



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street, MC 4920DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **202216020**
Release Date: 4/22/2022

Date:
January 6, 2021
Taxpayer ID Number:

Form:

Tax Period(s) Ending:

Person to Contact:

Identification Number:

Telephone Number:

UIL: 501.03-00

CERTIFIED MAIL – Return Receipt Requested
LAST DAY FOR FILING A PETITION WITH THE TAX COURT:

Dear :

This is a final determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3), effective January 1, 20 . Your determination letter dated September 26, 20 is revoked.

Our adverse determination as to your exempt status was made for the following reasons:

Organizations described in IRC Section 501(c)(3) of the Code and exempt under Section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. You have not established that you have operated exclusively for an exempt purpose.

As such, you failed to meet the requirements of IRC Section 501(c)(3) and Treasury Regulations Section 1.501(c)(3)-1(a), in that you have not established that you were organized and operated exclusively for exempt purposes and that no part of your earnings inured to the benefit of private shareholders or individuals.

Contributions to your organization are no longer deductible under IRC Section 170.

Organizations that are not exempt under IRC Section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information please visit www.irs.gov.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of IRC Section 7428 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 was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

U. S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under IRC Section 7428.

We'll notify the appropriate state officials (as permitted by law) of our determination that you aren't an organization described in IRC Section 501(c)(3).

You may be eligible for help from the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 1-877-777-4778.

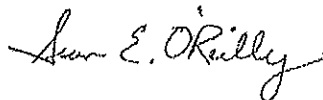
Taxpayer Advocate assistance can't be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

You can get any of the forms or publications mentioned in this letter by calling 800-TAX-FORM (800-829-3676) or visiting our website at www.irs.gov/forms-pubs.

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

Sincerely,

Enclosures:
Publication 892



Sean E. O'Reilly
Director, Exempt Organizations Examinations



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

Date:
July 2, 2020
Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:

ID number:
Telephone:
Fax:

Manager's contact information:

ID number:
Telephone:
Response due date:

CERTIFIED MAIL – Return Receipt Requested

Dear _____ :

Why you're receiving this letter

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

If you agree

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

After we issue the final adverse determination letter, we'll announce that your organization is no longer eligible to receive tax deductible contributions under IRC Section 170.

If you disagree

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

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 adverse determination letter.

Contacting the Taxpayer Advocate Office is a taxpayer right

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Additional information

You can get any of the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact the person shown at the top of this letter.

Sincerely,

for Sean E. O'Reilly
Director, Exempt Organizations Examinations

Enclosures:

Form 886-A, Form 6018

Publication 892, Publication 3498

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
Name of taxpayer	Tax Identification Number <i>(last 4 digits)</i>	Year/Period ended

Issues

Should _____ (the Organization) exemption from Federal income tax under Internal Revenue Code (IRC) section 501(c)(3) be revoked for failing to meet the organizational and operational tests of Treas. Reg. section 1.501(c)(3)-1(a) by not limiting its purposes in its organizing documents to, and operating exclusively for, 501(c)(3) exempt purposes?

Facts

Formation

The Organization was incorporated in the state of _____ on July 5, 20____. Article III of the Articles of Incorporation state that this corporation is a "nonprofit public benefit corporation", and state its specific purpose to be:

The specific purpose of this corporation is to advancement [sic] of renewable and sustainable home energy products and practices to aid in the reduction of homelessness, and conservation of precious natural resources.

The Organization's Bylaws, Article II, state that its purpose is set forth in the Articles of Incorporation and further state:

...whose mission is to increase awareness and educate the public about ways to conserve valuable natural resources, and also to provide assistance to eligibility [sic] homeowners who may wish to make improvements that conserve resources...

Application for Recognition of Exemption

The Organization submitted Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, in September of 2016. The following boxes on the Form 1023-EZ were checked:

Part II Box 5 – attesting that the organizing document limits the Organization's purposes to one or more exempt purposes within section 501(c)(3).

Part II Box 6 attesting that the organizing document does not expressly empower the Organization to engage, otherwise than as an insubstantial part of its activities, in activities themselves that are not in furtherance of one or more exempt purposes.

Part III Box 2 - Charitable – attesting that the Organization is organized and operated exclusively to further the purposes indicated.

Exemption

On September 21, 20____ the Organization received recognition of exemption under IRC section 501(c)(3) as a public charity, effective July 5, 20____.

Financials

The Organization filed Forms 990-N postcard return for its tax years ended December 31, 20____ and December 31, 20____, indicating its Gross Receipts for each year were less than \$_____.

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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The Organization maintained its financial information on a spread sheet labeled "Bank Activity" that was prepared from its bank statements. Following is a summary of the Organization's financial information based on the documents provided:

As of December 31, 20

Revenue:			
Donations		\$	
Grants:		\$()
Expenses:			
Bank Fees		\$()
Check Fees		\$()
Promo Supplies		\$()
Web Costs		\$()
Total Expenses		\$()
Assets:			
Cash	\$		\$
Liabilities:	\$	0	\$
			0

As of December 31,

Revenue:			
Donations		\$	
Grants		\$()
Expenses:			
Bank Fees		\$()
Gas		\$()
Total Expenses		\$()
Assets:			
Cash	\$	*	\$
Liabilities:	\$	0	\$
			0

*Per spread sheet

Based on the above figures, the Organization had a Form 990-EZ filing requirement for tax years 20 and 20 as its Gross Receipts exceeded \$50,000 in each year.

Website

The Organization maintains a website at . The website contains information on the Organization's purpose and activities. Review of the website in June of 20 showed:

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Name of taxpayer	Tax Identification Number <i>(last 4 digits)</i>	Year/Period ended

Home page identifies the 501(c)(3) charitable purpose as the conservation of precious natural resources and the movement away from reliance on fossil fuels. Public awareness campaigns to provide the information and tools necessary to make informed choices to reduce individual carbon footprint, conserve precious potable water sources and provide positive financial returns (money and resource saving guides).

are small one-time cash grants to eligible homeowners who agree to invest in material system and energy or water-saving improvements:

- Grants range from \$ - \$ based on type of project and anticipated resource savings
- Homeowners meeting certain criteria who complete a pre approved green home project within a set time period may apply online for a grant.
- Grant Advisors review applications and project details. Award Committee decides who gets a grant. Once approved and projects are verified, grants are mailed directly to the homeowner.
- The Organization verifies and background checks their recommended and approved contractors before allowing them to participate on behalf of their clients. Contractor committee vets and approves contractors – currently have over approved contractors.

Asks viewers how much they want to save and links to the “ :

- Calculates tax savings on the project (currently updated for the 2018 Tax Cut & Job Act rates and CA State tax tables).
- Includes a charity admin fee that is % of the amount donated (\$) to reach the total "charitable contribution" of \$ as shown on the website's example.
- Tells viewers they will save thousands of dollars from renewable home rebates and discounts that are offered exclusively through the Organization and its partners.

Examination

In May of 20 , the Revenue Agent (Examiner) issued an initial contact letter, Information Document Request (IDR) and Publication 1, to notify the Organization of the examination.

The Organization's Director contacted the Examiner as requested and stated that the Organization does not have electronic accounting records but uses bank statements and a spread sheet. He stated there has been very little activity but he would go through the IDR and provide the spread sheets and anything else that is easily faxable no later than one week prior to the appointment.

The Organization subsequently faxed its financial documents as well as documents relating to its application for exemption, including:

- Copy of unsigned Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*
- Communication from Legalzoom.com pertaining to the application:
 - Requests for detailed descriptions of purpose, activities and budget information and indicated the Organization intended to apply for exemption as a private foundation; some of the requested information was included.
 - Included a notice that only creates the application based on responses received – it does not submit the application to the IRS.
- Articles of Incorporation

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended

- Bylaws of the Organization
- Two-page document describing the Organization's activities, which appear to mirror information contained on the Organization's website.

Examiner analyzed the financial data and determined that deposits for a total of \$ were identified as contributions, \$ of disbursements were identified as grants, and a balance of \$ had yet to be disbursed as of .

Initial Appointment

The Organization's Director provided the following information at the meeting:

Organization's Activities:

Environmental conservation organization focusing on incentivizing individual homeowners to improve their home energy usage away from fossil fuels and towards green energy and water preservation.

The EO provides ranging from \$ - \$ (or approximately - % of the total cost of an improvement project) to eligible HOs who submit an application and required documentation.

Partner with contractor/construction firms to encourage HOs to invest in themselves – contractors go out and get bids on jobs – wanted to get them to tell the HOs that the EO gives grants. EO operates through a network of { who were vetted by financing companies (and) involved in the Act – a state sponsored effort to encourage

The contractors had to meet environmental criteria and the vetting verified licenses, insurance, bonds and that all were ' (were excluded).

EO contacted approximately of the contractors on the list - idea was for the contractors with potential clients 'on-the-fence' about doing a project to use the possibility of a grant from the EO as an incentive to do the improvements. No other means of outreach to HOs by the EO, but EO operated a website that can be found by online search.

HO submitted an on-line application including a description of the home improvement project, the contractor signed off on a completion certificate and the EO transferred the grant money. The first grant paid by the EO was by check, subsequent grants were by cards purchased through an on-line gift card provider. The reason for using the cards was to identify and track purchases and deliveries of the grants to the HOs.

Sources of Funding:

Paid a grant writer \$ for an initial -month arrangement to write grants to other organizations supporting environmental conservation. If successful, the arrangement would be extended another months and the grant writer was to receive a percentage of the grants received. It was not successful as no grants were received and the arrangement was terminated.

The EO had relationships with several individuals that resulted in donations. donations were received in 20 :

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	Tax Identification Number (last 4 digits)	Year/Period ended

- \$ from a contractor who identified the specific HO who was to receive the grant. This was a who requested the grant be provided to his client. The contractor did not want to give the client a discount. (Contractor is no longer in business).
- \$ (separate donations) from , one of the contractors from the vetting, who is owner of . This was a general donation to the EO and specific HO recipients were not identified. The donor only needed write-offs in 2018.

The 2018 Tax Cuts and Jobs Act has changed the incentive to donate – in 2018 there were no donations as everyone takes the standard deduction rather than itemize.

Partnered with (per their website) online donations. There have been no donations through .

Changes in Operations / Future Plans:

During the discussion of 501(c)(3) charitable activities, the Director stated that the organization has begun discussion with to include energy efficient components so that the recipients of the housing don't lose their homes because they can't afford to pay the energy bills, or do without heating etc.

Organization is working on ways to get funding – since the 2018 tax act donations have dropped since there is no tax deduction since most people take the standard deduction.

Project Calculator on Organization's Website:

It was a calculation to show HOs investing in their home how to lower their utility bill.

When questioned further about what looked like a calculator to show the project cost as a charitable contribution, the Director explained:

The page was put up in the early stages of the EOs operations and the Director didn't realize that it was still up. He said he should remove it.

The idea was that the HOs would be the donors tell the HOs that they could make a donation to the EO, the EO makes a grant to the contractor for the work and they save energy. The Director spoke with a non-profit attorney who said that this is not permissible – undue benefit to the HO and they can't deduct contribution, it must be decreased by the value of what they got. The Director said that they had never gotten any donations from HOs.

made the donations and only one of them specified who the HO beneficiary was to be. As the donations came from contractors (businesses) they would have just deducted the payments as a marketing expense or some other expense. The \$ donation from " was not made based on this calculator and that other than the \$ donation in , no donations were made specifying a HO recipient.

Application for Exemption, Form 1023-EZ submitted v. Form 1023 provided for examination:

He thought the follow-up questions from had actually come from the IRS and further said that he did not submit an application, but that had and he assumed it was the one that he had provided for the examination – he said that was what had been in his file.

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The Organization provided additional documents:

- Donor receipts identifying two individuals, for \$ and \$ each.
- Grant Fulfillment Activity spread sheet – same spread sheet as the books previously provided but excluding some minor disbursements.
- Spread sheet of clients containing a brief description of the home improvement planned or completed, and the associated job costs and grant amount.
- Summary of the Organization’s account with card provider
- ATM receipt for the \$ deposit and correspondence from related to the same

Review of the documents showed that of individual grant applications only were disbursed in 20 , and gift cards shown as grants were used by the Organization.

Based on the Director’s narrative and review of the documents provided, the examination was expanded into the subsequent year to determine whether additional contributions and grants were made and if so, whether they were for a 501(c)(3) exempt purpose.

Subsequent Information Document Requests (IDRs):

IDR-02 TY 20

- Second request for copies of the deposited items. Documents provided confirmed the donations previously identified, and the designation of the recipient of the \$ deposit. Also included a check to which is not a donation.
- Included a summary of the initial interview and requested that the Organization review and respond if any of the responses were not correctly stated. The Organization has not provided a response.
- The Organization fails the Public Support Test for public charities as it is not publicly supported as more than of its contributions are not from the general public, but from a limited number of donors.

IDR-03 TY 20 :

- To verify compliance with reporting requirements, requested contracts, and workpapers or schedules to show how the numbers were determined for the books:
 - The Organization had no contracts and the information provided for the accounting records, deposits and disbursements provided the requested information.
- To verify the financial records match operations, requested accounting books, bank statements, copies of deposited and disbursed items, and donor receipts. The Organization provided its books, bank statements and deposited items:
 - The same contractor who made the \$ donation in TY 20 , of , contributed another \$ in 20 .
 - A donation and subsequent grant were made that fit the scenario described by the Organization’s Director when explaining the “project calculator”:

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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\$ donation via on 10/10/20 (less) followed by a grant two days later:

\$ Donation

\$ Grant

\$ fee to the Organization (% of \$ donated)

The donation was identified as from on the Organization's original books, but as "TBD-No detail" on the corrected books

The donation receipt identifies the donor as

The statements identify the payor as

The bank statements show the grant as an ACH payment to

- A donation of \$ identified the donor as on the original books, but as on the corrected books:
 - The donation receipt identifies the donor as
 - The copy of the deposited check states "HVAC Unit" in the memo section.
 - There is no evidence of a grant in 20
- A donation of \$ identified the donor as on both the original and corrected books, the donation receipt and the copy of the deposited item, which stated "20 Donation" in the memo section.
 - The donation was made at the end of the year with no subsequent grants made that year.
- The Organization fails the Public Support Test for public charities as it is not publicly supported as more than of its contributions are not from the general public, but from a limited number of donors.
- To verify grants/expenses, requested all grant applications and related documentation, and source documents for expenses:
 - The Organization provided the following documents:
 - Bank Summary (books)
 - Corrected Bank Summary
 - Report
 - account summary
 - account summary
 - Review of the documents showed:
 - of the applicants received grants in 20 , in amounts ranging from \$ to \$ each.
 - All grants were paid using cards, with the following exceptions:
 - \$ grant noted above
 - \$ of cards were issued to the Organization rather than a HO
 - \$ of cards were issued to , the contractor who was the primary donor in 20 and who also donated in
 - The card purchases were shown as aggregate charges to a credit card paid by electronic payments on the bank statements.

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IDR-04 TY 20 :

- Requested an explanation of why gift cards were purchased and delivered to the Organization rather than to grant recipients, and substantiation of the exempt purpose use of those gift cards:
 - The Organization responded that “some cards were used for fundraising purposes to meet and host donor candidates in order to spend additional time explaining and presenting our mission and making donation solicitations. No donor candidates were provided any of these cards. Rather, they were used to cover meeting, travel, meal and incidental expenses related to managing the organization, courting donors or engaging in corporate strategy meetings.”
 - No source documents for the exempt purpose use were provided.

IDR-05 TY 20 & 20 :

- Requested two specific credit card statements in order to reconcile the _____ card purchases to the credit card charges/payments shown in the bank statements:
 - The credit card statements provided allowed Examiner to verify one of the credit card payments tied to the prepaid _____ cards, but the second credit card statement had insufficient details to do so.
- Requested an explanation for why gift cards were purchased and delivered to the Organization rather than to grant recipients, and substantiation of the exempt purpose use of those gift card:
 - The organization’s response was the same as to IDR-04 above.
- Requested detailed prepaid gift card account statements for a select sample of grants:
 - Verified that the grantees shown received the grants indicated – the gift cards were delivered as shown.
- Requested the source documents for a select sample of grants (included in the above gift card purchases):
 - Source documents showed that the same contractor, _____, was the contractor on all the sampled transactions. This contractor was the primary donor in 20 _____ and also contributed in 20 _____.
 - A \$ _____ grant to _____ was provided as part of a grant incentive program where the gift cards were offered as an incentive to encourage prospective grant recipients to receive environmentally friendly project improvement estimates.
 - The \$ _____ disbursement to _____ shown as a grant in the Organization's books and records:
 - The Organization's Director explained that he believed this was a refund to the contractor for a donation made either late in the prior year or early in the current year for which funds were not available until just prior to the disbursement.
 - No documentation or other substantiation of restricted donations was provided to indicate there was a right to a future refund.
 - Analysis of the donations and grants from January 1, 20 _____ through October 10, 20 _____ from this donor and all grants during that time – excluding the \$ _____ from another donor specifically

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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earmarked for his client – shows that substantially all funds donated by the contractor had been used for grants. Thus, there were no donations to refund.

- The transactions fit the scenario described by the Organization’s Director in the initial interview when explaining the purpose of the “project calculator” – converting a non-deductible home improvement into a deductible charitable contribution.

IDR-06 TY 20 and 20 :

- Second request for the credit card statement requested in IDR 05:
 - The Organization provided the requested statement and the Examiner tied the payment to the prepaid card purchases, verifying their stated use.
- Requested confirmation that _____ was the sole contractor on the projects for which grants were provided in 20 and 20 , and if not, to provide source documents for work completed by other contractors:
 - The Organization confirmed that all “energy-efficient” grant awards were completed by the same vendor,

Law:

Internal Revenue Code (IRC):

IRC Sec. 501(c)(3) exempts from income tax entities 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.

Treasury Regulations (Treas. Reg.):

§1.501(c)(3)-1(a) of the Federal Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

The organizing documents must include an acceptable purpose clause, Treas. Reg. §1.501(c)(3)-1(b)(1)(a)(i)(a), and may not include a powers clause which is too broad, Treas. Reg. §1.501(c)(3)-1(b)(1)(a)(i)(b). Defects in the organizing document cannot be corrected by the organization’s actual operations or by reference to other documents, Treas. Reg. §1.501(c)(3)-1(b)(1)(iv).

Regulations §1.501(c)(3)-1(c) states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanations of Items	Schedule number or exhibit
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Revenue Rulings (Rev. Rul.):

Rev. Rul. 2006-27, 2006-1 C.B. 915 found that a nonprofit organization that helped low-income individuals and families purchase homes does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code because it does not operate exclusively for charitable purposes. The organization knows the identity of the party selling the home to the grant applicant and may also know the identities of other parties who may receive a financial benefit from the sale. In substantially all of the cases in which the organization provides down payment assistance to the buyer, the organization receives a payment from the seller. There is a direct correlation between the amount of the down payment assistance and the amount of the home seller's payment to the organization. The organization does not conduct fundraising campaigns to attract financial support, instead receiving most of its support from home sellers and real estate related businesses that may benefit from the sale of homes to buyers who receive assistance from the organization.

Rev. Rul. 67-367, 1967-2 C.B. 188 found that a nonprofit organization whose sole activity is the operation of a "scholarship" plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code. An organization must serve a public rather than a private interest; it must not be operated for the benefit of private interests such as designated individuals.

Court Cases:

In American Campaign Academy v. Commissioner of Internal Revenue, 92 T.C. 1053, the Court held that the operation of a school to train individuals to fill responsible positions in campaigns of Republican candidates for political office provided a private benefit to unrelated third parties who were not a charitable class. The benefits to the entities and candidates of one specific political party were not incidental to the accomplishment of exempt purposes. The Court sustained the Service's denial of exemption under IRC section 501(c)(3) because more than an insubstantial part of their activities was to provide private benefit to individuals. The Court found that private benefit includes an "advantage, profit, fruit, privilege, gain, or interest, and that it is not limited to the organization's insiders but includes "disinterested" persons as well.

In Giving Hearts, Inc. v. Commissioner of Internal Revenue, T.C. Memo 2019-94 a non-profit corporation was not operated exclusively for exempt purposes, and thus it was not entitled to federal income tax-exempt status; while the corporation was organized for charitable purposes, focusing on funding local children's charities, it operated a sponsorship program that, by design and effect, permitted for-profit businesses to invoke its name as part of a telemarketing pitch intended, first and foremost, to generate sales leads and revenues, as participating businesses would be obliged to make a charitable contribution only when a potential customer agreed to an in-home product demonstration.

Government's Position:

It is the Government's position that the organization does not qualify for exemption under IRC section 501(c)(3) as it fails both the organizational and operational tests of Treas. Reg. §1.501(c)(3)-1(a).

The organization submitted Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Exemption was granted based on attestation by the Organization that its organizing document limits its purposes to one or more exempt 501(c)(3) purposes, that it does not expressly empower it to engage, otherwise than as an insubstantial part of its activities, in activities themselves that are not in furtherance of one or more exempt purposes, and that the Organization is organized and operated exclusively to further the purpose indicated, which the Organization stated as "charitable".

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Organizational Test

Examination of the Organization's Articles of Incorporation and its Bylaws show that it does not limit itself to 501(c)(3) purposes and expressly empower it to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of an exempt purpose:

The Articles of Incorporation state the Organization's purpose "*is to advancement [sic] of renewable and sustainable home energy products and practices to aid in the reduction of homelessness, and conservation of precious natural resources*". The Bylaws state its purpose "*is to increase awareness and educate the public about ways to conserve valuable natural resources, and also to provide assistance to eligibility [sic] homeowners who may wish to make improvements that conserve resources...*".

The advancement of sustainable home energy products and practices and providing assistance to eligible homeowners who wish to make energy-efficient home improvements are not 501(c)(3) purposes; thus, the Organization has not limited itself to engaging in and furthering only 501(c)(3) purposes and has failed the organizational test.

Operational Test

Treas. Reg. §1.501(c)(3)-1(c) states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. IRC section 501(c)(3) exempt purposes include religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competitions, or for the prevention of cruelty to children or animals. The Organization attested to being operated exclusively for charitable 501(c)(3) purposes.

Common to all definitions of charitable is the concept of broad public benefit. As such, charitable purposes include relief of the poor and stressed, erection or maintenance of public buildings, lessening of the burdens of government, promotion of social welfare, and promotion of health. Recipients of charitable activities generally are of a charitable class, such as the poor, elderly, handicapped, distressed or youth, or must be large or indefinite enough that providing aid to its members benefits the community as a whole. Even if the recipients were of 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 I.C.*

Examination of its activities shows that the Organization is engaged in providing grants to designated homeowners engaged in energy-efficient home improvements ostensibly for purposes of preserving the environment. Environmental preservation is not one of the stated 501(c)(3) exempt purposes - to qualify as a charitable activity it must have a significant and direct impact on the environment for the benefit of the public, outweighing any commercial or private benefits. IRC section 501(c)(3) allows no part of the net earnings of an exempt organization to inure to the benefit of any private shareholder or individual.

The Organization's position is that any benefit to individual homeowners is secondary to the greater benefit to the public at large in the form of a cleaner environment. Yet the examination shows that the primary beneficiaries of the Organization's grants are select individuals, with any benefit to the public at large incidental. The homeowner clients are not a charitable class, nor are they large or indefinite enough that providing aid to them benefits the community as a whole. Payments to pre-selected, specifically named individuals disqualifies an organization from exemption, *Rev. Rul. 67-367*.

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The Organization has confirmed that all the energy-efficient grant awards were completed by the same contractor. This contractor is a primary donor. Evidence also suggests that additional donors are involved in a client relationship with this same contractor and may be contributing the cost of their home improvements to the Organization, that then pays the same to the contractor as a grant, less an administrative fee. An organization that received substantially all of its funding from sellers or other businesses that stood to benefit from the transactions the organization facilitated was denied exemption because it was not operated exclusively for charitable purposes, *Rev. Rul. 2006-27*.

The examination clearly shows that while environmental conservation may be a purpose of the Organization, it is not the primary purpose, private benefit is. The donor/contractor benefits by increased business and his homeowner clients benefit from a reduction in their home improvement costs. In *American Campaign Academy*, 92 T.C., the Court upheld the Service's revocation of exempt status because more than an insubstantial part of the organization's activities was to provide private benefit to individuals. The Court found that private benefit includes an "advantage, profit, fruit, privilege, gain, or interest, and that it is not limited to the organization's insiders but includes "disinterested" persons as well. In *Giving Hearts, Inc.*, T.C. Memo 2019-94, the Court upheld revocation of exempt status of an organization, that although engaged in charitable activities, was primarily engaged in generating sales leads (and ultimately revenues).

Taxpayer's Position:

The Organization provided its written position at the initial appointment, and subsequently by fax:

I would like to submit the following information to the audit file for deliberations and research into the 501(c)3 status of our tax-exempt organization.

Position

A point was made during the data gathering, interview and fact finding portion of the current audit that a determination about whether the primary activities of our organization benefitted the public good and/or any one of a set of pre-identified charitable classes.

This point was further clarified to mean that any one individual receiving a benefit may not necessarily qualify under the public good or designated class definition.

To help clarify our primary mission and activities, the public good is served every time we are able to decrease the volume and rate of water depletion from our reservoirs when a homeowner elects to spend thousands of dollars of his/her own funds to replace water inefficient landscaping with drought tolerant landscaping. The water savings physically, directly and measurably contributes to the available water resources for all citizenry – not just the homeowner.

This same argument is made for investments in solar power and dirty power saving appliances. Every time a homeowner uses personal funds to actively produce clean energy or reduce the consumption of polluting energy the public benefits directly. We benefit in the form of lower carbon emissions, reduced energy bills (by limiting the need to invest in additional polluting forms of power or importing dirty power from out-of-state sources). If every homeowner invested in solar power and water reduction projects the entire public would see direct and measurable benefits and would not have directly paid for any of it. Only the homeowner can choose to improve their property in a way that benefits us all.

In fact, our primary activities of offering grant support to homeowners to encourage such investment on their part directly benefits all of us by conserving and preserving resources that we all equally rely on, use and consume. The

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resources we help protect and preserve are available to the public as a whole, and not limited to special categories of consumers

strongly feels it is necessary to look at the entire activity that we encourage. Namely, we get homeowners to invest their own dollars for the benefit of resource preservation that benefits the public at large. It's not enough to simply consider a small grant as a benefit when there is also a substantial cost that must be borne by the homeowner in advance. This cost is often between - the amount of the grant provided.

That means that any perceived benefit derived from grant support by must first be preceded by a - x cost borne solely and exclusively by the homeowner. Grants are only awarded in cases where the project qualifies to protect, preserve and conserve precious natural resources as well as reduce reliance on fossil fuels and the subsequent pollution they emit. These grants are, themselves, only awarded once a homeowner can demonstrate that they have first invested in and completed a project that would serve to protect public resources.

contends that a homeowner who incurs of dollars of cost, resulting in a communal resource benefit to the public, does not, in fact, enjoy an exclusive benefit that the public is denied. In fact, we should all be encouraging and thanking these conscientious homeowners for their personal investment (and in many cases indebtedness) in support of our commonly enjoyed resources and environmental health.

We strongly believe there is little offsetting benefit to receive a grant from when where must first be incurred a substantial - x cost. The "benefit" of incurring this cost that really benefits us all comes not from the miniscule reimbursement grant that follows, but only in the form of good environmental stewardship that helps protect our society and citizenry.

Please be sure to keep in mind that grant support is not a simple one-to-one benefit for a homeowner, but is, in fact, only a small portion of the overall cost, largely borne by individuals, that helps drive behavioral change, and, thus, society-wide improvement.

Conclusion:

The Organization does not qualify for exemption from Federal income tax for it failed to substantiate that it is organized and operated exclusively for one or more exempt purposes, resulting in its failure to comply with the requirements of IRC Sec. 501(c)(3) and Treas. Reg. Sec. 1.501(c)(3)-1(c).

It is the Government's position that the Organization failed to organize and operate exclusively to accomplish one or more of such exempt purposes specified in IRC Sec. 501(c)(3). Because the Organization was not organized and operated exclusively for the exempt purpose under IRC Sec. 501(c)(3), its Federal tax-exempt status under such section should be revoked effective January 1, 20 . The Organization is liable for filing Form 1120, U.S. Corporation Income Tax Return, for the tax year ended December 31, 20 and all years thereafter.