DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Attn: Mandatory Review, MC 4920 DAL
1100 Commerce St.
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 4, 2008

Number: **200837041**
Release Date: 9/12/2008

LEGEND
ORG = Organization name XX = Date Address = address
UIL: 501.15-00

ORG
ADDRESS

Employer Identification Number:
Person to Contact/ID Number:
Contact Numbers:
Voice
Fax

Dear :

In a determination letter dated September 6, 20XX, you were held to be exempt from Federal income tax under section 501(c)(15) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(15) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(15) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On March 3, 20XX, you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(15) of the Code.

You have filed a taxable return on Form 1120, for the year ended December 31, 20XX with us. For future periods, you are required to file Form 1120-F with the appropriate service center indicated in the instructions for the return.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that

a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

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

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
678 Front Street, Suite 200
Grand Rapids, MI 49504-5335

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

February 22, 2006

LEGEND
ORG = Organization name XX = Date Address = address

ORG
ADDRESS

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

Dear :

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

We have also enclosed Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues, and Publication 3498, *The Examination Process.* These publications include information on your rights as a taxpayer, including administrative appeal procedures within the Internal Revenue Service.

If you request a conference with Appeals, we will forward your written statement of protest to the Appeals Office, and they will contact you. For your convenience, an envelope is enclosed. If you and Appeals do not agree on some or all of the issues after your Appeals conference, the Appeals Office will advise you of its final decision

If you elect not to request Appeals consideration but instead accept our findings, please sign and return the enclosed Form 6018-A, *Consent to Proposed Adverse Action.* We will then send you a final letter modifying or revoking your exempt status under I.R.C. § 501(c)(15). 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 report of examination and send a final letter advising of our determination.

In either situation outlined in the paragraph above (execution of Form 6018-A or failure to respond within 30 days), you are required to file federal income tax returns for the tax period(s) shown above, for all years still open under the statute of limitations, and for all later years. File the federal tax return for the tax period(s) shown above with this agent within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in

the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free and ask for Taxpayer Advocate Assistance.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Form 6018-A
Report of Examination
Envelope

LEGEND
ORG = Organization name XX = Date XYZ = State City = city
Country = country Founder-1, Founder-2 = 1st, 2nd founders,
IP-1, IP-2, 1st, 2nd Insurance policies CO-1, CO-2, CO-3, CO-4, CO-5, CO-6,
CO-7, CO-8, CO-9, CO-10, CO-11, CO-12, CO-13, CO-14 = 1ST, 2ND, 3RD, 4TH, 5TH,
6TH, 7TH, 8TH, 9TH, 10TH, 11TH, 12TH, 13TH & 14TH Companies

ISSUES:

1. Is ORG providing insurance to its policyholders?

2. Is ORG an insurance company exempt from Federal tax as an organization described under Internal Revenue Code (IRC) section 501(c)(15) for taxable years 20XX?

3. Is ORG's primary and predominant activity that of insurance or investment activity?

4. Can ORG rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to IRC § 501(c)(15)?

5. Is ORG entitled to relief pursuant to IRC § 7805(b)?

6. If ORG cannot rely on its determination letter, what is the effective date of revocation?

FACTS

ORG. (ORG) was formed on June 11, 19XX in the Country, by Founders. In its Memorandum of Association filed on that date, ORG indicated as one of its objectives was to carry on the business of insurance, captive insurance and reinsurance, to act as agents and/or brokers for insurance companies and syndicates, to accept risks, settle claims, solicit insurance business, and all other matters incidental thereto. Both the Memorandum of Association and Articles of Association filed authorized capital of $ comprising of shares with par value of $ each.

On November 13, 20XX, ORG filed its 953(d) election. The election listed Founder-1 and Founder-2 as 50%/50% shareholders.

On November 13, 20XX, ORG filed Application Form 1024, Application for Recognition of Exemption Under Section 501(a), with the Internal Revenue Service, seeking tax exempt status under Internal Revenue Code section 501(c)(15). ORG indicated that it was incorporated on June 11, 19XX as a Property and Casualty Insurance company. They stated that they had entered into reinsurance contracts and anticipated continuing that line of business. It was also stated that they did not insure or reinsure any related party insurance.

ORG reinsured unaffiliated insureds who purchased credit insurance from CO-1. ORG assumed a pro rata portion of the risks covered by the underlying policies. ORG provided reinsurance covering unaffiliated insureds who purchased health insurance (medical supplemental insurance) reinsured by CO-2. ORG did not reinsure life insurance contracts.

Founder-1 was listed as the President and Founder-2 (wife) was listed as Secretary. Total assets and liabilities reported for year ending December 31, 19XX were $ and $ respectively. As part of the assets reported, ORG had a notes receivable outstanding with CO-3, A XYZ Partnership for $ and an investment in CO-4 of $. Capital stock issued and outstanding was shares; $.

Submitted with the application form was a copy of a coinsurance contract that ORG entered into with CO-5. The contract was effective from January 1, 19XX through December 31, 19XX. The contract was for credit disability and credit involuntary unemployment. Risk reinsured was all monthly premium individual policies or group certificates of credit disability and involuntary unemployment insurance assumed by CO-5 under its reinsurance agreement with Company Identification . refered to reinsurance contracts relating to CO-1. A breakdown of the coinsurance follows:

- Credit Disability Insurance $ per month
- Credit Involuntary Unemployment $ per month
- Maximum Total Premium $ for duration of contract

Reinsurance Commissions consisted of the following:

- Credit Disability Insurance 25% of reinsurance premiums
- Credit Involuntary Unemployment 60% of reinsurance premiums

Also submitted with the application form were two coinsurance contracts with CO-2. The first contract was effective from January 1, 20XX through December 31, 20XX. This contract was for supplemental health insurance. A breakdown of the coinsurance follows:

- Premium: $
- Risk Assumed: ($) of reserves, representing the risk and reserves assumed by Reinsurer under this Agreement as a pro rata portion of the risk reserves assumed by the Company.....

The second contract submitted was for Medicare Supplemental Insurance. It was effective from January 1, 20XX through December 31, 20XX. A breakdown of the coinsurance follows:

- Premium: $

- Risk Assumed: ($) of reserves, representing the risk and reserves assumed by Reinsurer under this Agreement as a pro rata portion of the risk reserves assumed by the Company.....

Included with the application form was a Participation Agreement between CO-7and CO-2. dated January 1, 20XX. The agreement stated that CO-6 should be liable for $ of initial reserves, representing a portion of CO-7's liability under the reinsurance agreement between the ceding company and CO-7. CO-6 shall pay furnish an irrevocable evergreen Letter of Credit to CO-7 in the amount of $. CO-6 shall pay an initial ceding commission to CO-7 in an amount equal to: ($) Dollars, representing Three and one-half Per Cent (3.5%) of the reserves ceded to CO-6 under the agreement. CO-6 shall also pay an annual renewal ceding commission to CO-7 in an amount equal to Three and one-half Per Cent (3.5%) of the portion of the reserves allocated to CO-6.

Based on the application form and the attachments filed, on September 6, 20XX, ORG received a favorable determination letter, granting them tax exempt status under section 501(c)(15) of the Internal Revenue Code of 1986.

In response to Question #1 under Insurance Activities, of Information Document Request (IDR) #1, ORG provided a copy of a Revised Business Plan. There is no indication that the original or revised Business Plan was ever submitted to the Service for review. There are no dates or signatures on this plan. Details of the Business Plan follow:

- Intends to write separate direct liability insurance policies for earthquake and toxic waste on real property owned by the ultimate beneficial owner.
- Policy limits will be $
- in future intends to write nursing home care expense insurance for members of the family of the ultimate beneficial owner of the Company
- Policy limits will be $
- Also intends to write reinsurance for medical reimbursement through CO-7 and CO-8.
- Retained CO-9 to act as its insurance manager in CO-10
- Intended policyholders for liability insurance to be written by the Company are businesses, companies and individuals associated with or owned by the ultimate beneficial shareholders.
- Sold directly to the insureds, Insurance Brokers will not be used
- Reinsurance will be transferred in from CO-6, who reinsures a portion of the non-life reinsurance pool of CO-7

In response to Question #2 under Insurance Activities, of IDR #1, ORG provided copies of directly written policies issued in 20XX. Details of these policies follow:

- CO-11

- March 31, 20XX to March 31, 20XX
- Commercial General Liability
- Limit: $
- Premium: $

- Founders- City, XYZ
  - January 1, 20XX to December 31, 20XX
  - Residential Property Earthquake Insurance
  - Limit:
    - Dwelling or Real Property- $
    - Other Structures- $
    - Personal Property- $
    - Loss of Use- $
  - Premium: $

- Founders- City, XYZ
  - January 1, 20XX to December 31, 20XX
  - Residential Property Earthquake Insurance
  - Limit:
    - Dwelling or Real Property- $
    - Other Structures- $
    - Personal Property- $
    - Loss of Use- $
  - Premium: $

- Founder-1, Managing Partner CO-3, A General Partnership
  - January 1, 20XX to December 31, 20XX
  - Managing Partner's Liability Insurance
  - Limit: (inclusive of cots of defense) $ Aggregate Limit of Liability for policy period
  - $

- CO-11.
  - January 1, 20XX to December 31, 20XX
  - Director's & Officer's Liability Insurance
  - Limit: (inclusive of cots of defense) $, Aggregate Limit of Liability for policy period
  - $

- CO-11.
  - January 1, 20XX through December 31, 20XX

- Financial Services Errors and Omission Insurance
- Limit: $
- Premium: $

- IP-1
  - 1/1/20XX – 12/31/20XX
  - Long Term Care Insurance
  - Benefits:
    - Facility Care Daily Benefit- $
    - Home and Community Care Daily Benefit- $
    - Maximum Caregiver Training Benefit- $
    - Maximum Lifetime Benefit- $
  - Rider Benefits:
    - Monthly Indemnity Benefit- $
    - Home and Community Care Weekly Benefit- $
  - Cost of Policy: $

- IP-2
  - 1/1/20XX – 12/31/20XX
  - Long Term Care Insurance
  - Benefits:
    - Facility Care Daily Benefit- $
    - Home and Community Care Daily Benefit- $
    - Maximum Caregiver Training Benefit- $
    - Maximum Lifetime Benefit- $
  - Rider Benefits:
    - Monthly Indemnity Benefit- $
    - Home and Community Care Weekly Benefit- $
  - Cost of Policy: $

- CO-11
  - January 1, 20XX to December 31, 20XX
  - CO-13 Tax Audit Expense Trust
  - CO-12
  - Reinsurance
  - Limit: 3x premiums
  - Premiums: $
  - Ceding Fee: $; Excise: $
  - Reinsurance Premium: $

- CO-11

- January 1, 20XX to December 31, 20XX
- CO-13 Legal Expense Trust
- CO-12
- Reinsurance
- Limit: 3x premiums
- Premiums: $
- Ceding Fee: $; Excise: $
- Reinsurance Premium: $

In response to Question #3, under Insurance Activities, of IDR #1, ORG provided a copy of a reinsurance agreement with CO-12. Effective date of the agreement was January 1, 20XX to December 31, 20XX. A breakdown of this agreement follows:

- 1/1/20XX – 12/31/20XX
- CO-12, Ltd.
- Assured: CO-13
- Universal has issued policies of insurance to CO-13
- A principal or company related to reinsurer (ORG) has purchased or intends to purchase insurance as a participant in the CO-13
- Reinsurer (ORG) desires to reinsure the Participant's Percentage of Premiums of the policies
- Tax Audit Expense policy and Legal Expense policy
- Limits: 3 times premiums on each
- Ceding fee: 3% plus 1% premium tax on each
- First Settlement Date: May 1, 20XX
- Reinsurer's Premium: Premiums times Participant's Premium Percentage, less ceding fee and premium tax;
- Premium: $ on each, less $ in expenses on each

As shown above, there are two policies listed for CO-4. These are the two policies that were reinsured through the reinsurance agreements above. There were no other insurance policies issued through CO-12 and CO-13 that were reinsured by ORG.

In response to Question #4, under Insurance Activities, of IDR #1, ORG provided year-end ceding statements furnished by CO-12 for each policy issued to CO-4. A breakdown of these statements follows:

- CO-12
  - 20XX
  - Tax Audit Expense
  - Premiums Reinsured: $

- Ceding commission: $
- Due Reinsurer: $

- CO-12
  - 20XX
  - Legal Expense
  - Premium Reinsured: $
  - Ceding Commissions: $
  - Insured Claims: $
  - Due Reinsurer: $

In response to Question #8, under Insurance Activities, of IDR, #1, ORG indicated that the maximum exposure to them at the end of 20XX if all policies outstanding filed claims at the same time was $.

In response to Question #6, under Insurance Activities, of IDR #1, ORG provided a copy of an Actuarial Report dated June 3, 20XX. The lines of insurance reported in this report were Residential Property Earthquake; Financial Services Errors and Omissions; Director's and Officers Liability; General Liability; Managing Partner's Liability; Elder Care. The report stated that the premiums charged were reasonable and that the assets of $ currently funded for 95% of the simulated outcomes.

As stated above, ORG indicated on their Application Form 1024 that they had an investment in CO-4 of $. CO-4 () is a limited liability company formed to hold the assets of ORG. ORG owns 5% while Founders own 95%. Form 1065, U.S. Return of Partnership Income, was filed for year-ended December, 31, 20XX. The only income reported was Long Term Capital Loss of $. Expenses totaled $ with an additional penalty of $. These amounts flowed to the Schedule K-1 for each partner. It was indicated on Form 1065 filed for 20XX that it was the final return.

Listed on the Form 990, under Part IX, Information Regarding Taxable Subsidiaries and Disregarded Entities, ORG listed . was 100% owned by ORG. It was formed to hold assets of ORG. Founder-1 was the manager. There was no tax return filed for 20XX because this was a single member LLC. Reported on the Form 990 was $ in total income with end of the year assets of zero. ORG did provide a copy of the XYZ Form 568, Limited Liability Company Return of Income for 20XX. The form indicated total income of $; total taxes and fees of $; and indication that it was its final return.

According to the audited financial statements for year ended December 31, 20XX, CO-14 owned 95% of CO-3, A XYZ General Partnership that was formed in the U.S. Both of these companies dissolved during 20XX.

In response to Question #4 under Financial Information, of IDR #1, ORG provided a copy of a promissory note with CO-3, a XYZ General Partnership, dated December 31, 20XX. According to the promissory note, ORG borrowed $ from CO-3 at an interest rate of 4.5%.

Included in their response to Question #4, ORG provided copies of two promissory notes, one to Founder-1 and another to CO-4. A breakdown of each note follows:

- Founder-1
  - December 31, 20XX
  - $
  - Interest rate: 4.5%
  - 16 payments

- CO-4
  - December 31, 20XX
  - $
  - Interest rate: 4.5%

A Transaction by Account worksheet was included with the Founder-1 note. The worksheet indicated that the loaning of money to Founder-1 was in installments. The second page of the worksheet gives the dates which go back to August 1, 20XX for the first installment.

Total premiums listed on Form 990 for December 31, 20XX was $. This amount agrees to the premiums listed in the summary sheet provided with the contracts. A breakdown of Form 990 for December 31, 20XX follows.

FORM 990 INFORMATION	20XX
Premiums Insurance Reserve Decrease	$ $
Interest Income	$
Dividends	$
Pass-Through Income- Montage	$
Income- Disregarded Entity- Cook	
Gain on Sale of Investment	$
Total Revenue	$
Total Assets	$
Total Liabilities	$
Gross Receipts	$

A comparison of premiums to total revenue is shown below:

REVENUE	20XX
Premiums	$
Total Revenue	$
Percentage- Premiums to Total Revenue	5.8%

A copy of Form 1120-PC was secured for year ending December 31, 20XX. Total Gross Investment income reported on return was $. Total Investment Expense reported was $. Net amount was -$. This return was the final return for ORG.

In 20XX, ORG filed Form 990-T, Exempt Organization Business Income Tax Return. Income reported on the return included income from CO-11. Total amount reported was $. Total tax due was $ with a penalty of $.

In 20XX ORG decided to dissolve and wind down its affairs. ORG did not write any policies during 20XX. At the end of 20XX ORG did not have any exposure on any outstanding policies. No new insurance was pursued in 20XX.

On January 4, 20XX, ORG filed with the Registry of Corporal Affairs CO-10 Financial Services Commission, Articles of Dissolution. The Articles stated that ORG was to wind-up because it no longer had any reasonable expectation of achieving its objectives. ORG would continue to be able to discharge or pay or provide for the payments of all claims, liabilities and obligations in full. ORG was expected to wind up and dissolve within 60 days of the filing of these Articles. Founder-1 was appointed the Liquidator with fee based on time and attendance, minimum of $.

On March 16, 20XX a Notice of Completion of Winding-Up and Dissolution of ORG was filed by Founder-1. The winding-up and dissolution of ORG had been completed. All assets and liabilities were transferred to Founders as the sole shareholders of ORG. Any loans outstanding were assigned to Founders. All assets were treated as income on their personal returns and paid tax on such returns.

During the audit year, ORG did not employ anyone to solicit its insurance business. In response to Question #5 under Insurance Activities of IDR #1, ORG stated that Founder-1 pursued the insurance activities on behalf of ORG. Founder-1 devoted approximately 40 hours a month on such activities. ORG also retained a management company. Also during the audit year, there were no claims filed.

LAW & ANALYSIS

1. Is ORG providing insurance to its policyholders?

The first issue is whether ORG is providing insurance. Determining whether this qualifies as insurance will assist in determining whether ORG can qualify for exemption pursuant to IRC § 501(c)(15).

In AMERCO & Subsidiaries, 96 T.C. 18 (19XX), a case affirmed by the 9th Circuit, the Tax Court adopted a three-part test . The three parts consist of; (1) Is the risk an insurance risk?; (2) Is there risk shifting and risk distribution?; and (3) Is there insurance in its generally accepted sense?

Neither the Internal Revenue Code nor the Regulations specifically define the term "insurance contract." The courts have generally required that a transaction involve both risk shifting (from the insured's perspective) and risk distribution (from the insurer's perspective) in order to be characterized as insurance. Helvering v. LeGierse, 312 U.S. 531, 539 (1941); Gulf Oil Corp. v. Commissioner, 914 F.2d 396, 411 (3rd Cir. 1990).

Risk shifting occurs when a person facing the possibility of a loss transfers some or all of the financial consequences of the loss to the insurer. Rev. Rul. 88-72, 1988-2 C.B. 31, clarified by Rev. Rul. 89-61, 1989-1 C.B. 75. The risk transferred pursuant to an insurance contract must be a risk of economic loss. Allied Fidelity Corp. v. Commissioner, 66 T.C. 1068 (1976), aff'd., 572 F.2d 1190 (7th Cir. 1978), cert. denied, 439 U.S. 835 (1978).

Risk shifting issues frequently arise in the case of captives. In Clougherty Packing Co. v. Commissioner, 811 F.2d 1297 (9th Cir. 1987), the court defined a "captive" in footnote 1 on page 1298 as,

> a corporation organized for the purpose of insuring the liabilities of its owner. At one extreme is the case presented here, where the insured is both the sole shareholder and only customer of the captive. There may be other permutations involving less than 100% ownership or more than a single customer, although at some point the term "captive" is no longer appropriate.

It is exam's position that risk distribution requires both a distribution of exposure units and a distribution of a pool of premiums. In addressing distribution courts have focused on one or the other, but no case has address both.

Risk distribution of exposure units refers to the operation of the statistical phenomenon known as the "the law of large numbers." When additional statistically independent risk exposure units are insured, although the potential total losses increase, there is also an increase in the predictability of average loss. This increase in the predictability of the average loss decreases the amount of

the capital that an insurance company needs per risk unit to remain at a given solvency level. See Rev. Rul. 89-61, 1989-1 C.B. 75.

The Courts have not spent a great deal of time explaining what they mean by risk distribution. No court has squarely held that there can be no risk distribution if there is only one, or a few, insureds. A fair reading of the court opinions addressing the issue, however, supports the IRS's position. See Barnes v. United States, 801 F.2d 984, 985 (7th Cir. 1986) ("Risk distributing is the spreading of the risk of loss among the participants in an insurance program."). See also, Commissioner v. Treganowan, 183 F.2d 288 , 291 (2nd Cir. 1950). Such spreading is effectuated by pooling among unrelated insureds. " [R]isk distribution means that the party assuming the risk distributes his potential liability, in part, among others." Beech Aircraft Corp. v. United States, 797 F.2d 920, 922 (10th Cir. 1986). Risk distribution is accomplished where the risk is distributed among insureds other than the entity that incurred the loss. See Ross v. Odem, 401 F.2d 464 (5th Cir. 1968).

The Sixth Circuit touched on the issue of risk distribution in Humana, Inc. v. Commissioner, 881 F.2d 247, 257 (6th Cir. 1989), noting that there was adequate risk distribution, "where the captive insures several separate corporations within an affiliated group and losses can be spread among the several distinct corporate entities." The Ninth Circuit has also measured risk distribution by explaining, "[i]nsuring many independent risks in return for numerous premiums serves to distribute risk. By assuming numerous relatively small, independent risks that occur randomly over time, the insurer smoothes out losses to match more closely its receipt of premiums." Clougherty Packing Co. v. Commissioner, 811 F.2d 1297, 1300 (9th Cir. 1987)

A general rule of thumb is that insurance companies need $1 of surplus for every $3 of premiums. Using this formula ORG would need $ ($/3) in surplus. In contrast ORG has surplus of $ or times its premiums ($ X 90.13= $). The reason such surplus is required is the lack of sufficient risk distribution in terms of exposure units for losses to be reasonably predictable. ORG's largest single per risk exposure is $ from general liability or 30.61 times its premium of $. Such exposure can not be paid out of premiums. As a result capital is the primary source of potential loss payments as opposed to a supplemental source. It is the Service's position that capital as the primary source of loss payments does not meet the tax court's third test for insurance, which is insurance in its generally accepted sense.

In Revenue Ruling 2002-90, 2002-2 CB 985, the question was raised regarding a distribution of a pool of premiums as to whether a subsidiary's arrangement to provide liability insurance coverage to 12 of its parent company's subsidiaries constituted insurance contracts for federal tax purposes and thus, the amounts paid as premiums by each subsidiary were deductible as business expenses. Under the arrangement, the subsidiaries were charged arm's length premiums, according to customary industry ratings, and none had liability coverage of less than 5 percent or more than 15 percent, of the total risk insured by the subsidiary.

As a result, the professional liability risks of the 12 subsidiaries were shifted to the insurer subsidiary as required to constitute an insurance contract for federal tax purposes. The common ownership of the subsidiaries, including the insurer, by the parent, did not affect the determination that the arrangements constituted insurance contracts.

In comparing this organization with the revenue ruling there are some similarities and differences. The question is whether these differences will affect the determination whether there is adequate risk shifting and risk distribution to qualify the policies as insurance.

The differences include the number of companies insured and the types of policies issued. In the revenue ruling there were 12 separate subsidiaries of the parent being insured. ORG insures only 5 entities.

In the revenue ruling, all 14 policies were for liability insurance. ORG issued 1 Commercial General Liability policy; 2 Residential Property Earthquake policies; 1 Managing Partner's Liability policy; 1 Director's & Officer's Liability policy; 1 Financial Services Errors and Omission policy; and 2 Long Term Care policies. Through the reinsurance agreement, ORG reinsured 1 Tax Audit Expense policy and 1 Legal Expense policy.

It has been determined by the revenue ruling that liability insurance provided to 12 of the parent's subsidiaries constitutes insurance. In this revenue ruling, all the insurance issued was the same kind. The question is whether issuing different types of policies to only five entities constitutes insurance. It is the Service's belief that it does not constitute insurance because there is not adequate risk distribution.

It is exam's position that risk distribution in terms of exposure units is computed by line of business. This is consistent with the position taken by the Service in FSA 1998-578, where it was concluded that, "One essential requirement for risk distribution is that the risk be homogenous. Accordingly, X's unrelated risks which are attributable to a different line of insurance as X's related risks should not be considered for the purpose of determining whether the related risks have been distributed. We note, however, that X's related risks may possess sufficient mass, homogeneity, and independence to be considered distributed without regard to unrelated risks."

Whether we consider each individual type of policy separate, because they are not homogeneous, or if we combine the policies together, it is the Service's position that there is not adequate risk distribution. There appears to be adequate risk shifting but without adequate risk distribution, the policies do not qualify as insurance.

2. **Is ORG an insurance company exempt from Federal tax as an organization described under Internal Revenue Code (IRC) section 501(c)(15) for taxable years 20XX?**

The second issue is whether ORG is an insurance company exempt from tax pursuant to I.R.C. section 501(c)(15) for the taxable year 20XX. I.R.C. section 501 provides that certain entities are exempt from taxation. Included in these entities are "[i]nsurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000." I.R.C. section 501(c)(15)(A)[1].

a. Definition of an Insurance Company.

Neither I.R.C. 501(c)(15) nor its corresponding regulations define an "insurance company." Subchapter L of the Code (I.R.C. sections 801-848), however, addresses the taxation of insurance companies. The term "insurance company" has the same meaning under section 501(c)(15) as it does in Subchapter L. See H. Conf. Rep. No. 99-841, 99th Cong., 2nd Sess. (Vol. II) 370-71, reprinted in 1986-3 (Vol. 4) C.B. 370-71.

I.R.C. section 816 (formally I.R.C. section 801) defines a life insurance company. As part of this definition, I.R.C. section 816 provides, "the term 'insurance company' means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies."

Treas. Reg. section 1.801-3(a)(1) defines an insurance company as,

A company whose primary and predominant business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Thus, though its name, charter powers, and subjection to State insurance laws are significant in determining the business which a company is authorized and intends to carry on, it is the character of the business actually done in the taxable year which determines whether a company is taxable as an insurance company under the Internal Revenue Code.

Treas. Reg. section 1.801-3(a)(1)(emphasis added). See also Bowers v. Lawyers Mortgage Co., 285 U.S. 182 (1932).

Prior to 20XX, the Internal Revenue Service had not ruled on whether the more stringent "greater than half" test set forth in I.R.C. 816 applies to an insurance company other than a life insurance company. Instead, to determine whether a non-life insurance company qualifies as an insurance

* * * *

[1] If an entity is part of a consolidated group, all net written premiums (or direct written premiums) of the members of the group are aggregated to determine whether the insurance company meets the requirements of I.R.C. section 501(c)(15)(A). I.R.C. 501(c)(15)(B). In this case, there are no other premiums to aggregate with the premiums ORG received during 20XX pursuant to I.R.C. 501(c)(15)(B).

company for tax purposes, the "primary and predominant business activity" test set forth in Treas. Reg. 1.801-3(a)(1) applies. See Rev. Rul. 68-27, 1968-1 C.B. 315.

The courts and the IRS have also, at times, looked to whether the transaction has characteristics traditionally associated with insurance, and whether the company conducts business like an insurance company. In order for ORG to be considered an "insurance company" entitled to tax exempt status under I.R.C. 501(c)(15) for the taxable years 20XX, its primary and predominant business activity during that year must have been issuing insurance contracts or reinsuring insurance risks. See I.R.C. section 816; Treas. Reg. section 1.801-3(a)(1).

Several court cases have addressed the issue of whether a company qualifies as an insurance company based on the company's primary and predominant business activity. The seminal case addressing this issue is Bowers v. Layers Mortgage Co., 285 U.S. 182 (1932). In Bowers, the Supreme Court determined that the taxpayer was primarily engaged in "the lending of money on real-estate security, the sale of bonds and mortgages given by borrowers and use of the money received from purchasers to make additional loans similarly secured." Bowers, 285 U.S. at 188-89. Although the taxpayer in Bowers earned "premiums" that amounted to approximately one-third of its income for the taxable years at issue, these premiums were attributable to the excess of the interest paid to the taxpayer by borrowers over the amount the taxpayer paid the purchasers to whom it subsequently sold bonds and mortgages. Id. at 188 n.5. The premiums also included fees the taxpayer charged for guaranteeing mortgage loans which it did not make or sell. Id. at 186. The Court noted that the "premiums" the taxpayer earned included agency and other services provided by the taxpayer which were not generally provided under traditional insurance contracts. Id. at 189.

Because the taxpayer's premium income was incidental to its business of lending money, the Bowers Court held that the taxpayer was not an insurance company for tax purposes. Id. at 190. the Court explained, "[t]he lending fees, extension fees and accrued interest appertain to the business of lending money rather than to insurance, and may not reasonably be attributed to the subordinate element of guaranty in [taxpayer's] mortgage loan business." Id. at 189. Cf. United States v. Home Title Insurance Co., 285 U.S. 191 (1932) (holding that the taxpayer was insurance company where taxpayer derived over 75% of its income from the insurance of titles and guarantees of mortgages.

In Inter-American Life Ins. Co. v. Commissioner, 56 T.C. 497 (1971), aff'd per curiam, 469 F.2nd 697 (9th Cir. 1972), the taxpayer issued and reinsured 17, 280, 325 and 424 insurance policies earning premiums of $867.94, $1,554.76, $1,125.70, and $1,421.98 during the taxable years 1958, 1959, 1960, and 1961 respectively. Inter-American, 56 T.C. at 507. Virtually all of the reinsurance contracts issued by the taxpayer came from another insurance company which was owned by the same two shareholders as the taxpayer. Id. Similarly, almost all of the directly written insurance policies issued by the taxpayer were issued to the same two shareholders of the taxpayer. Id. The taxpayer also engaged in the sale of real estate and stock, earned investment

income totaling $35,988.21, $31,195.60, $36,436.04, and $33,815.44 over the four years at issue. Id.

In Inter-American, the Tax Court compared the taxpayer's income from other activities, and held that the taxpayer was not an insurance company. According to the Tax Court, the insurance premiums the taxpayer earned were de minimis, comprising less than 15% of the taxpayer's gross investment income. Id. In addition, the taxpayer had no sales force in place to sell insurance contracts. Id. The Tax Court concluded that, because the taxpayer's primary and predominant source of income was from its investments, and because the taxpayer did not focus its primary and predominant efforts in pursuit of its insurance business, it was not an insurance company. Id. at 508.

The Tax Court also acknowledged that it was cognizant of the "problems indigenous to new life insurance companies, in particular, that the initial years of a new life insurance company's operations are generally difficult because the initial expenses incurred in 'putting policies on the book' are greater than the premium received" Id. (citing S. Rept. No. 291, 86th Cong., 1st Sess. (1959), 1959-2 C.B. 779). The Court explained, however, that it was basing its decision on the fact that the taxpayer did not focus its "capital and efforts primarily" on its insurance business, not on the fact that the taxpayer's insurance business was not profitable. Id. (citing Cardinal Life Ins. Co. v. United States, 300 F. supp. 387 (N.D. Tex. 1969)

In Cardinal Life Ins. Co. v. United States, 300 F. Supp. 387 (N.D. Tex. 1969), rev'd on other grounds, 425 F.2d 1328 (5th Cir. 1970), the taxpayer earned no income from insurance in two of the five years under examination, and earned .66%, .87% and 9.11% of its total income from insurance during the remaining three taxable years at issue. Cardinal Life, 300 F. supp. at 389. Instead, the taxpayer earned a majority of its income from dividends, interest, rent and capital gains. Id. Like Inter-American, the taxpayer in Cardinal Life failed to employ any brokers, solicitors, agents or salesmen. Id. It did, however pay an actuary on a fee basis to determine the amount of its premiums. Id. The Court noted that the taxpayer's income from insurance policies was "insignificant" compared to the total income earned by the taxpayer, explaining,

> While Plaintiff's insurance activities were insignificant, it was generating substantial income from dividends on stocks, rental income on real estate, rental income on trailers, interest income and capital gains upon disposal of real estate and stocks. These types of income constitute... personal holding company income which Congress has specifically stated is subject to a tax in addition to ordinary income tax. The Plaintiff is seeking to remove itself from the grasp of the personal holding company provisions by claiming life insurance company status through the issuance of a small and insignificant amount of insurance contracts.

Id. at 382.

In Industrial Life Ins. Co. v. United States, 344 F. Supp. 870 (D.S.C. 1972), aff'd per curiam, 481 F.2d 609 (4th Cir. 1973), the Fourth Circuit rejected the taxpayer's claim that it was an insurance company where the taxpayer earned 20% of its income from selling credit life insurance and issuing life insurance policies to its officers, and the balance of its income from its investment portfolio and the sale and leasing of real estate. The court explained,

> It is obvious from the financial information ... that the premium income from these years was small when compared with the income from real estate, mortgages and investment.
>
> It is also important to note that more than half of the premium income came from policies on the lives of the only officers and stockholders of the company.

Id. at 876. The Court likened the facts of Industrial Life to those of Cardinal Life. Id.

By contrast, in Service Life Ins. Co. v. United States, 189 F. supp. 282 (D. Neb. 1960), aff'd on other grounds, 293 F.2d 78 (8th Cir. 1961), the Court held that the taxpayer was an insurance company where it had "over $22,000,000 worth of life insurance on its books; over 70,000 individual policies in force; and approximately $1,675,000 in premium income" over a four year period. Id. at 286. The Service Life Court acknowledged that whether a company is considered an insurance company turns on the character of the business conducted by the company, not any percentage of income. Id. at 285-86. The Court did however; compare the taxpayer's premium income to its investment income to determine the business activity of the taxpayer. Id. at 286. Although the taxpayer also generated income from mortgage loans and investments, over half of the taxpayer's income was from its insurance premiums, and over half of its income producing assets was held for insurance policy reserves. Id.

i. ORG Earned a Substantial Amount of its Income During 20XX from its Investments

ORG should not be classified as an insurance company for tax purposes because its primary and predominant activity during the taxable year 20XX was not its insurance activity. This is evidenced by the sources of ORG's income during the years at issue. ORG reported the following income on its Forms 990 for the taxable year 20XX

FORM 990 INFORMATION	20XX
Premiums	$
Insurance Reserve Decrease	$
Interest Income	$
Dividends	$
Pass-Through Income- Montage	$
Income- Disregarded Entity- Cook	

Gain on Sale of Investment	$
Total Revenue	$
Total Assets	$
Total Liabilities	$
Gross Receipts	$

A comparison of premiums to total revenue and to gross receipts is shown below:

REVENUE	20XX
Premiums	$
Total Revenue	$
Percentage- Premiums to Total Revenue	5.8%
Percentage- Premiums to Gross Receipts	5.8%

As can be seen by the charts above, a majority of the income earned by ORG was from its investment activities, not its insurance activities. Only 5.8% of the income earned came from premiums received from the policies.

ii. ORG Failed to Use its Capital and Efforts Primarily to Earn Income from its Insurance Activity.

In addition to focusing on the sources of a company's income to determine if the company qualifies as an insurance company for tax purposes, courts have also considered the manner in which the company conducts its business activities. A taxpayer "must use its capital and efforts primarily in earning income from the issuance of contracts of insurance." Cardinal Life, 300 F. Supp. at 391.

During 20XX, ORG purported to operate as an insurance company, insuring contracts listed above. Based on the following, however, ORG has failed to demonstrate that it concentrated its capital and efforts primarily on its insurance business: 1) ORG was over capitalized; 2) ORG devoted little, if any, time to developing and marketing its insurance products; 3) ORG did not employ anyone to solicit insurance business, it had no employees; and 4) ORG devoted little time to its insurance activities.

First, relying on Bowers, ORG asserts that it held passive investments to secure the risks it undertook through its insurance activities. Some investment income is undoubtedly required to support a company's insurance activities. See Bowers, 285 U.S. at 189 (explaining, "'premiums' are characteristic of the business of insurance, and the creation of 'investment income' is generally, if not necessarily, essential to it."). In fact, one would expect an insurance company to

have investment income attributable to investing its premiums while awaiting claims submitted by its policyholders.

The first issue is how much investment income did ORG require to support the risk it assumed by entering into its insurance contracts. ORG held investment assets worth approximately $$, to cover anticipated insurance claims. As stated above, a general rule of thumb is that insurance companies need $1 of surplus for every $3 of premiums. For 20XX, the amount of surplus needed by ORG would be $. The amount of surplus maintained by ORG was over 90 times the amount needed. Therefore, ORG was over-capitalized.

Second, ORG devoted little time to developing and marketing its insurance products. In 20XX there were a total of 8 policies issued and 2 reinsured. In response to Question #1 under Insurance Activities of IDR #2, ORG indicated that for 20XX, 12 policies were issued to only two entities. Of these 12 policies, 10 of them were different types of insurance. Once these policies were issued, no policies were developed or marketed. No other effort was made to increase the amount of policies issued.

Third, ORG did not employ anyone to solicit its insurance business. In response to Question #5 under Insurance Activities of IDR #1, ORG stated that Founder-1 pursued the insurance activities on behalf of ORG. Founder-1 devoted approximately 40 hours a month on such activities. ORG also retained a management company.

In both Cardinal Life and Inter-American Life, where the courts determined that the primary and predominant business of each company was not insurance, neither company employed a sales force. In Cardinal Life, although the taxpayer sold some reinsurance contracts during the years at issue, the District Court noted,

> Plaintiff did not have an active sales force soliciting or selling insurance policies. Each of the insurance policies actually written by Plaintiff was as the result of reinsurance agreements wherein other companies ceded to Plaintiff certain amounts of insurance written by them. These reinsurance contracts were negotiated either by the president and sole stockholder of Plaintiff and/or the company's actuary who rendered services to Plaintiff on a fee basis. Plaintiff otherwise did not have any employees, brokers, agents or salesmen soliciting and selling insurance for it, and the only insurance written by Plaintiff was through insurance agreements.

Cardinal Life, 300 F. supp. at 392. Similarly, in Inter-American Life, the Court considered the fact that the taxpayer did not "maintain an active sales staff soliciting or selling insurance policies" during the taxable years at issue as evidence of the taxpayer's "lack of concentrated effort" on the insurance business. Inter-American Life, 56 T.C. 497, 507 (1971).

ORG had no employees, no sales or clerical staff. No effort has been made by anyone to solicit new business. There was no intent to sell policies to any other company; therefore there was no need to have a sales force, brokers, agents, and clerical staff.

Fourth, ORG spent an insignificant amount of time on its current insurance business. ORG issued the 8 policies in 20XX and reinsured 2. There were no claims filed during this time. Once the policies were issued there was very little time spent on the insurance business. The only activity was the receiving of checks and making deposits. As stated above, there was no promoting or selling of the insurance services and there were no employees or sales staff. The amount of time spent on its current insurance business was insignificant.

3. **Is ORG's primary and predominant activity that of insurance or investment activity?**

ORG generated a substantial amount of its income each year from its investments. Although ORG generated some premium income from its insurance policies, the primary and predominant activity during 20XX was its investments.

As shown in the charts above, ORG received very little premium income from its insurance agreements. A majority of its income came in the form of interest and income from the pass-through from . The primary and predominant activity conducted by ORG was its investment activity, not insurance activity.

4. **Can ORG rely on the determination letter granted by the Service allowing it to claim tax exempt status pursuant to IRC § 501(c)(15)?**

Under section 501(a) of the Code, organizations described in subsection 501(c) are exempt from federal income tax, unless such exemption is denied under section 502 or 503.

For taxable years prior to 20XX, I.R.C. § 501 provides that certain entities are exempt from taxation. Included in these entities are "[i]nsurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000." [I.R.C. § 501(c)(15)(A)].

Section 501(c)(15)(B) of the Code provided that when an entity was part of a controlled group, all net written premiums (or direct written premiums) or net written premiums of the members of the group were aggregated to determine whether the insurance company met the requirements under section 501(c)(15)(A).

Neither section 501(c)(15) of the Code, nor the regulations under that section define an "insurance company". Accordingly, the term "insurance company" has the same meaning under

section 501(c)(15) as it does in Subchapter L. See H. Conf. Rep. No. 99-841, 99th Cong., 2nd Sess. (Vol II) 370-71, reprinted in 1986-3 (Vol.4) C.B. 370-71.

Based on the facts presented above and the application of the law to those facts, it was determined that ORG was not an insurance company, therefore, ORG did not qualify for recognition of exemption from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(15) during 20XX. Not only was there no risk distribution of the policies issued, the majority of the organization's activities was its investments. Therefore, ORG cannot rely on its determination letter granted by the Service allowing it to claim tax exempt status pursuant to IRC 501(c)(15).

5. Is ORG entitled to relief pursuant to IRC § 7805(b)?

An organization may ordinarily rely on a favorable determination letter received from the Internal Revenue Service. Regulations 1.501(a)-1(a)(2); Rev. Proc. 2005-4, 14.02 (cross-referencing 13.01 et seq.) 2005-4 C.B. 128. An organization may not rely on a favorable determination letter, however, if the organization omitted or misstated a material fact, in its application or in supporting documents. In addition, an organization may not rely on a favorable determination if there is a material change, inconsistent with exemption, in the organization's character, purposes, or methods of operation after the determination letter is issued. Regulations 601.201(n)(3)(ii); Rev. Proc. 90-27, 13.02, 1990-1 C.B. 514. Any such changes must be reported to the Service so that continuing recognition of exempt status can be evaluated.

The Commissioner may revoke a favorable determination letter for good cause. Regulations 1.501(a)-1(a)(2). A favorable determination letter may be revoked by written notice to the organization to whom the determination originally was issued. Regulations 601.201(m) (cross-referencing Reg. 601.201(l)); Rev. Proc. 90-27, 14, 1990-1 C.B. 514, 518.

If the Commissioner revokes the tax exempt status of an organization, the remaining question is whether the revocation should be applied prospectively or retroactively. Generally, revocation of a determination letter is prospective. Rev. Proc. 2005-4, 14.02 (cross-referencing 13.01 et seq.). Revocation of a determination letter may, however, be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Regulations 601.201(n)(6)(i); Rev. Proc. 90-27, 14.01; Rev. Proc. 2005-4 14.02 (cross-referencing 13.01 et seq.).

In cases where the organization omitted or misstated a material fact, revocation may be retroactive to all open years under the statute. Regulations 601.201(l)(1). In cases where revocation is due to a material change, inconsistent with exempt status, in the character, the purpose, or the method of operation, revocation will ordinarily take effect as of the date of the material change. Regulations 601.201(n)(6)(i); Rev. Proc. 90-27. In any event, revocation will

ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked. Regulations 601.201(n)(6)(i).

Under certain circumstances, however, the Commissioner may, in his discretion grant relief from retroactive revocation under I.R.C. 7805(b) of the Code. Section 7805(b)(8) of the Internal Revenue Code provides:

> APPLICATION TO RULINGS. The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws, shall be applied without retroactive effect. Section 301.7805-1(b) of the regulations delegates authority grated by I.R.C. 7805(b) to the Commissioner (or the Commissioner's delegate).

To request I.R.C. 7805(b) relief, the organization must submit a statement in support of this application of I.R.C. 7805(b), as described in Rev. Proc. 2005-4, 14.02. See also Rev. Proc. 2005-5, 19. The organization's statement must expressly assert that the request is being made pursuant to I.R.C. 7805(b). The organization's statement must also indicate the relief requested and give reasons and arguments in support of the relief requested. It must also be accompanied by any documents bearing on the request. The organization's explanation and arguments should discuss the five factors bearing on retroactivity listed in Rev. Proc. 2005-4, 14.02(1) (cross-referencing 13.05), as they relate to the situation at issue. These five items are, in effect, the same as the factors provided in Regulations 601.201(l)(5) and 601.201(m), Statement of Procedural Rules, which states:

> Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such a ruling if:
>
> 1. there has been no misstatement or omission of material facts;
> 2. the facts at the time of the transaction are not materially different from the facts on which the [determination letter] was based;
> 3. there has been no change in applicable law;
> 4. the [determination letter] was originally issued for a proposed transaction; and
> 5. the taxpayer directly involved in the [determination letter] acted in good faith in reliance upon the [determination letter] and revoking or modifying the [determination letter] retroactively would be to the taxpayer's determinant.

If relief is granted under I.R.C. 7805(b), the effective date of revocation of a determination letter is no later than the date on which the organization first received written notice that its exemption might be revoked. Regulations 601.201(n)(6)(i); Virginia Education Fund v. Commissioner, 85 T.C. 743, 7522-3 (1985), aff'd 799 F.2d 903 (4th Cir. 1986). This does not preclude the effective date of revocation being earlier than the date on which the organization first received written

notice that its exemption might be revoked. Virginia Education Fund v. Commissioner, 85 T.C. at 753.

The Supreme Court has held that the Commissioner has broad discretion under I.R.C. 7805(b) (and its predecessor) in deciding whether to revoke a ruling retroactively. Automobile Club of Michigan v. Commissioner, 353 U.S. 180, 184 (1957). See also Dixon v. United States, 381 U.S. 68, 74-75 (1965). The Commissioner's determination is reviewable by the courts only for abuse of that discretion. Virginia Education Fund v. Commissioner, 85 T.C. 743, 752 (1985).

In this case, the facts presented in the examination are not the same as those presented in the application form filed with the Service. The application form stated that they had entered into reinsurance contracts and anticipated continuing that line of business. It was also stated that they did not insure or reinsure any related party insurance.

ORG reinsured, through CO-5 , unaffiliated insureds who purchased credit insurance from CO-1. ORG assumed a pro rata portion of the risks covered by the underlying policies. ORG provided reinsurance covering unaffiliated insureds who purchased health insurance (medical supplemental insurance) reinsured by CO-2. ORG did not reinsure life insurance contracts.

During the year under examination, ORG was no longer reinsuring credit insurance through CO-5 or CO-6 . ORG major activity was providing direct insurance, 8 policies in total. There were only 2 policies insured through reinsurance agreements. The operations of the organization during the audit year did not reflect how the organization was operation at time of the filing of the application form and the receiving of its favorable determination letter.

Based on the information provided in its original application form and attachments, and the information gathered on the organization's operations today, there have been material changes to the operations of the organization. Therefore, it is appropriate for the Commissioner to NOT grant relief from retroactive revocation of ORG's determination letter.

6. If ORG cannot rely on its determination letter, what is the effective date of revocation?

ORG is not entitled to relief under I.R.C. 7805(b). The effective date of revocation should be January 1, 20XX. This is the first year under examination.