



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

Date:
November 15, 2022
Taxpayer ID number (last 4 digits):

Form:

Tax periods ended:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Last day to file petition with United States

Tax Court:

February 13, 2023

Release Number: 202319018

Release Date: 5/12/2023

UIL Code: 501.03-00

CERTIFIED MAIL - Return Receipt Requested

Dear _____ :

Why we are sending you this letter

This is a final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3), effective _____ . Your determination letter dated _____ , is revoked.

Our adverse determination as to your exempt status was made for the following reasons: Organizations described in IRC Section 501(c)(3) and exempt under IRC Section 501(a) must be both organized and operated exclusively for exempt purposes. You have not demonstrated that you are organized for exempt purposes within the meaning of IRC Section 501(c)(3). Additionally, you have not demonstrated that you are operated for exempt purposes within the meaning of IRC Section 501(c)(3).

Organizations that are not exempt under Internal Revenue Code (IRC) Section 501 generally are required to file federal income tax returns and pay tax, where applicable. For further instructions, forms and information please visit **IRS.gov**.

Contributions to your organization are no longer deductible under IRC Section 170.

What you must do if you disagree with this determination

If you want to contest our final determination, you have 90 days from the date this determination letter was mailed to you to file a petition or complaint in one of the three federal courts listed below.

How to file your action for declaratory judgment

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. You can download a fillable petition or complaint form and get information about filing at each respective court's website listed below or by contacting the Office of the Clerk of the Court at one of the addresses below. Be sure to include a copy of this letter and any attachments and the applicable filing fee with the petition or complaint.

You can eFile your completed U.S. Tax Court petition by following the instructions and user guides available on the Tax Court website at ustaxcourt.gov/dawson.html. You will need to register for a DAWSON account to do so. You may also file your petition at the address below:

United States Tax Court
400 Second Street, NW
Washington, DC 20217
ustaxcourt.gov

The websites of the U.S. Court of Federal Claims and the U.S. District Court for the District of Columbia contain instructions about how to file your completed complaint electronically. You may also file your complaint at one of the addresses below:

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439
uscfc.uscourts.gov

US District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
dcd.uscourts.gov

Processing of income tax returns and assessments of any taxes due will not be delayed if you file a petition for declaratory judgment under IRC Section 7428.

We'll notify the appropriate state officials (as permitted by law) of our determination that you aren't an organization described in IRC Section 501(c)(3).

Information about the IRS Taxpayer Advocate Service

The IRS office whose phone number appears at the top of the notice can best address and access your tax information and help get you answers. However, you may be eligible for free help from the Taxpayer Advocate Service (TAS) if you can't resolve your tax problem with the IRS, or you believe an IRS procedure just isn't working as it should. TAS is an independent organization within the IRS that helps taxpayers and protects taxpayer rights. Contact your local Taxpayer Advocate Office at:

Internal Revenue Service
Taxpayer Advocate Office

Or call TAS at 877-777-4778. For more information about TAS and your rights under the Taxpayer Bill of Rights, go to taxpayeradvocate.irs.gov. Do not send your federal court pleading to the TAS address listed above. Use the applicable federal court address provided earlier in the letter. Contacting TAS does not extend the time to file an action for declaratory judgment.

Where you can find more information

Enclosed are Publication 1, Your Rights as a Taxpayer, and Publication 594, The IRS Collection Process, for more comprehensive information.

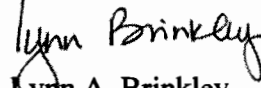
Find tax forms or publications by visiting IRS.gov/forms or calling 800-TAX-FORM (800-829-3676). If you have questions, you can call the person shown at the top of this letter.

If you prefer to write, use the address shown at the top of this letter. Include your telephone number, the best time to call, and a copy of this letter.

You may fax your documents to the fax number shown above, using either a fax machine or online fax service. Protect yourself when sending digital data by understanding the fax service's privacy and security policies.

Keep the original letter for your records.

Sincerely,



Lynn A. Brinkley

Acting Director, Exempt Organizations Examinations

Enclosures:

Publication 1

Publication 594

Publication 892



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

Date: 01/21/2022
Taxpayer ID number:
Form:

Tax periods ended:

Person to contact:
Name:
ID number:
Telephone:
Fax:
Address:

Manager's contact information:
Name:
ID number:
Telephone:
Response due date:
02/20/2022

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,

Karen T. Hood

Digitally signed by Karen T.
Hood
Date: 2022.01.21 10:04:49
-05'00'

for

Sean E. O'Reilly
Director, Exempt Organizations Examinations

Enclosures:
Form 886-A
Form 6018
Form 4621-A
Publication 892
Publication 3498

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

ISSUES:

- 1) Did _____ fail to timely file the required Information Return Form 990, fail to establish reasonable cause, and therefore is liable for penalties under §6652 of the Internal Revenue Code ("Code")?
- 2) Is _____ organized and operated exclusively for an exempt purpose within the meaning of §501(c)(3) of the Code?
- 3) Should _____ continue to be recognized as tax exempt under §501(a) of the Code as an organization described in §501(c)(3)?

FACTS

_____, hereinafter referred to as the Organization, was incorporated under the laws of the state of _____ as a nonprofit corporation on _____. In a determination letter dated _____, the Organization was held to be exempt from federal income tax as an organization described in Code §501(c)(3) and classified as a public charity described in Code §509(a)(1) and §170(b)(1)(A)(vi).

The Organization filed for an exemption determination electronically on Form 1023-EZ, *Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, signed on _____. The application attested that the organizational document contained the required limitation and dissolution provisions, that it was organized and operated for charitable purposes, and that it would not conduct activities that violate the applicable prohibitions and restrictions.

The Articles of Incorporation provides the following statement to address the specific purpose for which the corporation was organized:

"OUR MAIN GOAL IS TO TAKE CARE OF THE ONES WHO TOOK CARE OF US. WE ARE HERE TO HELP VETERANS IN NEED AS WELL AS THEIR FAMILY MEMBERS, WHETHER SOMEONE IS IN NEED OF FOOD, SHELTER, CLOTHES, ETC..., WE WILL BE THERE"

The Articles does not contain the dissolution provision required under §501(c)(3).

The _____ officers described their exempt activities to include talking to _____ in need of conversation, referring _____ to the _____ () for services and providing financial assistance to veterans and their family members. The _____ was also included in databases where it received referrals from other charities to assist needy individuals in their area. The _____ frequently set up a booth at the _____ in _____ where it would advertise the EO's services, give out T-Shirts, and solicit cash donations. The _____ also received donations through various corporate programs, such as _____, where donors selected a charity to which _____ would remit a portion of the donor's purchase as a charitable contribution.

On _____, the _____ website, _____, was observed to include information about _____, including an image and contact information for the purchase of the product. The website stated the following:

"

"

The website also included a page titled " _____", which included live links to the websites of _____, an _____ owned and operated by the _____ Treasurer, and _____, a _____ owned and operated by the _____ Vice President.

During the periods under examination, the _____ issued a total of _____ grants to individuals. Between _____ and _____, the _____ issued one grant to individuals totaling \$ _____. Between _____ and _____, the _____ issued no grants. Between _____ and _____, the _____ issued a total of _____ grants to individuals, totaling \$ _____. The payments are summarized in the Appendix on Page 13, Exhibit 1.

On _____, in response to Information Document Request 4, the _____ provided a narrative regarding the charitable distributions issued in _____.

" _____ received \$ _____ for tools. He was part of a _____ program for the homeless and needed tools to do the program. We gave him the grant so he would get off the streets and start a new life. _____, was given \$ _____ to catch up on bills. He was behind on bills and was on the verge of becoming homeless, so we helped him. _____ received \$ _____ for food. Simply put he needed food and we helped him _____ received _____ for electric. He was behind on his payments and we helped him so his electric would not be shut off. _____ received \$ _____ to help him purchase gifts for his daughter. His daughter loves music and they did not have any funds to buy her some musical instruments, so we helped them. Everyone we help is on a case by case phone call evaluation. I ask them their yearly income, if they're married or have children. I ask if they are service connected and if so how much. We do not have an application process due to not being a big non-profit organization. I have no documentation for my decisions."

The _____ acquired and disposed of real property in bargain sale transactions facilitated by (_____), a disinterested for-profit entity, who was contracted for brokerage and property management services. As a part of the services, the _____ located sellers who wished to donate real estate properties at an amount below the fair market value (FMV), a listing of qualified appraisers to complete the required appraisals, and buyers who desired to purchase the property from the _____. The _____ also facilitated financing through negotiating seller financing, or covered acquisition costs and recouped these costs from the _____ during the closing of the disposition sale. Beginning in _____ and concluding in _____, the _____ acquired properties appraised at \$ _____. As a part of the transactions, the _____ provided the donors acknowledgement of \$ _____ in noncash contributions. The _____ financed the remaining \$ _____ through the _____ and sellers. During the period of ownership, the _____ collected \$ _____ on behalf of the _____, comprising of rents and earnest money income from breached buyer contracts. This income was later netted against expenditures associated with acquisition and disposition costs after the final disposition of the property. In _____, the _____ disposed of all properties for \$ _____, and paid total fees and closing costs of \$ _____, of which \$ _____ was paid to the _____ for services. The _____ net income from these transactions totaled \$ _____. See Page 14, Exhibit 2 for a summary of transactions by property, including gross income, fees, and net income.

For the periods ending _____ and _____, the _____ timely filed _____, declaring that their gross receipts are normally \$ _____ or less. During the examination, the _____ was requested to file an information return to report noncash contributions, assets, and income and expenses from rental and real estate activities. On _____, the _____ filed _____ the tax period ending _____ indicating gross receipts of \$ _____ and total assets of \$ _____. On the same day, it filed _____ for the period ending _____ indicating gross receipts of \$ _____ and total assets of \$ _____. It also timely filed _____ for the tax period ending _____ on _____, indicating gross receipts of \$ _____ and total assets of \$ _____.

Return information, as filed, is detailed in the Appendix on Page 15, Exhibit 3:

LAW

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

Code §6033(a)(1) requires, in part, that organizations exempt from taxation under §501(a) to 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.

Code §6652(c) imposes a penalty for failure to file a return required under §6033(a)(1) on the date and in the manner prescribed, failure to include any of the information required to be shown on a return, or failure to show the correct information. The penalty is \$20 for each day during which such failure continues. For returns required to be filed in 2019, the maximum penalty for failure to timely file the required return with all required information with respect to any one return shall not exceed the lesser of \$10,000 or 5 percent of the gross receipts of the organization for the year.

Treas. Reg. §1.501(c)(3)-1(a) of the Income Tax Regulations (Treas. Reg.) provides that in order to be exempt as an organization described in Code §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. Reg. §1.501(c)(3)-1(b)(4) states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or operation of law, be distributed for one or more exempt purposes.

Treas. Reg. §1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Code §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.

Treas. Reg. §1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, 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.

Treas. Reg. §1.501(c)(3)-1(d)(1)(iii), Example 3, describes an organization that is deemed to violate the restriction on private benefit due to their arrangement with a related for-profit entity, regardless of whether the payments to the related for-profit entity are reasonable.

Treas. Reg. §1.501(c)(3)-1(d)(2) defines "Charitable" to include; relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii)

to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Revenue Procedure (Rev. Proc.) 82-2, 1982-1 C.B.367 identifies the states and circumstances in which the Service will not require an express provision for the distribution of assets upon dissolution in an exempt organization's articles of incorporation, trust instrument, or other organizing document to satisfy the "organizational" test in Treas. Reg. §1.501(c)(3)-1(b)(4).

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945), the Supreme Court held that "the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes."

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exerted significant indirect control over est of Hawaii, a nonprofit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the nonprofit as an "instrument" to further their for-profit purposes. The question for the Tax Court was not whether petitioner's payments to the for-profits were excessive but whether the for-profits benefited substantially from petitioner's operations. The Tax Court noted that petitioner provided a substantial private benefit to the for-profit corporations. Petitioner "was simply the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of those corporations." Accordingly, the Tax Court held that est of Hawaii did not qualify for exemption under §501(c)(3).

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court determined that the American Campaign Academy, a training program for political campaign professionals, operated for the private benefit of the Republican party because its curriculum was tailored to Republican interests, its graduates worked for Republican candidates and incumbents, and it was financed by Republican sources. The Tax Court defined private benefit as "nonincidental benefits conferred on disinterested persons that serve private interests." Private benefits included "advantage; profit; privilege; gain; [or] interest."

ISSUE #1 – Did _____ fail to timely file the required Information Return _____, fail to establish reasonable cause, and therefore is liable for penalties under §6652 of the Code?

TAXPAYER'S POSITION

On _____, the _____ provided an unsigned written penalty relief request for the period ending _____. On _____ the _____ provided a signed written penalty relief request for the period ending _____.

The _____ requests stated, in part, the following:

"Our _____ was filed late because _____ was the first time we were required to file a _____. There was a misunderstanding of the filing requirement because of how a bargain sale was handled by the company managing the bargain sale (_____). We fully believed that since the transaction and all funds were handled through _____, we were only required to report the net profit of the property when the was sold."

"Our _____ was filed late because _____ was audited and _____ was the first time we were required to file a _____. Due to poor knowledge of the filing requirement because of how a bargain sale was handled by _____, managing the bargain sale. We fully believed that since the transaction and all funds were handled through _____, we were only required to report the net profit of the property when the was sold. The net profit from the bargain sale was well below the _____ filing requirement and a _____ was timely filed for _____. All future _____ will be filed timely."

GOVERNMENT'S POSITION

It has been determined that the _____ failed to timely file the required information return, _____, failed to establish reasonable cause, and this therefore liable for penalties under §6652(c) of the Code. The _____ is liable for penalties of \$ _____ and \$ _____ for the periods ending _____ and _____ respectively.

Under Code §6033(c)(1), all organizations exempt from taxation under Code §501(c) are required to file an annual return, which correctly and completely states gross income, receipts, disbursements, and assets held for the period. This return must be filed on the proper form by the due date or extended due date for the period in question.

The filing requirements, as detailed in the Form 990 Series Instructions booklets, and posted on www.irs.gov is as follows:

Gross receipts normally ≤ \$50,000	990-N
Gross receipts < \$200,000, and Total assets < \$500,000	990-EZ or 990
Gross receipts ≥ \$200,000, or Total assets ≥ \$500,000	990

For the periods ending _____ and _____, the _____ submitted _____, instead of a _____, when their income and/or assets surpassed the minimum filing requirement thresholds for the periods. As the gross receipts for the period ending _____ included the non-cash contribution of _____, which was appraised at \$ _____ when received, the _____ was required to file _____ to report the gross receipt. As the _____ retained the asset throughout the period ending _____, it was required to file _____ to report the total assets, which surpassed \$ _____ based on their accepted valuation. By filing an electronic notice instead of an annual information return, the _____ failed to provide the Service with the necessary information required for the purposes of carrying out the internal revenue laws, as prescribed by the Secretary.

The _____ failed to establish reasonable cause, as it did not exercise ordinary care and prudence. The Service finds that the _____ should have had knowledge sufficient to determine the correct filing requirements under the law for the periods under examination. To make this determination, the Service considered the facts and circumstances against the _____ argument of 'ignorance of the law' and a 'mistake being made.' Information regarding filing requirements is widely available, as can be obtained online at www.irs.gov, including on the _____ (_____) landing page, as well as the _____ and _____ booklets. The Chief Executive Officer (CEO) and Treasurer both hold bachelor's in business administration degrees, the latter having a concentration in Accounting. The Treasurer, who completed the filing of the _____ also possesses an _____ (_____) Certification and owns and operates a bookkeeping and tax practice, where he works year-round as a tax preparer. It is a reasonable expectation that, based on the Officer's education and experience in the handling of business matters and tax issues, they should have known about the filing requirement. Additionally, making a mistake generally is not in keeping with the ordinary business care and prudence standard and does not provide a basis for reasonable cause.

The penalty is computed based on the taxpayer's figures, as follows:

Income	
Contributions	\$
Gross Receipts	\$
5% of Gross Receipts	\$
Number of days delinquent	
Rate per day	\$
Total proposed penalty	\$
Maximum penalty	\$
Lesser of Maximum penalty or 5% of gross receipts	\$
Total Failure to File Information Return Penalty IRC 6652(c)	\$

Income	
Contributions	\$
Rents	\$
Gross Amount Sales of Assets other than Inventory	\$
Gross Receipts	\$
5% of Gross Receipts	\$
Number of days delinquent	
Rate per day	\$
Total proposed penalty	\$
Maximum penalty	\$
Lesser of Maximum penalty or 5% of gross receipts	\$
Total Failure to File Information Return Penalty IRC 6652(c)	\$

ISSUE #2 – Is
of §501(c)(3) of the Code?

organized and operated exclusively for an exempt purpose within the meaning

TAXPAYER'S POSITION

The Taxpayer's position is unknown.

GOVERNMENT'S POSITION

It has been determined that the is not organized and operated exclusively for and exempt purpose because it does not meet the organizational test or the operational test under Treas. Reg. §1.501(c)(3)-1(a)(1).

Organizational Test

The Articles of Incorporation do not contain a provision that dedicates its assets to exempt purposes described in Code §501(c)(3) upon dissolution. Furthermore, the is organized in the State of , who does not have statutes applicable to nonprofit charitable corporations that satisfy the provisions of Treas. Reg. §1.501(c)(3)-1(b)(4), per Rev. Proc. 82-2. The was granted exemption based on their statement on **Form 1023-EZ** that the organizing document contained the required language. During the examination, the Service reviewed the articles of incorporation, found no dissolution language, and confirmed that there were no amendments to the document that effected the dissolution clause. Therefore, the does not meet the organizational test as described in Treas. Reg. §1.501(c)(3)-1(b)(4).

Operational Test

The substantially engaged in non-exempt activity that conferred more than a nonincidental private benefit on disinterested parties. Treas. Reg. §1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Treas. Reg. §1.501(c)(3)-1(d)(1)(ii) provides that an organization is not operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, even if an organization has many activities which further exempt purposes, exemption may be precluded if it serves a private interest.

The activity involving the acquisition and disposition of real estate as apart of bargain sales transactions served the private interests of the and the donors of the properties. Private benefit has been defined as "nonincidental benefits conferred on disinterested persons that service private interests." American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989). "Prohibited private benefit may include an 'advantage; profit; privilege; gain; [or] interest.'" In analyzing the factors of the transactions against the factors observed by the courts, the Service considered the benefit conferred and whether that benefit was qualitatively and quantitatively incidental. Qualitatively incidental means that the private benefit is a mere byproduct of the public benefit. For private benefit to be quantitatively incidental, it must be insubstantial in amount. The private benefit must be compared to the public benefit of the specific activity in question, not the public benefit provided by all the activities.

The benefits in question are the \$ [redacted] in fees paid to the [redacted] for the facilitation of the bargain sales transactions, as well as the \$ [redacted] in charitable deduction documentation given to the donors, which were based on appraisals that the [redacted] currently suspects to be overvalued. First, the [redacted] entered an exclusive contract to acquire, manage, and dispose of property through the [redacted], and completed a total of [redacted] transactions encompassing the purchase and sale of [redacted] individual properties. The fee schedule was based on the appraised value of the property, not the actual purchase or sale price, which was substantially less. This arrangement maximized the earnings of the [redacted], while minimizing the earnings of the [redacted]. Typically, an entity looking to purchase goods and services would deal with a number of different entities. In addition, it is abnormal to accept unfavorable terms or fail to compare prices prior to entering a contract. In this case, the [redacted] entered into an exclusive contract with a for-profit entity that had a highly unfavorable fee structure. On [redacted], during the initial interview, the [redacted] indicated that it discontinued the relationship with the [redacted] after the Treasurer reviewed the documentation and fee schedule and determined that the [redacted] was "taking a lot of money out of the transactions" and that the [redacted] net proceeds were low.

Second, the structure of the acquisition transaction involved a seller who would transfer the property to the [redacted] for a value below the appraised amount, treat the difference between the FMV and the sales price as a non-cash contribution, and claim a charitable deduction under Code §170(a) based on the appraised FMV of the property at the time of the sale. In this case, the [redacted] found the donor and connected them with a tax-exempt entity willing to participate in the transaction. The FMV was determined by an appraiser who was chosen from a list of preferred appraisers provided by the [redacted]. During the initial interview, the [redacted] stated that it was minimally involved in the appraisal process, and never met with or talked to the appraiser. The [redacted] further stated that at the time it did not doubt the valuation, but now believes that the [redacted] and the appraisers were working together to overstate the values of the properties. As apart of each transaction, the [redacted] provided a signed, written communication to the donor listing their name, date and amount of donation, based on the potentially overstated FMV, totaling \$ [redacted]. As a result, any excess benefit received by the donor in the form of deductions that are not allowable serves their private benefit, and not the benefit of the public at large.

The benefits received by the [redacted] and the donors were not a mere byproduct of a benefit received by the public. The real estate transactions were not related to the [redacted] charitable purpose, or any activity carried on to fulfill that charitable purpose. The purchase and sale of the real estate was purely for investment purposes with the goal of generating capital. The activity had no direct benefits to the public at large. Therefore, the benefit was not qualitatively incidental.

The benefits received by the [redacted] and the donors were not insubstantial. The fee schedule of the transaction is structured so that the EO retains very little profit and the real estate broker and their related contractors (appraiser, title search company, etc.) receive the largest benefit from the transaction. Analysis of the individual transactions show the proportion of financial benefit received by the [redacted] the [redacted], and the other related contractors. On average, the [redacted] retained [redacted] % of the proceeds (\$ [redacted] in Fees/ \$ [redacted] in Adjusted Gross Profit (computed as \$ [redacted] Sales of Investments less \$ [redacted] Acquisition Contract Prices)). On Average, The [redacted] retained [redacted] % of the proceeds (\$ [redacted] Net Profit/ \$ [redacted] in Adjusted Gross Profit (computed above)). Of the \$ [redacted] in proceeds received, the [redacted] issued only \$ [redacted] in grants to individuals. Therefore, the benefit was not quantitatively incidental. See Exhibit 4 on Page 16 in the Appendix for comparison of the income distribution between the [redacted], the [redacted], and Other by property. Also refer to Exhibit 2 for additional details related to income by property.

The Service also analyzed the other activities to determine if it served an exempt purpose, specifically the provision of financial assistance to and family members of , talking to in need of conversation, outreach efforts at the , referring to the for services, and promotion of . After review of all the facts and circumstances, the failed to provide evidence of substantial exempt activities.

The failed to substantiate that the payments made to individuals were given to a charitable class, such as the poor, elderly, physically or mentally handicapped, or distressed, and that the payments furthered a charitable purpose. As indicated by the CEO during the initial interview, the primary criteria for assistance is being a or the family member of a . Assisting and their families alone does not constitute as charitable under the meaning of Treas. Reg. 1.503(c)(3)-1(d)(2). By his statement, the does not assist who are % disabled because they can receive assistance directly from the . The does not have a process to analyze need. No application or formal request for assistance is required. No established procedures of oversight are in place, such as board member approvals. Instead, if contacted, the CEO reviews the , driver's license, or state identification, and assesses whether they currently receive benefits from the . This practice supports the government's assertion that the criteria for assistance is more associated with the recipient's status as a than being in a charitable class. The determination to assist the individual is then made at the CEO's discretion. No documentation exists to establish a financial need, such as a past due bill. No documentation related to the transaction is kept, other than the cancelled check, to establish the recipient as a member of a charitable class. Furthermore, the explanations provided by the about each grant does not clearly identify how the expenditure advanced an exempt purpose.

In addition, it is noted that during the years under examination, grants were issued totaling \$. No grants were awarded in the period ending . Based on the Service's analysis of the books and records, outside of noncash contributions, rental income and real estate sales proceeds received in connection with the bargain sales transactions, charitable receipts totaled \$ in the period ending , \$ in the period ending , and \$ in the period ending . Between and , prior to the receipt of the real estate proceeds, the paid a total of \$ in grants to fulfill their exempt purpose. In the absence of the funding gained from non-exempt real estate activities during , there would be little to no exempt activities. Taking the scope of their prior activities into consideration, and when measured in comparison with the magnitude of the real estate activities that resulted in in gross income, these activities appear substantially insignificant.

Activities related to conversations with was not shown to serve and exempt purpose, as no information was provided to establish that the discussions were conducted with a charitable class. In addition, referrals were not shown to advance an exempt purpose. While lessening the burden of government is a charitable purpose under §501(c)(3), the failed to demonstrate that it acts on the government's behalf, and thereby actually free up government assets – human, material, and fiscal. In addition, no relevant factors to determine if the government unit has made the necessary objective manifestation exists. While the activities with the are found to serve an exempt purpose, they were not found to be substantial. The explained that, since formation, it received referrals from the , of which it assisted individual. The outreach activities at the events are shown to support the by allowing the general public to find out about their services and donate, however no substantiation was provided to show how the public benefitted from the activity.

Activities associated with _____ did not advance an exempt purpose, but instead would serve the private interests of the Vice President and his business entities. Based on the statement of the Vice President during an interview on _____, the arrangement entailed the _____ licensing the brand and use of image from _____. The _____ would assist in the promotion of the product, cases would be pre-ordered, and the product would be manufactured to fill the order. The _____ would cover all expenses, donate \$ _____ per bottle to the _____, take a charitable deduction, and retain any remaining profit. This arrangement allows an insider to receive a financial benefit, specifically the charitable deduction and the gross profit, through their affiliation with the _____. The CEO and Vice President assert that sales were insignificant, and no profit or charitable deductions were realized. However, the _____ shared their name and logo with the product and actively promoted the _____ through advertisement on their website. In addition, the _____ website also contains live links to the websites of for-profit businesses owned by their board members, including _____. Regardless of the actual income realized from these activities, the insiders received an advantage created by the _____ promotion of the product and services. The court established in American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) that a prohibited private benefit may include an 'advantage; profit; privilege; gain or interest'. The existence of the _____ advertisement and links to the websites of insider's for-profit entities on the _____ website, in conjunction with the arrangement with _____ that advances the private interest of an insider, are factors that contribute to the determination that the _____ activities served private interests.

The presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945). In the case of _____, evidence indicates that there is a lack of activities fulfilling an exempt purpose, where there is an abundance of activities that fulfill non-exempt purposes. Like the ruling in est of Hawaii v. Commissioner, the for-profit entities were able to use the _____ as an "instrument" to further their for-profit purposes. The _____ allowed for the for-profit entities to receive substantial private benefit from the arrangements. In the instance of the arrangement with the _____, the _____ participated in separate transactions, and was used as an instrument resulting in \$ _____ of earnings in one fiscal period. As such, the _____ fails the operational test under Treas. Reg §1.501(c)(3)-1(c)(1) and Treas. Reg. §1.501(c)(3)-1(d)(1)(ii) as it engaged in activities that served private interests, and therefore more than an insubstantial part of their activities is not in furtherance of an exempt purpose.

ISSUE #3 – Should the taxpayer continue to be recognized as tax exempt under §501(a) of the Code as an organization described in §501(c)(3)?

TAXPAYER'S POSITION

The Taxpayer's position is unknown.

GOVERNMENT'S POSITION

It has been determined that the _____ does not qualify for exemption as an organization described in Code §501(c)(3) because it does not meet the organizational test or the operational test under Treas. Reg. §1.501(c)(3)-1(a)(1). The _____ should not continue to be recognized as tax exempt under §501(a) of the Code as an organization described in §501(c)(3).

The _____ fails the organizational test because its organizing document does not contain the required dissolution clause dedicating its assets to exempt purposes. It fails the operational test because more than an insubstantial part of its activities is not in furtherance of an exempt purpose, as it serves a private rather than a public benefit.

CONCLUSION

As required under Code §6033(c)(1), the _____ did not timely file an annual return that correctly and completely stated their gross income, receipts, disbursements, and assets held for the periods, and failed to establish reasonable cause for the purposes of determining penalty relief. The _____ is liable for penalties under Code §6652(c) of \$ _____ and \$ _____ for the periods ending _____ and _____ respectively.

The _____ is not an organization described in Code § 501(c)(3) and therefore is not exempt from federal income tax. The government will propose revocation of exemption on the first day of the tax year in which the noncompliant activities were substantiated, which is the first period under examination. Therefore, the effective date of revocation is _____. Forms 1120, *U.S. Corporate Income Tax Return*, should be prepared and filed by the _____ for the period of examination forward.

Appendix

Exhibit 1 Schedule of Grants Paid through

Periods ending				
Date	Check	Name	Amount	Memo
				Good Luck
				Tools
				Bills
				(Illegible)
				Electric, Etc.
				Christmas

Exhibit 2
Real Estate Transactions Detail by Property
Net Income and Fee Structure

Transaction	Price	Subtotal
Gross Income	\$	
	\$	
	\$	
	\$	
	\$	
	<u>\$</u>	
Total Gross Income		\$
Acquisition Contract Price (Note)		
	\$	
	\$	
	\$	
	\$	
	<u>\$</u>	
Total Acquisition Contract Price (Note)		(\$)
Closing Cost (After payoff of Acquisition Contract Price (Note)		
	\$	
	\$	
	\$	
	\$	
	<u>\$</u>	
Total Closing Cost (After payoff of Acquisition Contract Price (Note)		(\$)
Fees		
	\$	
	\$	
	\$	
	\$	
	<u>\$</u>	
Total Fees		(\$)
Total Fees		<u>(\$)</u>
Net Profit		
	\$	
	\$	
	\$	
	\$	
	<u>\$</u>	
		<u>\$</u>

Form
Periods ending

Exhibit 3
Return Data, As Filed by Taxpayer
through

GROSS RECEIPTS

\$ \$ \$

REVENUES

Contributions, gifts, grants:

\$ \$ \$

Investment Income:

\$ \$ \$

Other Revenue:

\$ \$ \$

TOTAL REVENUE

\$ \$ \$

EXPENSES

Grants and similar amounts paid:

\$ \$ \$

Other Expenses:

\$ \$ \$

TOTAL EXPENSES

\$ \$ \$

REVENUE LESS EXPENSES

\$ \$ \$

NET ASSETS

Total Assets:

\$ \$ \$

Total Liabilities:

\$ \$

NET ASSETS OR FUND BALANCES

\$ \$ \$

Exhibit 4
Real Estate Transaction Income as a Percentage by Property

Income as a Percentage (after payment of Note)	
	%
	%
Other	<u>%</u>
Total	<u>%</u>

Income as a Percentage (after payment of Note)	
	%
	%
Other	<u>%</u>
Total	<u>%</u>

Income as a Percentage (after payment of Note)	
	%
	%
Other	<u>%</u>
Total	<u>%</u>

Income as a Percentage (after payment of Note)	
	%
	%
Other	<u>%</u>
Total	<u>%</u>

Income as a Percentage (after payment of Note)	
	%
	%
Other	<u>%</u>
Total	<u>%</u>