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

IRS

Date: June 23, 2021

Taxpayer ID number:

Form:

Tax periods ended:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Release Number: 202239017
Release Date: 9/30/2022
UIL Code: 501.03-00

CERTIFIED MAIL - RETURN RECEIPT REQUESTED :

Dear :

Why we are sending you this letter
This is a final determination that you don't 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 . Your determination letter dated , is revoked.

Our adverse determination as to your exempt status was made for the following reasons: Organizations described in IRC Section 501(c)(3) and exempt under IRC Section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are organized exclusively for charitable, educational, or other exempt purposes within the meaning of IRC Section 501(c)(3).

You have also fail to demonstrate that you are operated exclusively for charitable, educational, or other exempt purposes within the meaning of IRC 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 also failed to produce documents to establish that you operated exclusively for an exempt purpose.

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.

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

What you must do if you disagree with this determination
If you want to contest our final determination, you have 90 days from the date this determination letter was mailed to you to file a petition or complaint in one of the three federal courts listed below.

How to file your action for declaratory judgment
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.

Please contact the clerk of the appropriate court for rules and the appropriate forms for filing an action for declaratory judgment by referring to the enclosed Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status. You may write to the courts at the following addresses:

United States Tax Court	U.S. Court of Federal Claims	U.S. District Court for the District of Columbia
400 Second Street, NW	717 Madison Place, NW	333 Constitution Ave., N.W.
Washington, DC 20217	Washington, DC 20439	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).

Information about the IRS Taxpayer Advocate Service
The IRS office whose phone number appears at the top of the notice can best address and access your tax information and help get you answers. However, you may be eligible for free help from the Taxpayer Advocate Service (TAS) if you can't resolve your tax problem with the IRS, or you believe an IRS procedure just isn't working as it should. TAS is an independent organization within the IRS that helps taxpayers and protects taxpayer rights. Contact your local Taxpayer Advocate Office at:

Or call TAS at 877-777-4778. For more information about TAS and your rights under the Taxpayer Bill of Rights, go to taxpayeradvocate.irs.gov. Do not send your federal court pleading to the TAS address listed above. Use the applicable federal court address provided earlier in the letter. Contacting TAS does not extend the time to file an action for declaratory judgment.

Where you can find more information
Enclosed are Publication 1, Your Rights as a Taxpayer, and Publication 594, The IRS Collection Process, for more comprehensive information.

Find tax forms or publications by visiting www.irs.gov/forms or calling 800-TAX-FORM (800-829-3676).

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

If you prefer to write, use the address shown at the top of this letter. Include your telephone number, the best time to call, and a copy of this letter.

Keep the original letter for your records.

Sincerely,

Sean E. O'Reilly

Sean E. O'Reilly
Director, Exempt Organizations Examinations

Enclosures:
Publication 1
Publication 594
Publication 892

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

Date:
March 13, 2019
Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact:

Employee ID:
Telephone:
Fax:
Manager's Contact Information:

Employee ID:
Telephone:
Response Due Date:
April 12, 2019

CERTIFIED MAIL – Return Receipt Requested

Dear :

Why you're receiving this letter
You stated that your organization ceased operations in . You previously agreed to sign the enclosed consent, which will allow us to propose revocation of your tax-exempt status as an organization described in Internal Revenue Code (IRC) § 501(c)(3)(c).

If you agree
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.

For 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,

Mark A Costa

for Maria Hooke
Director, Exempt Organizations
Examinations

Enclosures:
Form 6018

REVENUE AGENT'S REPORT FOR PROPOSED REVOCATION

I. ISSUE

1. Whether the tax-exempt status of . should be revoked based on multiple issues revealed during our audit including; activities inconsistent with the operation of an exempt organization (real estate sales), excess benefit transactions, undisclosed related party transactions, charitable activities not commensurate in scope with resources from real estate sales, inadequate records, and 501(c)(3) tax-exempt status acquired by assuming the identity of a previously dissolved exempt organization.

II. BACKGROUND

The organization was incorporated in the state of on . The incorporation was revoked by the state on for failure to file an annual report. . assumed the identity of an unrelated exempt organization that had previously dissolved its incorporation in the State of . did not apply for 501(c)(3) exempt status with the Internal Revenue Service by filing Form Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code and was not granted exemption based on a review of the activities in which the organization planned to engage. , "CEO" of , contacted TEGE Determinations on to request that the previously dissolved organization's name be changed to , Inc. Since that time, has been presumed to be a publicly supported organization described in IRC § 509(a)(l) and 170(b)(l)(A)(vi) because that designation was formerly assigned to the organization whose identity assumed. According to the Form , the organization's exempt purpose was described as;

"

According to the Form for the year under review, the Officers consisted of , CEO, , Executive Vice President, , Director, , Vice President of Marketing, , Secretary/Treasurer, and , Vice President of Development. No formal audit was conducted because stated that the organization had ceased operations at the start of and told the Agent that there were virtually no remaining records to review. If employment contracts existed, no copies were provided. The Form for the year under review stated that the organization had a written conflict of interest policy, but no copy was provided. The Taxpayer signed Form 6018 Consent to Proposed Action agreeing to revocation of the organization's exempt status on .

III. FACTS

President, , engaged in multiple Excess Benefit Transactions with the organization through related, undisclosed corporations and through an unincorporated entity that established and controlled. These entities constituted "Disqualified Persons" under IRC section 4958. A person is considered a *disqualified* person, with respect to any transaction with an applicable tax-exempt organization, if the "person" is a 35-percent controlled entity. The following are related controlled entities in which holds more than a percent interest; ( ), ( ), , ( ), and , ( ). In the year under review, funds flowed between ( ), and all these entities except . However, is a % shareholder in and so is joint and severally liable for any taxes and or penalties associated with the transactions of these entities. relationships with these entities were not disclosed on the organization's Forms , and a false answer was provided to a relevant question regarding whether the organization had engaged in transactions with related entities.

In Section M of the , & Forms , the organization was asked the following in Question # 32a:

- Does the organization hire or use third parties or related organizations to solicit, process, or sell non-cash contributions?
- The organization replied "NO", which was a false response because the organization used the related controlled entity, , to market and sell the properties. The organization's Representative supplied copies of several invoices issued to by to initiate payment for "marketing fees". The stated basis for the payments was % of the "charitable" contribution amount.

The organization has provided no documentary support for any of the multiple real estate transactions in which the organization engaged and provided no copies of contribution acknowledgements issued to the property "donors". In addition, the organization provided no documentation in support of more than $ in "investment resale expenses" characterized as "program service expenses" on the return. The organization also did not complete Question # 29 on the Form , for tax year ending , in its entirety. The organization was asked to provide details regarding the contributed property assets. No such details were provided.

According to summary information provided by the organization's representative (Exhibit A-1), at the time the organization ceased operations, remained in receipt of "donated" properties with a book value of $. The summary did not include the associated charitable contribution amounts on which the donor's IRC 170(c) tax deductions were based. In addition, copies of the associated charitable contribution acknowledgements were not provided. However, copies of invoices issued by to , for "marketing fees", were provided by the Representative (Exhibit A-2). In the sample invoice represented by (Exhibit A-2), the "charitable contribution" amount for the , property was $. According to the property summary provided by the Representative (Exhibit A-1) the , property had a book value of $. No explanation or documentation has been provided to explain

the discrepancy between the "charitable contribution" amount of $ and the "book value" of $. The organization has provided no supporting documentation or details regarding any of the multiple real estate transactions in which it engaged.

The organization claimed to have fulfilled its charitable mission by having made contributions through a 501(c)(3) microlender known as . The organization provided approximately pages of line item transactions titled "Transaction List: Account". Most of the transactions consisted of "loan repayment" amounts ranging from $ to $ per transaction. The documentation did not include totals, summary information, or page numbers and the name appeared only on the first page. We issued a summons to to verify the organization's participation in the reported activity and to confirm association with these transactions. representative replied that the microlender had no account information under the name of . According to , there were no charitable transactions completed by .

A bargain sale of property to a qualified organization is the sale or exchange of property to a charitable organization for less than the property's fair market value. A bargain sale transaction typically reduces the tax liability of the donating party. The portion of the sale that is considered a gift is equal to the excess of the fair market value of the donated item over the price paid by the charitable organization. The organization has provided no documentation that would allow the Service to determine if the property transactions in which the organization engaged, were conducted in accordance with CFR § 1.1011-2 Bargain Sale to a Charitable Organization. The organization provided no documentation that would allow us to tie property transactions listed on the " Financial Change Summary from to Close of Business ( ) (Exhibit A-1) provided by the Representative, to specific property addresses, or to any of the associated donors or buyers. The organization has provided no documentation in support of property valuations, and no copies of charitable contribution acknowledgements.

IV. LAW

26 U.S. Code § 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction
(1) General rule
There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.
(b) Percentage limitations
(1) Individuals. In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.
(A) General rule. Any charitable contribution to—
vi)
an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption

under section 501(a)) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public

26 CFR § 1.501(c)(3)-1 - Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

§ 1.501(c)(3)-1 Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.
(a) Organizational and operational tests.
(1) 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.
(2) The term exempt purpose or purposes, as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.
(b) Organizational test -
(1) In general.
(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its articles) as defined in subparagraph (2) of this paragraph:
(a) Limit the purposes of such organization to one or more exempt purposes; and
(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.
(ii) In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3). Therefore, an organization which, by the terms of its articles, is formed for literary and scientific purposes within the meaning of section 501(c)(3) of the Code shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely to receive contributions and pay them over to organizations which are described in section 501(c)(3) and exempt from taxation under section 501(a)) are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set for the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for charitable purposes, such articles ordinarily shall be sufficient for purposes of the organizational test (see subparagraph (5) of this paragraph for rules relating to construction of terms).
(iii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles to engage in a manufacturing business, or to engage in the operation of a social club does not

meet the organizational test regardless of the fact that its articles may state that such organization is created for charitable purposes within the meaning of section 501(c)(3) of the Code.

(iv) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(v) Unless otherwise prescribed by applicable regulations or other guidance published in the Internal Revenue Bulletin, an organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption (see § 1.501(a)-1(b)).

(2) Articles of organization. For purposes of this section, the term articles of organization or articles includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

(3) Authorization of legislative or political activities. An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

(i) To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or

(ii) Directly or indirectly to 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; or

(iii) To have objectives and to engage in activities which characterize it as an action organization as defined in paragraph (c)(3) of this section.

The terms used in subdivisions (i), (ii), and (iii) of this subparagraph shall have the meanings provided in paragraph (c)(3) of this section. An organization's articles will not violate the provisions of paragraph (b)(3)(i) of this section even though the organization's articles expressly empower it to make the election provided for in section 501(h) with respect to influencing legislation and, only if it so elects, to make lobbying or grass roots expenditures that do not normally exceed the ceiling amounts prescribed by section 501(h)(2) (B) and (D).

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

(5) Construction of terms. The law of the State in which an organization is created shall be controlling in construing the terms of its articles. However, any organization which contends that such terms have under State law a different meaning from their generally accepted meaning

must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the State attorney-general, or other evidence of applicable State law.
(6) Applicability of the organizational test. A determination by the Commissioner that an organization is described in section 501(c)(3) and exempt under section 501(a) will not be granted after July 26, 1959, regardless of when the application is filed, unless such organization meets the organizational test prescribed by this paragraph (b). If, before July 27, 1959, an organization has been determined by the Commissioner or district director to be exempt as an organization described in section 501(c)(3) or in a corresponding provision of prior law and such determination has not been revoked before such date, the fact that such organization does not meet the organizational test prescribed by this paragraph (b) shall not be a basis for revoking such determination. Accordingly, an organization that has been determined to be exempt before July 27, 1959, and which does not seek a new determination of exemption is not required to amend its articles of organization to conform to the rules of this paragraph (b), but any organization that seeks a determination of exemption after July 26, 1959, must have articles of organization that meet the rules of this paragraph (b). For the rules relating to whether an organization determined to be exempt before July 27, 1959, is organized exclusively for one or more exempt purposes, see 26 CFR (1939) 39.101(6)-1 (Regulations 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 FR 5167; 1954-2 CB 47).
(c) Operational test -
(1) Primary activities. 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.
(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words private shareholder or individual, see paragraph (c) of § 1.501(a)-1.
(3) Action organizations.
(i) An organization is not operated exclusively for one or more exempt purposes if it is an action organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.
(ii) An organization is an action organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:
(a) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
(b) Advocates the adoption or rejection of legislation.
The term legislation, as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation. An organization for which the expenditure test election of section 501(h) is in effect for a taxable year will not be considered an action organization by reason of this paragraph (c)(3)(ii) for that year if it is not denied exemption from taxation under section 501(a) by reason of section 501(h).

(iii) An organization is an action organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term candidate for public office means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.
(iv) An organization is an action organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.
(v) An action organization, described in subdivisions (ii) or (iv) of this subparagraph, though it cannot qualify under section 501(c)(3), may nevertheless qualify as a social welfare organization under section 501(c)(4) if it meets the requirements set out in paragraph (a) of § 1.501(c)(4)-1.
(d) Exempt purposes -
(1) In general.
(i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:
(a) Religious,
(b) Charitable,
(c) Scientific,
(d) Testing for public safety,
(e) Literary,
(f) Educational, or
(g) Prevention of cruelty to children or animals.
(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.
(iii) Examples. The following examples illustrate the requirement of paragraph (d)(1)(ii) of this section that an organization serve a public rather than a private interest:
Example 1.
(i) O is an educational organization the purpose of which is to study history and immigration. O's educational activities include sponsoring lectures and publishing a journal. The focus of O's historical studies is the genealogy of one family, tracing the descent of its present members. O actively solicits for membership only individuals who are members of that one family. O's research is directed toward publishing a history of that family that will document the pedigrees of

family members. A major objective of O's research is to identify and locate living descendants of that family to enable those descendants to become acquainted with each other.
(ii) O's educational activities primarily serve the private interests of members of a single family rather than a public interest. Therefore, O is operated for the benefit of private interests in violation of the restriction on private benefit in paragraph (d)(1)(ii) of this section. Based on these facts and circumstances, O is not operated exclusively for exempt purposes and, therefore, is not described in section 501(c)(3).
Example 2.
(i) O is an art museum. O's principal activity is exhibiting art created by a group of unknown but promising local artists. O's activity, including organized tours of its art collection, promotes the arts. O is governed by a board of trustees unrelated to the artists whose work O exhibits. All of the art exhibited is offered for sale at prices set by the artist. Each artist whose work is exhibited has a consignment arrangement with O. Under this arrangement, when art is sold, the museum retains 10 percent of the selling price to cover the costs of operating the museum and gives the artist 90 percent.
(ii) The artists in this situation directly benefit from the exhibition and sale of their art. As a result, the principal activity of O serves the private interests of these artists. Because O gives 90 percent of the proceeds from its sole activity to the individual artists, the direct benefits to the artists are substantial and O's provision of these benefits to the artists is more than incidental to its other purposes and activities. This arrangement causes O to be operated for the benefit of private interests in violation of the restriction on private benefit in paragraph (d)(1)(ii) of this section. Based on these facts and circumstances, O is not operated exclusively for exempt purposes and, therefore, is not described in section 501(c)(3).
Example 3.
(i) O is an educational organization the purpose of which is to train individuals in a program developed by P, O's president. The program is of interest to academics and professionals, representatives of whom serve on an advisory panel to O. All of the rights to the program are owned by Company K, a for-profit corporation owned by P. Prior to the existence of O, the teaching of the program was conducted by Company K. O licenses, from Company K, the right to conduct seminars and lectures on the program and to use the name of the program as part of O's name, in exchange for specified royalty payments. Under the license agreement, Company K provides O with the services of trainers and with course materials on the program. O may develop and copyright new course materials on the program, but all such materials must be assigned to Company K without consideration if and when the license agreement is terminated. Company K sets the tuition for the seminars and lectures on the program conducted by O. O has agreed not to become involved in any activity resembling the program or its implementation for 2 years after the termination of O's license agreement.
(ii) O's sole activity is conducting seminars and lectures on the program. This arrangement causes O to be operated for the benefit of P and Company K in violation of the restriction on private benefit in paragraph (d)(1)(ii) of this section, regardless of whether the royalty payments from O to Company K for the right to teach the program are reasonable. Based on these facts and circumstances, O is not operated exclusively for exempt purposes and, therefore, is not described in section 501(c)(3).
(iv) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated

exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is educational, exemption will not be denied if, in fact, it is charitable.

(2) Charitable defined. The term charitable is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an action organization of any one of the types described in paragraph (c)(3) of this section.

(3) Educational defined -

(i) In general. The term educational, as used in section 501(c)(3), relates to:

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(ii) Examples of educational organizations. The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example 1.

An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example 2.

An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example 3.

An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example 4.
Museums, zoos, planetariums, symphony orchestras, and other similar organizations.
(4) Testing for public safety defined. The term testing for public safety, as used in section 501(c)(3), includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.
(5) Scientific defined.
(i) Since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than a private interest, a scientific organization must be organized and operated in the public interest (see subparagraph (1)(ii) of this paragraph). Therefore, the term scientific, as used in section 501(c)(3), includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with scientific; and the nature of particular research depends upon the purpose which it serves. For research to be scientific, within the meaning of section 501(c)(3), it must be carried on in furtherance of a scientific purpose. The determination as to whether research is scientific does not depend on whether such research is classified as fundamental or basic as contrasted with applied or practical. On the other hand, for purposes of the exclusion from unrelated business taxable income provided by section 512(b)(9), it is necessary to determine whether the organization is operated primarily for purposes of carrying on fundamental, as contrasted with applied, research.
(ii) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.
(iii) Scientific research will be regarded as carried on in the public interest:
(a) If the results of such research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a nondiscriminatory basis;
(b) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or
(c) If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest: (1) Scientific research carried on for the purpose of aiding in the scientific education of college or university students; (2) scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public; (3) scientific research carried on for the purpose of discovering a cure for a disease; or (4) scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in this subdivision will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulae resulting from such research.
(iv) An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under section 501(c)(3) as a scientific organization, if:
(a) Such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in section 501(c)(3), or

(b) Such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulae resulting from its research and does not make such patents, copyrights, processes, or formulae available to the public. For purposes of this subdivision, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, such patent, copyright, process, or formula shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be utilized to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of subdivision (iii) of this subparagraph) only if it is carried on for a person described in subdivision (iii)(b) of this subparagraph or if it is scientific research described in subdivision (iii)(c) of this subparagraph.

(v) The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in section 501(c)(3) will not preclude such organization from meeting the requirements of section 501(c)(3) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research (see paragraph (e) of this section, relating to organizations carrying on a trade or business). See paragraph (a)(5) of § 1.513-2, with respect to research which constitutes an unrelated trade or business, and section 512(b) (7), (8), and (9), with respect to income derived from research which is excludable from the tax on unrelated business income.

(vi) The regulations in this subparagraph are applicable with respect to taxable years beginning after December 31, 1960.

(e) Organizations carrying on trade or business -

(1) In general. An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization. See, however, section 501(d) and § 1.501(d)-1, relating to religious and apostolic organizations.

(2) Taxation of unrelated business income. For provisions relating to the taxation of unrelated business income of certain organizations described in section 501(c)(3), see sections 511 to 515, inclusive, and the regulations thereunder.

(f) Interaction with section 4958 -

(1) Application process. An organization that applies for recognition of exemption under section 501(a) as an organization described in section 501(c)(3) must establish its eligibility under this section. The Commissioner may deny an application for exemption for failure to establish any of section 501(c)(3)'s requirements for exemption. Section 4958 does not apply to transactions

with an organization that has failed to establish that it satisfies all of the requirements for exemption under section 501(c)(3). See § 53.4958-2.
(2) Substantive requirements for exemption still apply to applicable tax-exempt organizations described in section 501(c)(3) -
(i) In general. Regardless of whether a particular transaction is subject to excise taxes under section 4958, the substantive requirements for tax exemption under section 501(c)(3) still apply to an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958-2) described in section 501(c)(3) whose disqualified persons or organization managers are subject to excise taxes under section 4958. Accordingly, an organization will no longer meet the requirements for tax-exempt status under section 501(c)(3) if the organization fails to satisfy the requirements of paragraph (b), (c) or (d) of this section. See § 53.4958-8(a).
(ii) Determination of whether revocation of tax-exempt status is appropriate when section 4958 excise taxes also apply. In determining whether to continue to recognize the tax-exempt status of an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958-2) described in section 501(c)(3) that engages in one or more excess benefit transactions (as defined in section 4958(c) and § 53.4958-4) that violate the prohibition on inurement under section 501(c)(3), the Commissioner will consider all relevant facts and circumstances, including, but not limited to, the following -
(A) The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;
(B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes;
(C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons;
(D) Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and
(E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f)(6) and § 53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.
(iii) All factors will be considered in combination with each other. Depending on the particular situation, the Commissioner may assign greater or lesser weight to some factors than to others. The factors listed in paragraphs (f)(2)(ii)(D) and (E) of this section will weigh more heavily in favor of continuing to recognize exemption where the organization discovers the excess benefit transaction or transactions and takes action before the Commissioner discovers the excess benefit transaction or transactions. Further, with respect to the factor listed in paragraph (f)(2)(ii)(E) of this section, correction after the excess benefit transaction or transactions are discovered by the Commissioner, by itself, is never a sufficient basis for continuing to recognize exemption.
(iv) Examples. The following examples illustrate the principles of paragraph (f)(2)(ii) of this section. For purposes of each example, assume that O is an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958-2) described in section 501(c)(3). The examples read as follows:
Example 1.
(i) O was created as a museum for the purpose of exhibiting art to the general public. In Years 1 and 2, O engages in fundraising and in selecting, leasing, and preparing an appropriate facility

for a museum. In Year 3, a new board of trustees is elected. All of the new trustees are local art dealers. Beginning in Year 3 and continuing to the present, O uses a substantial portion of its revenues to purchase art solely from its trustees at prices that exceed fair market value. O exhibits and offers for sale all of the art it purchases. O's Form 1023, "Application for Recognition of Exemption," did not disclose the possibility that O would purchase art from its trustees.

(ii) O's purchases of art from its trustees at more than fair market value constitute excess benefit transactions between an applicable tax-exempt organization and disqualified persons under section 4958. Therefore, these transactions are subject to the applicable excise taxes provided in that section. In addition, O's purchases of art from its trustees at more than fair market value violate the proscription against inurement under section 501(c)(3) and paragraph (c)(2) of this section.

(iii) The application of the factors in paragraph (f)(2)(ii) of this section to these facts is as follows. Beginning in Year 3, O does not engage primarily in regular and ongoing activities that further exempt purposes because a substantial portion of O's activities consists of purchasing art from its trustees and dealing in such art in a manner similar to a commercial art gallery. The size and scope of the excess benefit transactions collectively are significant in relation to the size and scope of any of O's ongoing activities that further exempt purposes. O has been involved in multiple excess benefit transactions, namely, purchases of art from its trustees at more than fair market value. O has not implemented safeguards that are reasonably calculated to prevent such improper purchases in the future. The excess benefit transactions have not been corrected, nor has O made good faith efforts to seek correction from the disqualified persons who benefited from the excess benefit transactions (the trustees). The trustees continue to control O's Board. Based on the application of the factors to these facts, O is no longer described in section 501(c)(3) effective in Year 3.

Example 2.

(i) The facts are the same as in Example 1, except that in Year 4, O's entire board of trustees resigns, and O no longer offers all exhibited art for sale. The former board is replaced with members of the community who are not in the business of buying or selling art and who have skills and experience running charitable and educational programs and institutions. O promptly discontinues the practice of purchasing art from current or former trustees, adopts a written conflicts of interest policy, adopts written art valuation guidelines, hires legal counsel to recover the excess amounts O had paid its former trustees, and implements a new program of activities to further the public's appreciation of the arts.

(ii) O's purchases of art from its former trustees at more than fair market value constitute excess benefit transactions between an applicable tax-exempt organization and disqualified persons under section 4958. Therefore, these transactions are subject to the applicable excise taxes provided in that section. In addition, O's purchases of art from its trustees at more than fair market value violate the proscription against inurement under section 501(c)(3) and paragraph (c)(2) of this section.

(iii) The application of the factors in paragraph (f)(2)(ii) of this section to these facts is as follows. In Year 3, O does not engage primarily in regular and ongoing activities that further exempt purposes. However, in Year 4, O elects a new board of trustees comprised of individuals who have skills and experience running charitable and educational programs and implements a new program of activities to further the public's appreciation of the arts. As a result of these actions, beginning in Year 4, O engages in regular and ongoing activities that further exempt purposes.

The size and scope of the excess benefit transactions that occurred in Year 3, taken collectively, are significant in relation to the size and scope of O's regular and ongoing exempt function activities that were conducted in Year 3. Beginning in Year 4, however, as O's exempt function activities grow, the size and scope of the excess benefit transactions that occurred in Year 3 become less and less significant as compared to the size and scope of O's regular and ongoing exempt function activities. O was involved in multiple excess benefit transactions in Year 3. However, by discontinuing its practice of purchasing art from its current and former trustees, by replacing its former board with independent members of the community, and by adopting a conflicts of interest policy and art valuation guidelines, O has implemented safeguards that are reasonably calculated to prevent future violations. In addition, O has made a good faith effort to seek correction from the disqualified persons who benefited from the excess benefit transactions (its former trustees). Based on the application of the factors to these facts, O continues to meet the requirements for tax exemption under section 501(c)(3).

Example 3.

(i) O conducts educational programs for the benefit of the general public. Since its formation, O has employed its founder, C, as its Chief Executive Officer. Beginning in Year 5 of O's operations and continuing to the present, C caused O to divert significant portions of O's funds to pay C's personal expenses. The diversions by C significantly reduced the funds available to conduct O's ongoing educational programs. The board of trustees never authorized C to cause O to pay C's personal expenses from O's funds. Certain members of the board were aware that O was paying C's personal expenses. However, the board did not terminate C's employment and did not take any action to seek repayment from C or to prevent C from continuing to divert O's funds to pay C's personal expenses. C claimed that O's payments of C's personal expenses represented loans from O to C. However, no contemporaneous loan documentation exists, and C never made any payments of principal or interest.

(ii) The diversions of O's funds to pay C's personal expenses constitute excess benefit transactions between an applicable tax-exempt organization and a disqualified person under section 4958. Therefore, these transactions are subject to the applicable excise taxes provided in that section. In addition, these transactions violate the proscription against inurement under section 501(c)(3) and paragraph (c)(2) of this section.

(iii) The application of the factors in paragraph (f)(2)(ii) of this section to these facts is as follows. O has engaged in regular and ongoing activities that further exempt purposes both before and after the excess benefit transactions occurred. However, the size and scope of the excess benefit transactions engaged in by O beginning in Year 5, collectively, are significant in relation to the size and scope of O's activities that further exempt purposes. Moreover, O has been involved in multiple excess benefit transactions. O has not implemented any safeguards that are reasonably calculated to prevent future diversions. The excess benefit transactions have not been corrected, nor has O made good faith efforts to seek correction from C, the disqualified person who benefited from the excess benefit transactions. Based on the application of the factors to these facts, O is no longer described in section 501(c)(3) effective in Year 5.

Example 4.

(i) O conducts activities that further exempt purposes. O uses several buildings in the conduct of its exempt activities. In Year 1, O sold one of the buildings to Company K for an amount that was substantially below fair market value. The sale was a significant event in relation to O's other activities. C, O's Chief Executive Officer, owns all of the voting stock of Company K. When O's board of trustees approved the transaction with Company K, the board did not perform due

diligence that could have made it aware that the price paid by Company K to acquire the building was below fair market value. Subsequently, but before the IRS commences an examination of O, O's board of trustees determines that Company K paid less than the fair market value for the building. Thus, O concludes that an excess benefit transaction occurred. After the board makes this determination, it promptly removes C as Chief Executive Officer, terminates C's employment with O, and hires legal counsel to recover the excess benefit from Company K. In addition, O promptly adopts a conflicts of interest policy and new contract review procedures designed to prevent future recurrences of this problem.

(ii) The sale of the building by O to Company K at less than fair market value constitutes an excess benefit transaction between an applicable tax-exempt organization and a disqualified person under section 4958 in Year 1. Therefore, this transaction is subject to the applicable excise taxes provided in that section. In addition, this transaction violates the proscription against inurement under section 501(c)(3) and paragraph (c)(2) of this section.

(iii) The application of the factors in paragraph (f)(2)(ii) of this section to these facts is as follows. O has engaged in regular and ongoing activities that further exempt purposes both before and after the excess benefit transaction occurred. Although the size and scope of the excess benefit transaction were significant in relation to the size and scope of O's activities that further exempt purposes, the transaction with Company K was a one-time occurrence. By adopting a conflicts of interest policy and new contract review procedures and by terminating C, O has implemented safeguards that are reasonably calculated to prevent future violations. Moreover, O took corrective actions before the IRS commenced an examination of O. In addition, O has made a good faith effort to seek correction from Company K, the disqualified person who benefited from the excess benefit transaction. Based on the application of the factors to these facts, O continues to be described in section 501(c)(3).

Example 5.

(i) O is a large organization with substantial assets and revenues. O conducts activities that further its exempt purposes. O employs C as its Chief Financial Officer. During Year 1, O pays $2,500 of C's personal expenses. O does not make these payments pursuant to an accountable plan, as described in § 53.4958-4(a)(4)(ii). In addition, O does not report any of these payments on C's Form W-2, "Wage and Tax Statement," or on a Form 1099-MISC, "Miscellaneous Income," for C for Year 1, and O does not report these payments as compensation on its Form 990, "Return of Organization Exempt From Income Tax," for Year 1. Moreover, none of these payments can be disregarded as nontaxable fringe benefits under § 53.4958-4(c)(2) and none consisted of fixed payments under an initial contract under § 53.4958-4(a)(3). C does not report the $2,500 of payments as income on his individual Federal income tax return for Year 1. O does not repeat this reporting omission in subsequent years and, instead, reports all payments of C's personal expenses not made under an accountable plan as income to C.

(ii) O's payment in Year 1 of $2,500 of C's personal expenses constitutes an excess benefit transaction between an applicable tax-exempt organization and a disqualified person under section 4958. Therefore, this transaction is subject to the applicable excise taxes provided in that section. In addition, this transaction violates the proscription against inurement in section 501(c)(3) and paragraph (c)(2) of this section.

(iii) The application of the factors in paragraph (f)(2)(ii) of this section to these facts is as follows. O engages in regular and ongoing activities that further exempt purposes. The payment of $2,500 of C's personal expenses represented only a de minimis portion of O's assets and revenues; thus, the size and scope of the excess benefit transaction were not significant in

relation to the size and scope of O's activities that further exempt purposes. The reporting omission that resulted in the excess benefit transaction in Year 1 occurred only once and is not repeated in subsequent years. Based on the application of the factors to these facts, O continues to be described in section 501(c)(3).

Example 6.

(i) O is a large organization with substantial assets and revenues. O furthers its exempt purposes by providing social services to the population of a specific geographic area. O has a sizeable workforce of employees and volunteers to conduct its work. In Year 1, O's board of directors adopted written procedures for setting executive compensation at O. O's executive compensation procedures were modeled on the procedures for establishing a rebuttable presumption of reasonableness under § 53.4958-6. In accordance with these procedures, the board appointed a compensation committee to gather data on compensation levels paid by similarly situated organizations for functionally comparable positions. The members of the compensation committee were disinterested within the meaning of § 53.4958-6(c)(1)(iii). Based on its research, the compensation committee recommended a range of reasonable compensation for several of O's existing top executives (the Top Executives). On the basis of the committee's recommendations, the board approved new compensation packages for the Top Executives and timely documented the basis for its decision in board minutes. The board members were all disinterested within the meaning of § 53.4958-6(c)(1)(iii). The Top Executives were not involved in setting their own compensation. In Year 1, even though payroll expenses represented a significant portion of O's total operating expenses, the total compensation paid to O's Top Executives represented only an insubstantial portion of O's total payroll expenses. During a subsequent examination, the IRS found that the compensation committee relied exclusively on compensation data from organizations that perform similar social services to O. The IRS concluded, however, that the organizations were not similarly situated because they served substantially larger geographic regions with more diverse populations and were larger than O in terms of annual revenues, total operating budget, number of employees, and number of beneficiaries served. Accordingly, the IRS concluded that the compensation committee did not rely on "appropriate data as to comparability" within the meaning of § 53.4958-6(c)(2) and, thus, failed to establish the rebuttable presumption of reasonableness under § 53.4958-6. Taking O's size and the nature of the geographic area and population it serves into account, the IRS concluded that the Top Executives' compensation packages for Year 1 were excessive. As a result of the examination, O's board added new members to the compensation committee who have expertise in compensation matters and also amended its written procedures to require the compensation committee to evaluate a number of specific factors, including size, geographic area, and population covered by the organization, in assessing the comparability of compensation data. O's board renegotiated the Top Executives' contracts in accordance with the recommendations of the newly constituted compensation committee on a going forward basis. To avoid potential liability for damages under state contract law, O did not seek to void the Top Executives' employment contracts retroactively to Year 1 and did not seek correction of the excess benefit amounts from the Top Executives. O did not terminate any of the Top Executives.

(ii) O's payments of excessive compensation to the Top Executives in Year 1 constituted excess benefit transactions between an applicable tax-exempt organization and disqualified persons under section 4958. Therefore, these payments are subject to the applicable excise taxes provided under that section, including second-tier taxes if there is no correction by the

disqualified persons. In addition, these payments violate the proscription against inurement under section 501(c)(3) and paragraph (c)(2) of this section.
(iii) The application of the factors in paragraph (f)(2)(ii) of this section to these facts is as follows. O has engaged in regular and ongoing activities that further exempt purposes both before and after the excess benefit transactions occurred. The size and scope of the excess benefit transactions, in the aggregate, were not significant in relation to the size and scope of O's activities that further exempt purposes. O engaged in multiple excess benefit transactions. Nevertheless, prior to entering into these excess benefit transactions, O had implemented written procedures for setting the compensation of its top management that were reasonably calculated to prevent the occurrence of excess benefit transactions. O followed these written procedures in setting the compensation of the Top Executives for Year 1. Despite the board's failure to rely on appropriate comparability data, the fact that O implemented and followed these written procedures in setting the compensation of the Top Executives for Year 1 is a factor favoring continued exemption. The fact that O amended its written procedures to ensure the use of appropriate comparability data and renegotiated the Top Executives' compensation packages on a going-forward basis are also factors favoring continued exemption, even though O did not void the Top Executives' existing contracts and did not seek correction from the Top Executives. Based on the application of the factors to these facts, O continues to be described in section 501(c)(3).
(3) Applicability. The rules in paragraph (f) of this section will apply with respect to excess benefit transactions occurring after
(g) Applicability of regulations in this section. The regulations in this section are, except as otherwise expressly provided, applicable with respect to taxable years beginning after July 26, 1959. For the rules applicable with respect to taxable years beginning before July 27, 1959, see 26 CFR (1939) 39.101(6)-1 (Regulations 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 FR 5167; C.B. 1954-2, 47).
(h) Effective/applicability date. Paragraphs (b)(1)(v) and (b)(6) of this section apply on and after

[T.D. 6500, 25 FR 11737, Nov. 26, 1960, as amended by T.D. 6525, 26 FR 189, Jan. 11, 1961; T.D. 6939, 32 FR 17661, Dec. 12, 1967; T.D. 7428, 41 FR 34620, Aug. 16, 1976; T.D. 8308, 55 FR 35587, Aug. 31, 1990; T.D. 9390, 73 FR 16521, Mar. 28, 2008; T.D. 9390, 73 FR 23069, Apr. 29, 2008; T.D. 9674, 79 FR 37631, July 2, 2014; T.D. 9819, 82 FR 29732, June 30, 2017]

26 U.S. Code § 509. (a) General rule. For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

(1) an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii));
(2) an organization which—
(A) normally receives more than one-third of its support in each taxable year from any combination of—
(i) gifts, grants, contributions, or membership fees, and
(ii) gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), not including such receipts from any person, or from any bureau or similar agency

of a governmental unit (as described in section 170(c)(1)), in any taxable year to the extent such receipts exceed the greater of $5,000 or 1 percent of the organization's support in such taxable year, from persons other than disqualified persons (as defined in section 4946) with respect to the organization, from governmental units described in section 170(c)(1), or from organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)), and (B) normally receives not more than one-third of its support in each taxable year from the sum of—
(i) gross investment income (as defined in subsection (e)) and
(ii) the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511.

26 CFR § 1.1011-2 - Bargain sale to a charitable organization.

§ 1.1011-2 Bargain sale to a charitable organization.
(a) In general.
(1) If for the taxable year a charitable contributions deduction is allowable under section 170 by reason of a sale or exchange of property, the taxpayer's adjusted basis of such property for purposes of determining gain from such sale or exchange must be computed as provided in section 1011(b) and paragraph (b) of this section. If after applying the provisions of section 170 for the taxable year, including the percentage limitations of section 170(b), no deduction is allowable under that section by reason of the sale or exchange of the property, section 1011(b) does not apply and the adjusted basis of the property is not required to be apportioned pursuant to paragraph (b) of this section. In such case the entire adjusted basis of the property is to be taken into account in determining gain from the sale or exchange, as provided in § 1.1011-1(e). In ascertaining whether or not a charitable contributions deduction is allowable under section 170 for the taxable year for such purposes, that section is to be applied without regard to this section and the amount by which the contributed portion of the property must be reduced under section 170(e)(1) is the amount determined by taking into account the amount of gain which would have been ordinary income or long-term capital gain if the contributed portion of the property had been sold by the donor at its fair market value at the time of the sale or exchange.

(2) If in the taxable year there is a sale or exchange of property which gives rise to a charitable contribution which is carried over under section 170(b)(1)(D)(ii) or section 170(d) to a subsequent taxable year or is postponed under section 170(a)(3) to a subsequent taxable year, section 1011(b) and paragraph (b) of this section must be applied for purposes of apportioning the adjusted basis of the property for the year of the sale or exchange, whether or not such contribution is allowable as a deduction under section 170 in such subsequent year.

(3) If property is transferred subject to an indebtedness, the amount of the indebtedness must be treated as an amount realized for purposes of determining whether there is a sale or exchange to which section 1011(b) and this section apply, even though the transferee does not agree to assume or pay the indebtedness.

(4)

(i) Section 1011(b) and this section apply where property is sold or exchanged in return for an obligation to pay an annuity and a charitable contributions deduction is allowable under section 170 by reason of such sale or exchange.

(ii) If in such case the annuity received in exchange for the property is non-assignable, or is assignable but only to the charitable organization to which the property is sold or exchanged, and if the transferor is the only annuitant or the transferor and a designated survivor annuitant or annuitants are the only annuitants, any gain on such exchange is to be reported as provided in example (8) in paragraph (c) of this section. In determining the period over which gain may be reported as provided in such example, the life expectancy of the survivor annuitant may not be taken into account. The fact that the transferor may retain the right to revoke the survivor's annuity or relinquish his own right to the annuity will not be considered, for purposes of this subdivision, to make the annuity assignable to someone other than the charitable organization. Gain on an exchange of the type described in this subdivision pursuant to an agreement which is entered into after December 19, 1969, and before May 3, 1971, may be reported as provided in example (8) in paragraph (c) of this section, even though the annuity is assignable.

(iii) In the case of an annuity to which subdivision (ii) of this subparagraph applies, the gain unreported by the transferor with respect to annuity payments not yet due when the following events occur is not required to be included in gross income of any person where -

(a) The transferor dies before the entire amount of gain has been reported and there is no surviving annuitant, or

(b) The transferor relinquishes the annuity to the charitable organization.

If the transferor dies before the entire amount of gain on a two-life annuity has been reported, the unreported gain is required to be reported by the surviving annuitant or annuitants with respect to the annuity payments received by them.

(b) Apportionment of adjusted basis. For purposes of determining gain on a sale or exchange to which this paragraph applies, the adjusted basis of the property which is sold or exchanged shall be that portion of the adjusted basis of the entire property which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the entire property. The amount of such gain which shall be treated as ordinary income (or long-term capital gain) shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of the sale or exchange as the amount realized on the sale or exchange bears to the fair market value of the entire property at such time. The terms ordinary income and long-term capital gain, as used in this section, have the same meaning as they have in paragraph (a) of § 1.170A-4. For determining the portion of the adjusted basis, ordinary income, and long- term capital gain allocated to the contributed portion of the property for purposes of applying section 170(e)(1) and paragraph (a) of § 1.170A-4 to the contributed portion of the property, and for determining the donee's basis in such contributed portion, see paragraph (c) (2) and (4) of § 1.170A-4. For determining the holding period of such contributed portion, see section 1223(2) and the regulations thereunder.

(c) Illustrations. The application of this section may be illustrated by the following examples, which are supplemented by other examples in paragraph (d) of § 1.170A-4:

Example 1.
In 1970, A, a calendar-year individual taxpayer, sells to a church for $4,000 stock held for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. A's contribution base for 1970, as defined in section 170(b)(1)(F), is $100,000, and during that year he makes no other charitable contributions. Thus, A makes a charitable contribution to the church of $6,000 ($10,000 value −$4,000 amount realized). Without regard to this section, A is allowed a deduction under section 170 of $6,000 for his charitable contribution to the church, since there is no reduction under section 170(e)(1) with respect to the long-term capital gain. Accordingly, under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis × $4,000 amount realized / $10,000 value of property). A has recognized long-term capital gain of $2,400 ($4,000 amount realized − $1,600 adjusted basis) on the bargain sale.

Example 2.
The facts are the same as in example (1) except that A also makes a charitable contribution in 1970 of $50,000 cash to the church. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is $50,000 for the amount of cash contributed to the church; however, the $6,000 contribution of property is carried over to 1971 under section 170(d). Under paragraphs (a)(2) and (b) of this section the adjusted basis for determining gain for 1970 on the bargain sale in that year is $1,600 ($4,000 × $4,000 / $10,000). A has a recognized long-term capital gain for 1970 of $2,400 ($4,000 − $1,600) on the sale.

Example 3.
In 1970, C, a calendar-year individual taxpayer, makes a charitable contribution of $50,000 cash to a church. In addition, he sells for $4,000 to a private foundation not described in section 170(b)(1)(E) stock held for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. Thus, C makes a charitable contribution of $6,000 of such property to the private foundation ($10,000 value − $4,000 amount realized). C's contribution base for 1970, as defined in section 170(b)(1)(F), is $100,000, and during that year he makes no other charitable contributions. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is $50,000 for the amount of cash contributed to the church. Under section 170(e)(1)(B)(ii) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, the $6,000 contribution of stock is reduced to $4,800 ($6,000 − [50% × ($6,000 value of contributed portion of stock − $3,600 adjusted basis)]). However, by reason of section 170(b)(1)(B)(ii), applied without regard to section 1011(b), no deduction is allowed under section 170 for 1970 or any other year for the reduced contribution of $4,800 to the private foundation. Accordingly, paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the stock sold to the private foundation, and under section 1.1011-1(e) the recognized gain on the bargain sale is $0 ($4,000 amount realized − $4,000 adjusted basis).

Example 4.

In 1970, B, a calendar-year individual taxpayer, sells to a church for $2,000 stock held for not more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. B's contribution base for 1970, as defined in section 170(b)(1)(F), is $20,000 and during such year B makes no other charitable contributions. Thus, he makes a charitable contribution to the church of $8,000 ($10,000 value − $2,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $800 ($4,000 adjusted basis × $2,000 amount realized / $10,000 value of stock). Accordingly, B, has a recognized short-term capital gain of $1,200 ($2,000 amount realized − $800 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of $3,200 ($8,000 value of gift − [$8,000 − ($4,000 adjusted basis of property × $8,000 value of gift / $10,000 value of property)]).

Example 5.
The facts are the same as in Example 4 except that B sells the property to the church for $4,000. Thus, B makes a charitable contribution to the church of $6,000 ($10,000 value −$4,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis × $4,000 amount realized / $10,000 value of stock). Accordingly, B has a recognized short-term capital gain of $2,400 ($4,000 amount realized − $1,600 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of $2,400 ($6,000 value of gift − [$6,000 − ($4,000 adjusted basis of property × $6,000 value of gifts / $10,000 value of property)]).

Example 6.
The facts are the same as in Example 4 except that B sells the property to the church for $6,000. Thus, B makes a charitable contribution to the church of $4,000 ($10,000 value −$6,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $2,400 ($4,000 adjusted basis × $6,000 amount realized/$10,000 value of stock). Accordingly, B has a recognized short-term capital gain of $3,600 ($6,000 amount realized −$2,400 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of $1,600 ($4,000 value of gift −[$4,000 −($4,000 adjusted basis of property × $4,000 value of gift/$10,000 value of property]).

Example 7.
In 1970, C, a calendar-year individual taxpayer, sells to a church for $4,000 tangible personal property used in his business for more than 6 months which has an adjusted basis of $4,000 and a fair market value of $10,000. Thus, C makes a charitable contribution to the church of $6,000 ($10,000 value −$4,000 adjusted basis). C's contribution base for 1970, as defined in section 170(b)(1)(F) is $100,000 and during such year he makes no other charitable contributions. If C had sold the property at its fair market value at the time of its contribution, it is assumed that under section 1245 $4,000 of the gain of $6,000 ($10,000 value −$4,000 adjusted basis) would have been treated as ordinary icome. Thus, there would have been long-term capital gain of $2,000. It is also assumed that the church does not put the property to an unrelated use, as defined in paragraph (b)(3) of § 1.170A-4. Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is $1,600 ($4,000 adjusted basis ×

$4,000 amount realized/$10,000 value of property). Accordingly, C has a recognized gain of $2,400 ($4,000 amount realized −$1,600 adjusted basis) on the bargain sale, consisting of ordinary income of $1,600 ($4,000 ordinary income × $4,000 amount realized/$10,000 value of property) and of long-term capital gain of $800 ($2,000 long-term gain × $4,000 amount realized/$10,000 value of property). After applying section 1011(b) and paragraphs (a) and (c)(2)(i) of § 1.170A-4, C is allowed a charitable contributions deduction for 1970 of $3,600 ($6,000 gift −[$4,000 ordinary income × $6,000 value of gift/$10,000 value of property]).

Example 8.
(a) On January 1, 1970, A, a male of age 65, transfers capital assets consisting of securities held for more than 6 months to a church in exchange for a promise by the church to pay A a non-assignable annuity of $5,000 per year for life. The annuity is payable monthly with the first payment to be made on February 1, 1970. A's contribution base for 1970, as defined in section 170(b)(1)(F), is $200,000, and during that year he makes no other charitable contributions. On the date of transfer the securities have a fair market value of $100,000 and an adjusted basis to A of $20,000.
(b) The present value of the right of a male age 65 to receive a life annuity of $5,000 per annum, payable in equal installments at the end of each monthly period, is $59,755 ($5,000 × [11.469 + 0.482]), determined in accordance with section 101(b) of the Code, paragraph (e)(1)(iii)(b)(2) of § 1.101-2, and section 3 of Rev. Rul. 62-216, C.B. 1962-2, 30. Thus, A makes a charitable contribution to the church of $40,245 ($100,000 −$59,755). See Rev. Rul. 84-162, 1984-2 C.B. 200, for transfers for which the valuation date falls after November 23, 1984. (See § 601.601(d)(2)(ii)(b) of this chapter). For the applicable valuation tables in connection therewith, see § 20.2031-7(d)(6) of this chapter. See, however, § 1.7520-3(b) (relating to exceptions to the use of standard actuarial factors in certain circumstances).

(c) Under paragraph (b) of this section, the adjusted basis for determining gain on the bargain sale is $11,951 ($20,000 × $59,755 / $100,000). Accordingly, A has a recognized long-term capital gain of $47,804 ($59,755 − $11,951) on the bargain sale. Such gain is to be reported by A ratably over the period of years measured by the expected return multiple under the contract, but only from that portion of the annual payments which is a return of his investment in the contract under section 72 of the Code. For such purposes, the investment in the contract is $59,755, that is, the present value of the annuity.

(d) The computation and application of the exclusion ratio, the gain, and the ordinary annuity income are as follows, determined by using the expected return multiple of 15.0 applicable under table I of § 1.72-9:

A's expected return (annual payments of $5,000 × 15)
$75,000.00

Exclusion ratio ($59,755 investment in contract divided by expected return of $75,000)
%

Annual exclusion (annual payments of $5,000 × 79.7%)
$3,985.00

Ordinary annuity income ($5,000–$3,985)
$1,015.00

Long-term capital gain per year ($47,804/15) with respect to the annual exclusion
$3,186.93
(e) The exclusion ratio of 79.7 percent applies throughout the life of the contract. During the first 15 years of the annuity, A is required to report ordinary income of $1,015 and long-term capital gain of $3,186.93 with respect to the annuity payments he receives. After the total long-term capital gain of $47,804 has been reported by A, he is required to report only ordinary income of $1,015.00 per annum with respect to the annuity payments he receives.
(d) Effective date. This section applies only to sales and exchanges made after December 19, 1969.

(e) Cross reference. For rules relating to the treatment of liabilities on the sale or other disposition or encumbered property, see § 1.1001-2.

[T.D. 7207, 37 FR 20798, Oct. 5, 1972, as amended by T.D. 7741, 45 FR 81745, Dec. 12, 1980; T.D. 8176, 53 FR 5570, Feb. 25, 1988; 53 FR 11002, Apr. 4, 1988; T.D. 8540, 59 FR 30148, June 10, 1994]

26 U.S. Code § 4958. Taxes on excess benefit transactions

(a) Initial taxes
(1) On the disqualified person
There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.
(2) On the management
In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.
(b) Additional tax on the disqualified person
In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.
(c) Excess benefit transaction; excess benefit. For purposes of this section—
(1) Excess benefit transaction
(A) In general
The term "excess benefit transaction" means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the

consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.
(B) Excess benefit
The term "excess benefit" means the excess referred to in subparagraph (A).
(2) Special rules for donor advised funds. In the case of any donor advised fund (as defined in section 4966(d)(2))—
(A)
the term "excess benefit transaction" includes any grant, loan, compensation, or other similar payment from such fund to a person described in subsection (f)(7) with respect to such fund, and
(B)
the term "excess benefit" includes, with respect to any transaction described in subparagraph (A), the amount of any such grant, loan, compensation, or other similar payment.
(3) Special rules for supporting organizations
(A) In general. In the case of any organization described in section 509(a)(3)—
(i) the term "excess benefit transaction" includes—
(I)
any grant, loan, compensation, or other similar payment provided by such organization to a person described in subparagraph (B), and
(II)
any loan provided by such organization to a disqualified person (other than an organization described in subparagraph (C)(ii)), and
(ii)
the term "excess benefit" includes, with respect to any transaction described in clause (i), the amount of any such grant, loan, compensation, or other similar payment.
(B) Person described. A person is described in this subparagraph if such person is—
(i)
a substantial contributor to such organization,
(ii)
a member of the family (determined under section 4958(f)(4)) of an individual described in clause (i), or
(iii)
a 35-percent controlled entity (as defined in section 4958(f)(3) by substituting "persons described in clause (i) or (ii) of section 4958(c)(3)(B)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).
(C) Substantial contributor. For purposes of this paragraph—
(i) In general
The term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person. In the case of a trust, such term also means the creator of the trust. Rules similar to the rules of subparagraphs (B) and (C) of section 507(d)(2) shall apply for purposes of this subparagraph.

(ii) Exception. Such term shall not include—
(I)
any organization described in paragraph (1), (2), or (4) of section 509(a), and
(II)
any organization which is treated as described in such paragraph (2) by reason of the last sentence of section 509(a) and which is a supported organization (as defined in section 509(f)(3)) of the organization to which subparagraph (A) applies.
(4) Authority to include certain other private inurement
To the extent provided in regulations prescribed by the Secretary, the term "excess benefit transaction" includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.
(d) Special rules. For purposes of this section—
(1) Joint and several liability
If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.
(2) Limit for management
With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $20,000.
(e) Applicable tax-exempt organization. For purposes of this subchapter, the term "applicable tax-exempt organization" means—
(1)
any organization which (without regard to any excess benefit) would be described in paragraph (3), (4), or (29) of section 501(c) and exempt from tax under section 501(a), and
(2)
any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.
Such term shall not include a private foundation (as defined in section 509(a)).
(f) Other definitions. For purposes of this section—
(1) Disqualified person. The term "disqualified person" means, with respect to any transaction—
(A)
any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,
(B)
a member of the family of an individual described in subparagraph (A),
(C)
a 35-percent controlled entity,
(D)
any person who is described in subparagraph (A), (B), or (C) with respect to an organization described in section 509(a)(3) and organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the applicable tax-exempt organization,
(E)
which involves a donor advised fund (as defined in section 4966(d)(2)), any person who is described in paragraph (7) with respect to such donor advised fund (as so defined), and

(F)
which involves a sponsoring organization (as defined in section 4966(d)(1)), any person who is described in paragraph (8) with respect to such sponsoring organization (as so defined).
(2) Organization manager
The term "organization manager" means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).
(3) 35-percent controlled entity
(A) In general, The term "35-percent controlled entity" means—
(i)
a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,
(ii)
a partnership in which such persons own more than 35 percent of the profits interest, and
(iii)
a trust or estate in which such persons own more than 35 percent of the beneficial interest.
(B) Constructive ownership rules
Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.
(4) Family members
The members of an individual's family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half-blood) of the individual and their spouses.
(5) Taxable period. The term "taxable period" means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—
(A)
the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or
(B)
the date on which the tax imposed by subsection (a)(1) is assessed.
(6) Correction
The terms "correction" and "correct" mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards, except that in the case of any correction of an excess benefit transaction described in subsection (c)(2), no amount repaid in a manner prescribed by the Secretary may be held in any donor advised fund.
(7) Donors and donor advisors. For purposes of paragraph (1)(E), a person is described in this paragraph if such person—
(A)
is described in section 4966(d)(2)(A)(iii),
(B)
is a member of the family of an individual described in subparagraph (A), or
(C)

is a 35-percent controlled entity (as defined in paragraph (3) by substituting "persons described in subparagraph (A) or (B) of paragraph (7)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).
(8) Investment advisors. For purposes of paragraph (1)(F)—
(A) In general. A person is described in this paragraph if such person—
(i)
is an investment advisor,
(ii)
is a member of the family of an individual described in clause (i), or
(iii)
is a 35-percent controlled entity (as defined in paragraph (3) by substituting "persons described in clause (i) or (ii) of paragraph (8)(A)" for "persons described in subparagraph (A) or (B) of paragraph (1)" in subparagraph (A)(i) thereof).
(B) Investment advisor defined
For purposes of subparagraph (A), the term "investment advisor" means, with respect to any sponsoring organization (as defined in section 4966(d)(1)), any person (other than an employee of such organization) compensated by such organization for managing the investment of, or providing investment advice with respect to, assets maintained in donor advised funds (as defined in section 4966(d)(2)) owned by such organization.
(Added Pub. L. 104–168, title XIII, § 1311(a), July 30, 1996, 110 Stat. 1475; amended Pub. L. 109–280, title XII, §§ 1212(a)(3), 1232(a), (b), 1242(a), (b), Aug. 17, 2006, 120 Stat. 1074, 1098, 1099, 1104; Pub. L. 110–172, § 3(i), Dec. 29, 2007, 121 Stat. 2475; Pub. L. 111–148, title I, § 1322(h)(3), Mar. 23, 2010, 124 Stat. 192; Pub. L. 115–141, div. U, title IV, § 401(a)(224), Mar. 23, 2018, 132 Stat. 1194.)

§ 53.4958-3 Definition of disqualified person.

(a) *In general -*

(1) *Scope of definition.* Section 4958(f)(1) defines *disqualified person,* with respect to any transaction, as any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any time during the five-year period ending on the date of the transaction (the lookback period). Paragraph (b) of this section describes persons who are defined to be disqualified persons under the statute, including certain family members of an individual in a position to exercise substantial influence, and certain 35-percent controlled entities. Paragraph (c) of this section describes persons in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization by virtue of their powers and responsibilities or certain interests they hold. Paragraph (d) of this section describes persons deemed not to be in a position to exercise substantial influence. Whether any person who is not described in paragraph (b), (c) or (d) of this section is a disqualified person with respect to a transaction for purposes of section 4958 is based on all relevant facts and circumstances, as described in paragraph (e) of this section. Paragraph (f) of this section describes special rules for affiliated organizations. Examples in paragraph (g) of this section illustrate these categories of persons.

(2) *Transition rule for lookback period.* In the case of any excess benefit transaction occurring before September 14, 2000, the lookback period described in paragraph (a)(1) of this section begins on September 14, 1995, and ends on the date of the transaction.

(b) *Statutory categories of disqualified persons* -

(1) *Family members.* A person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a member of the family of a person who is a disqualified person described in paragraph (a) of this section (other than as a result of this paragraph) with respect to any transaction with the same organization. For purposes of the following sentence, a legally adopted child of an individual is treated as a child of such individual by blood. A person's family is limited to -

(I) Spouse;

(ii) Brothers or sisters (by whole or half blood);

(iii) Spouses of brothers or sisters (by whole or half blood);

(iv) Ancestors;

(v) Children;

(vi) Grandchildren;

(vii) Great grandchildren; and

(viii) Spouses of children, grandchildren, and great grandchildren.

(2) *Thirty-five percent controlled entities* -

(I) *In general.* A person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a 35-percent controlled entity. A 35-percent controlled entity is -

(A) A corporation in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the combined voting power;

(B) A partnership in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the profits interest; or

(C) A trust or estate in which persons described in this section (except in paragraphs (b)(2) and (d) of this section) own more than 35 percent of the beneficial interest.

(ii) *Combined voting power.* For purposes of this paragraph (b)(2), combined voting power includes voting power represented by holdings of voting stock, direct or indirect, but does not include voting rights held only as a director, trustee, or other fiduciary.

(iii) *Constructive ownership rules* -

(A) *Stockholdings.* For purposes of section 4958(f)(3) and this paragraph (b)(2), indirect stockholdings are taken into account as under section 267(c), except that in applying section 267(c)(4), the family of an individual shall include the members of the family specified in section 4958(f)(4) and paragraph (b)(1) of this section.

(B) *Profits or beneficial interest.* For purposes of section 4958(f)(3) and this paragraph (b)(2), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than

section 267(c)(3)), except that in applying section 267(c)(4), the family of an individual shall include the members of the family specified in section 4958(f)(4) and paragraph (b)(1) of this section.

(c) *Persons having substantial influence.* A person who holds any of the following powers, responsibilities, or interests is in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization:

(1) *Voting members of the governing body.* This category includes any individual serving on the governing body of the organization who is entitled to vote on any matter over which the governing body has authority.

(2) *Presidents, chief executive officers, or chief operating officers.* This category includes any person who, regardless of title, has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization. A person who serves as president, chief executive officer, or chief operating officer has this ultimate responsibility unless the person demonstrates otherwise. If this ultimate responsibility resides with two or more individuals (e.g., co-presidents), who may exercise such responsibility in concert or individually, then each individual is in a position to exercise substantial influence over the affairs of the organization.

(3) *Treasurers and chief financial officers.* This category includes any person who, regardless of title, has ultimate responsibility for managing the finances of the organization. A person who serves as treasurer or chief financial officer has this ultimate responsibility unless the person demonstrates otherwise. If this ultimate responsibility resides with two or more individuals who may exercise the responsibility in concert or individually, then each individual is in a position to exercise substantial influence over the affairs of the organization.

(4) *Persons with a material financial interest in a provider-sponsored organization.* For purposes of section 4958, if a hospital that participates in a provider-sponsored organization (as defined in section 1855(e) of the Social Security Act, 42 U.S.C. 1395w-25) is an applicable tax-exempt organization, then any person with a material financial interest (within the meaning of section 501(o)) in the provider-sponsored organization has substantial influence with respect to the hospital.

(d) *Persons deemed not to have substantial influence.* A person is deemed not to be in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization if that person is described in one of the following categories:

(1) *Tax-exempt organizations described in section 501(c)(3).* This category includes any organization described in section 501(c)(3) and exempt from tax under section 501(a).

(2) *Certain section 501(c)(4) organizations.* Only with respect to an applicable tax-exempt organization described in section 501(c)(4) and § 53.4958-2(a)(4), this category includes any other organization so described.

(3) *Employees receiving economic benefits of less than a specified amount in a taxable year.* This category includes, for the taxable year in which benefits are provided, any full- or part-time employee of the applicable tax-exempt organization who -

(i) Receives economic benefits, directly or indirectly from the organization, of less than the amount referenced for a highly compensated employee in section 414(q)(1)(B)(i);

(ii) Is not described in paragraph (b) or (c) of this section with respect to the organization; and

(iii) Is not a substantial contributor to the organization within the meaning of section 507(d)(2)(A), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years.

(e) *Facts and circumstances govern in all other cases* -

(1) *In general.* Whether a person who is not described in paragraph (b), (c) or (d) of this section is a disqualified person depends upon all relevant facts and circumstances.

(2) *Facts and circumstances tending to show substantial influence.* Facts and circumstances tending to show that a person has substantial influence over the affairs of an organization include, but are not limited to, the following -

(i) The person founded the organization;

(ii) The person is a substantial contributor to the organization (within the meaning of section 507(d)(2)(A)), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years;

(iii) The person's compensation is primarily based on revenues derived from activities of the organization, or of a particular department or function of the organization, that the person controls;

(iv) The person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees;

(v) The person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole;

(vi) The person owns a controlling interest (measured by either vote or value) in a corporation, partnership, or trust that is a disqualified person; or

(vii) The person is a non-stock organization controlled, directly or indirectly, by one or more disqualified persons.

(3) *Facts and circumstances tending to show no substantial influence.* Facts and circumstances tending to show that a person does not have substantial influence over the affairs of an organization include, but are not limited to, the following -

(i) The person has taken a bona fide vow of poverty as an employee, agent, or on behalf, of a religious organization;

(ii) The person is a contractor (such as an attorney, accountant, or investment manager or advisor) whose sole relationship to the organization is providing professional advice (without having decision-making authority) with respect to transactions from which the contractor will

not economically benefit either directly or indirectly (aside from customary fees received for the professional advice rendered);

(iii) The direct supervisor of the individual is not a disqualified person;

(iv) The person does not participate in any management decisions affecting the organization as a whole or a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or

(v) Any preferential treatment a person receives based on the size of that person's contribution is also offered to all other donors making a comparable contribution as part of a solicitation intended to attract a substantial number of contributions.

(f) *Affiliated organizations.* In the case of multiple organizations affiliated by common control or governing documents, the determination of whether a person does or does not have substantial influence shall be made separately for each applicable tax-exempt organization. A person may be a disqualified person with respect to transactions with more than one applicable tax-exempt organization.

26 U.S. Code § 1.6001-1 Records.

(a)*In general.* Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.
(b)*Farmers and wage-earners.* Individuals deriving gross income from the business of farming, and individuals whose gross income includes salaries, wages, or similar compensation for personal services rendered, are required with respect to such income to keep such records as will enable the district director to determine the correct amount of income subject to the tax. It is not necessary, however, that with respect to such income individuals keep the books of account or records required by paragraph (a) of this section. For rules with respect to the records to be kept in substantiation of traveling and other business expenses of employees, see § 1.162-17.
(c)*Exempt organizations.* In addition to such permanent books and records as are required by paragraph (a) of this section with respect to the tax imposed by section 511 on unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6033. See section 6033 and §§ 1.6033-1 through 1.6033-3.
(d)*Notice by district director requiring returns statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under subtitle A of the Code, including qualified

State individual income taxes, which are treated pursuant to section 6361(a) as if they were imposed by chapter 1 of subtitle A.
(e)*Retention of records.* The books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

Rev. Rul. 64-182, 1964-1, C.B. 186. States that for an organization to be exempt under IRC section 501(c)(3) the organization must distribute funds for charitable purposes in amounts commensurate to its financial resources.
Rev. Rul. 67-246, Ex. 5. Amounts paid for chances to participate in raffles, lotteries, or similar drawings of chance or to participate in puzzles or other contests for valuable prizes are not gifts, and therefore, do not qualify as deductible charitable contributions.

Goldman V. Commissioner, 46 T.C. 136 (1966), aff'd, 388, Rev. Rul. 83-130 - In substance, a participant has not made a contribution but has rather purchased a chance to win a valuable prize.

Executive Network Club v. Commissioner, T.C. Memo. 1995-21. Individual(s) who run the raffles are compensated indirectly from a % controlled i.e.; related for-profit entity.

Bus. Bureau v. United States, 326 U.S. 279. 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. **Better Am. Campaign Acad. v. Commissioner, 92 T.C. 1053, 1065 (1989);** see also **Old Dominion Box Co., Inc. v. United States, 477 F2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973)** ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. **Am. Campaign Acad. v. Commissioner, supra at 1065-1066,** and **John Marshall Law School v. United States, 228 Ct. Cl. 902 (1981).**

V. GOVERNMENT'S POSITION

We intend to propose revocation of your organization's exempt status based on "**inurement**" issues revealed during our examination. Our examination revealed that the organization's President, , engaged in Excess Benefit Transactions with the exempt organization primarily through related, undisclosed corporations as well as through an unincorporated entity that the President established and controlled. These entities constituted "Disqualified Persons" under IRC section 4958.

The following summarizes the reported income, functional expenses, and charitable program expenses reported by the organization during the lookback period from through . Also included, is information reported from tax years ,

and . filed its final tax return for tax year . According to the Secretary of State's office, corporate status was revoked by the State on for failure to file an annual report.

Fig. 1 Itemization of Undocumented Expenses

No documentation has been provided to show that any charitable activities have occurred. Real estate expenses do not constitute Program Service Expenses. These expenses were mischaracterized on the returns. In tax year , more than $ in cash was withdrawn from the organization's bank account for purposes of paying real estate bonuses. The Representative's response (dated) to the Agents preliminary 886-A dated , stated that it is "common in the real estate industry to provide " " and cash bonuses as a form of incentive compensation to sales agents". The Representative provided a copy of the organization's " Transaction List" (Exhibit A-3). Selling real estate is not a charitable activity and paying cash bonuses to real estate agents is an inappropriate use of charitable funds.

The following functional expenses represent the most significant **UNDOCUMENTED** expenses ***EXCLUDING*** salaries. Office expenses in are significant because the organization ceased operations in .

Description								Totals
Contributions	$	$	$	$	$	$	$	
* Functional expenses	$	$	$	$	$	$	$	
Interest	$	$	$	$	$	$	$	
Investment resale expense	$	$	$	$	$	$	$	
All other expenses	$	$	$	$	$	$	$	
Office expenses						$	$	
								$
Program Service Expenses	$	$	$	$	$	$	$	
4a) No code entered	$	$	$	$	$	$	$	
4b) No code entered	$	$	$	$	$	$		
4c) No code entered	$	$	$	$	$	$	$	
4d) No code entered	$	$	$	$	$	$	$	$

Fig. 2 Itemization of Excess Benefit Transactions

The following graphic provides an itemization of the excess benefit transactions in which the organization engaged with Disqualified Persons in tax year . The detail provided, coupled with the absence of any charitable activities, evidences the size and scope of the excess benefit transactions at issue, and indicates that primarily served the interests of through entities he controlled rather than the public interest in the year under review, and in the subsequent years.

EXCESS BENEFIT TRANSACTIONS (EBTs)					
OUTGOING PAYMENTS TO:					TOTALS
	$	$	$	$	$
	$	$	$	$	$
	$	$	$	$	$
	$	$	$	$	$
TOTAL EBTs UNADJUSTED	$	$	$	$	$
INCOMING PAYMENTS FROM:					TOTALS
	($)	$	$	$	($)
	$	$	$	$	$
	($)	$	$	$	($)
	($)	$	$	$	($)
TOTAL EBTs ADJUSTED	$	$	$	$	$

On the previous table, the "Unadjusted EBT" amounts constitute the basis for the calculation of the 1st tier excise tax. The "*Adjusted* EBT" amounts constitute the basis for the calculation of the *2nd tier* excise tax. Incoming payments made to by the "Disqualified Persons"/entities were considered corrective in the calculation of the 2nd tier tax. The size and scope of the excess benefit transactions were significant in relation to the size and scope of the organization's regular and ongoing activities that did nothing to further exempt purposes. Neither the organization nor the microlender have provided documentation to evidence that any charitable activities occurred. Conducting "bargain sale" real estate transactions is not in itself a charitable activity. signed Form 6018 agreeing to revocation of the organization's exempt status but did not dissolve the organization's incorporation with the State. The incorporation was revoked by the State effective for failure to file an annual report.

Fig. 3 Analysis of Excess Benefit Transactions as a Percentage of the Organization's Total Revenues - The following graphic shows the excess benefit transactions at issue as a percentage of total revenues, and as a percentage of the organization's total expenses. The organization used most of its funding for non-charitable expenses. The greater matter may be that the organization has provided no documentation in support of any of these expenses. The Service has been unable to verify whether the reported expenses are legitimate or have even occurred due to inadequate records, and lack of cooperation on the part of the organization.

Description			
Contributions	$	$	$
* Functional expenses	$	$	$
Investment resale expense	$	$	$
All other expenses	$	$	$

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

Salaries	$	$	
Officer compensation	$		
Interest	$	$	$
Settlement costs		$	$
Office expenses	$	$	$
Occupancy	$	$	
Consultants	$		
Other employee benefits	$	$	
Payroll taxes	$		
Insurance	$		
Conferences, meetings	$		
Legal	$	$	$
Other			$
Travel	$	$	
Recruitment	$		
Communications	$	$	
Advertising	$	$	
Depreciation	$	$	$
Education & training	$	$	
Accounting	$	$	
Most Significant Expenses	$		$
Investment resale expense	$	$	$
All other expenses	$	$	$
Salaries	$	$	
Officer compensation	$		
Interest	$	$	$
Settlement costs		$	$

Non-Charitable Expenses			
As a % of Total Expenses	%	%	%
As a % of Contributions	%	%	N/A

Excess Benefit Transactions (1st-Tier)

	$
	$
	$
	$
Totals	$

Excess Benefit Transactions	
As a % of Total Expenses	%
As a % of Contributions	%

In summary, the relevant facts and circumstances with respect to the proposed revocation are as follows:

§1.501(c)(3)-1(f)(2)(ii)(A), "*the size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transactions occurred*". Our Examination revealed that appears to have been established for purposes of conducting bargain-sale real estate transactions. The organization has not evidenced charitable activities or a charitable purpose.

§1.501(c)(3)-1(f)(2)(ii)(B), "*the size and scope of the excess benefit transactions in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes*". Due to a complete lack of legitimate financial oversight, the cost of furthering this organization's exempt purpose, if any, far outweighs the benefits received. The operation of this organization has resulted in significant harm to the Government due to the organization's granting of fraudulent IRC section 170(c) tax deductions based on intentionally inflated property values. The transactions were conducted through undisclosed 35 percent controlled entities.

§1.501(c)(3)-1(f)(2)(ii)(C), as to "*whether the organization has been involved in multiple excess benefit transactions with one or more persons*". The organization has been involved with significant, multiple excess benefit transactions with undisclosed controlled entities, , and . is a +-% shareholder in and .

§1.501(c)(3)-1(f)(2)(ii)(D), as to "*whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions*". stated that the organization ceased operations at the start of tax year , and signed Form 6018 agreeing to the revocation of the organization's exempt status. The organization's corporate status was revoked by the State effective for failure to file an annual report.

§1.501(c)(3)-1(f)(2)(ii)(E), as to "*whether the excess benefit transaction has been corrected (within the meaning of 4958(f)(6) and § 53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person who benefited from the excess benefit transactions*". During the year under review funds flowed between and controlled entities , and . We considered incoming payments as "correction" for purposes of calculating the second-tier tax, but significant amounts remain outstanding.

Given the size and scope of the inurement issues revealed by our examination, is not operated exclusively for exempt purposes and does not qualify for exemption under IRC § 501(c)(3). Based on the facts and circumstances described, is not operated exclusively for exempt purposes and, therefore, does not qualify for exemption under IRC § 501(c)(3).

VI. TAXPAYER'S POSITION

The Taxpayer signed Form 6018 Consent to Proposed Action agreeing to revocation of the organization's exempt status on .

VII. CONCLUSION:

It is the Government's position that the organization engaged in multiple and repeated private benefit and inurement transactions, for which there has been insufficient correction, with the organization's President, a Disqualified Person, and undisclosed % controlled entities, under IRC § 4958. As a result, the organization is no longer eligible for exemption from federal income tax under IRC § 501(c)(3).

Accordingly, the organization's exempt status is revoked effective .

Form returns should be filed for tax periods ending on or after .