

Internal Revenue Service

Department of the Treasury

Person to Contact:

Date: APR 26 2018

Tel:

Fax:

Refer Reply to:

Number: **201829023**

Release Date: 7/20/2018

UIL: **7428.00-00**

In Re:

)

Tax Period(s) Ended:

Form Number

Employer Identification Number

CERTIFIED MAIL

Dear :

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code. It is determined that you are no longer recognized as exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code, effective December 1, 20 .

Our adverse determination was made for the following reason(s):

Your activities are not exclusively charitable and the assets of the organization have inured to the benefit of private individuals (i.e., your founders and/or officers) through the payment of their private expenses, private benefits, and cash. Therefore, you are not operated exclusively for exempt purposes pursuant to section 501(c)(3) of the Internal Revenue Code.

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

You are required to file Federal income tax returns on Form 1120 for any years that are still open under the statute of limitations.

By executing Form 906-c, Closing Agreement on Final Determination Covering Specific Matters, you have waived your right to contest this determination under the declaratory judgment provisions of section 7428 of the Internal Revenue Code.

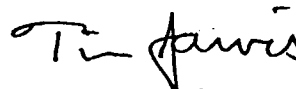
We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and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

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

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, formal appeals process, etc. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. See the enclosed Notice 1214, *Helpful Contacts for Your "Notice of Deficiency"*, for Taxpayer Advocate telephone numbers and addresses.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Jarvis", written over a horizontal line.

Timothy D. Jarvis
Appeals Team Manager

Enclosures:

Notice 1214 Helpful Contacts for Your Deficiency Notice
Notice 437, Notice of Intention to Disclose

**Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
1100 Commerce Street MS 4900 DAL
Dallas, TX 75242-1100**

Date: May 01, 2017

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Manager's name/ID number:

Manager's contact 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,

Maria Hooke
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS	Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended November 30, 20XX November 30, 20XX

ISSUES:

- Whether _____ is operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3)?
- Whether _____ is engaged primarily in activities that accomplish an exempt purpose?
- Whether any part of the net earnings of _____ inured to the benefit of any private shareholder or individual?
- Whether revocation of the Foundation's exempt status is appropriate given that the Foundation engaged in substantial excess benefit with its officer? If revocation is upheld the Date would be October 1, 20XX.

FACTS:

() was incorporated on February 19XX in _____ as a not-for-profit corporation and was recognized by the Internal Revenue Service as a tax-exempt organization as described in section 501(c)(3) by letter dated July 19XX. The Foundation was created in 19XX by _____, engineer and physicist. The purpose of the foundation was to promote scientific research in physics and cosmology; to propagate _____ theories of physics. _____ lectured and wrote and published research materials on physics. _____ supported other scientific organizations. In December 20XX, _____ passed away.

After his passing, his wife _____ assumed the position of President of _____, and has served in that position until the present. The board of trustees meets annually to discuss future plans and activities. During the interview and examination, the president was unable to describe any ongoing from 20XX when _____ passed, to the present.

_____ does not have any employees and is operated solely by _____ from her home in _____. During the interview, the president stated that _____ receives income from contributions and rental income. _____ provides short-term rental to travelers. The president did not explain how the rental income was related to _____ exempt purpose. During the review of _____ books and records multiple payments for clothes, travel and household repairs and maintenance charges were noted. When asked for substantiation to support how the noted payments were related to _____ exempt purpose known was provided.

_____ maintains one checking account at _____ has sole signature authority and control over the account.

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The income is used to pay the day to day personal expenses, pay for clothes and travel and the household repairs and maintenance bills of . The foundation has a checking account at

files Forms 990-N. The account shows the following transactions:

Revenue Sources	November 30, 20XX	November 30 20XX
Deposits	0	0
Withdrawals	0	0
Totals		

has an credit card whereas is the only authorized user. During the tax years that ended November 30, 20XX & 20XX charges were analyzed in detail. When asked for substantiation to support how the noted charges were related to exempt purpose none was provided. The following is a summary of noted charges:

FY 11/20XX	CHARGES	AMOUNT
1/10 to 1/12/20XX		0
1/8 to 1/11/20XX		0
1/1 to 1/8/20XX		0
1/14 & 24/20XX		0
1/18 to 1/20/XX		0
1/28 to 1/16/20XX		0
1/30/20XX		0
2/1/20XX		0
2/16/20XX		0
2/17/20XX		0
2/17/20XX		0
3/2 to 2/19/XX		0
3/6 to 2/20/XX		0
3/16/20XX		0
3/31/20XX		0
5/17/20XX		0
5/18/20XX		0
5/18/20XX		0
5/19/20XX		0
5/24/20XX		0
5/28/20XX		0
06/02 to 06/03/XX		0
6/10 & 11/ 20XX		0
6/26/20XX		0
6/24/20XX		0

EXPLANATIONS OF ITEMS

Schedule number or exhibit

Name of taxpayer

Tax Identification Number

Year/Period ended
November 30, 20XX
November 30, 20XX

6/22/20XX		0
6/18 to 6/20/XX		0
7/7/20XX		0
7/7/20XX		0
7/15/20XX		0
8/04 to 8/XX/XX		0
7/22 to 8/04/XX		0
8/20/20XX		0
8/21/20XX		0
8/22/20XX		0
8/24/20XX		0
8/25/20XX		0
8/26/20XX		0
8/27/20XX		0
9/3/20XX		0
9/4/20XX		0
9/24/20XX		0
10/2/20XX		0
10/8/20XX		0
10/10/20XX		0
10/10/20XX		0
10/13/20XX		0
10/15/20XX		0
10/16/20XX		0
10/18/20XX		0
10/21/20XX		0
10/24 to 31/20XX		0
10/28/20XX		0
10/30 to 11/420XX		0
11/2 to 05/20XX		0
11/12/20XX		0
11/14 to 12/04/20XX		0
11/5/20XX		0
11/15/20XX		0
11/17/20XX		0
11/14 to 12/04/20XX		0
11/21 to 12/04/20XX		0
11/24/20XX		0

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		0
12/24/20XX		0
12/2013 to 11/20XX		0
	TOTAL	0
JAN-DEC 20XX	UNEXPLAINED CHECKS (CK#)	0
JAN-DEC 20XX	AUTOPAY	0
	20XX TOTAL EXCESS BENEFIT TRANSACTIONS	0

FY 11/20XX	CHARGES	
1/22 to 1/31/20XX		0
1/23/20XX		0
1/29/20XX		0
2/26/20XX		0
3/2/20XX		0
3/6/20XX		0
2/27 to 3/04/20XX		0
3/24/20XX		0
4/2/20XX		0
4/27/20XX		0
7/1 to 7/3/20XX		0
7/3/20XX		0
9/24 to 10/13/20XX		0
9/16/20XX		0
9/20 to 10/14/20XX		0
9/23 to 10/09/20XX		0
9/22 to 10/09/20XX		0
10/6/20XX		0
10/19 to 11/03/20XX		0
10/21/20XX		0
10/27/20XX		0
11/12/20XX		0
11/05/20XX		0
12/15 to 1/14/20XX		0
12/16 to 1/06/20XX		0
	TOTAL HOME REPAIRS	0
	TOTAL CHARGES	0
JAN-DEC 20XX	UNEXPLAINED CHECKS (CK#)	0
JAN-DEC 20XX	AUTOPAY	0
	20XX TOTAL EXCESS BENEFIT TRANSACTIONS	0

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did not provided any documentation that supports an exempt purpose for charges.

did not provide any receipts or other documentation to show a business purpose for the expenditures that made up the balance of the credit card charges.

LAW:

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945).

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Prohibited private interests include those of unrelated third parties as well as insiders. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; privilege; gain; [or] interest." Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the promotion of education.

Treas. Reg. Section 1.501(c)(3)-1(a)(1) states: "In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such Code section."

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An

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organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(a) provides that in order for an organization to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code.

Treas. Reg. § 1.501(c)(3)-1(b) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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

In *Better Business Bureau of Washington, D C., Inc. v. U.S.*, 326 U.S. 279 (1945), the Supreme Court stated that an organization is not operated exclusively for charitable purposes if it has a single non charitable purpose that is substantial in nature.

The words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization. *Treas. Reg. § 1.501(a)-1(c)*. The inurement prohibition provision "is designed to prevent the siphoning of charitable receipts to insiders of the charity" *United Cancer Council v. Commissioner*, 165 F.3d 1173 (7th Cir. 1999). A "private shareholder or individual" for purposes of a private inurement analysis has been interpreted to mean an insider of the organization. See *Orange County Agricultural Society, Inc. v. Commissioner*, 893 F.2d 529, 534 (2d Cir. 1990). The prohibited private inurement involves using the assets of the exempt organization for the benefit of the insider; examples include payment of a percentage of revenue, lending money, and payment of personal expenses. *Founding Church of Scientology v. United States*, 412 F.2d 1197 (Ct. Cl. 1969).

Prohibited inurement is strongly suggested where an individual or small group has exclusive control over the management of the organization's funds. *The Church of Eternal Life and Liberty,*

Inc. v. Commissioner, 86 T.C. 916, 927 (1986); *Basic Bible Church v. Commissioner*, 74 T.C. 846, 857 (1980); *Church of the Transfiguring Spirit v. Commissioner*, 76 T.C. 1, 7 (1981).

Section 4958(c)(1)(A) of the Code, in part, defines an "excess benefit transaction" as "any transaction in which an economic benefit is provided by an applicable tax-exempt organization

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directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit." In addition, section 4958(c)(1)(A). also provides that "an economic benefit shall not be treated as the consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit." IRC § 4958(c)(1)(A).

Section 4958(e) of the Code defines an "applicable tax-exempt organization" as an organization described in either section 501(c)(3) or section 501(c)(4) of the Code or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction. "Such term shall not include a private foundation as defined in section 509(a)." I.R.C. § 4958(e).

Section 4958(f)(1) of the Code defines "disqualified person" as "(A) (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, [and] (C) a 35 percent controlled entity.

The expenses listed above appear to be excess benefit transactions because the economic benefits provided by an applicable tax-exempt organization directly or indirectly exceeds the value of any consideration received by the Foundation. I.R.C. § 4958(c)(1)(A)

GOVERNMENT'S POSITION:

The 501(c)(3) tax exempt status of _____ should be revoked because it is not operated exclusively for tax exempt purposes. An organization described in section 501(c)(3) must establish that no more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Treas. Regs. 1.501(c)(3)-1(c)(1).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves public, rather than private interests. Since the founder's death, the organization has not engaged in any activities that provide a charitable benefit to the public.

_____ is an officer and she has sole control over _____ bank account, disbursements, and assets. It is the position of the Government that _____ assets inured to the benefit of _____

There were multiple and repetitive transactions during the years under examination that were not substantiated as being related to _____ exempt purpose. Hence it is our position that a significant portion of _____ income was in fact used to pay for _____ personal expenses. From our review of the expenses as noted above, it clearly shows that the charges were personal in nature and conferred a private benefit to _____. Source documents support that _____ income was used to make home repairs and maintenance; to purchase home _____

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furnishings, groceries, alcohol, gasoline, restaurant visits, clothes, pet supplies, eye examination and glasses, travel expenses; and other unrelated charges. Although does not have a vehicle, charges for car related expenses were noted.

Although has a board of trustees they are not involved in the decisions and daily operations. They do not have internal controls to ensure that funds are used for exempt purposes. There are no safeguards in place to prevent the reoccurrence of assets inuring to the benefit of any private individual. The President has free reign over the foundation's bank account and the credit card. There are no indications that other board members have any involvement with the finances of the organization.

Based on the facts of this examination, does not qualify for exemption under IRC Section 501(c)(3) as a charitable organization. The foundation is not operated exclusively for exempt purposes. Inurement and private benefit to the president outweighs any and all public interest served.

TAXPAYER'S POSITION:

Taxpayer's position with respect to the issues, facts, applicable law and conclusions is unknown. The organization will be allowed 30 days to review this report and respond with a protest if desired.

CONCLUSION

 is not operating exclusively for section 501(c)(3) exempt purposes. They failed the operational test because they no longer are operating as an organization exempt under section 501(c)(3) of the code. Hence it is our recommendation that their exempt status should be revoked effective December 01, 20XX the beginning of the tax year whereas we became aware that they no longer are operating as an organization exempt section 501(c)(3) of the code.

If revocation is upheld, will be required to file Form 1120 for the tax periods ending November 31, 20XX and all subsequent tax years.