</u>
Checks to President		
Payments on behalf of President		
<b>Total</b>		

Since President provided that he was the only individual with use of the organization's debit card, all transactions that appear to be personal in nature or withdrawn from an ATM using the card are considered attributable to him. Additionally, all withdrawals from CO-3 are considered attributable to President because he was the only signer on the account during the period beginning July 20XX through December 31, 20XX when the transactions occurred. Neither President nor the organization has provided sufficient documentation to show that any of the funds were used for business purposes of the organization.

For the tax period ended December 31, 20XX, the organization had revenues of \$ based on the analysis of the organization's bank records. This amount is more than the \$ reported on the Form 990 filed by the organization. It is determined that \$ was paid to President or for the benefit of President. The amount of funds benefitting President during the period was % of the total revenues received by the organization.

For the tax period ended December 31, 20XX, the organization had revenues of \$ based on the analysis of the organization's bank records. The organization filed Form 990-N for this period reporting that their gross income was less than \$. It is determined that \$ was paid to President or for the benefit of President. The amount of funds benefitting President during the period was % of the total revenues received by the organization.

Substantially all of the revenues received in the name of ORG during the period of January 1, 20XX, through December 31, 20XX, inured to the benefit of President. No documentation has been received to show that the funds furthered the organization's exempt purposes. IRC section 501(c)(3) requires that for an organization to be tax exempt no part of its net earnings may inure to the benefit of any

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private shareholder or individual. ORG does not meet the requirements for exempt status under that code section.

**Conclusion:**

To be an exempt organization under IRC section 501(c)(3), no part of the organization's net earnings may inure to the benefit of any private shareholder or individual. Since it is clearly evident that a substantial part of ORG' revenues inured to the benefit of President, ORG does not meet the requirements under IRC section 501(c)(3) and the corresponding regulations. Based on the above analysis, the tax-exempt status of ORG should be revoked effective January 1, 20XX.

Forms 1120 should be filed for all tax periods ending after January 1, 20XX.