



Department of the Treasury
Internal Revenue Service
Independent Office of TE/GE
Appeals

2525 Capitol Street, Suite 201
Fresno, CA 93721

Release Number: **201944017**

Release Date: 11/1/2019

Date: C **AUG 08 2019**

Person to contact:

Name:

ID number:

Telephone:

Fax:

Employer ID number:

D

Uniform issue list (UIL):

501.03-00, 501.03-05, 501.03-30

A

B

Certified Mail

Dear

This is a final adverse 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 Section 501(c)(3) of the Code.

We have hereby revoked the favorable determination letter to you dated June 28, and you are no longer exempt under Section 501(a) of the Code effective January 1

We made the adverse determination for the following reasons:

You operate as a sponsoring organization for donor advised funds in which you routinely accept non-cash contributions of LLC interests. The non-cash contributions you accept are substantially similar to the type of transaction described in IRS Notice 2004-30. In conducting your activities you used the services of an individual who is permanently enjoined by a Federal district judge for promoting an abusive contribution scheme similar to contributions to your organization. Your activities served purposes other than charitable purposes and benefited private interests. As such you did not operate exclusively for tax-exempt purposes as is required for an organization to be described in section 501(c)(3) of the Code. Because you operated in a manner materially different than you represented in your exemption application, this revocation is effective retroactively to the year in which you began accepting the referenced non-cash contributions.

You're required to file federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Section 6110 of the Code after deleting certain identifying information. We 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 can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- The United States District Court for the District of Columbia
- You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

• **United States Tax Court** 400 Second Street, NW Washington, DC 20217

• **US Court of Federal Claims** 717 Madison Place, NW Washington, DC 20005

• **US District Court for the District of Columbia**
• 333 Constitution Avenue, NW Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under Section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status, for more information about the Appeals process.

You also have the right to contact the Taxpayer Advocate Service (TAS). 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 or call 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS 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.

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

Sincerely,

Appeals Team Manager

Enclosures:
Publication 892

cc: E



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

Date:
October 2, 2018
Taxpayer Identification Number:

Form:
990 Return
Tax Year(s) Ended:
20XX, 20XX
Person to Contact:

Employee ID:
Telephone:
Fax:
Manager's Contact Information:

Employee ID:
Telephone:
Response Due Date:
November 1, 20XX

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 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 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, EO Examinations

Enclosures:
Form 886-A
Form 6018

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

Issues

- Whether () exempt status under Internal Revenue Code (IRC) § 501(c)(3) should be revoked for failure to operate exclusively in furtherance of an exempt purpose.
- Whether exempt status should be revoked retroactively to January 1, 20XX, the first date failed to qualify for exempt status.

Background

was formed by on April 28, 20XX in for the primary purpose of providing assistance to individuals who live in poverty and are unable to provide for themselves and their family.

Although located in , is also registered with Secretary of State as a Domestic Limited Liability Company. is the registered agent. See Exhibit 1.

On August 19, 20XX, filed Form 1023, *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*, seeking federal tax-exempt status under IRC § 501(c)(3).

In subsequent correspondences (letters dated March 1 and 12, 20XX), advised the IRS that he hoped in the future to have received donor (sic) advised funds from various individuals and/or organizations.

In the letter dated June 28, 20XX, the IRS recognizes as a tax-exempt entity described under IRC §§ 501(c)(3) and 170(b)(1)(A)(vi), effective April 28, 20XX.

is operated on a calendar year basis. sole activity is receiving donation of LLC ownership interest and cash from the same donors who contributed the LLC interest, and distributing the cash contributions to other charities.

Board of Directors

board of directors comprised of the following:

- , director and president
- , director and treasurer
- , director and secretary

and are husband and wife. runs daily activities. signs all acknowledgement letter after receiving LLC interest donation. also signs check and makes deposit. maintains the books and records.

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

Neither [redacted] nor [redacted] received compensation from [redacted] for their services. However, emails exchange between [redacted] and [redacted] (discussed later under section About [redacted]) show that [redacted] compensated [redacted] personally for assisting with his charitable scheme.

In an email dated March 4, 20XX from [redacted] to [redacted], [redacted] wrote "... Also; how do I treat the \$0 advance for the LLC in [redacted] that you sent me. Was that a gift or do you send a 1099 or what? Today is our appointment with Tax preparers."

[redacted] replied, "[redacted] : Just have your CPA add \$0 to the income section of your return. Should not be an issue. Thx."

In another email dated October 20, 20XX from [redacted] to [redacted], [redacted] wrote "... Also, sometime back you mentioned that you would try to find some compensation for my work here. I am just wondering is that's still a possibility or not."

On October 21, 20XX, [redacted] replied as follows, "...I will send you something this year personally for all you do as well. Yes, send me financial asap and I will get the return done."

[redacted] followed up with an email dated December 21, 20XX as follows, "...I will send you a check for \$0 for year end. Take a few hundred dollars and fund the [redacted] account. You keep the rest. Okay??

Filed Form 990

[redacted] filed Form 990 for the tax years 20XX and 20XX and reported the following:

Assets	20XX	20XX
Cash	0	0
Investment – LLC interest	0	0
Total	0	0

[redacted] disclosed during an interview on February 8, 20XX that [redacted] has only one bank account maintained at [redacted] which is also reflected in [redacted] general ledger.

Emails exchange between [redacted] and [redacted] show that [redacted] also maintain a checking account ([redacted]) located in [redacted]. [redacted] did not disclose the existence of the [redacted] account. The account also did not appear on [redacted] books and records.

In an email dated October 20, 20XX from [redacted] to [redacted], [redacted] wrote, "...Another item: Should I close the [redacted] in [redacted] ? It's taking \$0 a month for inactivity. You gave me \$0 when we opened the account but it's been idle since then."

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

Revenue	20XX	20XX
Cash contributions	-	0
Non-cash contribution	0	0
LLC income	0	0
Total income	0	0

Cash contributions represent contributions and distributions from the LLCs and donors who donated LLC interest to . In 20XX, received \$0 cash contributions/distributions from the LLC. Instead of separately reporting the cash on the return, combined it with non-cash contributions.

Most donors instruct to distribute the cash to other charities. The donors fill out a "Disbursement Request Form". On this form, the donors list other charities they wanted to receive their distribution and amount. The donors then send the form along with a check to to cover the contribution plus administrative fee.

deposits the check into its checking account. then issues a check to each charity listed on the form and retains 0% of cash received for administrative fee. stated that the fee is for processing (receiving and disbursing) the donor's cash. The fee totaled \$0 and \$0 for the tax years 20XX and 20XX respectively.

LLC income represents share of oncome such as interest, dividends, royalties, and rental income allocated by the LLCs. The amounts were reported on Schedule K-1.

Expenses	20XX	20XX
Grants to other charities	0	0
Other expenses	0	0
Total	0	0

Grants to other charities equated to 0.00 and 0.00 percent of total revenue for the tax years 20XX and 20XX respectively.

Preparation of Form 990

states that he prepares return Form 990 with the help of his team. However, emails exchange between and show that prepared the return. For example, in an email dated July 28, 20XX from to , and at , wrote,

"The return will be due in 2 weeks.

I need K-1s for all LLC utilizing as the charity.

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

Once I have this, I can complete the return. No problem.

Please advise. Thx. ..”

In an email dated November 9, 20XX from _____ to _____, _____ wrote “
: Attached is the 990 and _____ Please print both and sign. Also attached is a detail for
Schedule R which should be attached to the Federal 990 only. Once you have these signed,
then mail the returns with the statute extension attached to both state and fed returns. Mail to
the following. Let me know if you have any questions. Blessing!

The address for mailing is:

The Fed 990 mailing address is:

Department of Treasury Internal Revenue Service Center Ogden, UT 84201-0027”

does not have a Form 990-T filing requirement and has not filed that form.

Donated LLCs Interest

received substantial non-cash contributions in the form of LLC ownership interest from
various donors. Since 20XX, _____ received ownership interest donation in the following LLCs.
discloses that the donors were referred to _____ by financial planners, CPAs, attorneys, and
members of his team.

LLC	LLC
-----	-----

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

Operating Agreement shows that the donor assigned his/her ownership interest in _____ to _____ in 20XX.

_____ and _____ are owned by the same donor.

_____, _____, and _____ are owned by the same donor.

Membership interest in _____, _____, and _____ was transferred from _____ (discussed later in the report).

Per _____ Secretary of State, _____ is listed as their registered agent for _____, _____, and _____.

The original shareholder in _____ donated 0 percent of his/her interest in the LLC to _____.

During the audit, _____ provided the following for

1. Statement of Assets and Liabilities (balance sheet)
2. Bank statement from April 20XX to January 20XX for checking account # _____ maintained at _____.

The Statement of Assets and Liabilities shows _____ owns 0 percent of _____, valued at \$0.

The bank statements show _____ had \$0 in its account. The only activity in this account was a purchase of checks for \$0. There was no deposit into this account. The account was closed on January 30, 20XX and the \$0 was transferred to an unknown account.

_____ did not provide Profit & Loss Statement (or similar) for _____. _____ explains that since bank service charges were the only activity, no financial statements were created.

_____ provided Statement of Assets and Liabilities for _____. The Statement of Assets and Liabilities shows that _____, _____, and _____ each holds 0 shares in _____.

The value of 0 shares is \$0 million.

Explanations of Items

Name of taxpayer	Tax Identification Number (<i>last 4 digits</i>)	Year/Period ended 20XX, 20XX
------------------	--	---------------------------------

states that no bank account was opened for in 20XX because they were received late in 20XX.

In the letter dated April 19, 20XX, revised the amount of LLC interest received in 20XX from \$0 to \$0.

20XX		20XX	
LLC	Amount	LLC	Amount
	0		0
	0		0
	0		0
	0		0
	0		0
	0		0
	0		0
	0		0
	0		0
	0		0
	0		0
Total	0	Total	0

How LLC Ownership Interest is Donated to

The process begins with the donors creating a donor-advised account or donor-advised fund with _____ by filling out a Donor Application and paid initial set-up fee, ranging from \$0 to \$0. The donors provide their information and name their donor-advised account.

The donors then assign their ownership interest in their LLC to _____ by executing a gift assignment agreement called Gift Assignment of Membership Interest (Gift Assignment). The Gift Assignment specify either the number of preferred non-voting membership units or percentage of non-voting membership interest to be assigned to _____. The Gift Assignment also requires _____ to agree to the terms and conditions of the Operating Agreement.

Upon accepting the LLC interest, _____ signs the Acknowledgment of Assignment of Membership Units (Acknowledgment) on behalf of _____. In most case, the Acknowledgment specifically requires _____ to read and understand Section 7.8 of the Operating Agreement.

Section 7.8 states, “**7.8 Maintenance of a Tax Exempt Member.** In the event a gift of Membership Units is made to an organization which holds tax exempt status, the Company shall retain the right to reclaim any or all Membership Units of such Member and transfer them to an alternate tax exempt organization, in good standing and which holds a similar mission, in the event the Member's tax exempt status is revoked, audited, or otherwise jeopardized, in the determination, and at the absolute and unquestionable discretion, of a majority in interest of the

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

*Common Members. A gift of Membership Units of the Company to such tax exempt organization shall be deemed null and void unless this retained right is specifically communicated to, with reference to this **Section 7.8** of the Agreement, expressly acknowledged, and agreed to, by the receiving tax exempt organization. **Notwithstanding any provision to the contrary herein, under no circumstance shall any tax-exempt Member of the Company be liable for any debt of the Company.***

Separately from signing the Acknowledgment, _____ also signs the Operating Agreement agreeing to its terms, conditions, and provisions. _____ further signs the Schedule of Allocation (Exhibit B) agreeing to the allocation set forth in Schedule of Allocation.

Review of Operating Agreement

_____ provides Operating Agreement for the LLCs. The Operating Agreements reveal the following ownership information, including profit and loss allocation.

LLC	Donor's common units	Donor's preferred units	's common units	's preferred units	Authorized units	Authorized common units	Authorized preferred units	capital %	profit %	loss %
	0	-	0	0	0	0	0	0%	0%	0%
								0%	0%	0%
				0		0	0	0%	0%	0%
			-	0	0	0	0	0%	0%	0%
0	-	-		0	0	0	0	0%	0%	0%
0	0	-		0	0	0	0	0%	0%	0%
0	-	-		0	0	0	0	0%	0%	0%
0	-	-		0	0	0	0	0%	0%	0%
0	0	-		0	0	0	0	0%	0%	0%
0	0	0		0	0	0	0	0%	0%	0%
0	0	-		0	0	0	0	0%	0%	0%
								0%	0%	0%
								0%	0%	0%
Operating Agreement not provided								0%	0%	0%
No shares info					0	00	0	0%	0%	0%
0	-	-		0	0	0	0	0%	0%	0%
								0%	0%	0%
0	0	-	-		0	0	0	0%	0%	0%
0	-	-		0	0	0	0	0%	0%	0%
Operating agreement not provided.										
0	-	-		0	0	0	0	0%	0%	0%
		-		0	0	0	0	0%	0%	0%

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

0	0	-	0	0	0	0	0%	0%	0%
0	0	-	0	0	0	0	0%	0%	0%
0	-	-	0	0	0	0	0%	0%	0%
See note				0	0	0	0%	0%	0%
0	-	-	0	0	0	0	0%	0%	0%
No shares info				0	0	0	0%	0%	0%
0	-	-	0	0	0	0	0%	0%	0%
			is the owner of				0%	0%	0%
0	0	-	0	0	0	0	0%	0%	0%
0	0	-	0	0	0	0	0%	0%	0%

The units owned by a member determine the member's capital and profit percentage. For example, if a member owns 0 units of 0 units issued, he/she owns 0 percent of capital and profit interest in the company. Article 5.3 of most Operating Agreement. The Operating Agreements reveal the following notable provisions:

- Majority interest means the interest of the Common Members holding greater than 0 percent of the total interest held by the Common Members. Article 1.16
- Preferred Member means the holder of nonvoting units. Article 1.30
- Preferred Return (Article 1.31) means with regard to a Preferred Member, starting on date Capital Contribution is made, an annual amount equal to the lesser of:
 - 0 percent of the Company's net pre-tax profit or
 - 0 percent, or other agreed percentage, of the Net Asset Value (NAV) of the unrecovered Capital Account Balance of such Preferred Member, as such balance may change from time to time, and only in the year Company generates positive net revenue, or
 - 0 percent of the Company's net revenue (gross revenues minus cost of goods sold = net revenues), to be calculated on an annual basis or
 - Any other calculation as may be agreed upon unanimously by and between the Members from time to time.
- Preferred Allocation Account (Article 1.28) means a separate account maintained for each Preferred Member which is increased by (i) the amount of net profits allocable to the Preferred Member in each fiscal year and reduced by any amount credited to the Preferred Distribution Account along with any interest earned on such amount and (ii) interest on the Preferred Distribution Account. The balance of this account shall be distributed to the Preferred Member's Capital Account at the end of the current year:

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

Preferred Allocation Account =

Beginning Balance
 (+) Preferred Return (annual)
 (+) Other allocated net profits
 (+) Interest earned on Preferred Distribution Account
 (-) Amount credited to the Preferred Distribution Account
 Ending Balance _ Preferred Member's Capital Account

- Preferred Distribution Account (Article 1.29) means a separate account maintained for each Preferred Member which is increased by (i) the amount of the Preferred Return credited to such Preferred Member and (ii) interest on the balance of such account. The balance of this account shall be distributed to the Preferred Member by 12/31 of the following fiscal year:

Preferred Distribution Account =

Beginning Balance
 (+) Preferred Return (annual)
 (+) Interest earned on Preferred Distribution Account
 Ending Balance _ Distribution to be Paid to Preferred Member by Dec. 31st of following Fiscal Year

- Supermajority interest means a Member or Members holding among them at least 80 percent of all voting rights. Article 1.37
- The Manager, in most cases is the same as the donor, has exclusive management duties. The Manager has exclusive authority, discretion, power, and control to manage the business. Article 4.1. With respect to certain transactions, the Manager must obtain written consent or affirmative vote of Members holding supermajority interest. Article 4.4
- Preferred shareholder has no voting right or consent right. Article 5.5
- Article 6.2 (c) – Notwithstanding anything to the contrary herein, unless otherwise agreed upon under the **Schedule of Allocations** attached hereto and incorporated herein as **Exhibit B**, and to the extent permitted by all applicable law:
 - For all activity considered active, resulting income (or loss) shall be allocated to the Common Members in proportion to each such Common Member's Membership Interest;
 - Deductions related to income, expenses, and losses, shall be allocated to the Common Members in proportion to each such Common Member's Membership Interest, except that no such deductions shall be allocated to any tax-exempt Member;
 - The profit of all activities, including royalty income, not considered active shall be allocated as follows:
 - To the extent a preferred member is a tax-exempt organization, one hundred percent (100%) to such preferred member, or as otherwise agreed as identified in Exhibit B

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

- To the extent a tax-exempt preferred member is allocated less than one hundred percent (100%), remaining profits shall be allocated to the other Members according to their respective Membership Interest held, or as otherwise agreed as identified in Exhibit B; and,
 - Amortization expenses shall be allocated to the Common Members in proportion to each such Common Member's Membership Interest.

In most cases, the allocation set forth in the Schedule of Allocation is the same as Article 6.2(c).

- Article 6.3 – Net Losses – except as specifically provided elsewhere in this Agreement, net losses shall be allocated as follows:
 - first, to Common Members who have positive capital account balance in proportion to their respective capital account balances until such capital account balances are reduced to zero, and
 - second, to Preferred Members in proportion to their respective ownership of non-voting units
- The Manager shall cause the Company (LLC) to distribute net operating cash flow on a quarterly basis or at such other time as the Manager reasonably determine. However, subject to Section 6.7 (Return of Distributions), neither the Company nor the Manager shall be liable for the making of distributions in accordance with the provision of this section.
Article 6.4
- Transfer of membership interest is restricted. Article 7.1
- All transfers must be approved by the Manager and all Members. Article 7.2
- Restrictions do not apply to transfers:
 - To the Company
 - To a trust for the benefit of Member
 - By inter vivo gift or by testamentary transfer to any spouse, parent, sibling, in-law, child, or grand-child of the Member or charitable remainder trust, or donor-advised family foundation; or
 - To any Affiliate (as defined in Article 1.2) of the Member. Article 7.3
- In case of transfer to a third party, the Company as the first right to purchase the membership interest from the member. Article 7.4
- Any transfer of membership units made involuntarily, except for those pursuant to Section 7.8, shall be deemed null and void and not be recognized by the Manager and the transferee shall have no rights associated with the ownerships of such units.
- Maintenance of tax exempt member. Article 7.8. See complete description above.

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

- Provisions in LLC Agreement of and , are essentially identical. In particular, Article 8.1 of LLC's Agreement provides that the Manager has sole discretion in determining the timing and amount of distribution of cash flow and net proceeds. No less than 0 percent of net cash flow and net proceeds shall be distributed each year beginning in the third year of the Company's existence. The Manager's determination regarding whether or not to make distribution in excess of necessary distribution and the amount of distribution to be made shall be final and binding on all members.

LLCs Cash Distributions to

Schedule K-1 shows the following cash distributions from the LLCs to 20XX

LLC	20XX	20XX
	-	-
0	0	0
0	0	0
0	0	0
-	0	0
-	-	-
-	0	0
-	0	0
0	-	-
-	-	-
-	0	0
0	0	0
-	0	0
0	0	0
0	0	0
0	0	-
0	0	0
-	0	0
-	0	0
-	0	0
-	0	0
0	-	-
-	0	0
-	-	-

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

-	-
-	-
-	-
-	-
0	0

Form 8283

During the audit, provided Forms 8283, *Noncash Charitable Contributions*, for donors who contributed LLC membership units to in 20XX and 20XX. Form 8283 is required when the amount of deduction for all noncash gifts is more than \$0.

appraised the value of LLC ownership units for charitable contribution deduction purposes and signed all Form 8283.

About

On April 3, 20XX, the United States of America, Plaintiff, filed a Complaint for Permanent Injunction and Other Relief against , Defendant. Per the complaint.

1. From 19XX to the present, (" ") has organized, promoted, and operated an elaborate—and bogus—charitable giving tax scheme throughout the United States. Through this scheme, creates an entity for each scheme participant and advises them to transfer assets to the new entity. then causes the participants to purportedly "donate" or "assign" an interest in these entities to charities that controls. then "appraises" the purportedly donated interests in a manner that fails to comply with the law and generally accepted appraisal standards. Finally, prepares the federal income tax return documents to claim the bogus charitable contribution deductions.
2. This entire tax scheme occurs only on paper. Participants never actually transfer or donate anything to purported charities. In some egregious instances, participants claim bogus charitable deductions for nonexistent, fictional assets that fabricates.
3. Regardless of the purported form, advises scheme participants to take unwarranted tax deductions for charitable donations that knows were never made, and, in some instances, for assets that did not exist. sells this scheme to the clients of financial planners and Certified Public Accountants by misrepresenting his experience, his credentials, and the merits of his charitable giving tax scheme. In return, scheme participants pay substantial fees to based on the purported value of the assets initially transferred to the entities.

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

4. charitable giving tax scheme has harmed the United States by depriving the government of tax revenue. The IRS has identified specific transactions that, through 20XX, cost the United States Treasury more than \$0 lost tax revenue. And while the IRS has assessed and will continue to assess scheme participants with significant tax liabilities, it will likely never fully recover the monies bilked from the Treasury.
5. The United States brings this Complaint pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 to enjoin and all persons and entities in active concert or participation with from, among other things, directly or indirectly:
 - a. Making or furnishing or causing another person to make or furnish a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit, or otherwise providing tax advice, in exchange for compensation;
 - b. Preparing (or assisting others in preparing) appraisals in connection with any federal tax matter;
 - c. Acting as federal tax return preparers, or filing, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than his own tax returns; and
 - d. Organizing or assisting in the organization of a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement concerning charitable contribution deductions.

The United States also seeks to disgorge the ill-gotten gains that derived from this bogus charitable giving tax scheme.

Bogus Charities

Since 19XX, has established at least three purported charities in :
 (1) (" "); (2) (" "); and (3) (" ")
 (collectively, the "Bogus Charities"). controlled all three purported charities and operated them in the same manner.

According to their respective Articles of Incorporation, the Bogus Charities were purportedly organized for charitable purposes. submitted a Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code ("Tax Exempt Status Application"), on behalf of each of the Bogus Charities. The IRS granted the Bogus Charities tax exempt status based on the Tax Exempt Status Applications that submitted.

Over the years, is listed on documents filed with the Secretary of State's Office as an officer, treasurer, director, incorporator, or registered agent for the Bogus Charities. has also attempted to avoid IRS scrutiny by

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

affiliating his parents or other individuals with the Bogus Charities on filings with the Secretary of State's Office. At all times, however, controlled the Bogus Charities and was the only true officer and director. The Bogus Charities had no employees.

On May 16, 20XX, executed an agreement with the IRS on behalf of retroactively revoking tax exempt status as of January 1, 20XX. The IRS concluded, and did not dispute, that was not engaged primarily in activities for exempt purposes, and its net earnings inured to the benefit of private individuals—i.e., him and his family.

On 20XX, , on behalf of , stipulated to an entry of judgment against it in U.S. Tax Court for past due taxes for 20XX and 20XX. owed taxes on its income because it was not a tax exempt entity.

On May 19, 20XX, executed agreements with the IRS on behalf of and retroactively revoking and tax exempt status as of January 1, 20XX and January 1, 20XX, respectively, because used and as tools for promoting, organizing, and executing his charitable giving tax scheme.

Bogus Charitable Transactions

Under the first step in scheme, creates a partnership or limited liability company (the "Entity" or "Entities") for scheme participants. Regardless of their form, the Entities are holding companies that exist solely to facilitate scheme. prepares and files all paperwork necessary to create the Entities, including the partnership or LLC agreements.

Next, the scheme participants transfer "property" to the newly formed Entities using contractual documents prepared by . Some participants, at direction, claim to transfer cash or real property to the Entities while others purportedly transfer backdated promissory notes and fabricated intellectual property. Over time, varied how he executed this scheme step, but the variations were meaningless from both economic and federal income tax perspectives.

then drafts the paperwork necessary to cause the scheme participants to "donate" or "assign" an interest in the newly-created Entities to one of the three Bogus Charities.

Some participants purport to donate a % non-controlling interest in their Entity, while others a 0% interest. In some cases, misrepresents the "transaction" to the participants, telling such participants that they were "contributing" a 0% non-controlling interest, when, in fact, completed the transactional paperwork to show a 0% "contribution."

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

then causes the Bogus Charities to send contemporaneous written acknowledgments of the purported contributions to the scheme participants.

appraises each "contribution" to facilitate the bogus charitable deductions. Not only are the appraisals baseless, but is prohibited by law from providing them.

completes, signs, and provides to each scheme participant IRS Forms 8283, Noncash Charitable Contributions ("Form 8283"), which are necessary to claim a non cash charitable contribution of more than \$0. sends the scheme participants the following instructions: "Please find IRS Form 8283 which has been completed and signed. Please attach the Form 8283 with your [tax year] Form 1040. After you have done this, then simply file the Return. . . . Use the value of the gift on Form 8283 (page 2 Part I) as a DEDUCTION on SCHEDULE A – ITEMIZED DEDUCTION – CHARITABLE CONTRIBUTION."

In following instructions, the scheme participants then attach the prepared Form 8283 to their personal federal income tax returns to claim unwarranted charitable deductions. The Forms 8283 are based entirely on the bogus appraisals that prepares to facilitate this scheme.

On paper, it appears that the participants donate something of value to the Bogus Charities. repeatedly advises the scheme participants to take actions to give his scheme substance. This was mere window dressing, however, designed to disguise tax shelter. In reality, the scheme participants retain complete control over their Entities and their Entities' assets and continue to use the purportedly donated assets as if nothing ever happened.

After executing the "transaction," the Bogus Charities do not take dominion or control over the Entities or their assets. The Bogus Charities are simply vehicles through which executes his elaborate charitable giving tax scheme.

told potential participants that they could establish Donor Advised Funds ("DAFs") through the Bogus Charities, but this was a false statement.

To establish a DAF, the Bogus Charities were required to take control of the purportedly contributed Entity interests. As explained throughout this Complaint, the scheme participants never gave up control of the purportedly contributed assets, which knew. If scheme participants actually wanted to make a donation to a charity through a Bogus Charity— which many participants did not do— required them to send to him a "Disbursement Request Form" along with a check made out to one of the Bogus Charities. These "Disbursement Request Forms" merely gave the appearance of a valid DAF, but a valid DAF would never have required an additional check from the participant. This process

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

shows that the Bogus Charities never had dominion or control over any of the purported contributions.

Some participants in _____ tax scheme, upon _____ advice and with his assistance, have taken out substantial loans from their respective Entities even after transferring their ownership interest to one of the Bogus Charities. These loans are made on beneficial terms and sometimes go unpaid. _____ testified in a _____ deposition that most participants borrowed their Entities' assets or used the assets as collateral for some other purpose.

Consequently, participants in _____ scheme receive a large income tax deduction and still get the use and enjoyment of the assets that generated the deduction.

Because each of _____ scheme participants claimed non-cash charitable contributions of over \$0 on their tax returns based on the purported donation of their Entity interests to the Bogus Charities, they were required to obtain qualified appraisals of the purportedly donated Entity interests from "qualified appraisers."

In reality, _____ performs the appraisals for the scheme participants. _____ does not tell scheme participants that he is the appraiser prior to performing the appraisals. _____ completed and signed the Form 8283 for each of the participants, which _____ based entirely on the bogus appraisals he prepared. _____ often listed the following credentials on the Form 8283 after his signature:

_____ claims that he "implemented and consulted on over 0 charitable plans in States encompassing \$_____ since 19XX [and] performed over 0 qualified appraisals of closely-held businesses since 20XX."

The appraisals _____ uses in his tax scheme are bogus because _____ is excluded by law from preparing appraisals in connection with this scheme, the appraisals are not qualified appraisals within the definition of the Internal Revenue Code, and the appraisals are based on unreliable methods.

_____ profits from his scheme by charging a percentage fee based on the value of the purportedly donated assets. His standard fee is "0% of net assets transferred [to the Bogus Charities] up to but not in excess of \$0, plus 0% of net assets transferred which exceed \$0."

Examples of _____ Charitable Giving Scheme

_____ sold his charitable giving tax scheme to _____ based Participant 1 through Participant 1's financial planner. Participant 1 claimed a \$0 charitable contribution deduction on his 20XX federal income tax return. _____ charged \$0 for Participant 1 to participate in this scheme.

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

Participant 1 decided to participate in charitable giving tax scheme in April 20XX. used an existing LLC and illegally backdated every document he prepared for Participant 1 so that Participant 1 could claim a charitable deduction on his 20XX federal income tax return.

On April 10, 20XX, and Participant 1 completed an LLC Agreement to transfer an LLC that had previous established in 20XX to Participant 1. backdated the LLC Agreement to December 29, 20XX.

Then, drafted a promissory note through which Participant 1 promised to pay his LLC \$0. backdated the promissory note to December 31, 20XX. The promissory note was not secured by any collateral and charged a 0% interest rate on outstanding balances in 20XX and 0% on any outstanding balances thereafter.

also drafted an assignment agreement through which Participant 1 purported to assign 0% of his LLC to backdated the assignment agreement as well to December 31, 20XX.

Despite executing the assignment agreement, Participant 1 believed, based on misrepresentations, that Participant 1 only assigned a non-controlling LLC interest to .

On April 17, 20XX, Participant 1 opened a bank account in the LLC's name. Participant 1 was the only person with signature authority over this account. Participant 1 never gave or anyone at control over the account.

Later in 20XX, Participant 1 transferred \$0 to the LLC's bank account to "repay" the bogus note's principal. Participant 1 did not pay any interest.

then prepared an appraisal report backdated to January 31, 20XX—more than two months prior to the transfer of the LLC to Participant 1—in which "appraised" Participant 1's purported gift of LLC units to at \$0.

backdated appraisal does not describe or analyze the LLC's only asset—the promissory note. Rather, applied his standard 0% discount for lack of control, despite stating that owned 0% of Participant 1's LLC, and a 0% discount for lack of marketability. provided no meaningful explanation for these discounts.

then prepared an IRS Form 8283 so that Participant 1 could claim a \$0 charitable contribution for the purported donation to on his 20XX federal income tax return.

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

The IRS audited Participant 1's tax return and disallowed the \$0 charitable contribution.

In January 20XX, after the IRS initiated the audit of Participant 1's 20XX tax return, Participant 1 made four charitable distributions totaling \$0 to . In order to do so, Participant 1 completed "Disbursement Request Form," but also sent a check to in that amount.

Additional information can be found _____

and His Bogus Charities' Connections to

and his Bogus Charities' connections to include, but are not limited to:

- Per Secretary of State, is the registered agent for .
- Membership units in , () to is one of the Bogus Entities formed and controlled by .
- is the registered agent for . , and
- Form 8283 provided by shows that appraised the value of LLCs for all donors who donated their ownership interest to .
- Emails exchange between and show involved with . Below are some of the emails exchange.

In an email dated September 19, 20XX from to and at , wrote, " : Thx. Please check K-1. It has 's name personally with a zero K-1. Need K-1 for this LLC.

Here are the clients who have LLCs with K-1s to the charities. Please send these to me asap. I need ALL of these before I can prepare the and returns. You have sent some but not all of these to date. Thx! .."

The clients listed in his email were donors who donated LLC interest to is , one of bogus charities.

In an email dated April 4, 20XX from to , wrote, " : We did finally get the large deal closed I told you about earlier this year.

I will be sending you the 8283 form to sign this week for the gift.

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

Will get everything else later but we need to get this formed [sic] signed so that client/donor can prepare his tax return.

This gift will be around \$C Nice case.

Thx for your assistance as always! Hope to have some more this year.

God Bless! ..

The deal discussed in this email is

In an email dated November 10, 20XX from _____ to _____, _____ wrote, "... I will be working at _____ office next week and part of that will be having them call the clients and having them contribute dollars to

Will keep you posted. God Bless!!"

In an email dated November 10, 20XX from _____ to _____, _____ wrote, "... I will FAX you a request from _____ Secretary of State to submit a Business Entity Report by December 31st. Also: FYI; the bank there is charging the account \$0 a month for inactivity. Maybe another deposit will for stall any further charge."

Law

IRC § 501(c)(3) exempts from income tax corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulations (Treas. Regs.) § 1.501(c)(3)-1(a)(1) provides in order to be exempt as an organization described in § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Regs. § 1.501(c)(3)-1(a)(2) provides that, the term exempt purpose or purposes, as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

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

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

accomplish one or more of such exempt purposes specified in § 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.

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. v. U.S., 326 U.S. 279 (1945).

Notice 2004-30

The Internal Revenue Service and the Treasury Department are aware of a type of transaction, described below, in which S corporation shareholders attempt to transfer the incidence of taxation on S corporation income by purportedly donating S corporation nonvoting stock to an exempt organization, while retaining the economic benefits associated with that stock. This notice alerts taxpayers and their representatives that these transactions are tax avoidance transactions and identifies these transactions, and substantially similar transactions, as listed transactions for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations and §§ 301.6111-2(b)(2) and 301.6112-1(b)(2) of the Procedure and Administration Regulations. This notice also alerts parties involved with these transactions to certain responsibilities that may arise from their involvement with these transactions.

FACTS

In a typical transaction, an S corporation, its shareholders, and an organization exempt from tax under § 501(a) and described in either § 501(c)(3) or § 401(a) of the Internal Revenue Code (such as a tax-qualified retirement plan maintained by a state or local government) (the exempt party) undertake the following steps. An S corporation issues, pro rata to each of its shareholders (the original shareholders), nonvoting stock and warrants that are exercisable into nonvoting stock. For example, the S corporation issues nonvoting stock in a ratio of 0 shares for every share of voting stock and warrants in a ratio of 0 warrants for every share of nonvoting stock. Thus, if the S corporation has 0 shares of voting stock outstanding, the S corporation would issue 0 shares of nonvoting stock and warrants exercisable into 0 shares of nonvoting stock to the original shareholders. The warrants may be exercised at any time over a period of years. The strike price on the warrants is set at a price that is at least equal to 0 percent of the purported fair market value of the newly issued nonvoting stock on the date the warrants are granted. For this purpose, the fair market value of the nonvoting stock is claimed to be substantially reduced because of the existence of the warrants.

Shortly after the issuance of the nonvoting stock and the warrants, the original shareholders donate the nonvoting stock to the exempt party. The parties to the transaction claim that, after the donation of the nonvoting stock, the exempt party owns 0 percent of the stock of the S corporation. The parties further claim that any taxable income allocated on the nonvoting stock to the exempt party is not subject to tax on unrelated business income (UBIT) under §§ 511 through 514 (or the exempt party has offsetting UBIT net operating losses). The original shareholders might also claim a charitable contribution deduction under § 170 for the donation

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

of the nonvoting stock to the exempt party. In some variations of this transaction, the S corporation may issue nonvoting stock directly to the exempt party.

Pursuant to one or more agreements (typically redemption agreements, rights of first refusal, put agreements, or pledge agreements) entered into as part of the transaction, the exempt party can require the S corporation or the original shareholders to purchase the exempt party's nonvoting stock for an amount equal to the fair market value of the stock as of the date the shares are presented for repurchase. In some cases, the S corporation or the original shareholders guarantee that the exempt party will receive the fair market value of the nonvoting stock as of the date the stock was given to the exempt party if that amount is greater than the fair market value on the repurchase date.

Because they own 0 percent of the voting stock of the S corporation, the original shareholders have the power to determine the amount and timing of any distributions made with respect to the voting and nonvoting stock. The original shareholders exercise that power to cause the S corporation to limit or suspend distributions to its shareholders while the exempt party purportedly owns the nonvoting stock. For tax purposes, however, during that period, 0 percent of the S corporation's income is allocated to the exempt party and 0 percent of the S corporation's income is allocated to the original shareholders. The transaction is structured for the original shareholders to exercise the warrants and dilute the shares of nonvoting stock held by the exempt party, or for the S corporation or the original shareholders to purchase the nonvoting stock from the exempt party at a value that is substantially reduced by reason of the existence of the warrants. In either event, the exempt party will receive a share of the total economic benefit of stock ownership that is substantially lower than the share of the S corporation income allocated to the exempt party.

DISCUSSION

The transaction described in this notice is designed to artificially shift the incidence of taxation on S corporation income away from taxable shareholders to the exempt party. In this manner, the original shareholders attempt to avoid paying income tax on most of the S corporation's income over a period of time.

The Service intends to challenge the purported tax benefits from this transaction based on the application of various theories, including judicial doctrines such as substance over form. Under appropriate facts and circumstances, the Service also may argue that the existence of the warrants results in a violation of the single class of stock

requirement of § 1361(b)(1)(D), thus terminating the corporation's status as an S corporation. See, e.g., §§ 1.1361-1(l)(4)(ii) and (iii).

Transactions that are the same as, or substantially similar to, the transaction described in this notice are identified as "listed transactions" for purposes of §§ 1.6011-4(b)(2), 301.6111-2(b)(2), and 301.6112-1(b)(2) effective April 1, 20XX, the date this notice was released to the public. Independent of their classification as listed transactions, transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the

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

disclosure requirements of § 6011 (§ 1.6011-4), the tax shelter registration requirements of § 6111 (§ 301.6111-1T and § 301.6111-2), or the list maintenance requirements of § 6112 (§ 301.6112-1). Under the authority of § 1.6011-4(c)(3)(i)(A), the exempt party in the listed transaction described in this notice will also be treated as a participant in the transaction (whether or not otherwise a participant). The exempt party will be treated as participating in the transaction for the taxable year of the purported donation, the taxable year of the reacquisition, and all intervening taxable years. Pending further review and possible additional guidance, this notice does not apply to any investment in employer securities, as defined in § 409(l), by an employee stock ownership plan subject to the requirements of § 409(p).

Persons who are required to register these tax shelters under § 6111 but have failed to do so may be subject to the penalty under § 6707(a). Persons who are required to maintain lists of investors under § 6112 but have failed to do so (or who fail to provide those lists when requested by the Service) may be subject to the penalty under § 6708(a). In addition, the Service may impose penalties on parties involved in these transactions or substantially similar transactions, including the accuracy-related penalty under § 6662.

The Service and the Treasury Department recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

Taxpayer's Position

position is not known.

Government's Position

Issue 1

Treas. Regs. § 1.501(c)(3)-1(a)(1) provides in order to be exempt under IRC § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in IRC § 501(c)(3).

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 § 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. See also Better Business Bureau of Washington, D.C. v. U.S.

The facts shows that more than an insubstantial part of activities are not in furtherance of an exempt purpose. These activities included:

1. Participating in the S Corporation Tax Shelter scheme.
2. Operating as a vehicle to assist carrying out his abusive charitable scheme.

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

These two activities disqualify from exempt status under IRC § 501(c)(3).

Discussion of the activities above

1. is a participant in the S Corporation Tax Shelter scheme.

Transactions that are the same or substantially similar to those described in Notice 2004-30 are designed to artificially shift the incidence of taxation on S corporation income away from taxable shareholders to the exempt party. In this manner, the original shareholders attempt to avoid paying income tax on most of the S corporation's income over a period of time. The shifting of taxation away from the taxable shareholders is possible due to the exempt party generally does not pay tax on its income. Since inception, has not paid any tax on its income. Notice 2004-30 designated these type of transactions as listed transactions.

In determining whether the donations of non-voting LLC membership units to are the same or substantially similar to Notice 2004-30, the provisions in the Operating Agreements and other relevant facts are examined. These provisions include:

- i. The original shareholders donated nonvoting membership units to
- ii. The original shareholders retain control of the LLC via their holdings of voting membership units and exclusive management rights.
- iii. The original shareholders have the power to determine the amount and timing of any distributions. Although the Operating Agreement requires annual distributions, in practice, some LLCs have not made a distribution to
- iv. is allocated 0 percent or more of the profit, while the original shareholders are allocated 100 percent of the loss.
- v. The LLCs have the first right to purchase nonvoting membership units. With the original shareholders owning all of voting units and their exclusive management right, they can issue additional share to dilute the share of nonvoting stock held by

Discussion of the above factors

- i. The original shareholders donated nonvoting membership units to

Similar to Notice 2004-30, the original shareholders donated nonvoting membership units to , while retaining voting membership units. As the holder of nonvoting membership units, has no voting right and consent right. Article 5.5.

The only two exceptions were and . The original shareholder of these two LLCs donated 0 voting membership units to , which give 0 percent of voting rights. Even in these two isolated cases, was powerless due to the Supermajority rule set forth in Article 1.37. Supermajority interest means a Member or Members holding among them at least 0 percent of all voting rights. With 0 percent of voting rights, lacks the votes to override the decision of the original shareholder. Even in these two cases, Article 7.8 gives the donors the rights to take back the donated interest if was to be audited or its exempt status is revoked.

Explanations of Items

Name of taxpayer	Tax Identification Number (last 4 digits)	Year/Period ended 20XX, 20XX
------------------	---	---------------------------------

- ii. The original shareholders retain control of the LLC via their holdings of voting membership units and exclusive management rights.

Similar to Notice 2004-30, after the original shareholders donated nonvoting membership units to , they still own 0 to 0 percent of voting membership units. Furthermore, Article 4.4. gives the original shareholders exclusive management rights. Being the holder of voting units and manager of the LLC allows the original shareholder to retain control of the LLC.

Furthermore, Article 7.8 gives the donors the rights to take back the donated interest if was to be audited or its exempt status is revoked. This shows not only the original shareholders retain control of the LLC, they also retain control of the ownership interest donated to .

- iii. The original shareholders have the power to determine the amount and timing of any distributions.

In Notice 2004-30, because they own 0 percent of voting stock of the S Corporation, the original shareholders have the power to determine the amount and timing of any distributions.

In this case, the original shareholders, also Manager of the LLCs, have the power to determine the amount and timing of distributions. Per the Operating Agreement, a preferred member only receive a fixed percentage of the LLC's income as distribution. The distribution is the lesser of 0 percent of LLC income or 0 percent of their capital account balance. The distribution is to be made by December 31 of the following fiscal year. See Preferred Return, Preferred Allocation, and Preferred Distribution.

In practice, some LLCs did not make any distributions to in 20XX and 20XX.

In the case of , and , the Manager, who is also the original donor or his/her representative, has the sole discretion in determining the amount and timing of distributions, which won't occur until the third year of the LLC's existence.

- iv. is allocated 0 percent or more of the profit, while the original shareholders are allocated 0 percent of the loss. The Special Allocation Provisions further allocate all passive income to and all active income and deductions to the original shareholders.

In Notice 2004-30, 0 percent of the S Corporation income is allocated to the exempt party and 10 percent to the original shareholders.

It's the same in this case. In many instances, regardless of percentage of membership interest, Article 6.2(c) of the Operating Agreement and Schedule of Allocation allocate:

- 0 to 0 percent of income to , a preferred member
- all passive income to
- 0 to 0 percent of losses to the common members

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

- all active income, deductions, amortization expenses, and losses to the common members

v. The LLCs have the first right to purchase nonvoting membership units.

In Notice 2004-30, the exempt party can require the S Corporation or the original shareholder to purchase its nonvoting stocks.

Although there were no indications that warrants were issued in this case, the Operating Agreement provides the LLC with the first option to repurchase nonvoting units. In these LLCs, the donors, their spouse and/or family members are the sole holders of voting units. They also act as the LLC's manager. They have the power to issue additional shares to the LLC or increase the authorized shares so they can issue additional preferred shares. Such issuance of additional shares may dilute the value of those share already held by . Given has no voting and consent rights, there's nothing it can do to prevent the issuance of additional shares.

In summary, the facts show the transactions in this case are the same or substantially similar to those described in Notice 2004-30. Therefore, it is concluded that was a participant in the S-Corporation Tax Shelter scheme as described in Notice 2004-30.

2. acts as a vehicle of bogus charitable scheme.

As stipulated in , charitable giving scheme is designed to assist his wealthy clients improperly reducing their tax liability by taking unwarranted charitable contribution deductions. scheme has harmed the United States by depriving the government of tax revenue. The IRS has identified specific transactions that, through 20XX, cost the United States Treasury more than \$0 in lost tax revenue.

To facility his scheme, needed a charity described under IRC § 501(c)(3) to take the bogus contributions, as contributions to such charity is tax deductible. In the beginning, created his bogus charities , and so he could facilitate his scheme. Once scheme was exposed, the IRS revoked , and 's tax exempt status, which agreed to.

then looked for other charity to carry on his scheme. is that charity. Facts connecting to scheme included, but are not limited to:

- Per Secretary of State, is the registered agent for
- prepared return Form 990.
- appraised the value of ownership interest for donors who donated their interest to signed all Form 8283.

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

- sought approval from on important matters such as closing the bank account at (). The emails exchange show that gave money to to open a checking account at under name.
- Emails exchange between and , dating back to January 20XX. The emails exchange involved matters ranging from preparation and filing of Form 990 to closing a big deal that was facilitating for his client, the \$0 LLC interest donation to .

In conclusion, the facts show that was operated as a vehicle of bogus charitable scheme.

The two activities discussed above were more than an insubstantial part of activities. These two activities did not further one or more exempt purposes described in IRC § 501(c)(3). Therefore, exempt status under IRC § 501(c)(3) should be revoked.

Issue 2

activities remain the same since inception. The Operating Agreement shows began accepting LLC interest donation in 20XX. This shows that became a participant in tax avoidance scheme in 20XX.

Therefore, it's warranted to revoke exempt status retroactively to January 1, 20XX, the first date it was determined was not operated to further its exempt purpose.

Conclusion

is not operated exclusively in furtherance of an exempt purpose described in IRC § 501(c)(3). Its exempt status should be revoked retroactively to January 1, 20XX. is required to file Form 1120, *U.S. Corporation Income Tax Return*, for the tax years 20XX, 20XX, and all future years.