TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **200708089**
Release Date: 2/23/07
Date: November 30, 2006
UIL: 501.03-01, 509.03-01

,

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
Form 1120
Tax Years:
All years

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose,* and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: September 8, 2006

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:
,

Uniform Issue List No.

501.03-02
509.03-00

Legend:

A = ,
B =
M =
N =
O =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

You were formed on October 30, 2003 as a nonprofit corporation in the state in which you are located. Your Articles of Incorporation state, "This corporation is organized for the specific and primary purpose of benefiting, performing the functions of, or carry out the purposes of that class of publicly supported organizations, including M, that are described in Sections 501(c)(3) and 509(a)(1) or (2) of the Internal Revenue Code (the "Code"), and that engage in charitable activities which are consistent with the charitable purposes of M." Your Articles lack a dissolution clause. The statutes applicable to nonprofit corporations in the state in which you were incorporated satisfy the provisions of section 1.501(c)(3)-1(b)(3) of the regulations with regard to distribution of assets upon dissolution.

You support and benefit M through contributions to a donor advised fund established with M. M is an organization described in section 501(c)(3) of the Code and is classified as an organization described in section 509(a)(1) and 170(b)(1)(A)(vi). In addition to supporting M, you provide support to other publicly supported organizations.

Initially, you were governed by a five member governing board. Three of the directors were appointed by M. Your founders, A and B, served as the two remaining directors. Your founders are disqualified persons with respect to you. Currently, you are governed by a three member governing board. M appoints two of your directors. B serves as your third director.

Your initial funding from A and B consisted of cash and a 98% interest in a limited partnership in N (the "Limited Partnership".) Your ownership interest in the Limited Partnership is your primary asset. At the end of 2004, the Limited Partnership interest constituted greater than 99.3% of your total assets.

The Limited Partnership was formed on October 30, 2003, to provide centralized management of various investments and business activities. The Limited Partnership's sole asset, real estate, was sold and the funds were used to provide loans which are described below. Currently, you and B serve as limited partners, holding a 98% and 1% ownership interest, respectively. O, serving as the general partner (the "General Partner"), holds the remaining 1% interest. O is a limited liability company (the "LLC").

Section 3.01a of the Certificate of Limited Liability Company provides that the LLC, in its capacity as General Partner of the Limited Partnership, will act in a manner deemed to be in the best interest of the LLC.

A and B each hold a 50% ownership interest in the LLC. Through their ownership interest, A and B control the LLC. The LLC in its capacity as General Partner of the Limited Partnership controls the Limited Partnership.

With respect to the governance and operation of the Limited Partnership, the Partnership Agreement provides, in pertinent part, that:

- All decisions regarding the conduct of the business of the Limited Partnership will be made by the General Partner who has the exclusive right and full authority to manage, conduct and to operate the Limited Partnership business and its investment activities or to bind the Limited Partnership to any obligation or liability whatsoever.

- No limited partner has the right to withdraw from the Partnership or to receive a return of any of its contributions to the Limited Partnership until the Limited Partnership is terminated.

- No limited partner has the right or power to cause the dissolution and winding up of the Limited Partnership by court decree or otherwise.

- The General Partner is not required to distribute cash in each year in an amount greater than one percent of the net asset value of the Limited Partnership assets other than an

amount sufficient to pay income tax or unrelated business income tax that a limited partner is required to pay because of the distribution.

- Cash distributions are made on a pro rata basis.

Your Application for Exemption, signed on October 1, 2004, indicates that you had $722,523 in assets as of that date, $4,110 in cash and an interest in the Limited Partnership which you valued at $718,413.

Section 6.01 of the limited partnership agreement grants the LLC, as General Partner, the right to loans funds of the partnership without the approval of the limited partners.

During 2004, $700,000, 97% of your assets, was distributed to your founders in the form of loans made by the Limited Partnership, an entity controlled indirectly by your founders. The loans are described below.

Pursuant to a Promissory Note dated April 14, 2004, A and B borrowed $100,000 from the Limited Partnership. In a second Promissory Note, signed on June 15, 2004, the Limited Partnership agreed to loan A and B an additional $600,000. The terms of the Promissory Notes are identical. The loans are due in 2024. The annual rate of interest is 2 ½%. No payments on the principal or the interest are due prior to 2024. The Promissory Notes provide that repayment cannot occur sooner than 10 years from the date the notes were signed.

To date, your founders have made no payments on the principal of the Promissory Notes. Interest payments totaling $27,513 have been made over the 2 ¼ years the loans have been in effect. These payments resulted in an average annual rate of return on your investment in the Limited Partnership of 1.6%. This figure was arrived at by dividing the total interest payments, $27,513, by $733,080 (the total value of the Limited Partnership based on your figures, which resulted in a total of 3.75% rate of return over 2 ¼ years. 3.75% divided by the 2 ¼ years the loans have been in effect equals an annual rate of return of 1.6%.

The loans described above are secured by a life insurance policy on the life of B which was purchased on April 17, 2004. The policy, a term life insurance policy, has a face value of $750,000. The policy was converted to a whole life policy on July 7, 2004. The face value remained the same. B is the owner of the policy. B's Revocable Living Trust is the beneficiary. The annual premiums for the policy are $12,772. The benefits are payable upon B's death or at the maturity date, July 7, 2051, whichever comes first. Currently, the life insurance policy used as collateral on the $700,000 in loans has a cash surrender value of $0.

You furnished a Policy Pledge Agreement (the "Agreement') dated June 14th, 2004, regarding the whole life insurance policy. The Agreement, between A and B and the Limited Partnership, provides that:

- A and B will pay the premiums to keep the policy in full force and effect.

- A and B have no right to change the beneficiary of the policy, pledge the policy as collateral, borrow from the policy or to exercise any other incident of ownership with respect to the policy without the express written consent of the lender.

- If B dies prior to the expiration of the 10 year restriction on repayment that appears in the Promissory Notes, repayment funds are to be placed in an escrow account until expiration of the restriction period.

- A and B may substitute other collateral for the life insurance policies. Although substitution cannot be made without the approval of the Limited Partnership, the approval shall not be unreasonably withheld.

501(c)(3):

Law

Section 501(a) of the Code provides, in part, that organizations described in section 501(c) are exempt from federal income tax. Section 501(c)(3) of the Code describes, in part, an organization that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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

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

Section 1.501(c)(3)-1(c)(2) of the regulations provides that 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. Section 1.501(a)-1(c) defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization must be organized and operated to serve a public rather than a private interest and specifically 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.

In Rev. Rul. 67-5, 1967-1 C.B. 123, the Service found that an organization controlled by the creator's family was operated to enable the creator and his family to engage in financial activities that were beneficial to them, but detrimental to the organization. The organization owned common stock that paid no dividends of a corporation controlled by the organization's creator and his family. The Service held that the foundation was operated for a substantial non-

exempt purpose and served the private interest of the creator and therefore, was not entitled to exemption under section 501(c)(3) of the Code.

The "not more than an insubstantial part of its activities" standard of section 1.501(c)(3)-1(c)(1) of the regulations can be understood by reference to Better Business Bureau v. United States, 316 U.S. 279 (1945) which held that an organization which engaged in some educational activity but pursued nonprofit goals outside the scope of the statute was not exempt under section 501(c)(3) of the Code. The Court stated that an organization is not operated exclusively for charitable purposes if it has a single noncharitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations which further goals outside the scope of section 501(c)(3).

In Best Lock Corporation v. Commissioner, 31 T.C. 620 (1959), the court upheld the denial of recognition of section 501(c)(3) status of an organization that loaned funds to members of the founder's family, even though the loans were repaid. The court determined that loans to family members and unsecured loans to friends of the founder and his family promoted private rather than charitable purposes.

In Founding Church of Scientology v. United States, 412 F.2d 1197 (Ct. Cl. 1969) and in Church in Boston v. Commissioner, 71 T.C. 102 (1978), the courts found that the very existence of a private source of loan credit from an organization's earnings may itself amount to inurement. See also Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), aff'd, 631 F.2d 736 (7th Cir. 1980).

In Orange County Agricultural Society, Inc. v. Commissioner, 893 F.2d 529, 534 (2d Cir. 1990), the appellate court affirmed the Tax court's holding that loans extended on advantageous terms to its founders, or to an entity controlled by them, indicates private inurement. In Orange County, the loans were interest-free and, while some payments were made, the repayments did not match the loan amounts and there was no evidence in the record that the full amount loaned would ever be repaid.

Rationale

As 100% owners, A and B control the LLC. Control of the Limited Partnership is vested in the LLC acting in its capacity as the General Partner. As a limited partner, you are not permitted to participate in the management or decision-making of the Limited Partnership. You are not in a position to influence the timing of the sale or disposition of any investment or assets of the Limited Partnership, and are, therefore, not in a position to control the timing of the realization of any capital gains that may arise from such a sale or disposition. You do not have the right to withdraw from the Partnership or to receive a return of any of your contributions to the Limited Partnership until the Limited Partnership is terminated. You have no control over when the Limited Partnership will be terminated. The provisions of the Limited Partnership Agreement

severely restrict the control that you, as a limited partner, may exercise and grant significant control and management powers to the General Partner.

A and B, through their joint ownership of the LLC, control it. As noted above, the LLC, in its capacity as the General Manager, controls the Limited Partnership. Thus, through these artificial entities created by A and B, A and B control your primary asset, your 98% ownership interest in the Limited Partnership. Through their indirect control of your primary asset, A and B indirectly control you.

A and B contributed assets to you that they valued at approximately $744,800. By manipulating the artificial entities, they regained control and use of $700,000 of the funds that they originally contributed to you. Thus, like the organization described in Rev. Rul. 67-5, you are operated to enable A and B to engage in financial activities that are beneficial to them, but detrimental to you.

A and B caused the Limited Partnership to enter into loan agreements that were extremely beneficial to them but detrimental to you as it put the value of your ownership interest in the Limited Partnership at risk. As a limited partner who holds a 98% ownership interest, you had no control over whether these loans would be made. A and B, acting indirectly as the General Partner, approved these loans without input from you. The loans, which now constitute 97% of your assets, were secured by collateral which has no monetary value. The Promissory Notes provide for a below market interest rate. The average annual rate of return on the loans is 1.66%, well below the market rate at the time the loans were entered into. The Promissory Notes prohibit repayment for 10 years from the dates the notes were signed. See also Best Lock Corporation, supra, loans to family members might be considered made for personal purposes regardless of whether they are repaid; Founding Church of Scientology v. United States, supra, and Church in Boston v. Commissioner, supra, the very existence of a private source of loan credit from an organization's earnings may itself amount to inurement.

Like the organization described in Orange County, the loans issued to A and B by the Limited Partnership puts the value of your primary asset at risk and results in private inurement. There have been no repayment of principal and only a negligible amount of interest paid. There is no evidence that the loans will be repaid. In the event of nonpayment, the Limited Partnership has no recourse since the collateral used to secure the loans has no monetary value.

An organization must establish that it operates exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3) if it has a single non-charitable purpose that is substantial in nature. An organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private individuals. See Better Business Bureau v. United States, supra.

You were formed to operate for the benefit of A and B. Thus, your primary purpose results in private benefit and inurement to A and B. Accordingly, you serve a private rather than public purpose.

Based on the information provided in your Form 1023 and supporting documentation, we conclude that you are not operated exclusively for purposes described in section 501(c)(3) of the Code. You have not shown that your assets do not inure to any private individual. In fact, your application demonstrates you operate for the benefit of A and B.

Section 509(a)(3):

Law

Section 509(a) of the Code defines the term "private foundation" as an organization described in section 501(c)(3) other than organizations described in section 509(a)(1), (2), (3), or (4).

Section 509(a)(3) provides that the term "private foundation" does not include an organization that:

(A) is organized and operated exclusively for the benefit of, to perform the function of, or to carry out the purposes of one or more organizations described in section 509(a)(1) or (2);

(B) is operated, supervised or controlled by, or in connection with, one or more organizations described in section 509(a)(1) or (2);

(C) is not be controlled, directly or indirectly, by one or more persons who would be disqualified persons as defined in section 4946 if the organization were a private foundation, other than foundation managers as defined in section 4946(a)(1)(B) and organizations described in section 509(a)(1) and (2).

Section 1.509(a)-4(c)(1) of the regulations provides that an organization is organized exclusively for one or more purposes specified in section 509(a)(3)(A) of the Code only if its articles of organizations: (i) limit the purposes of such organization to one or more of the purposes set forth in section 509(a)(3)(A); (ii) do not expressly empower the organization to engage in activities which are not in furtherance of purposes set forth in section 509(a)(3)(A); (iii) state the specified publicly supported organizations; and (iv) do not expressly empower the organization to operate to support or benefit any organization other than the specified publicly supported organizations stated in its articles of organization.

Section 1.509(a)-4(d)(1) of the regulations provides that in order to meet the requirements of section 509(a)(3)(A), an organization must be organized and operated exclusively to support or benefit one or more "specified" publicly supported organizations. The manner in which the publicly supported organizations must be "specified" in the articles for purposes of section 509(a)(3)(A will depend upon whether the supporting organization is "operated, supervised, or controlled by" or supervised or controlled in connection with" such organizations or whether it is "operated in connection with" such organizations.

Section 1.509(a)-4(d)(2) of the regulations provides, in pertinent part, that an organization which is "operated, supervised, or controlled by" a supported organization may specify that organizations by class or purpose and which include the supported organizations without designating such organizations by name; or publicly supported organization which are closely related in purpose or function to those publicly supported organizations referred to in subdivision(i)(a) of this subparagraph without designating such organization by name.

Section 1.509(a)-4(d)(2)(iii) contains two examples that illustrate how a class or purpose is specified.

Example (1). X is an organization described in section 501(c)(3) which operates for the benefit of institutions of higher learning in the State of Y. X is controlled by these institutions (within the meaning of paragraph (g) of this section) and such institutions are all section 509(a)(1) organizations. X's articles will meet the organizational test if they require X to operate for the benefit of institutions of higher learning or educational organizations in the State of Y (without naming each institution). X's articles would also meet the organizational test if they provided for the giving of scholarship to enable students to attend institutions of higher learning but only in the State of Y.

Example (2). M is an organization described in section 501(c)(3) which was organized and operated by representatives of N church to run a home for the aged. M is controlled (within the meaning of paragraph (g) of this section) by N church, a section 509(a)(1) organization. The care of the sick and the aged are long standing temporal functions and purposes of organized religion. By operating a home for the aged, M is operating to support or benefit N church in carrying out one of its temporal purposes. Thus M's articles will meet the organizational test if they require M to care for the aged since M is operating to support one of N church's purposes (without designating N church by name).

Section 1.509(a)-4(e)(1) of the regulations provides, in pertinent part, that a supporting organization will be regarded as "operated exclusively" to support one or more specified publicly supported organizations (hereinafter referred to as the "operational test") only if it engages solely in activities which support or benefit the specified publicly supported organizations. Such activities may include making of payments to or for the use of, the specified publicly supported organization.

Section 1.509(a)-4(e)(2) of the regulations provides, in pertinent part, that a supporting organization is not required to pay over its income to the publicly supported organization in order to meet the operational test. It may satisfy the test by using its income to carry on an independent activity or program which supports or benefits the specified publicly supported organizations. All such support must, however, be limited to permissible beneficiaries in accordance with subparagraph (1) of this paragraph.

Section 4946 of the Code provides, in pertinent part, that a disqualified person is a person who is a substantial contributor to a foundation.

Section 1.509(a)-4(j)(1) of the regulations provides, in pertinent part, that under the provisions of section 509(a)(3)(C) a supporting organization may not be controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more publicly supported organizations. An organization will be considered "controlled," for purposes of section 509(a)(3), if the disqualified persons, by aggregating their votes or positions of authority, may require such organization to perform any act which significantly affects its operations or may prevent such organization from performing such act. This includes, but is not limited to, the right of a substantial contributor or his spouse to designate annually the recipients, from among the publicly supported organizations of the income attributable to his contribution to the supporting organization. Thus, if the governing

body of a foundation is composed of five trustees, none of whom has veto power over the actions of the foundation, and no more than two trustees are at any time disqualified persons, such foundation will not be considered controlled, directly or indirectly, by one or more disqualified persons by reason of this fact alone. However, all pertinent facts and circumstances including the nature, diversity, and income yield of an organization's holdings, the length of time particular stocks, securities, or other assets are retained, and its manner of exercising its voting right with respect to stocks in which members of the governing body also have some interest, will be taken into consideration in determining whether a disqualified person does in fact indirectly control an organization.

Rev. Rul. 80-207, 1980-2 C.B. 193, held that an organization with a 4-person-board consisting of a substantial contributor and two employees of a corporation owned (over 35 percent) by the substantial contributor was indirectly controlled by disqualified persons and was not a supporting organization under section 509(a)(3) of the Code. The Service stated that because one of the organization's directors was a disqualified person and neither the disqualified person nor any other director had a veto power over the organization's actions, the organization was not directly controlled by a disqualified person under section 1.509(a)-4(j) of the regulations. However, in determining whether an organization is indirectly controlled by one or more disqualified persons, one circumstance to be considered is whether a disqualified person is in a position to influence the decisions of members of the organization's governing body who are not themselves disqualified persons.

Rationale:

Your Articles identify the organizations you were formed to support and benefit as publicly supported organizations described in section 501(c)(3) of the Code that engage in charitable activities which are consistent with the charitable purposes of M. M is a grant making foundation. Thus, the "class" that you identify includes any publicly supported organization described in section 501(c)(3) that has at any time provided, or will in the future provide, grants to qualified organizations. This covers a large portion of the section 501(c)(3) universe.

Examples of classes and purposes that are sufficiently limited in scope appear at section 1.509(a)-4(d)(2)(iii) of the regulations.

In Example (1), the supported organizations are identified by class, institutions of higher learning in a particular state.

In Example (2), the supported organization is identified by purpose, care of the sick and elderly. The purpose listed in the Articles is one of the purposes of the supported organization, a church.

The "class" of organizations specified in your Articles of Incorporation is broader than the class of organizations contemplated by the regulations. Accordingly, you fail to satisfy the requirements of section 1.509(a)-4(c)(1)(iii) of the regulations.

You are not organized to benefit one or more specified publicly supported organizations. You have no dissolution clause in your Articles of Incorporation. The statute regarding distribution of

assets in the event of dissolution in the state in which you were incorporated does not prohibit distribution of your assets to organizations other than the specified publicly supported organizations. Accordingly, you fail to satisfy the requirements of section 1.509(a)-(c)(1)(iv) of the regulations.

You fail to meet the organizational test described at section 1.509(a)-4(c)(1) of the regulations for the reasons stated above.

During 2004, 97% of the value of your assets, primarily your ownership interest in the Limited Partnership, was distributed to A and B through the issuance of a loan by the Limited Partnership. Accordingly, you do not engage solely in activities that support or benefit M. The use of your assets was not limited to supporting or benefiting permissible beneficiaries. Thus, you fail to satisfy the operational test described at section 1.509(a)-4(e).

When determining whether control by disqualified persons exists, all pertinent facts and circumstances will be taken into consideration such as the nature, diversity, and income yield of an organization's holdings, the length of time particular stocks, securities, or other assets are retained, and its manner of exercising its voting right with respect to stocks in which members of the governing body also have some interest, will be taken into consideration in determining whether a disqualified person does in fact indirectly control an organization.

There is no diversity in your assets. You have a small amount of cash and a 98% interest in the Limited Partnership, your primary asset. The annual yield on your investment is 1.6%, far below the average rate of return for other investments you might have chosen. You have no right to withdraw from the Limited Partnership without the indirect approval of your founders. You have no voting rights with respect to the Limited Partnership. The Limited Partnership is controlled indirectly by your founders though their ownership interest in the LLC, the General Partner of the Limited Partnership. By the terms of section 3.01a of the Certificate of Limited Liability Company, the LLC is required to act in its own best interest and, thus, the best interest of A and B. This is evidenced by the fact that A and B caused the Limited Partnership to enter into loan agreements that were extremely beneficial to them but detrimental to you as it put the value of your ownership interest in the Limited Partnership at risk. The loans, which now constitute 97% of your assets, were secured by collateral which has no monetary value and provide for a below market interest rate. As shown by the above facts, you are indirectly controlled by A and B, disqualified persons with respect to you. See section 1.509(a)-4(j) of the regulations.

Conclusion:

Based on our analysis of your activities and, in light of the applicable law, we have determined you do not qualify for tax exemption as an organization described in section 501(c)(3) of the Code. Even if we determined that you were described in section 501(c)(3), you would be a private foundation and not a supporting organization under section 509(a)(3) of the Code. You must file federal income tax returns.

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

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative,* if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney.* All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:x)
xxxxxxxxxxxxxxx
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements