DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE: EO Examination
1100 Commerce Street
Dallas, Texas 75242

501-03.00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201407019**
Release Date: 2/14/2014

LEGEND
ORG – Organization name
XX – Date Address - address

ORG
ADDRESS

Date: February 6, 2013

Employer Identification Number:
Person to Contact/ID Number:
Contact Numbers:
(Phone)
(Fax)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear :

In a determination letter dated October 12, 20XX, you were held to be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(3) of the Code. Accordingly, your exemption from Federal income tax is revoked effective February 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(3) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights.

Our adverse determination was made for the following reasons:

> IRC 501(c)(3) of the Internal Revenue 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 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...
>
> Treasury Regulation Section 1.501(c)(3)-1(d)(1)(iii) 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.

You have not established that your are operated exclusively for exempt purposes described in section 501(c)(3) of the Code. Specifically, you have not shown that a substantial part of your activities does not serve the private interest of your officers and other individuals. Additionally, you have not demonstrated that no part of your net earnings inures to the benefit of private shareholders or individuals. Specifically, you have not shown that various payments you made have not resulted in net earnings flowing to your officers and their family members.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120. Those returns should be filed with the appropriate Service Center.

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 of 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 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:

You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

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 or 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 in regards to this matter please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations

Internal Revenue Service
Department of the Treasury
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
1100 Commerce Street
Dallas, Texas 75242

Date: April 2, 2012

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

ORG
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:

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

ISSUES

1. Whether (Foundation) is operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3):

   a. Whether the Foundation is engaged primarily in activities that accomplish an exempt purpose?
   b. Whether more than an insubstantial part of the Foundation's activities are in furtherance of a non-exempt purpose?
   c. Whether the Foundation was operated for the purpose of serving a private benefit rather than public interests?

2. Whether any part of the net earnings of the Foundation inured to the benefit of any private shareholder or individual?

3. Whether revocation of the Foundation's exempt status is appropriate given that it has been determined that the Foundation engaged in excess benefit with two of its officers?

FACTS

Backgound:

The Foundation was established by after their daughter, was diagnosed with autism. The Form 1023, Application for Recognition of Exemption, states the mission of the Foundation as follows: "To provide optimal outreach, education, and services to individuals confronting autism and alzhemeimer's [sic] and their caregivers and families through our services and staff dedicated to improving quality of life." The organization is named after mother,

The Foundation was incorporated on November 23, in as a not-for-profit corporation. and was recognized by the Internal Revenue Service as a tax-exempt organization as described in section 501(c)(3) by letter dated October 12, , effective, November 23, . The letter also stated that the Foundation would be classified as a public charity rather than a private foundation.

Following are the current officers of the Foundation:

Officers	Title
	President
	Vice president
	Secretary

All three officers are family members who reside at the same address as that used by the Foundation, No additional officers or directors are listed on the Form 990 for the tax year ending January 31, or on the Form 990-EZ for the tax year ending January 31, . The bylaws state at Article III, Section 1, that "the Board shall have up to twenty-one, and no fewer than fifteen, members. The Foundation does not appear to be operating with the number of directors stated in its bylaws and appears to have no oversight by anyone other than the three family members.

The Foundation bylaws set forth the following as the Foundation's purpose:

> Article I - Purpose: The purpose is to increase public awareness of autism and Alzheimer's; to support and conduct research, educational and informational activities to increase public awareness of autism and Alzheimer's; to provide research and information to patients, families and local community; to sponsor reports, meetings and workshops for patients, families and caregivers; conduct research and education about funding for low-income patients; and to educate the public about the growing need of organizations that provide services or advocacy for disadvantaged people suffering from these brain diseases.

Activity Description:

The agent interviewed Vice President, concerning the Foundation's programs and activities. stated that the Foundation is a resource center to provide information on autism and Alzheimer's. She stated that the activities of with respect to the Foundation consist of answering calls on their personal telephones from parents seeking information on autism. She also stated that the Foundation has a website and conducts some social events at the home. In addition, she stated that she visits local hospitals, churches and therapy centers and that the Foundation receives referrals from doctors and government agencies. The invite families with children to their home for picnics and swimming events on weekends. She added that the Foundation serves as a support group for families. No diary or log was provided to show the frequency with which undertakes these activities.

The Foundation provided a copy of a brochure and a list of activities as evidence of activities carried on. See **Exhibit 2.** The list of activities provided does not show the dates of events, locations, times, or the numbers of attendees. Printouts of photographs from the Foundation website depict children and adults at a party held at the family home. See **Exhibit 3.**

According to the Foundation's representative, the took children to an animal sanctuary in . No further details on the number of children, times, method of transportation, number of accompanying adults, or requirements for inclusion in the trip were provided.

The agent asked about whether the Foundation conducts or provides funding for research. response was that the Foundation does not conduct or fund any research on autism and Alzheimer's. The Foundation provided a list of names of organizations from which the Foundation states that it receives, or to which it makes, referrals. No additional information was provided concerning the frequency or results of any referrals. See **Exhibit 4.**

Funding:

The following sources of revenue are reported on the Forms 990:

Revenue Sources	Tax Year	Tax Year
Contributions, gifts, grants		
Investment income		
Totals		

Expenditures reflected in the general ledger, bank statements, and cancelled checks in fiscal tax years ending January 31, and January 31, , reveal numerous transactions in which the organization expended funds that apparently directly benefited the family members rather than the Foundation. The following table shows expenditures made using the Foundation's funds:

Expenditures	Tax Year	Tax Year
Security dog		
Electronics purchases		
decorations		
Hyperbaric chamber & related equipment		
Sporting equipment		
purchases		
payment		
Furniture		
Attorney retainer		
Trailer Shop,		
Trip to		
On Line Books		

Explanations of the above expenditures were requested but were not provided. It does not appear that the described purchases and payments with Foundation funds were made in furtherance of the Foundation's exempt purposes. See **Exhibit 1** for a summary of expenses for tax years ending January 31, and January 31,

The agent issued several Information Document Requests to obtain receipts and information with respect to how these expenditures are related to the Foundation's exempt purposes. The Foundation did provide explanations for some of the expenditures but did not provide appropriate explanations for those listed above.

The Foundation does not have any employees and is operated from the family home in The financial affairs of the Foundation are controlled by Vice President of the Foundation. She has management authority over the Foundation's day to day operations and decisions; she and her husband have signature authority on the Foundation's bank accounts. As noted above and are listed on the Forms 990 as officers.

The Foundation appears to be operated in a manner that enables the family to engage in activities that are financially beneficial to them. Any charitable benefits to the public appear to be insubstantial. The Foundation appears to be operated for non-exempt purposes in that it serves the private interests of the family members to a more than insubstantial extent.

Use of Funds:

In April of , the Foundation purchased a portable hyperbaric chamber, oxygen concentrator and pressure kit and training materials for $ The pressurized chamber administers pure oxygen and is used as an alternate form of treatment for children with autism. Although the treatment is believed to improve symptoms of autism by increasing oxygen intake in the brain, the treatment has not been scientifically verified. See **Exhibit 5**. Typically, a hyperbaric chamber treatment is conducted in a formal autism clinic or children's hospital and is administered by a registered medical technician.

The hyperbaric chamber purchased by the Foundation is kept at the family home on the second floor adjacent to the parent's master bedroom. The chamber does not appear to be available for general public use, and no medical technician is employed to operate it.

A chamber log is maintained to document date, name, and time the chamber was used. The agent reviewed the chamber log and found that from June 2, through January 31, , the chamber was used 114 times. The family members and used the chamber 94 times or % of the times it was used. Other individuals who were close family friends used the chamber 20 times or % of the times it was used. See **Exhibit 6**.

On November 11, , the Foundation purchased a security dog for $ The dog lives with the family and appears to be the family pet. stated the dog is helpful in the treatment of autism and is a pet for the children to play with when they visit their home. See **Exhibit 7.** It appears that the Foundation does not conduct activities for the public on a regular basis. No information was provided that indicates that Foundation activities are conducted at the family home over three times a year.

In August and November of the Foundation made several purchases of electronic equipment and computer for approximately $. Purchases were made at and retail stores. The items were apparently used by the family members. No receipts and no reasonable explanation was provided to show how these items benefit the Foundation and the general public.

In November and December of the Foundation purchased and installed a Christmas wonderland display for $. The decorations are on display in the family home and appeared to primarily benefit the family. The display is inside a large glass fish tank and is filled with decorations. stated that the display provided helpful therapy for the children when they visit on weekends.

Throughout the Foundation's funds were used to purchase books online, furniture, a moped and a trailer, to pay attorney retainer fees, and to pay expenses for family vacations enjoyed in See **Exhibit 1** for amounts expended.

The Foundation website, provides some general information about the organization and displays photographs of some activities. The site also posts the programs offered by the organization and solicits donations. The website programs show family and patient support groups. No information was provided to substantiate any face to face contact with individuals or groups. The Foundation's education and training involves answering telephone calls from individuals seeking information on autism. The website shows the Foundation offers programs and participates in advance treatments. The Foundation does not conduct research or provide funding for autism and Alzheimer's. There is no evidence the Foundation participates in collaboration with healthcare professionals or holds a leadership role for Alzheimer's related organizations as stated on their Form 990-EZ return.

Lastly, no evidence was provided to substantiate the Foundation has any educational workshops for medical professionals programs as shown on the website. The Foundation did provide a list of individuals and medical professionals as referrals.

LAW

Exempt Status:

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 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. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945).

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. Prohibited private interests include those of unrelated third parties as well as insiders. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; privilege; gain; [or] interest." Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

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.

Private Inurement and Excess Benefit Transactions:

The words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization. Treas. Reg. § 1.501(a)-1(c). The inurement prohibition provision "is designed to prevent the siphoning of charitable receipts to insiders of the charity . . . ." United Cancer Council v. Commissioner, 165 F.3d 1173 (7th Cir. 1999). A "private shareholder or individual" for purposes of a private inurement analysis has been interpreted to mean an insider of the organization. See Orange County Agricultural Society, Inc. v. Commissioner, 893 F.2d 529, 534 (2d Cir. 1990). The prohibited private inurement involves using the assets of the exempt organization for the benefit of the insider; examples include payment of a percentage of revenue, lending money, and payment of personal expenses. Founding Church of Scientology v. United States, 412 F.2d 1197 (Ct. Cl. 1969).

Prohibited inurement is strongly suggested where an individual or small group has exclusive control over the management of the organization's funds. The Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 927 (1986); Basic Bible Church v. Commissioner, 74 T.C. 846, 857 (1980); Church of the Transfiguring Spirit v. Commissioner, 76 T.C. 1, 7 (1981).

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the court found that although the organization did serve charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse and the need to be open and candid about financial matters; the applicant failed to provide information concerning financial affairs.

Section 4958(c)(1)(A) of the Code, in part, defines an "excess benefit transaction" as "any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit." In addition, section 4958(c)(1)(A). also provides that "an economic benefit shall not be treated as the consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit." IRC § 4958(c)(1)(A).

Section 4958(e) of the Code defines an "applicable tax-exempt organization" as an organization described in either section 501(c)(3) or section 501(c)(4) of the Code or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction. "Such term shall not include a private foundation as defined in section 509(a)." I.R.C. § 4958(e).

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Section 4958(f)(1) of the Code defines "disqualified person" as "(A) (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, [and] (C) a 35 percent controlled entity.

Treasury Regulation section 53.4958-3(c) provides that voting members of the governing body, presidents, chief executive officers, or chief operating officers are persons who are in a position to exercise substantial influence over the affairs of the organization.

Treasury Regulation section 53.4958-4(a)(1) provides that in order to determine whether an excess benefit transaction has occurred, all consideration and benefits exchanged between a disqualified person and the applicable tax-exempt organization and all entities it controls are to be taken into account.

Treasury Regulation section 1.501(c) (3)-l(f) (ii) provides that all the relevant facts and circumstances must be considered in determining whether to continue to recognize the tax exempt status of an organization that has engaged in excess benefit transactions, and lists the following five relevant factors that will be considered in that determination.

(A) The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;

(B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the ongoing activities that further exempt purposes;

(C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons;

(D) Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and

(E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f) (6) and Treasury Regulation section 53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.

ANALYSIS

Exempt Status:

The Foundation appears to have engaged in few activities that further its exempt purpose. Vice President states that she and her husband have answered some telephone calls and have invited autistic children and their families into their home for activities. The Foundation maintains a website and has published a brochure about its activities.

The address of the Foundation is the same as the residence of the officers. The expenditures appear to primarily benefit the family. Funds of the Foundation have been used for the purchase of an animal that appears to be a family pet and to purchase furniture, Christmas decorations, and electronic equipment for the personal residence. The hyperbaric chamber purchased by the Foundation is located off the master bedroom of the residence and is used by the family members and close friends. Foundation funds were used to finance a family trip to . Though some exempt purpose activity has occurred, the Foundation does not appear to operate exclusively exempt purposes as required by section 501(c)(3) and Section 1.501(c)(3)-1(c)(1).

Similar to the organization in Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the Foundation appears to exist to serve the private benefit of its founders, and thus fails the operational test of section 501(c)(3) even though it may operate for some exempt purposes. As in that case, control over financial affairs by the founders creates an opportunity for abuse. More than an insubstantial part of the Foundation's activities appear to benefit the family members rather than the general public.

Since the Foundation does not operate exclusively for exempt purposes and operates to the private benefit of the family to a more than insubstantial extent, the Foundation is not described by section 501(c)(3).

Excess Benefit Transactions and Revocation:

and are classified as disqualified persons with respect to of the Foundation because they are officers and founders of the Foundation who exercise substantial control over the Foundation's operations and financial affairs. I.R.C. § 4958(f)(1)(A); Treas. Reg. § 53.4958-3(c).

The expenditures listed on the Expenditures Chart above appear to be excess benefit transactions as to and in that they are transactions in which economic benefits were provided by an applicable tax-exempt organization directly or indirectly to or for their use andthe value of those economic benefits exceeds the value of any consideration received by the Foundation. I.R.C. § 4958(c)(1)(A)

The Foundation's facts and circumstances can be evaluated under the five factors listed in Treasury Regulation section 1.501(c) (3)-l(f) (ii) as follows.

> (A) The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;
>
> (B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the ongoing

activities that further exempt purposes;

Taking the above two factors together, the Foundation does not appear to have extensive regular and ongoing activities furthering its stated exempt purposes. The value of the aggregate excess benefit transactions involving the are substantial when compared to the scope of the Foundation's other activities. The Foundation reports revenue in the amount of $ for the fiscal year ending January 31, and expended $ over twice that amount, in the excess benefit transactions in which it engaged in that year. The Foundation reports revenue in the amount of $ for the fiscal year ending January 31, and expended $ in the excess benefit transactions in which it engaged in that year. When combined, the revenue for the two years totals $ and the amount expended in excess benefit transactions totals $ Thus, over 80 percent of the revenue of the Foundation was expended to benefit the family during the two fiscal years examined.

(C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons;

The Foundation appears to have engaged in multiple excess benefit transactions with the family. Seven were indentified in the fiscal year ending January 31, and six were identified in the fiscal year ending January 31,

(D) Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions;

No safeguards appear to have been implemented. The same family remains in control of the bank accounts and the day to day operations of the Foundation. Further, the Foundation is not adhering to the terms of its current bylaws that the board shall contain no fewer than 15 members and continues to operate with only three family members on its board.

(E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f) (6) and Treasury Regulation section 53.4958-7, or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.

The Foundation has not sought correction, as defined in the section 4958 regulations, from the family.

Accordingly, when all the factors are taken into consideration, the Service has concluded that it is appropriate to pursue revocation as a result of the transactions described above in addition to the failure of the Foundation to operate exclusively for an exempt purpose.

TAXPAYER's POSITION:

Taxpayer's position with respect to the issues, facts, applicable law and conclusions is unknown. The organizations will be allowed 30 days to review this report and respond with a protest if desired.

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GOVERNMENT'S POSITION

Based on the facts learned during the examination, the Foundation does not qualify for exemption under IRC Section 501(c)(3) as a charitable organization. Revocation of the Foundation's exempt status is appropriate since it is not operated exclusively for exempt purposes. The Foundation clearly confers a private benefit on the family members. The Foundation funds appear to be used primarily for the benefit of the As noted above, an organization that operates for the benefit of its creators' private interests is not operating exclusively for exempt purposes.

CONCLUSIONS

1. The above facts demonstrate that the Foundation is not operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3):
   a. The Foundation is not engaged primarily in activities that accomplish an exempt purpose.
   b. More than an insubstantial part of the Foundation's activities are in furtherance of a non-exempt purpose.
   c. The Foundation was operated for the purpose of serving a private benefit rather than public interests.

2. A substantial part of the net earnings of the Foundation inured to the benefit of and , two officers of the Foundation.

3. Revocation of the Foundation's exempt status is appropriate in addition to the determination of section 4958 excise tax with respect to the officers due to the following factors:

   a. The Foundation engaged in few exempt purpose activities;
   b. The scope of the excess benefit transactions is substantial when compared with the scope of other activities and expenditures;
   c. The Foundation engaged in multiple excess benefit transactions;
   d. The Foundation has implemented no safeguards that are reasonably calculated to prevent excess benefit transactions;
   e. The excess benefit transactions have not been corrected (within the meaning of section 4958(f) (6) and Treasury Regulation section 53.4958-7, and the organization has made no good faith efforts to seek correction from the disqualified persons who benefited from the excess benefit transactions.

Accordingly, the Foundation does not qualify for exemption under section 501(c)(3) and its tax exempt status should be revoked. This proposed revocation would be effective February 1, . Any contributions to the Foundation will not be deductible as charitable contribution.

The Foundation will be required to file Form 1120 for the tax period ending January 31, and for all subsequent tax years

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