



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
TEGE EO Examinations Mail Stop 4920 DAL  
1100 Commerce St.  
Dallas, Texas 75242

Date: December 14, 2018

Release Number: **201922033**  
Release Date: 5/31/2019  
UIL Code: 501.03-00

Tax Year Ending:  
December 31, 20XX  
Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

**CERTIFIED MAIL – RETURN RECEIPT**

Dear :

This is a final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Code section 501(c)(3) effective January 1, 20XX. Your determination letter dated March 25, 20XX is revoked.

The revocation of your exempt status was made for the following reason(s):

Organizations described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents or otherwise establish that you are operated exclusively for exempt purposes and that no part of your net earnings inure to the benefit of private shareholders or individuals. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by sections 6001 and 6033(a)(1) and the regulations thereunder.

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

Organizations that are not exempt under section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms, and information, please visit [www.irs.gov](http://www.irs.gov).

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 and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

United States Tax Court  
400 Second Street, N.W.  
Washington, D.C. 20217

U.S. Court of Federal Claims  
717 Madison Place, N.W.  
Washington, D.C. 20439

U.S. District Court for the District of Columbia  
333 Constitution Ave., N.W.  
Washington, D.C. 20001

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under section 7428 of the Internal Revenue Code.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 1-877-777-4778.

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

Sincerely,

Maria Hooke  
Director, EO Examinations

Enclosure:  
Publication 892



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

Date: 9/28/2018

Taxpayer Identification Number:

Form:

990-N

Tax Year(s) Ended:

December 31, 20XX

Person to Contact:

Employee ID:

Telephone:

Fax:

Manager's Contact Information:

Employee ID:

Telephone:

Response Due Date:

10/28/2018

**CERTIFIED MAIL – Return Receipt Requested**

Dear :

**Why you're receiving this letter**

We enclosed a copy of our audit report, Form 886-A, Explanation of Items, explaining that we propose to revoke your tax-exempt status as an organization described in Internal Revenue Code (IRC) Section 501(c)(3).

**If you agree**

If you haven't already, please sign the enclosed Form 6018, Consent to Proposed Action, and return it to the contact person shown at the top of this letter. We'll issue a final adverse letter determining that you aren't an organization described in IRC Section 501(c)(3) for the periods above.

After we issue the final adverse determination letter, we'll announce that your organization is no longer eligible to receive tax deductible contributions under IRC Section 170.

**If you disagree**

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.

3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

The IRS Appeals Office is independent of the Exempt Organizations division and resolves most disputes informally. If you file a protest, the auditing agent may ask you to sign a consent to extend the period of limitations for assessing tax. This is to allow the IRS Appeals Office enough time to consider your case. For your protest to be valid, it must contain certain specific information, including a statement of the facts, applicable law, and arguments in support of your position. For specific information needed for a valid protest, refer to Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

Fast Track Mediation (FTM) referred to in Publication 3498, The Examination Process, generally doesn't apply now that we've issued this letter.

4. Request technical advice from the Office of Associate Chief Counsel (Tax Exempt Government Entities) if you feel the issue hasn't been addressed in published precedent or has been treated inconsistently by the IRS.

If you're considering requesting technical advice, contact the person shown at the top of this letter. If you disagree with the technical advice decision, you will be able to appeal to the IRS Appeals Office, as explained above. A decision made in a technical advice memorandum, however, generally is final and binding on Appeals.

**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 adverse determination letter.

**Contacting the Taxpayer Advocate Office is a taxpayer right**

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

**For additional information**

You can get any of the forms and publications mentioned in this letter by visiting our website at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact the person shown at the top of this letter.

Sincerely,

Maria Hooke  
Director, Exempt Organizations  
Examinations

Enclosures:

Form 886-A  
Form 6018  
Form 4621-A

Form <b>886-A</b> (May 2017)	Department of the Treasury – Internal Revenue Service <b>Explanations of Items</b>	Schedule number or exhibit 1
Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended 20XX

**Issues**

Whether the taxpayer has demonstrated through the production of records that it is organized and operated exclusively for exempt purposes under 501(c)(3) of the Internal Revenue Code.

**Facts**

Per the State of \_\_\_\_\_, the EO is incorporated in the state of \_\_\_\_\_. The Articles of Incorporation were filed with the state on 10/17/20XX. The entity type is stated as "ordinary business – Non-Stock." The effective date is 10/17/20XX. \_\_\_\_\_ is stated as the resident agent. The Taxpayer filed Articles of Incorporation as a Tax Exempt Nonstock Corporation. The following representation are made in the Articles.

The name of the organization is \_\_\_\_\_. The purpose for which the corporation is formed is stated as, "To house and train homeless, needy and disabled individuals to be productive contributors to society." The resident agent is \_\_\_\_\_. The number of directors is three. The names of the Directors are \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

Article VIII states the following:

*"No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributors to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.*

The Determination Application, (Form 1023) is signed by \_\_\_\_\_, as the President of the organization. It is dated 12/19/XX. The application is date stamped as being received in \_\_\_\_\_ on 1/11/20XX. The business address of the organization is stated as \_\_\_\_\_, in \_\_\_\_\_. The application states that bylaws have been adopted. The application indicates that all required organization documents have been adopted. The application states that none of the officers are related through family or business relationships. It also, states that that the applicant does not have a business relationship with any of officers.

In Part V of the application, "Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Employees, and Independent Contractors," the following information is requested.

The names, titles, and mailing addresses of all of your officers, directors, and trustees. For each person listed, state their total annual compensation, or proposed compensation, for all services to the organization, whether as an officer, employee, or other position. Use actual figures, if available. Enter "none" if no compensation is or will be paid.

The information the Taxpayer reported in response to this request is stated below:

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<u>Name</u>	<u>Title</u>	<u>Address</u>	<u>Compensation Amount (annual actual or estimated)</u>
	Chairman		\$0
	Vice Chairman		\$0
	Treasurer		\$0

Also in Part V of the application, the Taxpayer asserts that no officer, Director, Trustee, employee, or independent Contractor will receive more than \$0 per year. The applicant also asserts that no independent contractor will receive more than \$0 per year.

Other assertions made in Part V of the application are stated below.

- 2b. No business relationship exists between any of the founders/directors/officers.
- 3b. None of the founders/directors/officers receive compensation from any other organization that are related to the founders/directors/officers through common control.
4. In establishing compensation for the founders/directors/officers, the Taxpayer stated that regarding compensation, the organization will follow a conflict of interest policy, that it will approve compensation arrangements before paying compensation, the organization will document in writing the date and terms of the approved compensation arrangements, a record in writing will be maintained of the decisions of founders/directors/officers regarding compensation arrangements, and compensation arrangements will be based on compensation paid by similarly situated organizations and current compensation surveys.
- 5a. The organization has adopted a conflict of interest policy.
- 6a. The organization will not compensate founders/directors/officers through non-fixed payments.
- 7a. The organization will not buy any goods or services from the founders/directors/officers.
- 8a. There will be no leases, contracts, or other agreements between the organization and its founders/directors/officers.

The organization has adopted a conflict of interest policy. The stated purpose of the conflict of interest statement is articulated in Article I. It states the following:

“The purpose of the conflict of interest policy is to protect interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transactions. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.”

Article III of the Conflict of Interest Policy provides procedures for the following:

1. Duty to disclose
2. Determining whether a conflict of interest exists.
3. Procedures for addressing the conflict of interest
4. Violations of the conflict of interest policy.

Article IV states that there will be records of all proceedings.

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Article V – Compensation, states the following:

a. A voting member to the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

Determination letter (947) is dated 3/25/20XX. This letter recognizes the Taxpayer as a 501(c)(3) organization with a foundation code of 170(b)(1)(A)(vi). Effective date is 10/17/20XX. Per the letter, Compliance Guide for 501(c)(3) Public Charities was included with this letter. This letter is signed by \_\_\_\_\_, Director, EO Rulings and Agreements.

REVENUE

The taxpayer initially filed a Form 990-N for the 20XX tax year. On this return, it is stated that gross receipts were not greater than \$0. Subsequently, the taxpayer filed an amended Form 990 return. Form 990 for the year 20XX states its revenue and expense items as follows:

The taxpayer states its revenue for the year on the amended return as \$0.

It appears that the totality of the organization's funding comes from the following \_\_\_\_\_ organizations. See below:

Funding 20XX

	\$ 0
	\$ 0
Total	<u>\$ 0</u>

In Part IV, question 33 of the return the Taxpayer indicates that the organization owns 0% of \_\_\_\_\_ disregarded entities. In Schedule R, these disregarded entities are identified as \_\_\_\_\_ and \_\_\_\_\_. Per the 20XX 990 return for the year under exam, these \_\_\_\_\_ organizations provided 0% of the Taxpayer's funding.

In the course of the examination, other disregarded entities were identified. Per the initial interview with \_\_\_\_\_, the taxpayer specifically identified 0 business entities that were gifted to \_\_\_\_\_. These are \_\_\_\_\_, and \_\_\_\_\_ presented signed documents indicating the gifting of these organizations. A review of the banking records of the organization and its disregarded entities show that the amount stated as revenue is incorrect. When one reviews the bank statement for all the disregarded entities and removes intercompany transfers, the amount of revenue received by \_\_\_\_\_ is higher than that stated on the 20XX Form 990. See detail below.

<u>Entity</u>	<u>Year</u>	<u>Taxable Bank Deposits</u>
	20XX	\$0
	20XX	\$0
	20XX	\$0
	20XX	\$0
	20XX	\$0
	20XX	\$0
	20XX	<u>\$0</u>
Total		\$0
Less Stipends paid		<u>(0)</u>
Total Adjusted Revenue		\$0



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Less amount reported on 990 (0)  
 Unreported Revenue on 990 \$0

The founders of \_\_\_\_\_ are also the owners of a business entity. This organization is \_\_\_\_\_ . Each of the founders of the organization reports income and expense from this business on Schedule C of their 1040 returns for 20XX. Since there are \_\_\_\_\_ owners of this business, this income should have properly been reported as partnership income on a Form 1065. A review of the 20XX bank statements for \_\_\_\_\_ shows that funds from \_\_\_\_\_ and its disregarded entities were transferred into the account of \_\_\_\_\_ , a business wholly owned by the founders of \_\_\_\_\_ . See schedule below:

20XX Transfers to

Transfer from _____	\$ 0
Transfers from _____	\$ 0
Transfer from _____	\$ 0
Transfer from _____	<u>\$ 0</u>
Total	<u>\$ 0</u>

The RA has not been able to establish a business reason for these transfers. No contracts exist that would explain these transfers to the business entity owned by the founders. Nor has the organization provided an explanation for these transfers.

A review of bank records also shows that funds were transferred to the parents of \_\_\_\_\_ . No W-2 or 1099s were issued related to these transfers. These are summarized below:

Payment to Family Members

From _____	WF #0000 & _____	#0000
<u>Date</u>	<u>Amount</u>	
1/10/20XX	\$ 0	
1/15/20XX	\$ 0	
2/2/20XX	\$ 0	
2/3/20XX	\$ 0	
2/22/20XX	\$ 0	
3/2/20XX	\$ 0	
5/1/20XX	\$ 0	
2/10/20XX	\$ 0	
2/10/20XX	<u>\$ 0</u>	
Total	<u>\$ 0</u>	

The business address of \_\_\_\_\_ in 20XX was \_\_\_\_\_ , in \_\_\_\_\_

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This is a house in a residential neighborhood. This house was rented by \_\_\_\_\_ . Per the Form 1040s of the founders, this is also their residencies. Also, \_\_\_\_\_ parents and brother lived at this location. There is no indication that any of these individuals reimbursed \_\_\_\_\_ for providing this housing.

Expenses are stated on the 20XX Form 990 return as follows:

**990 Expenses**

Legal	\$ 0
Accounting	\$ 0
Lobbying	\$ 0
Advertising and Prom.	\$ 0
Office Expense	\$ 0
IT	\$ 0
Occupancy	\$ 0
Travel	\$ 0
Conferences	\$ 0
Interest	\$ 0
Insurance	\$ 0
Resident Supplies	\$ 0
Licensing Fees	\$ 0
Pest control,	
Maintenance	\$ 0
Charitable contributions	\$ 0
Other expense	<u>\$ 0</u>
	\$ 0

In an effort to document the expenses of the organization and the use of the organization's funds, the Revenue Agent issued Information Document Requests (IDRs). IDRs 2 -12 were issued on 5/10/XX. These IDRs are attached to the Revenue Agent Report. The purpose of each IDR is listed below.

IDR #2 sought an explanation of the organizations apparent understatement of its income. Banking records indicated that the organization did not report \$0 of income on its Form 990 return.

IDR #3 sought information on the officer's compensation, as banking records indicated that compensation of the officers was misstated on the Form 990 return. IDR #3 also sought information as to how officer compensation was determined and reported on the 990 return and the 1040 returns. It also sought information as to how the organization reported wages of its workers, as there were no W-2s or 1099s issued.

IDR #4 sought information regarding the transfer of funds to an officers' owned business.

IDR #5 sought documentation relating to the officer's expenses at restaurants.

IDR #6 sought information regarding the organization's payment to relatives of the CEO of the organization and also sought information regarding payment to the relatives of the COO of the organization.

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IDR #7 sought information regarding travel expenses of the officers of the organization.

IDR #8 sought information regarding the hotel expenses of the officers.

IDR #9 sought information regarding automobile and gas expenses of the officers.

IRD #10 sought information regarding convenience store expenses.

IDR #11 sought information relating to expenses at liquor stores, charges, and other expense items that appear to be personal in nature.

IDR #12 sought information regarding the cash withdraws totaling \$0

The Revenue Agent worked with the taxpayer's power of attorney to secure this information. The Revenue Agent provided the power of attorney with all bank statements that were in the Revenue Agents procession. The power of attorney indicated that he was in the process of securing this information, but was having issues obtaining the financial records of the organization. On 7/30/XX, the Revenue Agent issued an extension notice granting the taxpayer 15 additional business days to submit the requested information. On 8/21/XX, the Revenue Agent issued a second extension of 15 days to submit the requested information. On 9/12/XX, the Revenue Agent issued a Delinquency Notice to the taxpayer stating that if the requested information was not received by 9/25/XX, the Revenue Agent would propose revocation of the organization's exempt status.

At present, the Revenue Agent has not received the requested information. It should be noted that the requested records that the Revenue Agent sought were all records that belonged to the organization and should have been easily available to them. Currently, the Power of Attorney is seeking these records through a FOIA request from the Small Business/Self-Employed (SBSE) Division of the Internal Revenue Service, as these documents were summoned from banks pursuant to an SBSE examination of the officers. Also, the taxpayer could have provided this Revenue Agent answers to most questions by reviewing their internal record keeping, i.e. the General Ledger, Income Statement and journal entries.

## Law

### 26 U.S. Code § 6033 - Returns by exempt organizations

#### (a) Organizations required to file

##### (1) In general

Except as provided in paragraph (3), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

(b) **Certain organizations described in section 501(c)(3)** Every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary may by forms or regulations prescribe, setting forth—

(9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent—

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- (A) diversion of funds from the organization's exempt purpose, or  
(B) misallocation of revenues or expenses,

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.

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.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. *Better Bus. Bureau v. United States*, 326 U.S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); *Am. Campaign Acad. v. Commissioner*, 92 T.C. 1053, 1065 (1989); see also *Old Dominion Box Co., Inc. v. United States*, 477 F.2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973) ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. *Am. Campaign Acad. v. Commissioner*, supra at 1065-1066.

In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978), the courts ruled the organization did not qualify for exemption under IRC section 501(c)(3) because it was not operated exclusively for charitable, educational, or scientific purposes.

In order to be recognized as exempt under IRC section 501(c)(3), the organization is prohibited from:

- 1) Permitting its net earnings to inure to the benefit of private individuals or operating in a way where more than an insubstantial part of its activities further private versus public purposes
- 2) Engaging substantially in legislative activity
- 3) Participating or intervening in any political activity

Treas. Reg. section 1.501(c)(3)-1(c)(2) states that an organization is not exclusively operated for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. section 1.501(a)-1(c) defines a "private shareholder or individual" as "persons having a personal and private interest in the activities of an organization."

If the private benefit to an individual or a group of individuals is greater than the public benefit, the private benefit is considered substantial. A substantial private benefit can result in revocation of exempt status.

Even a small amount of private inurement is fatal to exemption. In *Spokane Motorcycle Club v. U.S.*, 222 F. Supp. 151

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(E.D. Wash. 1963), net profits were found to inure to private individuals where refreshments, goods and services amounting to \$825 (representing some 8% of gross revenues) were furnished to members. In *John Marshall Law School and John Marshall University v. United States*, 228 Ct. Cl. 902 (1981), 81-2 U.S.T.C. 9514, involve classic channeling of an organization's net earnings to those in control. The court sustained the Service's revocation of the school's exempt status based on inurement. The court found inurement existed when the school provided the following to family members who were its officers:

- Interest free loans
- Unsecured loans
- Payments for non-business travel
- Payments for non-business entertainment
- Personal health spa membership

In *United Cancer Council, Inc. v. Commissioner*, 165 F.3d 1173 (1999), the appeals court stated the inurement clause of IRC section 501(c)(3) interprets the phrase "private individual or shareholder" as an insider of the charity. The court further said a charity must not improperly pass its earnings to its founder, board members, their families, or anyone else described as an insider who is the equivalent of an owner or manager. The insider could be an employee such as an office manager.

### Taxpayer Position

The taxpayer through its power of attorney asserts that it has been unable to produce the records requested by the Revenue Agent. In a letter dated 9/11/20XX, the power of attorney states the following:

As previously mentioned, on January 15, 20XX my office sent to the Internal Revenue Service (IRS) a Freedom of Information Act (FOIA) request for all the financial documentation it has relating to this taxpayer. Unfortunately, we only received our first partial response to this request on or about July 25, 20XX, totaling 0 pages. While we are very pleased to finally receive a response to our FOIA request, its unexpectedly large number of documents has required the taxpayer to expend significant time and resources going through them. Considering this complex review process, it appears that the taxpayer will not be able to properly respond to your information request for at least another thirty (30) days. I am sorry for this delay. Notwithstanding the foregoing, however, please know that from my review thus far of the taxpayer's books and records, including those provided to my office by the IRS pursuant to the FOIA request, I believe the taxpayer will be able to provide all the records you are requesting, but just not by the current due date.

The power of attorney also states the following regarding one of the organization's disregarded entities.

Further, I would like to bring to your attention an important note regarding your Form 4564, which I noticed upon review. Apparently, \_\_\_\_\_ is listed therein as an entity owned by the taxpayer. It is my understanding the assignment/transfer of \_\_\_\_\_ to the taxpayer was never actually finalized. The only entities assigned/transferred to \_\_\_\_\_ were \_\_\_\_\_ and \_\_\_\_\_, both of which are correctly listed on your Form 4564.

### Government Position

The government's position is that the taxpayer has not demonstrated that it has not engaged in specific acts of inurement. The government position holds that the taxpayer is not in compliance with Section 1.501(c)(3)-1(d)(ii) of the regulations. This regulation provides that an organization is not organized or operated exclusively for one or more

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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.

While the taxpayer contends that it is attempting to gather these records, it should be noted that the records which the Revenue Agent has requested are the records belonging to the taxpayer.

The Revenue Agent has raised legitimate questions regarding the organization's use of its funds. The Revenue Agent has on multiple occasions requested documentation that would allow the Revenue Agent to determine if the organization's founders have engaged in acts of inurement. The efforts of the Revenue Agent to secure this information from the taxpayers has not been successful. Reg. 1.501(c)(3)-1(d)(1)(ii) states that the burden of proof is upon the organization to establish that it is not organized or operated for the benefit of private interests. This requirement applies equally to inurement and private benefit issues.

Considering that the taxpayer is unable or unwilling to establish that it is not organized or operated for the benefit of private interests, the Revenue Agent is proposing revocation of the organization's exempt status as of January 1, 20XX, the first day of the year under audit.

### **Conclusion**

Organizations described in I.R.C. § 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents or otherwise establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. § 6001, 6033(a)(1) and Rev. Rul. 59-95, 1959-1 C.B. 627. As such, the Service proposes revocation of your exempt status as of January 1, 20XX.