Internal Revenue Service
Appeals Office

Department of the Treasury

Employer Identification Number:

Person to Contact:

Release Number: **201740022**
Release Date: 10/6/2017
Date: December 29, 2016

Employee ID Number:
Tel:
Fax:

Tax Period(s) Ended:
December 31, 20xx and thereafter.

Certified Mail

UIL: 501.03-05

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, 20XX.

The revocation was made for the following reason(s):

You have not shown that you are operated exclusively for tax exempt purposes as defined in section 501(c)(3) of the Internal Revenue Code. Disbursements of cash from your organization were not shown to be exclusively for charitable purposes.

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

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date

this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate 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 matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

Joseph K. Phegley
Appeals Team Manager

Enclosure: Publication 892

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

IRS

Date:
November 20, 2013
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:
Phone Number:
Fax Number:
Manager's name / ID number:

Manager's contact number:
Phone Number:
Response due date:

Certified Mail - Return Receipt Requested

Dear :

Why you are receiving this letter
We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree
If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you
If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status
If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation
If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right
You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information
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,

Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Internal Revenue Service
Tax Exempt and Government Entities Division

Department of the Treasury

Taxpayer Identification Number:

Date: March 23, 2014

Form:

Tax Year(s) Ended:
12/31/20XX and 12/31/20XX
Person to Contact/ID Number:

Contact Numbers:
Telephone:
Fax:
Manager's Name/ID Number:

Manager's Contact Number:

Dear :

We have considered your protest and have concluded that it does not alter our original determination.

We are enclosing Form 886-A, *Explanation of Items*, addressing the disputed items, law, and your position.

Your case is subject to a mandatory technical review. After the review, assuming there is sufficient time remaining on the statute of limitations for assessment, we will forward your case to the Office of Appeals for further consideration. An appeals officer will contact you. You do not need to take further action at this time.

In general, if there is a proposed unpaid tax adjustment, any applicable interest continues to accrue on the proposed tax while this case is in Appeals.

Thank you for your cooperation.

Sincerely,

RA/Forensic Investigator

Enclosure:
Form 886-A

ORG (ORG) case was returned from Internal Revenue Service Office of Appeals ("Appeals") for reconsideration of our determination after ORG submitted purported new information and raised new positions.

The submitted information included a box of documents, received approximately November 3, 20XX, for some of the program/projects ORG fiscally sponsored along with documentation relating to the 20XX and 20XX Caravans to Country which ORG has in the past represented as their own program/project and not a fiscally sponsored entity.

In addition to the box of documents, ORG submitted numerous correspondences to Appeals containing new positions/arguments. This specifically included:

- Letter dated May 28, 20XX from Power of Attorney XXXXX ("POA") with attachments.
- Letter dated August 21, 20XX from POA with attachments.
- Letter dated August 29, 20XX from POA with attachments.
- Letter dated November 3, 20XX from POA with attachments.
- Letter dated November 11, 20XX from POA.

Over 1,900 additional documents were added to the Administrative Record from the information ORG provided to Appeals. The majority of these documents were previously reviewed on-site.

ORG also submitted two correspondences, via facsimile ("fax"), to Revenue Agent XXXXX as follows:

- Letter dated January 9, 20XX from POA with an attachment reflecting Country's ("CTRY") website lists a CTRY charity named "ORG-1".
- Letter dated January 20, 20XX from POA with a news article concerning comments opined by one individual, Indv-1, in regards to January 20XX shooting in the City, Country offices of *Indv-2.*

Review of ORG's new arguments and provided documents are as follows:

Fiscal sponsorship of ORG-1 – As stated in the original report (original RAR) issued November 20, 20XX and in the rebuttal to the protest provided with Letter 5072 (Protest Rebuttal), ORG-1 was ORG's largest fiscally sponsored project in 20XX raising tax-deductible donations of over $0 million dollars.

There were significant concerns that several public sources indicated this program/project provided support to a designated terrorist organization (ORG-2) and the government requested repeatedly for adequate documentation to resolve ORG's involvement in this program/project.

During the audit, ORG failed to verify that the substantial tax-deductible donations solicited and received here in the United States were used for a tax-exempt purpose and, as the fiscal sponsor, ORG could not verify they had discretion and control of the funds since they were unable to confirm the end use of the funds. ORG provided some documentation for ORG-1 during the audit, but information provided was either incomplete and/or lead to questions which could not be answered by the provided documentation. The government made numerous attempts to obtain additional information to address ORG-1 U.S. and the overseas activities, but ORG refused to cooperate. In addition, ORG's internal counsel (Counselor) opinion was provided to ORG's employees, officers and directors to plead the 5th amendment and not answer any questions or provide documentation for this particular project. Therefore, even oral testimony was unable to be obtained to explain this program/project.

For the Appeals process, ORG provided only a couple actual documents (attached to ORG's August 21, 20XX correspondence) which is discussed later. In addition to these documents, ORG's May 28, 20XX letter raised concerns about the government's reliance *"in a significant and unquestioning way on information from a person, Indv-1…"* and *"ignored media reports, such as the Chronicle that report that the of Country and Country reviewed the activities of one of the ORG grantees, a CTRY charity known as ORG-1, and concluded that none of ORG-1's funds were diverted to ORG-2."*

- The first part of this statement is inaccurate. Information Document Request (IDR) #031, issued on February 9, 20XX, Item #33, mentions a July 16, 20XX article by the New Agency in which members of the July 20XX XXXXX from the U.S. met with ORG-2 Prime Minister while in Territory on July 16. ORG-2 has been designated as a Foreign Terrorist Organization (FTO). New Agency is located in the Territory/Territory and has no affiliation with Indv-1. ORG was requested to provide information on this meeting, but refused to provide any information. In addition, IDR #038, issued on April 19, 20XX, was prepared after limited internet research and provided articles/information from various public sources including: , Wikipedia, and ( ). Furthermore, although part of the information shared with IDR #038 was a comprehensive report prepared and posted on ( ) website which has an affiliation to Indv-1 (founder and executive director of), that report included over 90 footnotes and links to other articles, videos, reports most of which were not prepared by .

- The second part of the statement is misleading in that it states "*the of Country and Country reviewed the activities of one of the ORG grantees, a CTRY charity known as ORG-1…*" The Country (CTRY) organization called "ORG-1" (herein referred to as "ORG-1-CTRY") was not a grantee of any of the funds from ORG for the U.S. program/project called ORG-1 (herein referred to as "ORG-1 USA"). None of the funds were sent to ORG-1-CTRY or were under the control of ORG-1-CTRY. The only link between ORG-1-CTRY and ORG-1 USA was the involvement of Country Member of Parliament Indv-3.

Included in the Administrative Record (received date April 26, 20XX) were correspondences and documents received from or issued to Indv-3 (and/or his Chief of Staff Indv-4) concerning the establishment of the ORG-1 USA. These initial (proposition) documents as well as review of the actual documents provided for the ORG-1 USA program clearly showed ORG was not granting funds to ORG-1-CTRY, but was the fiscal sponsor of a program/project headquarters in City that was conducting activities similar to ORG-1-CTRY activities.

Of concern, the initial documents provided by Indv-3/Indv-4 to ORG stated that was ORG-1 USA was not a charity, but would do some charitable activities. Specifically an e-mail from Indv-4, dated April 21, 20XX, was provided which stated:

> *"While being clearly a not-for-profit organization, ORG-1 US does not purport to be a charity: its aims and objects, though including charitable work, go beyond that and enter into non-party political campaigning, viz encouraging a shift in US public and political opinion towards support for the cause."*

If the true purpose of ORG-1 USA was for political activity, a prohibited activity for an organization exempt under IRC §501(c)(3), this is something ORG should have considered prior to becoming a fiscal sponsor for the ORG-1 USA program/project.

ORG's January 20, 20XX correspondence relates to the May 28, 20XX correspondence in that ORG provided a recent news article concerning comments opined by Indv-1. This correspondence specifically states that Indv-1 has been *"internationally discredited"* and the Agent should "*retract all references to, and reliance on, the now internationally-discredited views of the Investigative Project on Terrorism and Indv-1.*"

- This correspondence, along with all other correspondence and documents received from ORG for the Appeals process, has been included in the Administrative Record. The news article will not be retracted because, as stated in the original RAR, Protest Rebuttal and Appeals Response Rebuttal, the Agent believes the article and external links provided are relevant to the case. The article is only one of many references that warrant the proposed revocation.

ORG's May 28, 20XX correspondence claims even though the CTRY's of Country and Country report (published March 4, 20XX) was available publicly, the agent did not cite this report. This report was not cited/referred in ORG's rebuttal dated December 18, 20XX; this was not cited in the government's original RAR/Protest Rebuttal because the government was not aware of this report. The government acknowledges this report was not cited in the original RAR, but it is irrelevant since ORG-1-CTRY was not ORG's grantee. ORG-1-CTRY was not a program/project fiscally sponsored by ORG. Review of the financial records did not reflect the payment of any funds to ORG-1-CTRY. No records have been provided to support the position ORG-1-CTRY was a grantee as is now claimed.

For the Appeal process, ORG provided the 20-page CTRY's of Country and Country ( ) report on ORG-1-CTRY. This document was reviewed as part of the Appeals reconsideration process and this document provided some background/history of ORG-1-CTRY, but was not relevant to ORG's examination and the fiscal sponsorship of ORG-1 USA based in City. The analysis of this document, and other documents provided for the Appeals process, will be included in the workpapers and shared with ORG for inclusion in the Administrative Record

In reviewing the correspondence from ORG, dated January 9, 20XX, POA responding on behalf of ORG makes the following statements:

"In our conversation, you indicated that you have a concern with what you described as ORG's continuing support of ORG-1 in light of internet reports that the has revoked ORG-1's status as a registered charity in the Country."

"As ORG has informed you in the past, the organization has been the subject of unsubstantiated internet rumors and outright false information, particularly with regard to ORG-1. As a result, your concerns are troubling on three counts…"

- Prior to discussing the three concerns, a comment needs to be included in the record concerning the first part of this statement. POA misunderstood the information verbally shared with him during the December 22, 20XX telephone conversation. Specifically, a comment was made by the Agent that there were recent news articles implying problems with ORG-1-CTRY, founded by Indv-3, and the government was concerned given ORG's last face-to-face contact (meeting held in ORG's office in New York on September 17, 20XX) and the protest to the original RAR, dated December 18, 20XX, indicated ORG was still actively involved with the ORG-1 USA program/project.

  The records show Indv-3 was the individual who approached ORG about establishing the fiscal sponsorship of the City-based ORG-1 USA and some of the funds from ORG-1 USA were used to pay expenses of Indv-3. If there were problems with Indv-3's use of the funds from ORG-1-CTRY, than there could be concerns with Indv-3's use of the ORG-1 USA funds. If ORG-1 USA was set-up using ORG-1-CTRY as a model and problems are now noted with ORG-1-CTRY, then there could be problems/concerns with ORG-1 USA.

In returning to ORG's correspondence dated January 9, 20XX, ORG raised three concerns including:

1) Revocation of ORG-1-CTRY status are false as evidenced by the provided copy of the CTRY website showing ORG-1-CTRY is still registered. The charitable status of ORG-1-CTRY is irrelevant, but as discussed in the analysis of documents provided for the Appeals process, the CTRY Press Release posted October 9, 20XX states an investigation (inquiry) had commenced in June 20XX and the manager was replaced with an Interim Manager on September 15, 20XX. The inquiry related to the failure by the current and/or

former trustees to account for charity funds since the inception (20XX) of ORG-1-CTRY. Indv-3 was one of the original trustees. If ORG-1-CTRY was set-up incorrectly and had problems, it is possible ORG-1 USA could have problems.

2) *"ORG's tax years under examination are the years ending December 31, 20XX and December 31, 20XX, thus events that may have occurred in later years are not relevant for the current examination"* – the government acknowledges the examination periods were 20XX and 20XX, but disagrees with events occurring in later years are not relevant to the issue. The examination of a tax-exempt organization is activity based and, although records were not reviewed for more current years, if questionable activities continued, this would be an area of concern for the government. In addition, Item #11 on the original protest filed by ORG, dated December 18, 20XX, specifically stated at that time (end of 20XX) ORG remained involved with ORG-1 USA. If ORG-1 USA was involved in questionable activities, even after the audit years, and ORG continued to serve as the fiscal sponsor, this would be of concern to the government.
3) *"The incorporation of unsubstantiated information and assumptions about ORG's current activities and ORG-1's* (government believes this is a reference to "ORG-1-CTRY") *current charity status into your analysis of events in the 20XX and 20XX tax years"* – the government is not sure how to address this concern since ORG-1-CTRY has nothing to do with City-based ORG-1 USA. The only common denominator or relationship between the City and Country ORG-1 is Indv-3. The concern of the Government is the activities of ORG-1 USA and whether or not the concerns raised with CTRY-ORG-1 also exist with ORG-1 USA due to the relationship Indv-3 has with both entities.

   For ORG-1 USA, even after multiple attempts to secure additional records and information, ORG failed to comply and actually verbally stated on multiple occasions that they would not provide the requested documentation based on 5th amendment concerns. In addition, ORG has failed repeatedly to provide information to show they, as the fiscal sponsor, had discretion and control of funds as required by Revenue Ruling 68-489, 1998-2 C.B. 210; and ORG failed to maintain and provide records establishing that the funds were used for section 501(c)(3) purposes.

One of the correspondences provided by ORG with a new position was a letter submitted by ORG dated November 11, 20XX. This correspondence was issued to Appeals after the meeting held November 5, 20XX. ORG is now taking the position that since ORG-1-CTRY was a *"bona fide charity under the charity rules administered by the of Country and Country"* and since *"the did conduct an inquiry and determined* (of ORG-1-CTRY) *that no funds had been diverted to ORG-2",* there should not be an issue when *"a publicly-supported US Charity*" (ORG) makes "*a grant to a duly-recognized CTRY charity."* ORG's letter goes on to make reference to Treas. Reg. §53.4945 and Rev. Proc. 92-94, 1992 CB 507.

As stated previously, the status of ORG-1-CTRY is irrelevant since there has been no documentation provided to verify ORG-1-CTRY was the grantee of funds from ORG. It is unclear why ORG references Treas. Reg. §53.4945 and Rev. Proc. 92-94 which are applicable to private

foundation. ORG is a public charity under IRC §501(c)(3) as an organization described in IRC §170(b)(1)(A)(vi).

Key Point #1 listed on ORG's November 11, 20XX correspondence states there are *"tax rules applicable to a private foundation and those applicable to a publicly-supported charity, like ORG, particularly with regard to the specific grant oversight rules found in section 4945 of the Internal Revenue Code that only apply to private foundations"*. ORG's correspondence goes on to state: *"The distinction between the detailed and prescriptive private foundation rules and the much more ambiguous, and thus subjective, publicly-supported charity rules is important and was not recognized and fully addressed in the revenue agent's report."*

It is unclear why ORG believes this distinction needs to be addressed. IRC §4945, Taxes on Taxable Expenditures, contains excise taxes to discourage private foundations from engaging in legislative and political activities, making grants to individuals without prior approval of the Internal Revenue Service (Service), making grants to organizations (other than public charities) without exercising adequate control and supervision over the use thereof, and providing grants for non-charitable purposes. ORG is not a private foundation, but is rather a public charity exempt under IRC §501(c)(3) as an organization described in IRC §170(b)(1)(A)(vi). The grant oversight rules under IRC §4945 were not addressed in the original RAR because they are not relevant in this case because the organization is not a Private Foundation and IRC §4945 is not applicable to public charities. The precedent stated in the original RAR is on point with the grant/expenditure documentation required of an organization exempt as a public charity.

From the mention of Reg. §53.4945 and Rev. Proc. 92-94 as Key Point #2 in the November 11, 20XX letter, it appears this is mentioned as it relates to the ORG-1 USA program/project fiscal sponsored by ORG, but once again this is not relevant given ORG is a public charity and the funds were not disbursed to a public charity.

If, at a later date, ORG provides documentation to verify ORG-1-CTRY was a grantee of ORG funds and funds raised by the City-based ORG-1 USA program/project were raised to be given to ORG-1-CTRY, that would raise a major concern for the Government. ORG previously acknowledged, and documents submitted for the audit (including a document provided for the Appeals process[1]) confirmed, those who made contribution to ORG-1 USA were given acknowledgement receipts confirming the amount donated and stating the donor was entitled to a tax-deductible donation. If the funds raised by ORG-1 USA were for a foreign organization, the donors would not have been allowed a tax deduction for a charitable contribution under IRC §170(c).

IRC §170(c)(2)(A) provides that, if a charitable contribution is to be deductible, it must be made to an organization *"created or organized in the United States or in any possession thereof, or under the law of the United States, any state, the District of Columbia, or any possession of the United States."* ORG-1-CTRY does not meet this definition and the raised charitable contributions would not be deductible.

[1] Attached to ORG's letter dated August 21, 20XX was "Exhibit 3" – a sample of an acknowledgement letters sent to donors.

The government consistently has held that donations by individuals to or for the use of domestic charitable organizations are deductible even though entirely used abroad, subject to the "conduit" and "earmarking" restrictions. This long-standing rulings position is reflected in GCM 30645 (Apr. 30, 1958) and in 1972 was incorporated into the regulations at Reg. 1.170A-8(a)(1). Conversely, gifts given directly to foreign charities (such as ORG-1-CTRY) are not deductible as charitable contributions because of the IRC §170(c)(2)(A) requirement that the recipient be a domestic organization, i.e., a corporation, trust or community chest, fund or foundation that is created or organized in the United States, or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States.

It is a basic principle that an inquiry as to the deductibility of a contribution does not stop once it is determined that an amount has been paid to a qualifying organization; if the amount is earmarked, then it is appropriate to look beyond the fact that the immediate recipient is a qualifying organization to determine whether the payment constitutes a charitable contribution. See S.E. Thomason v. Commissioner, 2 T.C. 441 (1943); Rev. Rul. 54-580, 1954-2 C.B. 97; and Rev. Rul. 63-252, 1963-2 C.B. 101.

Rev. Rul. 63-252 was discussed in the original law section of the original RAR and dealt with deductibility of contributions by individuals to a charity organized in the United States, which thereafter transmits some or all of its funds to a foreign charitable organization. Charitable contributions may be allowed as deductions if the domestic charity does not merely act as a conduit for the foreign charity.

Rev. Rul. 63-252, in applying this principle to transfers of United States-solicited contributions from domestic to foreign organizations, concludes:

> *"'A given result at the end of a straight path is not made a different result because reached by following a devious path.' Minnesota Tea Co. v. Helvering, 302 U.S. 609, at 613, Ct. D. 1305, C.B. 1938-1, 288; George W. Griffiths v. Helvering, 308 U.S. 355, at 358, Ct. D. 1431, C.B. 1940-1, 136. Moreover, it seems clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to a foreign organization were held to be deductible solely because, in the course of transmittal to a foreign organization, they came to rest momentarily in a qualifying domestic organization. In such case the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient."*

See Rev. Rul. 63-252 discussed in the law section of the original RAR for additional information.

ORG correspondence, dated August 21, 20XX, provided additional information on ORG-1 USA and one of the items discussed in this correspondence was the fiscal sponsorship letter issued to ORG-1 USA. This specific fiscal sponsorship letter was previously reviewed and was included in the Administrative Record (received date April 26, 20XX). The fiscal sponsorship letter was issued under the signature of Indv-5 with the title of "Associate

Director". Indv-5 was interviewed for the audit and at that time she used the title "co-executive director".

The fiscal sponsorship letter stated, in part:

- *"...the aid will be delivered to, and distributed by, a coalition of non-governmental groups including the ORG-3 and the United Nations Relief and ORG-4 (ORG-4)."*
- *"We feel confident that this work is consistent with ORG's progressive mission and with our 501(c)(3) status."*
- *"We will ask you to submit a semi-annual fiscal report which accounts for your expenditure of grant funds".*

  - As mentioned above, the original proposal from Indv-3 and information provided by his Chief of Staff Indv-4 was reviewed for the audit and copies were secured and included in the Administrative Record. There was no mention in these documents that funds would be distributed to the non-governmental organizations mentioned above.

  - Although ORG states this is consistent with their IRC §501(c)(3) status, one of the comments included in the proposal is that ORG-1 USA does not consider itself to be a charity, but is rather involved in political activities – which is strictly prohibited for an IRC §501(c)(3) organizations.

  - Even though the fiscal sponsorship letter for ORG-1 USA states semi-annual reports were requested to account for the expenditures, for this fiscally sponsored entity (as well for other fiscally sponsored entities whose fiscal sponsorship letter included similar statement about the submission of semi-annual reports), no reports were provided for the audit and it is unknown if any of the fiscally sponsored entities ever submitted reports.

  Of interest, ORG's August 21, 20XX correspondence makes the statement: "*ORG will require ORG-1 to make regular reports accounting for expenditures of funds provided under the fiscal sponsorship arrangement*". Although reports were requested, the fiscal sponsorship letter did not actual make the statement of this being a requirement and, as stated above, no reports were provided for the audit.

The August 21, 20XX correspondence also attempts to address ORG having discretion and control of the funds and make the statement "*there are several documents describing ORG's intention to exercise discretion and control of funds provided to ORG-1, ORG's diligence in confirming the use of funds it provided, and reports to donors exhibiting ORG's attentiveness to the specific uses of such funds.*

- This statement is very misleading in that payments made were not confirmed to be for charitable purpose and, when it was established funds were diverted for non-exempt

purposes, ORG failed to try to act to recover the funds. ORG was requested, on multiple occasions over an extended period of time, to provide information on the use of the funds which ORG failed to provide. In addition, as stated in IDR #036, two documents provided as substantiation were determine to not be acceptable, but ORG failed to provide a response to clarify those provided documents.

The government is very concerned about ORG-1 USA funds were solicited and received as tax-deductible donations and then some of these funds were diverted to the personal account of the City coordinator, Indv-6. Several questions were raised in IDR #031 concerning this situation, but ORG refused to answer these questions as discussed in the original RAR and subsequently issued Protest Rebuttal. Even though substantial funds were either paid to Indv-6 as compensation and/or diverted to her personal accounts, ORG failed to file any employment tax reports on the payments to Indv-6. This is yet another example of ORG's failure to exercise discretion and control of the funds received.

The questions asked in IDR #031 were based, in part, on e-mail documents provided by ORG concerning messages between Indv-6 and one of Indv-3's associate, Indv-7. These e-mails were secured for the audit and are included in the Administrative Record (received date 04/28/20XX). Some of the specific concerns raised included:

- Missing ORG-1 USA funds involving *tens of thousands of dollars*;
- Allegations of undocumented expenditures which may have been misappropriated by Indv-6i;
- Refund from Travel for $0 that went into Indv-6's "personal" account and there is no accounting for the use of the funds;
- Concerns over substantial funds sent overseas for vehicle storage was sent to Indv-6's friend (Indv-8 – dba "CO-1") who had "*taken the vehicles and stored them elsewhere, based on either brute force or through some kind of court order which we did not know was happening. He now claims a lien over the vehicles, giving him effective ownership",* but Indv-6's statement was never proven to be correct and true.
- And other diversions for non-§501(c)(3) purposes. Refer to the document include in the Administrative Record for more specifics.

Summary of ORG's involvement in ORG-1 USA

The government stands by the original position.

- ORG was approached to be the fiscal sponsor of the City-based program/project called ORG-1 and, as such, ORG was required to exercise control and discretion over the use of the funds for a IRC §501(c)(3) purpose. Rev. Rul 68-489, 1968-2 C.B. 210.

- ORG failed to verify that substantial donations raised for the ORG-1 USA program/project were used for a tax-exempt purpose and, as the fiscal sponsor, ORG did not have discretion and control of the funds so they were unable to confirm the end use of the funds. ORG provided some documentation for ORG-1 USA, but the information/documents provided was either incomplete and/or lead to questions which could not be answered by the provided documentation. The government made numerous attempts to obtain additional information to address ORG-1 USA and the overseas activities, but ORG refused to cooperate.
- There were several Information Document Requests (IDRs) ORG did not respond to concerning the ORG-1 USA program/project including IDR #028, general questions on ORG's fiscal sponsorships; IDR #31, IDR #36 and IDR #38 all specifically questioning activities and problems noted in the review of the provided documents.
- ORG not only failed to exercise control and discretion and verify that the donations were used for tax-exempt purpose, ORG refused to provide all necessary information and ORG refused answer to any questions relating to ORG-1 USA claiming the 5th Amendment privilege.
- Multiple sources indicated the funds raised and items purchased, such as vehicles, were given to ORG-2, a designated FTO, and ORG's involvement in this overseas activity continued until at least through the end of 20XX and it is unknown when (or if) ORG stopped the fiscal sponsorship of this program/project.
- In terms of funding, this was a substantial activity of ORG.

ORG's Country Related Programs – There were two programs ORG was involved in relating to Country that were questioned during the audit: "U.S. – Country XXXX" (also known as "XXXXX to Country") which is an on-going/annual program to collect goods/funds and deliver them to Country; and ORG serves as the U.S. administrator for the Medical Student Scholarship Program for the School of Medicine located in Country. These two activities are significant activities in terms of the amount of time spent on these activities.

There were several unanswered questions relating to these programs and ORG declined to provide information to fully assess these programs. ORG failed to submit a response to IDR #039 requesting information. In addition, as stated in the original RAR and Protest Rebuttal, the government's position is ORG is conducting these activities in violation of U.S. sanctions on Country. As discussed in the original RAR, U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) administers and enforces comprehensive economic sanctions against Country as set forth in the Country Assets Control Regulations, 31 C.F.R. part 515 (the "Regulations"), issued under the authority of the Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44, and other statutes. Information obtained directly from OFAC – and mentioned in the original RAR – indicated ORG was in violation of the U.S. sanctions.

During the Appeals process, ORG provided substantial documentation and raised new positions on these programs. Most of the documentation had been previously reviewed, but was re-reviewed. There was one new, undated, document entitled: *"When Should the*

Churches Say "No"? A Pastoral Call to U.S. Churches for Dialogue and Action in Response to the U.S. Embargo Against Country". This document was provided twice with correspondence provided by ORG: Correspondence dated May 28, 20XX and correspondence dated August 29, 20XX. Although undated, ORG stated the document *"describes as 'recent' events that occurred in the 1992 - 1993 timeframe, including the first XXXXX to Country"* and therefore the document believes to have been prepared in the 1990s. No information was shared on the recipients of the document.

Both of ORG's correspondences references ORG's *"deep religious motivations"* are central to the aid programs ORG undertakes and supports; both correspondences raised the concern that the original conclusions in the original RAR were wrong in stating the Country-related programs did not align with ORG's exempt purpose of giving aid to the poor; and both stated ORG believed their religious faith demanded they offer humanitarian assistance to the people of Country as well as *"take on the economic sanctions imposed by the U.S. government".*

- ORG's Articles of Incorporation, bylaws and purposes were discussed in the original RAR. As previously discussed, there was no mention of actually providing direct aid to the poor; activities listed included "*developing viable programs for the building of community organizations", "assist in the formation of local organizations by residents of urban neighborhoods", "sponsor and carry out research and produce and distribute training materials in connection with community organization programs", and "make appropriate grants for particular community organization programs".*

  The government does not dispute the providing of aid to the poor is an exempt purpose pursuant to IRC §501(c)(3). However, as discussed in the previous Protest Rebuttal, Rev. Rul. 75-384, held an organization that is the sponsor of activities involving civil disobedience is considered an organization which violates law and public policy and therefore cannot be exempt under section 501(c)(3) or section 501(c)(4). If the government was aware of ORG's activities of encouraging/sponsoring civil disobedience, ORG would not have been approved as an IRC §501(c)(3) organization.

  ORG, by its own statements and information publicly post on its website (see Attachment to IDR #039), clearly state part of the purpose of the activities conducted in Country was for civil obedience and was to be in defiance of the U.S. sanctions.

ORG provided the same document, *"When Should the Churches Say "No"?,* with the correspondence dated August 29, 20XX. This correspondence included an expanded explanation and stated, in part:

These distinctly religious motivations for ORG's activities are particularly important given the provision of the recent Appropriations Act that prohibits the IRS from targeting U.S. citizens for the exercise of First Amendment rights.

Additionally, the insistence in the RAR on penalizing ORG for supposedly violating OFAC regulations or procedures appears to be a violation of the Religious Freedom Restoration Act

("RFRA"),2 which requires that the exercise of religion may only be burdened by the federal government by the "least restrictive means" available to achieve a compelling government interest. If the IRS imposes a revocation of charitable status, the burden on the practice of religion by the members of ORG would be substantial and would likely violate RFRA.

- No information/documentation has been provided to show ORG's support of Country activities is done as part of the practice of religion by their members.

- The government respects and values individuals exercising their first amendment rights. The revocation does not relate to the religious practice of ORG's members, but to the activities conducted by the entity. Activities which clearly violate public policy, such as violating clearly stated U.S. sanctions, is not acceptable nor allowable pursuant to IRC §501(c)(3).

ORG's correspondence dated May 28, 20XX raises the issue that U.S. Department of Treasury Office of Foreign Assets Control ("OFAC") approved of and permitted ORG's transportation of aid to Country on a regular basis through the years and therefore the original RAR is incorrect. ORG's response specifically states, in part: *"OFAC has repeatedly approved of and provided licenses for ORG's deliveries of aid to Country as well as for student participants in the scholarship program."* ORG provided two letters from OFAC, July 17, 19XX and July 14, 20XX reflecting approval of transportation of goods to Country; and one letter dated July 28, 20XX issued as a license for some of the students to allow them to engage in travel related expenses. ORG goes on to state: *"It is true that ORG has long disputed the propriety of OFAC's potential restrictions on ORG's religiously-motivated aid efforts, and ORG does not dispute that OFAC and U.S. Customs and Border Patrol (previously the U.S. Customs Service) have at various times threatened action against ORG…"* ORG repeated this same general information in ORG's correspondence to Appeals dated November 3, 20XX.

The above statements, and the statements included in the correspondence dated November 3, 20XX, are misleading and were addressed in the original RAR and Protest Rebuttal:

- Attached to IDR #039 were pages from ORG's own website. On one of the website pages it states: "

." ORG has had over XX XXXXX to Country and, per the statements on ORG's website and as confirmed by contact with OFCA, ORG has never requested a license. For a few of the XXXXX, after publicity stunts such as media frenzy, hunger strikes, etc., OFAC bowed to pressure and granted license for them to travel and allowed them to take certain humanitarian items such as medical supplies, bicycles, school supplies, etc. However, as mentioned in the original RAR, from the contact with OFAC it was determined items in violation of the sanctions – such as electronics, cash, etc. – were

collected by ORG, but were not allowed to cross into Country and were not allowed to be taken to Country.

- OFAC confirmed ORG has on multiple occasions made trips in violation of the sanctions on Country. OFAC also confirmed no actual penalties had been asserted which could be due to limited resources, and in light of competing demands for limited government resources, OFAC has not conducted investigations into the more recent ORG XXXXX to Country. This does not change the facts that the actions taken by ORG were in violation of economic sanctions against Country as set forth in the Country Assets Control Regulations, 31 C.F.R. part 515 (the "Regulations"), issued under the authority of the Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44, and other statutes.

- As discussed in the original RAR, those students who received full scholarships provided by the Country government to attend the School of Medicine located in Country were the individuals who received licenses to allow them to travel to Country to attend school. The licenses for the students were previously reviewed, but ORG provided them again as attachment to correspondence dated May 28, 20XX. As discussed in the original RAR, once the students were selected for the School of Medicine located in Country, ORG became a facilitator between the students and their families in the United States and ORG transported money and goods between family or friends in the United States and the students in Country. OFAC confirmed the transporting of money and goods is a violation of the sanctions against Country and OFAC provided information that ORG is not licensed by OFAC to act as a remittance forwarding service and ORG has never been licensed to do so.

A couple more comments were included in ORG's correspondence dated May 28, 20XX that needs to be addressed. This includes: *"It is particularly troubling that in the first conference with the Revenue Agent on March 29, 20XX, ORG's counsel indicated that ORG may have received OFAC approval in the past, and indicated that OFAC would likely have records providing further details about ORG's history with OFAC. Despite all this, the RAR appears to be based on public media reports dating back to the early 1990s. Without explanation, the RAR takes the extraordinary and inappropriate step of reaching conclusions as to non-tax law (i.e. the legality of ORG's actions under laws pertaining to foreign trade) in order to facilitate a conclusion that ORG's exempt status should be revoked based essentially on selected unsubstantiated media reports."*

- During the interview with ORG's original Power of Attorney, POA, on March 29, 20XX, POA made reference to OFAC having records and referred the Agent to OFAC for the records. Therefore, OFAC was contacted. Information obtain from OFAC was included in the original RAR and/or the Protest Rebuttal. POA was retained as Power of Attorney for the audit, but was not involved in the day-to-day operation of ORG and some of the statements he made during the March 29, 20XX meeting were inaccurate. For example, in discussing the students attending the medical school in Country, POA stated this was an administrative activity in which no funds/money actually went to Country. As the actual records show, including documents submitted by ORG for the Appeals, this turned

out to be a false statement since money/goods were taken to Country in support of this program. Given his lack of daily involvement, POA's statements were not determined to be credible.

- The comments that the original RAR is based on "*public media reports dating back to the early 1990s*" and "*based essentially on selected unsubstantiated media reports*" is unwarranted. As stated above, much of the background on the activities in Country is taken straight off ORG's own website which goes back to the beginning of the XXXXX to Country (1992) and other information was provided by OFAC which the agent was referred to by ORG's representative, POA. It is unclear what media report ORG is now mentioning.

ORG correspondence, dated November 3, 20XX, discussed ORG's legal concerns about the position taken in the original RAR concerning ORG participation activities which are illegal and violation public policy. The following statements were made by ORG in the November 3, 20XX correspondence:

"...this position conflicts with the Service's longstanding policy of refusing to act on its own judgment as to the legality of an organization's activities, which is a reflection of the fundamental limits on the IRS's authority and the basic principles of due process. The importance of this limitation is underscored by the Supreme Court's directive in Bob Jones v. United States addressing the application of determinations that an activity is contrary to public policy: "We emphasize, however, that these sensitive determinations [of charitable status] should be made only where there is no doubt that the organization's activities violate fundamental public policy." 461 U.S. 574, 597-98 (1983)."

"The IRS policy is clearly stated in GCM 37111(May 4, 1977):

> *The Internal Revenue Service is not in a position to make determinations as to the illegality of an act under a provision of law other than the Internal Revenue Code. The Constitution of the United States provides for separation of powers, and a determination of illegality in such cases is within the province of the judiciary. From an administrative standpoint alone, such a task would be impossible for the Internal Revenue Service to undertake. From a legal standpoint, moreover, the onus which attaches to a determination of illegality is such that it would be improper to delegate such a determination to an administrative body without the procedural and substantive due process protection provided through the judicial process."*

"Therefore, it is important to emphasize that OFAC never issued a final determination that ORG acted illegally or had violated the laws that OFAC enforces."

- The problems noted with the XXXXX to Country are only some of the many reasons why revocation is applicable. As discussed previously in the original RAR and Protest Rebuttal, all organizations exempt under IRC §501(c)(3) must conform to certain fundamental legal principles applicable to all charitable organizations. Treas. Reg. 1.501(c)(3)-1(d)(2); Rev. Rul. 67-325, 1967-2 C.B. 113, 116-7. See also Rev. Rul. 71-447, 1971-2 C.B. 230; Rev.

Rul. 75-231, 1975-1 C.B. 158. One of these basic charitable principles is that charitable organizations may not engage in behavior that is illegal or violates public policy.

Rev. Rul. 71-447, 1971-2 C.B. 230, states:

Both the courts and the Internal Revenue Service have long recognized that the statutory requirement of being `organized and operated exclusively for religious, charitable,...or educational purposes' was intended to express the basic common law concept [of `charity']....All charitable trusts, educational or otherwise, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy.

As discussed in 1994 CPE article referred to in ORG's correspondence dated November 3, 20XX, the illegality doctrine derives from English charitable trust law, the legal foundation on which 501(c)(3) was built. Under charitable trust law, trusts violating law or public policy cannot qualify for charitable status. Restatement Trusts (Second), 377, Comment c (1959); IVA A. Scott, The Law of Trusts, 377 (4th Ed. 1989). Thus, the "illegality doctrine" encompasses illegal activity as well as activity in violation of public policy.

In addition, tax exemption for IRC §501(c)(3) organizations is often justified on the grounds that charitable organizations lessen the burdens of government by providing benefits to the public which would otherwise have to be furnished by the government. H.R. Rep. No. 1820, 75th Cong., 3d Sess. 19 (1930). Trinidad v. Sagrada Orden, 263 U.S. 578, 581 (1924); Jackson v. Statler Foundation, 496 F. 2d 623, 634 (2d Cir. 1974); St. Louis Union Trust Co. v. United States, 374 F. 2d 427, 432 (8th Cir. 1967); Duffy v. Birmingham, 190 F. 2d 738, 740 (8th Cir. 1951); Walz v. Tax Commission, 397 U.S. 664, 680, 687 (1970) (Brennan, J., concurring).

Because benefit to the public is an underlying justification for charitable tax benefits, organizations which increase governmental burdens cannot justify tax exemption. Organizations engaged in illegal activity increase the governmental burden of law enforcement, while activities that are inconsistent with public policy obviously increase, rather than reduce, governmental costs and burdens, and are inconsistent with the basic requirement that exempt organizations serve a public purpose.

In the Country activities conducted by ORG, ORG openly stated during the audit and historically posted information on their website, that they intentionally refused to apply for a license and conducted the activities conducted as a form of civil disobedience. This increased the burden to OFAC, US Immigration and Customs, and other law enforcement agencies that were involved in the policing of the various civil disobedience acts.

➢ Mentioned earlier was Rev. Rul. 75-384. This revenue ruling concerns organizations involved in protests. An organization whose primary activity is sponsoring protest demonstrations at which participants are urged to deliberately block vehicles and pedestrians, disrupt the work of government, and prevent the movement of supplies is not exempt under §501(c)(3). Rev. Rul. 75-384, 1975-2 C.B. 204. In that ruling, the

organization's activities violated local ordinances and constituted "breaches of public order." They demonstrated an illegal purpose inconsistent with charitable ends, and increased the burdens of local government. Compare Rev. Rul. 80-278, 1980-2 C.B. 175, in which the confrontations were accomplished through the courts and were clearly not illegal.

- Mentioned in ORG's correspondence was the Supreme Court's directive in *Bob Jones v. United States (461 U.S. 574, 597-98)* addressing the application of determinations that an activity is contrary to public policy. As quoted above, the determination of charitable status *"should be made only where there is no doubt that the organization's activities violate fundamental public policy."*

  In this case, ORG openly and repeatedly intentionally violated the Country sanctions in violation of law and public policy.

Another concern raised by ORG in the November 3, 20XX correspondence concerned the lack of analysis on a substantiality determination.

- As discussed in 1994 CPE article referred in ORG's correspondence dated November 3, 20XX, substantiality must be considered quantitatively as well as qualitatively. The quantitative test focuses on the time and attention the organization gives to the illegal activity. The qualitative test focuses on the seriousness of the illegality involved, and the extent to which the activity can be attributed to the organization by virtue of the involvement of directors or officers or through clear ratification of the organization's governing body. The illegal activity may be so serious that even an isolated incident would outweigh the organization's other activities and be a basis for revocation or denial of exemption, regardless of the nature and extent of its exempt activities.

  The question of substantiality of illegal activity was considered in GCM 34631 (October 4, 1971). This GCM stated that it is insufficient to consider only the quantitative basis for determining substantiality. The nature of the acts is as important as the ratio that illegal activities bear to activities that further exempt purposes. Specifically, the GCM provides:

  > A great many violations of local pollution regulations relating to a sizable percentage of an organization's operations would be required to disqualify it from 501(c)(3) exemption. Yet, if only 0% of its activities were directed to robbing banks, it would not be exempt. This is an example of an act having a substantial non-exempt quality, while lacking substantiality of amount. A very little planned violence or terrorism would constitute 'substantial' activities not in furtherance of exempt purposes.

  ORG had three main activities as discussed in the original RAR – 1) XXXXX to Country; 2) serving as the administrators of the Medical Student Scholarship Program for the School of Medicine located in Country; and 3) the fiscal sponsoring of several programs/projects not exempt under Section 501(c)(3) of the Internal Revenue Code.

Two of ORG's three main activities relate to Country activities. In reviewing the books and records, a substantial amount of time and attention of ORG is spent on activities relating to specifically planning and arranging the XXXXX to Country; less time is spend on screening applicants for possible scholarship to the School of Medicine. The government has concerns about the activities conducted in Country given ORG's stance on civil disobedience and violations of the sanctions against Country. For the fiscal sponsorship, based on documents provided for the audit, ORG spent a substantial amount of time and attention to the largest fiscally sponsored entity, ORG-1 USA. Given ORG's lack of oversight, control and discretion over the use of funds by ORG-1 USA, and ORG's failure to maintain records establishing funds were used for IRC §501(c)(3) purposes, the funds sent overseas could have been misappropriated and given to ORG-2, a designated Foreign Terrorist Organization (FTO) pursuant to 8 U.S.C. 1189. As stated in GCM 34631, very little terrorism would constitute 'substantial' activities not in furtherance of exempt purposes.

- G.C.M. 36153, dated January 31, 1975, states that because planning and sponsoring illegal acts are in themselves inconsistent with charity and social welfare it is not necessary to determine whether illegal acts were, in fact, committed in connection with the resulting demonstrations or whether such a determination can be made prior to conviction of an accused. However, it is necessary to establish that the planning and sponsorship are attributable to the organization, if exemption is to be denied or revoked on this ground.

  In ORG's case, testimony provided for the examination and information posted by ORG clearly reflect the activities are those of ORG and not of just some renegade individuals involved with ORG. These acts were encouraged by, and conducted by, officers and directors involved in ORG over many, many years and, as such, would be considered as activities "of the organization" (ORG).

- Another point to consider in regards to substantiality is *when* the government should take action to revoke based on illegal activities or activities which violate public policy. As stated in the 1994 CPE article referred in ORG's correspondence dated November 3, 20XX, where the activity does not violate tax laws, the government must either rely on another governmental body's determination of illegality or make its own.

  In some situations the illegal activity is so blatant as to demand action by the government. For example, there may be a clear violation of state law, such as gambling operations, but which will not likely be aggressively prosecuted because the state does not have the resources to enforce the gambling laws. Sometimes, the organization may not even deny that its operations violate the law. In cases where the illegality is uncontested, the government may pursue the possibility of revocation on the basis of those activities without a specific determination of illegality by state authorities.

  In ORG's situation, in regards to the Country activities, ORG willingly and openly acknowledges their intention to perform acts of civil disobedience. Hence, the government

can and should pursue revocation on the basis of these long-time, continuing, activities even if another agency does not pursue legal action.

In closing, as stated in the original RAR, there were multiple problems with the XXXXX to Country. For example, ORG collected non-cash goods and money when the XXXXX traveled through the USA. The income and non-cash goods were not reported on ORG's Form 990. Although ORG sponsored the caravan and paid for the vehicles, drivers, etc., ORG claims they were not responsible for collecting the items, so ORG did not believe the items collected should be reportable at FMV on the Form 990. Therefore no records were kept on the items donated and thus it is possible the Form 990 had an underreporting of gross receipts. The financial records also reflected substantial cash disbursements, often paid to Executive Director Indv-10, that were not tied back to specific receipts so it was not possible to tell if all disbursements were used for the intended charitable purpose.

Summary of ORG's Country Related Activities

The government stands by the original position.

- Although the goods taken into Country were for humanitarian purposes and, on some occasions, were licensed by OFAC, information was still available that ORG attempted to take the prohibited items over to Country in violation of economic sanctions against Country and were stopped at the border. In addition, ORG's own website state they did not request a license from OFAC and the actions taken were *"act of civil disobedience".* Revenue Ruling
  75-384, held an organization that is the sponsor of activities involving civil disobedience is considered an organization which violates law and public policy and therefore cannot be exempt under section 501(c)(3) or section 501(c)(4).
- For activities relating to students attending the School of Medicine, there is no provision in the law for ORG to take goods/services and act as a transporter/remittance forwarding service. OFAC clearly stated these are acts in violation of the sanctions against Country. ORG did not have a license to do activities relating the medical students. The license ORG tried to claim as their own was actually applied for and given to the individual students; not to ORG. The students' license was given to allow them to travel to/from Country to attend school.
- Even though the enforcement of any sanctions does lie with OFAC, the activities performed that would warrant sanctions by OFAC does have an effect on the exempt status of an IRC §501(c)(3) organization and that enforcement lies with the IRS. The fact that OFAC did not pursue any penalties or criminal charges on ORG, possibly due to limited resources, the fact that ORG could do so is an important criterion. ORG willingly and openly acknowledges their intention to perform acts of civil disobedience in violation of law or public policy.
- Although ORG's believes the government should not be pursuing this issue given this is not an Internal Revenue Service (Title 26) tax issue, all organizations tax-exempt under IRC §501(c)(3) must conform to certain fundamental legal principles applicable to all charitable

organizations. One of these basic charitable principles is that charitable organizations may not engage in behavior that is illegal or violates public policy. This is a continuing civil disobedience act conducted by ORG.

- ORG failed to respond to request for specific information concerning the activities in Country. Specifically, the fail to provide the response to IDR #039.

Sponsorship for an IRC §501(c)(4) organization: Healthcare

This fiscally sponsored entity was discussed in the Protest Rebuttal previously provided to ORG since ORG's original protest stated this *"was a program designed to support the educational programs of the Health XXXXX organization…"* However, as stated in the Protest Rebuttal, information and documents were not provided to support this statement. There were two IDRs, IDR #016 and IDR #032, issued that ORG failed to provide the response.

Healthcare was formed in 20XX, but applied for and received tax-exempt status as a social welfare organization exempt under IRC §501(c)(4) in February 20XX. IRC §501(c)(4) organization are not entitled to receive tax-deductible donations.

For the Appeals process, ORG provided correspondence dated August 21, 20XX that discussed the Healthcare program/project and provided was an e-mail (labeled as ORG's "Exhibit 4") with a received date of February 24, 20XX which discussed the "National Health Program " (former name of Healthcare). It is unclear who prepared this specific e-mail, but the opening paragraph of the message states, in part:

> *"The tax-exempt program is a now an integral part of the XXXXX Foundation for XXXXX XXXXX, a 501 (c) 3 organization). We are convinced that this issue – health care – is the big enchilada in this race, and that this is the most critical time in perhaps three decades on this issue. We can win it, but we have to be very strategic."*

This gives the appearance this program/project may have already been accepted as a fiscally sponsored entity of ORG; rather than a document submitted for ORG to review the planned activities as implied in ORG's statement: *"Exhibit 4 shows that ORG's fiscal sponsorship of Healthcare ... involved a significant review of Healthcare !'s planned activities."*

In reviewing the provided documents, some of the activities listed may have been for *"public awareness campaigns focused on healthcare"* as claimed by ORG in the August 21, 20XX correspondence. However, some of the listed activities were clearly activities designed to influence legislation (i.e. be considered lobbying/legislative activities).

Section 1.501(c)(3)-1(c)(3)(ii) of the regulations provides that the term legislation "includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure."

Although this section of the regulations does not elaborate on the precise meaning of the word "action", in this situation, one should consider the meaning of the phrase "action by the Congress" for purposes of IRC 4911(e). In IRC 4911(e), the phrase "action . . . by the Congress" is used in the definition of the term "legislation" and the term legislation" is used to delineate the extent to which certain organizations described in IRC 501(c)(3) may conduct certain types of lobbying activities.

IRC 4911(e)(2) provides that, for purposes of IRC 4911, "[t]he term 'legislation' includes action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment or similar procedure." In IRC 4911(e)(3), Congress limited the meaning of the term "action", as that term is used in IRC 4911, to the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items."

Section 1.501(c)(3)-1(c)(3)(ii) of the regulations provides both direct and grass roots lobbying are nonexempt activities subject to the IRC 501(c)(3) limitation on substantial legislative action.

Section 1.501(c)(3)-1(c)(3)(ii) also provides that, more generally, advocating the adoption or rejection of legislation constitutes an attempt to influence legislation for purposes of the IRC 501(c)(3) lobbying restriction. This provision was tested in the case of Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972); cert. denied, 414 U.S. 864 (1973). Christian Echoes National Ministry published articles and produced radio and television broadcasts that urged recipients to become involved in politics and to write to their representatives in Congress to urge that they support prayer in public schools and oppose foreign aid. The organization argued that attempts to influence legislation would occur only if legislation were actually pending. The Tenth Circuit concluded that the regulation properly interpreted the statute, and that the organization was engaged in attempting to influence legislation, even if legislation was not pending.

As stated previously, in February 20XX, Healthcare received its tax-exempt status as a social welfare organization exempt under IRC §501(c)(4).

In addition to reviewing the attachment to correspondence dated August 21, 20XX, reviewed voluminous documents provided for the Appeals. Most of these documents had been previously provided and reviewed. Although some of the information may have an education component, many of the documents provided for a second review indicated Healthcare was involved substantially in lobby/legislative activities.

The government's concern remains the same – Attached to IDR #032 were screen prints of information posted on the then current Healthcare website (printed on February 1, 20XX). As shown, at that time, Healthcare stated contributors could make the *"check out to 'ORG/Healthcare XXXX' for tax-deductible donations."* Nothing was stated in regards to what would qualify to be considered a charitable deduction for and what would be considered support for the lobby/legislative activities. Since Healthcare was included in the Protest Rebuttal, the website was again checked on March 6, 20XX and at that time the same language

telling contributors to make the checks out to ORG for a tax deduction. The print-out of the March 6, 20XX website was included as an attachment to the Protest Rebuttal.

In ORG's correspondence dated November 11, 20XX, ORG states *"...the revenue agent...bases her conclusions about Healthcare XXXX's activities on the entity's current website, not the website as it existed in 20XX and 20XX. Significantly, the agent does not note that the same website reflects that Healthcare XXXXX is funded by the XXXXX, not ORG, thus the revenue agent's concerns are more appropriately raised with the XXXXX."*

- This statement is misleading in that, as stated above, screen prints of Healthcare 's websites from February 1, 20XX and March 6, 20XX were reviewed and copies provided to ORG for their review and comment. ORG failed to provide a response to IDR #032 which inquired about the solicitation. The comment about Healthcare is now funded by "XXXXX" is not relevant to this examination. No information has been provided on when and why Healthcare made the change and what the arrangement is between XXXXX and Healthcare

Another position raised in ORG's correspondence dated August 21, 20XX concerning the funds solicited by Healthcare and received by ORG are not, per ORG, problematic since those expenses used for lobby activities could count *"towards ORG's lobbying expenditure limit"*. ORG did not provide any legal basis for this position.

- The legislative activities conducted by Healthcare are not ORG's direct activities. Therefore, this would not be considered part of ORG's allowable lobbying expenditure.

Summary of Sponsorship of IRC §501(c)(4) organization

The government stands by the original position.

No new information has been provided to change the previous determination. The IRC §501(c)(4) organization, Healthcare , solicited and received tax-deductible donation by allowing individuals to make the payments out to ORG.

Other Fiscally Sponsored Entities – Two of the larger fiscally sponsored entities were discussed above (ORG-1 USA and Healthcare). In addition to these two, ORG sponsored several other programs/projects as discuss in the original RAR and Protest Rebuttal.

Over the course of the examination, multiple IDRs were issued on the various program/project fiscally sponsored by ORG and ORG failed to provide the requested information. Attached to the Protest Rebuttal, and attached to correspondence issued to ORG on August 10, 20XX, was the list of the outstanding IDRs.

For the Appeal process, ORG provided copies of various documents for some of the fiscally sponsored entities. Almost all of the documentation now provided was previously reviewed. Although some of the program/project files provided for the Appeals included requests for reimbursement of and some supporting receipts were provided, the files were missing information on the purpose of the programs and missing evidence of discretion/control exempt purpose as required by Rev. Rul. 68-489. In addition, ORG may have provided some actual document for a few of these projects, but there were several other, larger, fiscally sponsored entities for which no information was provided for the Appeals process. Almost all of the fiscally sponsored entities, and problems noted, were discussed in the original RAR and/or the Protest Rebuttal.

ORG specifically mentions some other fiscally sponsored projects in their correspondence as follows:

In the correspondence dated August 21, 20XX, ORG states the *"fiscal sponsorship of other very small projects (the Family & Friends of Donee-1, the Donee-2, the Donee-3 and the Donee-4) together fit squarely within ORG's charitable mission to fight civil rights injustices".* ORG disagrees with the original RAR which states these projects could be consider private benefit. ORG provided some attachments to the August 21, 20XX correspondence as well as providing some of the same documents previously reviewed during the audit.

In reviewing the documents attached to the August 21, 20XX correspondence, the following was noted:

- Letter received by ORG on December 20, 20XX requesting ORG become the fiscal sponsor of "Family and Friends of Donee-1". The letter stated, in part, *"Donee-1 is a voluntary organization whose ultimate aim is freedom for Donee-1, a freedom fighter presently serving a 60-year term in the federal prison system.*
  "Our primary activities are dissemination of information about Donee-1's case, coordination of support, and annual fundraisers to cover the costs of his commissary and other needs."

  Reviewed the other documents provided separately for this program/project and these were the same documents previously reviewed. As stated previously in the original RAR and/or Protest Rebuttal, in 20XX the only expenditure was the paying of legal fees in June 20XX. The documentation provided for the audit reflected legal fees were paid to Attorney Attorney-1. The reviewed Attorney-Client Retainer Agreement from Attorney-1 included "Scope and Duties" which stated Attorney-1 was hired to provide legal services in connection with post-conviction criminal appeal for Donee-1. The expenses for 20XX were all directly related to Donee-1 and were for his legal fees and for his spending (commissary) expenses. Also provided was the fiscal sponsorship letter with ORG agreeing to be the fiscal sponsor for this program/project. This letter stated that the raised funds would be deposited into *"your ORG account, and will disburse them according to your specifications upon the request of the project officer you designate. We will ask you to submit a semi-annual fiscal report which accounts for your expenditure of grant funds."*

The providing of a semi-annual report is not sufficient to provide control and discretion over the use of the funds prior to their use. In addition, although this fiscal sponsorship letter – and many others – included the same/similar language about the requirement to submit *"semi-annual fiscal reports"*, the files did not include any such reports. IDR #24 was issued to obtain statements and documentations for reconsideration of a tax-exempt purpose under IRC §501(c)(3) for this program/project, but ORG failed to provide documentation or information.

Although ORG claims they are supporting this program/project to "fight civil injustices", as discussed in the Protest Rebuttal, the background and reason Donee-1 is imprisoned was not for this a civil rights issue. The Protest Rebuttal included an attachment (Exhibit C) which stated Donee-1 was found guilty of taking part in an armored-truck robbery in which a guard and two police officers were killed and Donee-1 was found guilty to aiding his sister escape from prison. The soliciting of tax-deductible donations to pay for the legal and "commissary and other needs" of this specific individual is a private benefit.

- Attached to the August 21, 20XX correspondence, ORG provided the fiscal sponsorship letter provide to Donee-4 dated April 19, 19XX. This letter was silent as to the planned activities and what ORG would do to provide control and discretion over the use of the funds. Also provided was a flyer for *"Awards Dinner & Volunteer Party"* held on August 6, 19XX. Per the flyer – *"A Night to Recognize, Honor and Thank All who have worked to free the Territory Political Prisoners"* and some 1993 documents and one undated document for an unrelated organization. Reviewed the other documents provided separately for this program/project and these were the same documents previously.

  As stated in the Protest Rebuttal, from the information reviewed on this project and on-line research conducted, it appeared Donee-4 was geared towards getting three specific individuals out of prison so it appears this is a private benefit issue. IDR #35 was issued to obtain other information, but ORG failed to provide any documentation or information to establish the tax-exempt purpose of this program/project.

For both of these two programs, ORG's correspondence states, in part: "*...the documents in Exhibit 5 pertaining the Donee-4 and Donee-1 reflect ORG's diligence regarding the use of funds, and that these projects collectively further ORG's exempt purpose.*" These documents are discussed previously and clearly do not further an IRC §501(c)(3) purpose and does not provide control and discretion over the use of the funds.

- A couple other program/projects mentioned in the August 21, 20XX correspondence included the Donee-2; and the solicitation of tax-deduction donations to pay for the memorial service of Indv-9. No information was attached to the August 21, 20XX correspondence. The documents provided separately were the same documents previously reviewed and discussed in the Protest Rebuttal. There were IDRs issued for both of these program/projects, and many others, that ORG failed to provide documentation and/or information.

The August 21, 20XX and November 3, 20XX correspondences submitted by ORG mentions many of the fiscally sponsored entities are small projects. This is not in dispute for this year, but it is unknown how large and/or active these programs/projects were in the past. Many of these programs/projects were long-term, on-going, projects with no anticipated end and many of them would not be approved for their own tax-exempt status under IRC §501(c)(3). In addition, the size of the programs/projects is not really relevant consideration the number of fiscally sponsored entities and the available information indicates some programs/projects were not for an exempt purpose and/or involved private benefits.

ORG's August 21, 20XX correspondence begins and ends by mentioning former executive director, Indv-10, who passed away in 20XX. As stated in the correspondence, Indv-10 was involved in ORG from 19XX to 20XX and was "highly involved" in ORG's activities/decisions.

- Indv-10 is discussed in a separate section later.

Reviewed ORG's correspondence dated November 3, 20XX. Provided with this correspondence was an Excel spreadsheet summarizing some of the sponsored projects – including the programs/projects mentioned above. There were no supporting documents provided for much of the information included on this Excel spreadsheet to substantiate the statements. For example:

For the *Donee-1* program/project, comments made include this was *a "project designed to provide information about the specific case of Donee-1 and to educate US citizens about his work as a . Donee-1 is a doctor of and was a co-founder and director of devoted to improving health care in the . He is the . The project operates a program of action that includes an aimed as sharing the methods and influence of Donee-1 as well as his impact ."*

- Nothing submitted for the audit – including information submitted for the Appeals – substantiated these statements.

"Donee-2 is a collective of individuals and groups in the City metropolitan area educating about the case of Donee-2 and advocating for his freedom based on the overwhelming evidence of his innocence. Project participants also organize a host of educational activities to raise awareness about the correlation between racism and the death penalty."

- Nothing submitted for the audit – including information submitted for the Appeals – substantiated these statements.

For the *Donee-3* program/project, the Excel spreadsheet states *"The Foundation's primary goals are to continue the legacy of Donee-11 and Donee-12*

and other community activists who work vigorously to advocate for and educate those living in disenfranchised communities through cultural and educational projects. The Foundation prioritizes educational outreach to community youth and provides assistance to support the families of marginalized community activists."

- Nothing submitted for the audit – including information submitted for the Appeals – substantiated these statements.

Included on the Excel spreadsheet was the *"US-Country XXXXX"* as a *"sponsored"* project. During the audit, and as mentioned on ORG's website, this was represented to be a direct program/project of ORG and not a *"sponsored"* project as stated on the Excel spreadsheet. ORG handled donations for this project and directly paid the expenses relating to this project. ORG had employees assigned who handled the XXXXX program.

In ORG's letter dated November 3, 20XX, statements are made including: *"The box of records includes records for each of the projects summarized in Exhibit 1, including receipts and records of disbursements, as well as correspondence and other documents reflecting the purposes and results of some of the projects. As you will see, significant records were maintained with respect to these projects."* As discussed above, the provided information was not significant for many of the programs and did not reflect the purpose and results of the projects. Also, there were several fiscal sponsorship letters reviewed and many of them included standard language of requiring a "semi-annual report", but there were no actual semi-annual reports submitted by the fiscally sponsored entities to ORG to account for expenditures. A couple of these fiscal sponsorship letters were submitted with ORG's responses.

ORG's November 3, 20XX correspondence closes out by stating, in part, ORG had implemented new procedures *"for overseeing grant monies and fiscal sponsorship programs"*. Provided for the Appeals was *"ORG's board minutes addressing discussions on strengthening oversight of fiscal sponsorship programs."* ORG also provided an "*example of the type of acceptance letter that ORG now issues to fiscal sponsors, which details the more robust oversight procedures that ORG requires fiscally sponsored programs to adhere to."*

- Reviewed the provided meeting minutes. None were signed and none indicated who attended the Board of Directors meetings and who was involved in the discussion and planned action.

- ORG has in the past made statements at the Board of Directors meeting, as annotated in the meeting minutes included in the Administrative Record, about taking certain actions to increase oversight and to do specific actions, but failed to take the action. In addition, for many of the fiscal sponsored program/project, some standard language was included in the fiscal sponsorship acknowledgement letter – such as requiring a semi-annual report – but ORG failed to follow up and enforce the requirement. Another document provided for the audit to explain ORG's activities was the November 20XX meeting notes for the *"strategic planning session of the ORG board of directors"*. This document was received on June 14,

20XX and is part of the Administrative Record. This document mentions planned activities and actions, but ORG did not follow through with the plans.

- In reviewing documents submitted for the ORG-1 USA program/project, many of the documents made statements indicating there could be good oversight and control, but the reality was, the stated actions did not occur. See IDR #031 for some of the problems identified. ORG failed to provide documents/information for IDR #031.

Past bad acts cannot be overcome by making statements – verbal or written – which may or may not be followed. There is no real proof that ORG would be in compliance in the future. Inclusion in meeting minutes or the adoption of a resolution by the Board of Directors is a self-serving statement and does not correct the problems of the past and is no assurances oversight would be provided in the future.

Summary of Fiscal Sponsorship of Other Organizations

The government stands by the original position.

No new information has been provided to change the previous determination. The Protest Rebuttal previously provided to ORG provides detail information on why the fiscally sponsored entities are not acceptable.

In reviewing the project files, some of the programs/projects are not in furtherance of ORG's granted tax-exempt purposes nor were the activities in furtherance of any purpose stated in section 501(c)(3) of the Internal Revenue Code; ORG did not retain control and discretion on the disbursements made to or on behalf of the programs/projects by often making distribution payments without verification of the expense and verification of the tax-exempt purpose; some of the funds disbursed were for private benefit of only specific individuals; and many of the program/project files included minimal to no actual documentation so ORG was not maintaining records establishing the use of the funds.

ORG served as a conduit for the various fiscally sponsored entities. ORG deducting 0% of the amount collected from any donations received as their fee and made the remainder of the fund available for the program/projects. They did not have control and discretion on the use of the funds and failed to take action to ensure the distributions were used only for an IRC §501(c)(3) purpose.

ORG was told in a letter issued to them dated August 10, 20XX, Section 1.6033-2(i)(2) of the Federal Tax Regulations provides, in part, that every organization exempt from tax shall submit such additional information as may be required by the Service for the purpose of inquiring into its exempt status. Failure to comply with our request for information could result in the loss of your tax exempt status. Even with this requirement, ORG still failed to provide additional information to resolve the audit issue.

Founder and Former Executive Director Indv-10 – The government does not dispute or disagree that Indv-10 was an active participant in ORG and he was involve in many of the decisions made over the years given his long-term relationship (approximately 19XX to 20XX). However, Indv-10 is only one individual and ORG had several long-term employees and long-term Board of Directors members who could have, should have, and appears to have been involved in the oversight, review and approval of the fiscally sponsored entities. In reviewing the November 20XX meeting notes for the *"strategic planning session of the ORG board of directors"*, and the provided meeting minutes for Board of Directors meetings held in 20XX and 20XX, several of the same individuals are listed as board members and/or employees in all these years.

ORG provided correspondences, dated August 21, 20XX, states the original RAR did not take into consideration the passing of Indv-10 who *"died in 20XX, approximately one year before the audit of ORG commenced."* Indv-10's *"absence undoubtedly accounts significantly for the current ORG personnel's inability to explain decision-making and managerial processes, and the difficulty the organization has had in providing information regarding ORG's specific activities. ORG has been struggling to recover from the loss of his institutional knowledge, particularly given that many of the smaller programs questioned by the revenue agent initially begun under his tenure, well before the current leadership took charge of the organization."*

- The current leadership consists of two co-executive directors – Indv-13 and Indv-14. As shown by the November 20XX "*strategic planning session of the ORG board of directors*" and the other meeting minutes provided for the 20XX and 20XX Board of Directors meetings, Indv-13 was an active Board of Directors member and participated in these meetings. Indv-14 is the daughter of Indv-10.

- Many of the Board of Directors members are the same members who have been around for a substantial number of years.

- The audit actually began with co-executive director Indv-5 who provided some oral testimony prior to her leaving due to health/medical reasons. Indv-5 was a long- term employee and was one of the participants at the November 20XX strategic planning meeting, as well as attending part of the Board of Directors meetings held in 20XX and 20XX. Indv-5 was also the employee who signed the fiscal sponsorship letters.

- An active employee of ORG, Indv-15, was very involved in the audit process and was the person the government primarily worked with to obtain both the financial records and information on the various programs/projects. Indv-15 was the employee who handled the day-to-day operations, including the financial transactions, and had information on many of the various programs. Indv-15 was another long-term employee and was one of the participants at the November 20XX strategic planning meeting. Indv-15 also attended Board of Directors meetings as staff in 20XX/20XX.

- For the fiscally sponsored entities, this is a two-party transaction/agreement. Even if ORG could not obtain supporting records from their files, they should have been able to secure documents from the fiscally sponsored entities to present for the audit. This was not done.

ORG's correspondence, dated August 21, 20XX, included a couple of comments in need to clarification. Specifically, the correspondence stated, in part: *"…the RAR makes several conclusory assertions that are highly misleading and cast ORG in a negative light: ORG 'refused' to provide explanations of program expenditures, and ORG 'was unable to establish who, if anyone, was on the advisory committee [deciding what programs to fiscally sponsor] and ORG was unable to confirm who actually reviewed the materials and made the decision to support specific programs/projects.' The reason that ORG was not able to provide certain information is that XXXXX Walker is deceased, and this should be accounted for in the assessment of ORG's explanations of its activities during the time when XXXXX remained integrally involved in ORG."*

- Multiple IDRs were issued on various programs/projects and activities of ORG to which ORG failed to respond.

  For a couple of the programs/projects and activities – specifically ORG-1 USA and the Country activities – some documents were provided, but ORG has refused to provide other documentations needed to resolve the issues. In addition, ORG refused to provide any oral testimony in regards to ORG-1 USA claiming 5th Amendment concerns and, for the Country activities, per information provided at the meeting held in ORG's office on September 17, 20XX, ORG stated they would not be providing any other information or testimony on the Country activities.

- Although ORG's comments in the correspondence gives the impression the inability to provide information was due to the passing of Indv-10, two levels of management attended one or more meetings at ORG's offices to try to resolve the issue. During those meetings ORG stated, through their representative, Power of Attorney POA, they would not be answering questions for certain programs.

- ORG's refusal was previously addressed in both the original RAR and in the Protest Rebuttal.

ORG's correspondence dated November 11, 20XX stated: *"Finally, it is worth noting that there is no evidence of undue enrichment or excessive compensation, and that organization subsists on public contributions and the efforts of volunteers."*

- This statement is not correct given the unreported – and hidden – compensation to Mr. XXXXX. This issued was not pursued during the audit, given the passing of Indv-10. The funds paid to Indv-10 were issued without proper accounting. This included the following:

Date	Check #	Amount	Comments
01/16/XX	0	0	10/10 - 11/21
02/04/XX	0	0	12/05 - 01/16
02/12/XX	0	0	01/30 - 02/13
03/20/XX	0	0	02/20 - 03/13
03/20/XX	0	0	"Bonus"
04/15/XX	0	0	03/20 - 04/10
05/18/XX	0	0	04/24 - 05/08
07/09/XX	0	0	05/22 - 07/03
09/24/XX	0	0	07/17 - 08/28
10/12/XX	0	0	09/11 - 10/09
11/06/XX	0	0	10/23 - 11/06
TOTAL PAID		**0**	

These payments to Indv-10 were posted to Account #000 as "Travel". Indv-15 who handled the books and records, including the financial records, stated she made these payments to Indv-10 after Indv-10 requested she issue them to him. Based on the dates annotated on the checks, these appear to be for compensation for services, but payments were not run through the normal payroll company. Indv-10 did not receive a Form W-2 or a Form 1099 for the payments. Although the amounts are reasonable, this is still a compensation issue which should have been addressed and included in ORG's employment tax reporting.

- Included in the November 20XX "*strategic planning session of the ORG board of directors*" was a section labeled "Leadership transition" and this mentioned Indv-10's then salary was *"only $0/month"*. This supports the amount identified above most probably was Indv-10's compensation.

- Given the non-filing of an employment tax form (Form W-2 or Form 1099), there is the probability this income was not reported on Indv-10's personal Form 1040 and thus this could be an automatic excess benefit transaction subject to excise tax under IRC §4958. This issue was also not pursued given the passing of Indv-10.

In addition to the specific compensation identified above, there were question concerning multiple checks for substantial amounts, such as $0, $0, $0, and $0 issued to Indv-10 and cashed by Indv-10. ORG claimed the purpose of these checks were for various XXXXX to Country expenditures paid in cash and/or cash taken to medical students studying in Country (with the funds provided by the medical student's families). The full

expenditure amounts for the XXXXX to Country could not be verified given the high number or receipts, but this was allowed without requiring additional verification. If the payments were for reimbursement of expenses, the payments would still be considered additional compensation reported on a Form W-2 because there was no Accountable Plan in place under IRC 62.

Summary of Information on Indv-10

- Although ORG claims the passing of Indv-10 had major impact on ORG's ability to provide documents for the audit and comply with requests for information, as discussed in the original RAR and Protest Rebuttal, this does not seem totally correct.
- For the smaller programs/projects, the government acknowledges there could have been some loss of knowledge, but if properly organized and sponsored, ORG should have been able to provide documents from the fiscally sponsored entities. For all projects, ORG should have retained all required documents and should have had more than one person involved in the decision making process.
- Although Indv-10 was the former executive director and was involved in the activities and decisions of ORG, there were other, long-time, employees and Board of Directors members available to be involved.
- Indv-10 actually used his position as an insider, executive director, to direct the employee who handled the financial records issue checks to him without any accountability. This could be considered inurement and would be excess benefit transaction subject to IRC §4958. Pursuant to IRC §501(c)(3), any amount of inurement is grounds for revocation.

Overall Summary of Review of Information Submitted for Appeals Process:

Although voluminous documents were provided for the Appeal process, a substantial amount of these documents were previously provided for the audit. Review of the previously provided documentation was annotated in the case workpapers and some relevant documents, and a sample of the general information, was included in the Administrative Record. Some of the exact same documentations previously provided for the audit and included in the Administrative Record were provided a second time for the Appeals process and thus are included again in the Administrative Record.

The documents and statements made do not change the previous documentation.

1) The primary activities of ORG involved activities in Country conducted in violation of the Country Assets Control Regulations, 31 C.F.R. part 515 (the "Regulations"), issued under the authority of the Trading With the Enemy Act, 50 U.S.C. App. §§ 1-44, and other statutes. U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) administers and enforces the comprehensive economic sanctions, and when ORG refused to cooperate, third party contact was made to OFAC to obtain information.

OFAC confirmed the Regulations generally prohibit virtually all direct or indirect transactions of any nature with Country or Country nationals by any person subject to the jurisdiction of the United States, including any corporation, partnership, association, or other entity that is organized under the laws of the U.S. or any state of the United States, except as authorized by OFAC or exempted by statute. In ORG's situation, ORG could have voluntarily applied for a license to take some of the goods they took to Country. However, ORG refused to apply for a license and, as stated on ORG's own website, ORG took these acts as a form of civil disobedience. In addition, OFAC had to intervene on multiple occasions, increasing the burden of government, rather than lessening the burden of government.

The activities involving Country included the Caravan to Country and ORG serving as the U.S. administrator for the Medical Student Scholarship Program for the School of Medicine located in Country

2) The other major activity for ORG was the fiscal sponsorship of multiple nonexempt programs/projects. Many of these programs/projects were for an extended period of time. Many of these programs/projects would not qualify to be tax-exempt on their own merits; some programs/projects benefitted specific individuals or a small group of individuals; at least one program/project, ORG-1 USA, had the potential to be supporting an illegal activity. The fiscally sponsored entities ranged from small to very large, in terms of income, and the size could, and did, vary from year-to-year.

   For the fiscal sponsorship activity, ORG acted more as conduit than as a fiscal sponsor. ORG would collect 0% of any funds raised by the fiscally sponsored entities, but ORG would fail to retain control and discretion over use of the funds and maintain records establishing that the funds were used for section 501(c)(3) purposes.

Nothing new has been provided for the audit to allow ORG to retain its tax-exempt status.