

Internal Revenue Service

Appeals Office
San Jose Appeals, MS-7100
55 S. Market St., Suite 440
San Jose, CA 95113

Department of the Treasury

Employer Identification Number:

Date: DEC 11 2015

Person to Contact:

Number: 201610025
Release Date: 3/4/2016

UIL:
501.33-00

Certified Mail

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, xxxx.

Our adverse determination was made for the following reason(s):

1. You are not operated exclusively for exempt purposes within the meaning of Code § 501(c)(3) and Treasury Regulation § 1.501(c)(3)-1(d). You do not engage primarily in activities that accomplish one or more of the exempt purposes specified in Code § 501(c)(3). More than an insubstantial part of your activities are in furtherance of a non-exempt purpose.
2. You are not operated primarily for a public purpose as is required by Code § 501(c)(3) and Treasury Regulation § 1.501(c)(3)-1(d)(ii). Your operations result in substantial benefit to private interests.

Contributions to you are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the

documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also 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 matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892 and/or 556

cc:



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division

Date: AUG 6 2014

Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:
Phone Number:
Fax Number:
Manager's name / ID number:

Manager's contact number:
Phone Number:
Response due date:

Certified Mail - Return Receipt Requested

Dear :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't 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:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

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,

Barbara L. Harris
Acting, Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31,

ISSUES:

1. Whether exempt status under Internal Revenue Code (IRC) § 501(c)(3) should be revoked since its primary purpose is the provision of housing to the founders' farm employees, which serves the private interests of the founders.
2. Whether certain payments, identified below, constitute taxable expenditures defined under IRC §§ 4945(d)(2) and (3), and should be taxed under IRC §§ 4945(a)(1) and (b)(1).

FACTS:

Organization Background

Form 1023, Application for Recognition of Exemption, was filed by _____ on _____. It states its purpose is to distribute charitable contributions to:

- Religious organizations
- Schools and Universities
- Other cultural, historical, or educational organizations.

If further states that its financial support will come from contributions from individuals and professional people. Fundraising will be planned with individual solicitations. The activities will be conducted in _____ by _____ officers and directors. It is not a supporting organization, a private operating foundation, or a home for the aged or handicapped. It does not provide any scholarship benefits or student aid. The facilities and operations will not be managed by another organization or individual under a contract. It is not a party to any leases and does not provide services or products.

_____ was incorporated in the State of _____ on _____ by the Department of Commerce and Consumer Affairs State of _____. These documents state that _____ will operate exclusively for charitable, religious, educational, scientific or literary purposes. Upon dissolution, assets shall be distributed for exempt purposes described under IRC § 501(c)(3) or to federal, state, or local government. The organization will not engage in any act of self-dealing as defined in §4941(d) of the IRC. None of the corporation's assets or net earnings will inure in whole or part to the benefit of any private individual except in furtherance of charitable, religious, educational, scientific or literary purposes.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit #1
Name of Taxpayer		Year/Period Ended December 31,

Officers

President
Vice President, Director
Director
Treasurer

The address for all officers is _____ The
bylaws were signed _____ by _____ and _____

Related Entity:

_____ incorporated in _____ as a for-profit agricultural business, founded, owned, and operated by _____ and his family. Its commercial operations are on approximately _____ farm acres and it provides full-time employment to approximately _____ people. office is located at _____

All tenants of _____ low income agricultural housing activity are employees. _____ deducts rent from its employees' payroll for the amount of the employees' rent that is due to the _____

No references or links to _____ were found on _____ website. _____ has no website.) _____ website, _____, encourages fundraisers to purchase, then sell, _____ produce inventory at farmers markets. An excerpt from _____ website follows:

Other Activities: _____ has advertised a variety of public events since the year of _____ or earlier. It has provided weekly farmers markets since the year of _____. Examples of internet postings advertise similar seasonal activities hosted by _____. These include:

- o An advertisement with costs for entertainment including a Giant Corn Maze, rides, and a list restaurants selling their food. The advertisement

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer	Year/Period Ended December 31,	

promotes "The Market Place" that "shoppers can browse".
 : Thursday

- o s hosts Easter Egg Hunt, with hay rides, rock climbing, inflatables and more. From 9 a.m.-5 pm.,
 Call , ext. 41.
 ()
- o While the say they are concerned about the fate of the workers, they maintain they are good corporate citizens who offer corn maze and pumpkin patch events for school kids and Easter egg hunts for children in the community, during which they teach them about agriculture and farm life. (.com:
 Investigated for State and Federal Labor Violations)

Reported Activities

filed Form 990 for year (that reported fundraising activities. Forms 990-PF for years through that reported housing activities. Providing housing to employees is Foundation's primary activity per filed Forms 990-PF from to present. states it had no activities until when it reported gross receipts of \$ as public contributions from fundraising. Receipts of \$ were from and \$ from "Easter Egg Hunt". After expenses of \$, Foundation showed a loss of \$ No distributions of donations or grants were made by

Housing Rental: through activities:

The following are chronological activities for housing:

- May Board Meeting:

Foundation's board met to approve action to pursue a USDA Farm Labor Housing Loan.

- May Letter of Conditions from USDA:

This letter describes the housing as " units, Employees" and shows the activity as Units of Section 521 Rental Assistance

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31,

Activities for Year of Examination

Revenue

For year ended December 31, Form 990-PF reported the following:

Contributions, Gifts, Grants, etc.	\$
Labor Housing	\$
Total Revenue	\$

The examination results show the following revenue:

Labor Housing Revenue (Rent Tenants)	\$
Labor Housing Revenue (Rent Subsidy)	\$
Total Revenue	\$

Rental income was collected by contracted management company,
The records for the rental activities were maintained by

For contributions of \$, no money was contributed to on. Instead, the amount represents forgiveness of a debt for expenses s paid in a prior year. The expenses were incurred for year event called " " claims that because I did not repay for expenses. considered itself to have made contributions to Foundation in year The examiner found internet advertisements showing as the sponsors of the event. No mention of was found.

Expenses: Qualifying Distributions and Undistributed Income

Form 990-PF for tax year states: Qualifying Distributions of were made for "scholarships to students", and that "Contributions were only given to preselected charitable organizations." Excess distributions carried from year totaled \$

Qualifying Distributions: Scholarship to Students

The auditor requested all documents related to scholarship authorization, criteria, solicitation, and recipient selection process. had no supporting documentation related to their scholarships and no IRS approval of their scholarship programs. stated it had no specific documented formalities and that scholarship availability was mostly communicated by word of mouth.

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer	Year/Period Ended December 31	

records for the \$ of "scholarship to students" expenditure on Form 990 show the following payments: paid directly to Ms. , a member of pharmacy fraternity at Ms.'s school transcripts were mailed to s "scholarship letter states "Your parents are very proud of you." explained that met a member of Ms. family, who is with the state legislature, during an event hosted by the Bureau. Ms. learned of the scholarship at this event and she was subsequently selected to receive the scholarship based on high academic achievement. Other payments are as follows.

- \$ letter of appreciation is addressed to
- \$ donation to a local High School.
- \$ paid directly to The believes that this was paid as a replacement for a lost check paid out in prior years to assist in expenses for school books. No supporting documentation was provided.

There was also \$ paid to "Friends of Representative). provided a copy of check # , dated and noted as "donation". The financial institution's copy of the same check shows the note as " event tickets" and "donation". stated this payment for the political candidate "was a mistake by an employee who wrote a check from main account". transferred \$ from its bank account #1 to its bank account #2 to correct the mistake. Regardless, no reimbursement to from was evidenced.

Public records show is a member of the House of Representatives, representing the District since . In and won re-election. State of Campaign Spending Commission reports that "Committee: Friends of " contributions included \$ received on from . (Friends of . : Report On: Supplemental January 1 - June)

Qualifying Distributions: Excess distributions

The auditor requested records to explain the \$ distribution carried from year to the year . The distributions were paid for the amounts and purposes as follows:

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		Year/Period Ended December 31, .
Name of Taxpayer		

- Housing (Rental)
- Year Sunset on the Plains Expenses
- Payments to individuals
- Payments to Schools and Church

Liabilities

The amount of \$ _____ was included in liabilities for a bill paid by _____ for _____
 No documents supported that _____ was liable for this expense.

Tax Law - Exempt Status

Exempt Purpose

IRC § 501 provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided that no part of the net earnings inures to the benefit of any private shareholder or individual.

§ 1.501(c)(3)-1(c)(1) of the Income Tax Regulations (Regulations) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in IRC 501(c)(3). An organization must not engage in substantial activities that fail to further an exempt purpose. In *Better Business Bureau of Washington, D.C. v. U.S.*, 326 U.S. 279, 283 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

Regulations § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Regulations § 1.501(c)(3)-1(d)(2) defines the term "charitable" as used in § 501(c)(3) as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Revenue Procedure 96-32, 1996-1 C.B. 717, 1996-20 I.R.B. 14. sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in § 501(c)(3) of the IRC because they relieve the poor and distressed as described in § 1.501(c)(3)-1(d)(2).06-.07 of the Regulations as follows:

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit #1
Name of Taxpayer		Year/Period Ended December 31,

To be recognized as exempt from income tax under § 501(c)(3), a low-income housing organization must not only serve a charitable purpose but also meet the other requirements of that section, including the prohibitions against inurement and private benefit.

If an organization furthers a charitable purpose such as relieving the poor and distressed, it nevertheless may fail to qualify for exemption because private interests of individuals with a financial stake in the project are furthered. For example, the role of a private developer or management company in the organization's activities must be carefully scrutinized to ensure the absence of inurement or impermissible private benefit resulting from real property sales, development fees, or management contracts.

An organization of farmers formed to furnish farm laborers for individual farmers does not qualify for exemption. The organization obtained requests from member farmers for workers, assigns the laborers to the farmers, receives payment from the farmers, and pays the laborers or their representatives. The organization's income is from a small rental fee paid by the workers and fees and dues paid by the farmers. Its funds are used to operate a labor camp to house transient farm workers while they are working in the area. The organization, by engaging in the activities described above, is merely providing services to individual farmers that they would have to provide for themselves or get someone else to provide for them. Revenue Ruling (Rev. Rul.)72-391, 1972-2 C.B. 249.

An organization formed to provide low income housing to families but with preference for housing to employees of a farm proprietorship operated by the individual who created and controls the organization does not qualify for exemption under § 501(c)(3) of the IRC. The organization constructed ten rental units adjacent to the farm. Applicants for housing were preference according to type of position and length of employment on the farm. All of the units are occupied by regular employees of the farm. The individual pays the rent for the employees. All of the housing units are occupied by low income families. The organization was initially funded through a loan from a governmental agency and contributions from the individual. Its receipts are from rental payments and its disbursements are for repayments on the loan and upkeep of the rental units. Since the organization gave preference for housing to employees of the farm proprietorship operated by the individual who created and controls the organization, and all the units are in fact occupied by such employees, the organization is serving the private interests of the individual rather than a public interest. Accordingly, it is held that the organization's activities are not charitable and that it does not qualify for exemption from Federal income tax under § 501(c)(3) of the IRC. Rev. Rul. 72-147, 1972-1 C.B. 147

The court held that an organization that operated a school to train individuals for careers as political campaign professionals, but that could not establish that it operated

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		Year/Period Ended December 31,
Name of Taxpayer		

on a nonpartisan basis, did not exclusively serve purposes described in IRC 501(c)(3) because it served private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with a particular political party and that most of the organizations graduates worked in campaigns for the party's candidates. The court concluded the organization conducted its educational activities with the objective of benefiting the party's candidates and entities. Although the candidates and entities benefited were not organizational "insiders", the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve private interests within the meaning of IRC 501(c)(3)-1(d)(1)(ii). The court concluded by stating that even if the political party's candidates and entities did comprise a charitable class, [the organization] would bear the burden of proving that its activities benefited members of the class in a non-select manner. "American Campaign Academy", 92 T.C. at 1077.

The court held that an association formed in a private real estate development to operate parks, swimming pools, boat docks and other recreational facilities did not qualify as IRC 501(c)(3) organization. Although the organization provided some benefit to the general public, the primary intended beneficiaries were the residents and property owners of the private development. Thus, the organization operated for a substantial non-exempt purpose rather than for exclusively charitable purposes. *Columbia Park & Recreation Association v. Commissioner*, 88 T.C. 1 (1987), aff'd.

A nonprofit organization that provides specially designed housing to elderly persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is an organization operated exclusively for charitable purposes within the meaning IRC 501(c)(3). Rev. Rul. 79-18, 1979-2 C.B. 194. See also Rev. Rul. 72-124, 1972-1 C.B. 145; Rev. Rul. 61-72, 1961-1 C.B. 188; and Rev. Rul. 64-231, 1964-2 C.B. 139.

In *Foundling Church of Scientology v. United States*, 412 F.2d 1197, (Ct. Cl. 1969), cert. denied, 397 U.S. 1009 (1970), an organization argued that the Court should not find that the organization's earnings had inured to its founders since it had made some payments to him as repayments on a loan. Since the organization did not produce any documents evidencing this indebtedness, the Court concluded that the plaintiff had failed to meet its burden of proof that a part of the corporate earnings was not a source of benefit to private individuals.

In *Wendy L. Parker Rehabilitation Foundation, Inc. v. C.I.R.*, T.C. Memo. 1986-348, the Tax Court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The Court found that the family coma victim was a substantial beneficiary of the foundation's funds. It also noted that such distributions relieved the family of the economic burden of providing medical and rehabilitation care

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31,

for their family member and, therefore, constituted inurement to the benefit of private individuals.

Benefit does not have to involve the flow of funds. See Rev. Rul. 76-206 (providing services to a for-profit that would otherwise have had to have been purchased). Benefit does not require that payments for goods or services be unreasonable or exceed fair market value. EST of Hawaii v. Commissioner, 71 T.C. 1067 (1979).

A nonprofit organization formed to aid immigrants in overcoming social, cultural, and economic problems by providing personal counseling, referrals to helpful agencies, social and recreational activities, instruction in English, and distributing a newsletter containing information on attaining citizenship, securing housing, and obtaining medical care is operated exclusively for charitable and educational purposes and qualifies for exemption under IRC 501(c)(3). Rev. Rul. 76-205, 1976-1 C.B. 154.

IRC 501 provides for exemption from income tax for organizations described in IRC 501(c) and IRC 501(d). §501(c)(3) provides this exemption for corporations, associations and trusts that are organized and operated for charitable, educational, literary, religious, and or scientific purposes, to test for public safety, for fostering national or international amateur sports competition (with certain limitations,) or for preventing cruelty to animals or children.

IRC 501(c)(3) also requires that no part of the net earnings inures to the benefit of any private shareholder or individual, that no substantial part of the activities of is to carry on propaganda, or otherwise attempt to influence legislation, and that it not participate in, or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office.

IRC 507(a) sets forth the requirements for a private foundation to be terminated, either voluntarily under IRC 507(a)(1), or involuntarily under IRC 507(a)(2). The two requirements for involuntary termination, are that 1) there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), that give rise to liabilities for taxes under Chapter 42, and 2) that for this reason the Secretary notifies the organization that it is subject to a termination tax imposed by IRC 507(c).

IRC 509 defines private foundations to be organizations described in IRC 501(c)(3) that do not meet one of the exceptions further listed in IRC §§ 509(a)(1), 509(a)(2), 509(a)(3), or 509(a)(4).

Tax Law: Private Foundation and Excise Taxes (IRC 4945):

IRC §§ 4945(a) and 4945(b) impose excise taxes on taxable expenditures defined in IRC 4945(d).

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31,

IRC 4945(a)(1) imposes a 20% excise tax for each taxable expenditure that is to be paid by the private foundation.

IRC 4945(b)(1) imposes an excise tax of 100% on the foundation for taxable expenditures that are not "corrected" (IRC 4945(i)) within the taxable period, that shall be paid by the private foundation.

IRC 4945(b)(2) imposes an excise tax of 50% on the foundation manager in cases where taxes are imposed under IRC 4945(b)(1), and the foundation manager refused to agree to part or all of the "correction" (IRC 4945(i)). This tax is to be paid by the foundation manager.

IRC 4945(c)(2) limits the tax imposed by IRC 4945(a)(2) to \$5,000, and the tax imposed by IRC 4945(b)(2) to \$10,000.

Political & Legislative:

IRC 4945(d)(1) holds that taxable expenditures include any amounts expended by a private foundation to carry on propaganda, or otherwise to attempt, to influence legislation, which includes any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be), other than through making available the results of nonpartisan analysis, study, or research (IRC 4945(e)(1) and 4945(e)(2)).

A private foundation influences the outcome of a specific public election if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. (Regulation 53.4945-3(a)(2)). The term "candidate for public" means an individual who offers himself or herself, or is proposed by others, as a contestant for an elective national, state, or local public office.

IRC 162 sets forth the types of ordinary and necessary expenses that may be allowed as deductions in carrying on any trade or business. IRC 162(e) denies a deduction under IRC 162 for certain lobbying and political expenditures. IRC 162(e)(1) proceeds to list the expenditures which are not deductible, including amounts paid or incurred in connection with influencing legislation (IRC 162(e)(1)(A)), participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office (IRC 162(e)(1)(B)), any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums (IRC

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31,

162(e)(1)(C)), or any direct communication with certain executive branch officials in an attempt to influence the official actions or positions of those officials. (IRC162(e)(1)(D)).

IRC § 4945(i)(1) sets forth that with respect to any "taxable expenditure" (IRC § 4945(d)), the terms "correction" and "correct" mean the recovery of part or all of the expenditure to the extent possible, and where full recovery is not possible such additional corrective action as is prescribed by the Secretary by § 4945(i)(2) holds that with respect to any "taxable expenditure" (IRC 4945(d)), the "taxable period" is the period beginning with the date on which the taxable expenditure occurs and ending on the earlier of A) the date of mailing of a notice of deficiency with respect to the tax imposed by IRC § 4945(a)(1), or B) the date on which tax imposed by § 4945(a)(1) is assessed.

Scholarships and Grants:

Grants to individuals must be made in accordance with procedures approved in advance by the Internal Revenue Service. To secure such approval, a private foundation must demonstrate in its request for advance approval that:

- Its procedure awards grants on an objective and non-discriminatory basis;
- The procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- The foundation will supervise grants to determine whether grantees have fulfilled the grant terms.

See Regulations 53.4945-4(b)(2).

IRC 4945(g)(1) excludes from the term "taxable expenditure" scholarship grants that are subject to the provisions of IRC 117(a) and are to be used for study at an educational institution described in IRC 170(b)(1)(A)(ii). IRC 4945(g) provides further that these individual grants must be provided on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary.

Termination of a Private Foundation:

IRC 507(a) sets forth the requirements for a private foundation to be terminated, either voluntarily under IRC §507(a)(1), or involuntarily under IRC § 507(a)(2). The two requirements for involuntary termination, are that 1) there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), that give rise to liabilities for taxes under Chapter 42, and 2) that for this reason the Secretary notifies the organization that it is subject to a termination tax imposed by IRC § 507(c).

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit #1
Name of Taxpayer		Year/Period Ended December 31,

IRC 509 defines private foundations to be organizations described in IRC § 501(c)(3) that do not meet one of the exceptions further listed in §§ 509(a)(1), 509(a)(2), 509(a)(3), or 509(a)(4).

Income Tax:

IRC § 11 imposes a tax for each taxable year on the taxable income of every corporation.

IRC § 61 of the Code defines gross income as all income from whatever source derived.

IRC § 162 of the Code allows as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

§ 1.6001-1(d) of the Regulations requires corporations to make such returns, render such statements, or keep such specific records as will enable the Service to determine whether or not such corporation is liable for tax under subtitle A of the Code.

§ 1.6012-2 of the Regulations requires every corporation subject to taxation under subtitle A of the Code to make a return of income regardless of whether it has taxable income or regardless of the amount of its gross income. In addition, this regulation specifies Form 1120 as the required return of a corporation.

GOVERNMENT'S POSITION:

1. provision of low income housing exclusively to the founders' employees, constitutes activities that primarily serve the private interests of the founders.
2. is not operated exclusively for a charitable purpose and does not meet this requirement to qualify for exemption from Federal income tax under IRC § 501(c)(3).
3. recognition of exempt status under § 501(c)(3) should be revoked because it does not meet the requirements .
4. liable for excise taxes applicable to private foundations on payments made directly to individuals and to a non-qualifying organization.

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31,

5. The aforementioned payments are in violation of IRC § 4945(d), and is liable for the amount of tax.
6. is subject to taxation under subtitle A of the IRC as described below.

Private Benefit

was formed for the private benefit of its founders, the family members, and their family-owned commercial farms. is organized and primarily operated in a manner to further the commercial farm ventures of and the family.

recognized that to receive a government grant for housing its farm workers, proof of IRC 501(c)(3) status was required by USDA. This status can secure key funding and facilitate lender and governmental agency approval of the funding transfers.

The founders used their IRC 501(c)(3) exempt status to obtain government subsidies for housing, then used the benefits exclusively for employees of the founders' business, did not seriously solicit tenants other than employees and several instances support that Farms' considered the its very own foundation (The names of documents (USDA loan is for " units, Employees, Units of section 512 rental assistance"). The ultimate result is that any benefit from the housing activity went exclusively and directly to its founders, and employees. The organizations activities are fully oriented to its own membership rather than to the general public. As noted in G.C.M. 38459, "an organization which serves a private interest other than incidentally is not entitled to exemption as an organization described in IRC § 501(c)(3).

activities and expenditures benefit had unfettered use of funds and used them for private purposes to pay for its self-promotional community events, including Markets and other events that included sales of products and of for-profit vendors' products. control was used to benefit by insiders (family members) as evidenced by insider contributions that were changed at whim to loans.

Substantial Non-exempt Purpose

substantial non-exempt purpose was one of qualifying for a federal housing loan and rent subsidies for employees while avoiding the regulatory requirements that competing for-profit farms must contend with to

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit #1
Name of Taxpayer		Year/Period Ended December 31,

acquire the same loans and rent subsidies. The government loan for the housing was dependant on the organization enjoying recognition of tax exempt status under IRC § 501(c)(3). It is not furthering a charitable or educational purpose to ensure had a ready supply of farm labor through provision of housing expenses paid for the government for its employees only. Further, low-income tenants were not provided tools or opportunities to better their situation through training related to home ownership, unlike the case in Rev. Rul. 67-138.

situation can also be distinguished from situations 1 through 3 of Rev. Rul. 70-585, none of which primarily benefited their individual members, founders, or other insiders.

To be recognized as exempt from income tax under IRC § 501(c)(3), a low-income housing organization must not only serve a charitable purpose but also meet the other requirements of that section, including the prohibitions against inurement and private benefit.

has not established that it does not provide preferential services or benefits to its members other than those of a purely incidental nature.

As in *Better Business Bureau of Washington, D.C. v. U.S.*, 326 U.S. 279, 283, the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

is like the organization described in Rev. 72-147, where all units of the housing have been occupied by employees (or employees' family members) of a farm proprietorship operated by the individual who created and controls the

Although providing housing for low-income families furthers charitable purposes, doing so in a manner that gives preference to employees of the founder's business primarily serves the private interest of the founder rather than a public interest.

is similar to *Easter House* where the court found that the health-related services were merely incidental to the organization's operations of a service which, in and of itself, did not serve an exempt purpose. And the business purpose, and not the advancement of education and charitable activities purpose, of the activity is the primary goal. (*Easter house*, 12Cl. CT. at 485-86.) Here, with , any charitable purpose of providing housing for the poor is incidental to actual business purpose of housing their employees while obtaining government subsidies available only to non-profit organizations.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit #1
Name of Taxpayer		Year/Period Ended December 31,

Further, like the organization described in Rev. Rul. 72-391, 1972-2 C.B. 249. Where the furnishing of housing for transient farm laborers is merely a necessary adjunct for the accomplishment of the organization's purpose", in case, that of securing a labor force for the founder's business.

Similarly, is like the organization in Rev. Rul. 69-280, C.B. 1969-1 that operated primarily and directly for the benefits of the individual members rather than for the community as a whole.

provides substantial financial benefits to by essentially providing it with a means of housing their employees and providing an easy source of capital to purchase real estate to accomplish this. Utilizing the exempt status of eliminates roadblocks to obtaining a housing loan, and saves considerable time and money to repay the loan through government payment of low rent subsidies and payroll deductions for rent. As such, serves a private interest more than incidentally, contrary to § 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

Revocation

does not qualify for exemption from tax under IRC 501(c)(3) because it has failed to operate exclusively for exempt purposes as required by IRC 501(c)(3), Treas. Reg. §1.501(c)(3)-1(a)(1), and Treas. Reg. §1.501(c)(3)-1(a)(2) because more than an insubstantial part of its activities is not in furtherance of exempt purposes. A substantial part of its funding, expenses, staff, and program is in furtherance of increasing profits of the founders' agricultural business. recognition of exempt status under § 501(c)(3) should be revoked.

Note: Once a private foundation's exempt status is revoked, it is considered a taxable private foundation until it terminates its private foundation status under the provisions § 507 of the Code. It must continue to file Form 990-PF and pay any applicable private foundation excise taxes (calculated on Form 4720) until termination.

Taxable Expenditures

The is subject to the excise taxes under § 4945. Outlined below are the analyses of the liabilities and the computation of the taxes for each year.

The grants or scholarships to individuals were made prior to receiving approval, therefore, it constitutes taxable expenditures under IRC 4945(d)(3). Regardless, the scholarship would not have met the approval criteria that requires grants to be awarded on an objective and nondiscriminatory basis. No data supports that any type of selection criteria was established or followed. (See IRC 4945(d)(3), 4945 (g) and Regs. 53.4945-4(a)(ii)).

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit #1
Explanation of Items		
Name of Taxpayer		Year/Period Ended December 31,

contributions to a candidate for public office are taxable expenditures subject to chapter 42 excise taxes. The internal transfer of funds did not correct the distribution. (See IRC 4945(b))

Forgiven Loan shown as Contribution to

The examiner could uncover no evidence to support that the event was related to , but rather public credit was given to and it was held on ; for-profit property. Nor does evidence support that was liable for the event expenses. All advertisements support that this was one of ' promotional and revenue generating events that has been conducting for several years independent of

The amount of \$ "contribution" representing forgiveness of an unproven debt is disallowed.

The excess distribution carryover from the prior year, of was based on \$ of distributions of which only \$ were qualifying distributions. (See calculation below.) However, further documentation was not supplied to support that this amount of qualifying distributions exceeded a determined amount of year minimum distributions. Therefore, no excess distribution carry over to the year return will be allowed at this time.

Year	Distributions of \$, Shown as Excess Distributions on Year		
Amount	Purpose		Qualifying Non-Qualifying	Non-Qualifying Distribution
	Housing (Rental)			
	Year Sunset on the Plains Expenses			
	Scholarship; Scholarship Recipient:			
	School			
	School			
	Total Non-Qualifying Distributions from Year			
	Total Qualifying Distributions from Year			

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit #1
Name of Taxpayer		Year/Period Ended December 31,

TAXPAYER'S POSITION:

The taxpayer has not yet provided their opinion.

CONCLUSION:

has not demonstrated that it is operated exclusively for exempt purposes within the meaning IRC § 501(c)(3) and Treasury Regulations § 1.501(c)(3)-1(d). did not engage primarily in activities that accomplish one or more exempt purposes specified in § 501(c)(3). It is operated for a substantial non-exempt purpose and for the benefit of private, rather than public, interests and its activities resulted in substantial private benefit.

required to file Federal income tax returns on Forms 1120 for the tax period ending December 31, , as stated in the heading of this letter, and for all tax years thereafter.

Because was a private foundation as of the effective date of revocation, it is considered to be a taxable private foundation until it terminates its private foundation status under § 507 of the Code. In addition to the income tax return, you must also continue to file Form 990-PF by the 15th day of the fifth month after the end of your annual accounting period. For information on termination your private foundation status, IRM 7.26.7 and IRC 507(a) and (b).

§4945 Computations

The taxable expenditures made by the under §§ 4945(d)(3) and 4945(d)(5), subject the foundation to imposition of the first tier excise tax under § 4945(a)(1), at a tax rate of 10%. Since correction of the expenditures has not been made, § 4945(b)(1) imposes a second tier excise tax of 100% against the foundation.

The total taxable expenditures of \$ include the following:

- \$ paid directly to Ms.
- \$ paid directly to
- \$ paid to "Friends of

The tax is computed as shown below:

Year	
Taxable expenditures	
§ 4945(a)(1) rate	%

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit #1
Name of Taxpayer		Year/Period Ended December 31,

§ 4945(a)(1) excise tax	
Taxable expenditures	
§ 4945(b)(1) rate	x 100%
§ 4945(b)(1) excise tax	\$
Total § 4945 taxes	\$

Returns and payments should be sent to the following mailing address:

Internal Revenue Service

TE/GE Division M/S: W540 rb

Make check(s) or money order(s) payable to the United States Treasury.

For the foregoing reasons, is not an organization described in § 501(c)(3) and revocation of its exempt status is proposed effective January 1,

Forms 1120 returns should be filed for the tax periods ending on or after January 1, Forms 990-PF and 4720 are also applicable to private foundations.

Information: Form 1120 Filing Requirement:

Taxation under subtitle A of the Code: A corporate organization whose tax-exempt status is revoked is brought current on its filing and tax liabilities by transferring the Form 990 data to converted Forms 1120 and assessing any tax due. If Foundation's exempt status is revoked, Forms 1120, *U.S. Corporation Income Tax Return*, should be filed for the tax periods ending on or after January 1, .

§ 1.6012-2 of the Regulations requires every corporation subject to taxation under subtitle A of the Code to file Form 1120 to report the income and deductions per §§ 61 and 162 of the Code respectively.

For the year , the examiner adjusted the revenue (from \$ to) to reflect the additional tenant and subsidy rental income shown on records. The expenses were adjusted (from \$ to \$) to disallow the \$ of donation disbursements made to individuals and to a non-qualified entity.