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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: December 24, 2003

Utl: 501.00-00

Form Number:
Tax Period Ended:
Person to Contact:
Contact Telephone Number:

Employee Identification Number:

EIN

Contact Address:
Internal Revenue Service
TEGE: EO: MR: FA
P.O. Box 13163, Room 1520
Baltimore, MD 21203

CERTIFIED MAIL

Dear Sir or Madam:

In a letter dated August 1982, a ruling was issued wherein your organization was held to be exempt from Federal Income Tax as an organization described in section 501(c)(13) of the Internal Revenue Code (IRC) of 1954.

IRC 501(c)(13) exempts: "Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

We have reviewed your activities and examined your financial records for the period ending 1. Based upon our examination, we have determined that the organization's income has inured to the benefit of a private shareholder or individual because of a sales and management agreement entered into that grants what amounts to an equity interest or a joint venture in your organization. Further, since your Articles of Incorporation did not prohibit inurement as required by the Code and Regulations, the owners and employees of the management company became your Board of Trustees each time there was an ownership change in the management company. Due to this, the organization no longer had any control over its own organization or operations.

31 Hopkins Plaza, Room 1520, Baltimore, Maryland 21201

DR-049-2004

TP:
EIN: _____

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Based upon the facts and the applicable law, your organization no longer meets the requirements for exemption under section 501(c)(13) or any other section of the Code. We are therefore proposing revocation of your organization's exemption from Federal income tax under section 501(c)(13) of the Internal Revenue Code effective January 1,

You have agreed with us and have signed on November 27, 2002 a Form 6018, Consent to Proposed Adverse Action, revoking your exempt status. If you still accept our findings, you do not need to take further action. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the examination report and your revocation will become final.

Since you will no longer be an exempt organization, you will be required to file Federal income tax returns on Form 1120, US Corporation Federal Income Tax Return at the end of your fiscal year. In the future, please file these returns with the appropriate service center indicated in the instructions for those returns.

If you do not accept our findings, you may appeal the proposed adverse determination through our office to the Office of Regional Director of Appeals. To request appeals consideration, you should follow the instructions in the enclosed Publication 892. We will then forward your request to the Office of Regional Director of Appeals. If a hearing is requested, you will be contacted to arrange a mutually convenient time and place.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate is not able to reverse a legally correct tax determination, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. If you want Taxpayer Advocate assistance, please call toll-free 1-877-777-4778. If you prefer to respond by mail, please direct your correspondence to the following address:

Taxpayer Advocate

If you have any questions, please call or write the contact person whose name and telephone number are shown above. If you write, please include your telephone number, the best time to call you if we need more information, and a copy of this letter to help us identify your account.

Thank you for your cooperation.

Sincerely,



R. C. Johnson
Director, EO Examinations

Enclosures:

Publication 892
Examination Report

REPORT OF EXAMINATION-EXEMPT ORGANIZATIONS

Page 1 of 1

1. Form Number		2. Key District Office:		3. Date of Report December 24, 2003	
4. Name and Address of Taxpayer			5. Name and Address of Private Foundation		
6. Social Security or Employer Identification No.		7. Tax Period(s)	8. Private Foundation Employer Identification No.		9. Tax Period(s)
10. Report Preparer's Name JOL			11. Agreement Secured Yes		
12. Findings Discussed With NA			13. Agreement Date November 27, 2002		
14(a). Summary of Proposed Adjustments			14(b) Penalty		
Internal Revenue Code Section	Period Covered by Examination	Amount of Tax	Additional Tax (Private Foundation)	Internal Revenue Code Section	Amount
501(c)(13)		NA			

Revocation of Exempt Status: Your exemption from income tax under section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(13) is being revoked effective January 1,

15. Schedules and Exhibits Attached

See attached Forms 886-A & 6018.

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Form 6018 (Rev. August 1983)	Department of the Treasury-Internal Revenue Service Consent to Proposed Adverse Action (All references are to the Internal Revenue Code)	Prepare In Duplicate
Case Number	Date of Latest Determination Letter	
Employer Identification Number	Date of Proposed Adverse Action Letter	
Name and Address of Organization		

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501 (c) (3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☐ Denial of exemption
- ☒ Revocation of exemption, effective JANUARY 1,
- ☐ Modification of exempt status from section 501 (c)() to 501 (c) (), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)(), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization	
Signature and Title	Date
Signature and Title	Date
Cat. No. 430000	

Form 6018 (Rev. 8-1983)

Form 886-A	DRAFT EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer		Year Ended

Issues:

Whether exempt status under IRC §501(c)(13)
should be revoked, effective January 1,

Facts:

The amended and restated code of regulations of the company states that

The trustees hold office on a perpetual basis and continue in office until their successor is duly elected and qualified or until their earlier resignation, removal from office or death. Any trustee may be removed by the affirmative vote of a majority of the Board of Trustee. The officers of are appointed by the Board of Trustees and may be removed by the Board of Trustees.

An agreement between and provided for the following:

- A 50 year term with automatic unlimited 10-year extensions solely at the option of the for-profit management company.
- has the right to terminate the agreement at any time by giving 90 days prior written notice.
- has absolutely no right under the contract to unilaterally terminate the contract without cause.
- If breaches the contract or commits a default under the agreement, must give them written notification and 30 days to

Form 886-A	DRAFT EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer		Year Ended

cure the breach or default.

- If a dispute arises between _____ and _____ that they cannot resolve, it must be submitted to binding arbitration.¹
- _____ may assign the Agreement to a similar entity subject to the written consent of _____ which may not be unreasonably withheld.²
- _____ was appointed _____'s agent, was granted an exclusive right to provide the general management services, and to sell interment spaces, lawn crypts, mausoleum crypts and niches, memorials, and burial vaults in the cemetery, and other cemetery merchandise and services on both a pre-need and at-need basis.
- _____ agreed to pay _____ as compensation for its management and sales services _____ % of the gross sales price of each item and service sold by _____ and _____ % of the interest received on the sale of each item and service.
- _____ percent of the proceeds (cash received) on any purchase contract, including the down payment and payments made on principal and interest, was to be paid to _____ until the total commission due is paid in full. (The management company receives its money first)
- _____ agreed to pay _____ a sales bonus if gross sales volume in any year equals or exceeds \$ _____. The sales bonus is to be calculated as a percentage (_____ % - _____ %) of gross sales based on the sales volume in a particular year.
- _____ agreed to reimburse _____ for the salaries, wages, benefits and other payroll expenses, including payroll taxes, associated with the personnel provided by _____ who manage and maintain the cemetery, including the cemetery manager,

¹ Since _____ owners/employees make up the board of _____, it is difficult to envision a dispute arising that could not be resolved.

² As stated in footnote #1, since _____ owners/employees make up the board of _____ it is in reality difficult to image a circumstance under which consent to the reassignment would be withheld.

Form 886-A	DRAFT EXPLANATION OF ITEMS	Schedule or Exhibit No.
Name of Taxpayer		Year Ended

administrative/office personnel, grounds superintendents, grounds crew, and such other non-sales personnel as are required for the proper operation of the cemetery and its business. has the full authority to decide how much of its personnel's time and in what manner and whom shall represent it in carrying out the terms of the agreement.

- was to determine the terms, conditions, and prices of the interment spaces, lawn crypts, mausoleum crypts and niches, memorials, and burial vaults in the cemetery.
- its officers, directors, partners, stockholders, employees, agents, representatives, subsidiaries and affiliates were not be held liable for any error of judgment, mistake or law or loss suffered by in connection with performance of its obligations and duties.

The "Sales and Management Agreement" gives the management company almost complete control over for at least the next 50 plus years. It is as if is a subsidiary of Because of total control over the operations of it follows that is not being operated as a non profit organization, but rather as a subsidiary of

Taxpayer's Position:

has indicated agreement with the proposed revocation effective January 1, and form 6018 has been signed.

Government's Position:

This is basically a case of substance versus form. The written agreement purports to be a sales and management contract. However, in reality, has conveyed an equity or joint venture interest to based on the following factors:

- 1) The term of the contract is 50 years, which essentially covers the useful life of the cemetery for purposes of sales.

Form 886-A	DRAFT EXPLANATION OF ITEMS	Schedule or Exhibit No.
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- 2) cannot cancel the contract without cause, which is indicative of an equity or joint venture interest. Normally a service agreement can be cancelled within a reasonable time frame (i.e. after 12 months, 36 months) without cause.
- 3) pays a high percentage of sales to as well as the related expenses.
- 4) Employees of handle all activities and make up the Board of Directors.

Conclusion:

It has been determined that exempt status should be revoked effective January 1, because of the following reasons:

- A. income has inured to the benefit of a private individual because of a sales and management agreement that grants what amounts to an equity interest or a joint venture interest in to This ownership interest is evidenced by the manner in which control of changes whenever the ownership of the company holding the management contract changes.
- B. The same sales and management agreement provides for an unreasonable revenue sharing arrangement.
- C. is a defacto subsidiary of total control over the operations of , results in not being operated as a non-profit organization, but rather as a subsidiary of In order to qualify as an exempt cemetery company, must be operated as a non profit organization.
- D. The arrangement between and has in essence conferred an equity interest to or is, at the very least, a joint venture arrangement.
- E. Further, even if the arrangement is not considered to represent an equity interest or joint venture, the contract so distances from the actual operation of the cemetery that it can no longer be said to be operating a cemetery company. In essence no longer exists.

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Form 886-A	DRAFT EXPLANATION OF ITEMS	Schedule or Exhibit No.
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For all of the reasons stated above, status as an exempt organization under IRC section 501(c)(13) should be revoked effective January 1,