



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

Release Number: 202535014  
Release Date: 8/29/2025  
UIL Code: 501.03-00

Date:  
June 3, 2025

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:

September 1, 2025

**CERTIFIED MAIL - Return Receipt Requested**

Dear [REDACTED]:

**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 [REDACTED]. Your determination letter dated [REDACTED], is revoked.

Our adverse determination as to your exempt status was made for the following reasons: Your organization is not organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Rather, you are operated for a substantial non-exempt purpose, and you have not demonstrated that you are operated for public benefit rather than private benefit. Accordingly, your organization does not qualify for exemption as an organization described in section 501(c)(3).

Organizations that are not exempt under 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](https://www.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](https://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](https://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](https://uscfc.uscourts.gov)

**US District Court for the District of Columbia**  
333 Constitution Avenue, NW  
Washington, DC 20001  
[dcd.uscourts.gov](https://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).

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 if 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. Visit [TaxpayerAdvocate.IRS.gov/contact-us](https://TaxpayerAdvocate.IRS.gov/contact-us) or call 877-777-4778 (TTY/TDD 800-829-4059) to find the location and phone number of your local advocate. Learn more about TAS and your rights under the Taxpayer Bill of Rights at [TaxpayerAdvocate.IRS.gov](https://TaxpayerAdvocate.IRS.gov). Do not send your Tax Court petition to TAS. Use the Tax Court address provided earlier in the letter. Contacting TAS does not extend the time to file a petition.

**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](https://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,

[Redacted Signature]

Lynn A. Brinkley  
Director, Exempt Organizations Examinations

Enclosures:

Publication 1

Publication 594

Publication 892

cc: [Redacted]



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

[REDACTED]

[REDACTED]

Date:  
11/14/2024

Taxpayer ID number:

[REDACTED]

Form:

[REDACTED]

Tax periods ended:

[REDACTED]

Person to contact:

Name:

ID number:

Telephone:

Fax:

Address:

[REDACTED]

Manager's contact information:

Name:

ID number:

Telephone:

Response due date:

12/14/2024

**CERTIFIED MAIL – Return Receipt Requested**

Dear [REDACTED]:

**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.

**If you disagree**

1. Request a meeting or telephone conference with the manager shown at the top of this letter.
2. Send any information you want us to consider.
3. File a protest with the IRS Appeals Office. If you request a meeting with the manager or send additional information as stated in 1 and 2, above, you'll still be able to file a protest with IRS Appeals Office after the meeting or after we consider the information.

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

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

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

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

**If we don't hear from you**

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final adverse determination letter.

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

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

**Additional information**

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

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

Sincerely,

Digitally signed by Larry D. Pugh  
Pugh  
Date: 2024.11.14 09:34:49  
-08'00'

For Lynn A Brinkley

Director Exempt Organization Examinations

**Enclosures:**

Form 886-A

Form 6018

Pub 892

Pub 3498

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

### ISSUE

Does \_\_\_\_\_ continue to qualify for tax exemption under Internal Revenue Code Section 501(c)(3)?

### FACTS

( ) was incorporated on \_\_\_\_\_ as a nonprofit corporation. Its Form 1023-EZ, initial application for exemption, was reviewed by the examiner. The application was signed on \_\_\_\_\_, by President/Treasurer of \_\_\_\_\_ requested exemption under section 501(c)(3) of the Code and sought non-private foundation classification as a publicly supported charity under sections 509(a)(1)/170(b)(1)(A)(vi). \_\_\_\_\_ stated it was formed to provide food, opportunity, shelter, and above all \_\_\_\_\_, for those less fortunate. Form 1023-EZ also disclosed that \_\_\_\_\_ would operate bingo or other gaming activities. The final determination letter (Letter 947) was mailed on \_\_\_\_\_ recognizing \_\_\_\_\_ as an organization described in section 501(c)(3), classified as a publicly supported charity under sections 509(a)(1)/170(b)(1)(A)(vi). The effective date of exemption per Letter 947 is \_\_\_\_\_.

The examination of \_\_\_\_\_ Form 990 for \_\_\_\_\_ was started on \_\_\_\_\_. The \_\_\_\_\_ interview was conducted \_\_\_\_\_. Those in attendance, during the initial interview, included \_\_\_\_\_ Treasurer and Program Director \_\_\_\_\_, \_\_\_\_\_ Power of Attorney-CPA (POA) \_\_\_\_\_, and the examiner. \_\_\_\_\_ was absent. Interview was conducted at \_\_\_\_\_ This was the main office location of the organization.

The following information was gathered during the initial interview:

- Treasurer \_\_\_\_\_ stated \_\_\_\_\_ was formed to provide food, opportunity, shelter, and above all \_\_\_\_\_ for those less fortunate. \_\_\_\_\_ focus has mainly been \_\_\_\_\_ In \_\_\_\_\_ a new mission statement was adopted. It reads, " \_\_\_\_\_ mission is to support \_\_\_\_\_."
- Treasurer \_\_\_\_\_ stated that from \_\_\_\_\_ through \_\_\_\_\_, net revenue from fundraising was roughly \$ \_\_\_\_\_. Subtracting expenses for accounting, legal, office expenses, marketing, IT/Website, and payroll, net revenue is \$ \_\_\_\_\_. Based on this number, \_\_\_\_\_ programs received \_\_\_\_\_%, or roughly \$ \_\_\_\_\_. Without subtracting expenses, programs received \_\_\_\_\_%.
- Note: Treasurer \_\_\_\_\_ summarized the above numbers for the examiner.

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
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- Treasurer \_\_\_\_\_ stated, that in the course of the \_\_\_\_\_ years, \_\_\_\_\_ acquired assets of the office in \_\_\_\_\_ for over \$ \_\_\_\_\_ as well as the \_\_\_\_\_ is currently in the process of building " \_\_\_\_\_ " for \_\_\_\_\_ and have spent \$ \_\_\_\_\_ on the \_\_\_\_\_ and another \$ \_\_\_\_\_ on design, engineering, and site work. Of the time devoted to the programs and the mission, not including \_\_\_\_\_, and overseeing, planning, and coordinating the building process, the time spent on programs is \_\_\_\_\_ % collectively. Outside of the programs and building, time is spent on fund-raising efforts.
- In addition to the \_\_\_\_\_ office, \_\_\_\_\_ rented a property owned by its President in \_\_\_\_\_ as a vacation home for \_\_\_\_\_ and has been used for that purpose \_\_\_\_\_. Treasurer \_\_\_\_\_ stated \_\_\_\_\_ started the program in late \_\_\_\_\_. At the time of the interview, \_\_\_\_\_ was paying \$ \_\_\_\_\_ /month for the use of this property.
- Individuals are made aware of \_\_\_\_\_ program through \_\_\_\_\_ website, referral from other organizations, the \_\_\_\_\_ ( \_\_\_\_\_ ), and word of mouth. Those eligible to participate in this program include \_\_\_\_\_ for emergency direct aid \_\_\_\_\_ and there is no discrimination ( \_\_\_\_\_ ).
- Treasurer \_\_\_\_\_ stated \_\_\_\_\_ spent \$ \_\_\_\_\_ for the relief program in \_\_\_\_\_. More than \_\_\_\_\_ individual \_\_\_\_\_ were assisted with aid for evictions, medical costs, rents, foods, etc. \_\_\_\_\_ also added some new programs in \_\_\_\_\_ such as \_\_\_\_\_ transport, ( \_\_\_\_\_ event), and the vacation home.
- Per the Treasurer \_\_\_\_\_, \_\_\_\_\_ income is coming from \_\_\_\_\_ raffles and sweepstakes.
- Examiner asked, "what are the primary activities of the organization?" Per the Treasurer \_\_\_\_\_, every day is direct aid to \_\_\_\_\_.
- \_\_\_\_\_ had \_\_\_\_\_ employees. Per the Treasurer \_\_\_\_\_, in \_\_\_\_\_ there was \_\_\_\_\_ board member- \_\_\_\_\_ the president and CEO. The President/CEO was compensated. The reason why \_\_\_\_\_ did not have a board in \_\_\_\_\_ is that the organization has just begun operations and it didn't believe a board was needed. Per the Treasurer and POA, the President of the organization does everything: all the fundraising, communication with all the external people, and manages the organization.
- Per the Treasurer \_\_\_\_\_, \_\_\_\_\_ has \_\_\_\_\_ checking account. \_\_\_\_\_ expenditures are registered in \_\_\_\_\_ by the accountant, and she (Treasurer) does the recording. Per the Treasurer \_\_\_\_\_, the President/CEO writes the checks, is authorized to sign the checks, and \_\_\_\_\_ signature is required on checks.

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
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- Examiner noted there was \$ for mileage reimbursement from the Adjusted Trial Balance. Examiner asked for an explanation and if there is a mileage log. Per the Treasurer and POA, that was the mileage reimbursement paid to the president of the organization for the travel expenses incurred while delivering the raffles to the winners the . There is no log for mileage and documentation because the confiscated all the paper and electronic documents from the organization (this report will go into more details on the involvement).
- Examiner noted some payments made to the state of (state tax). Examiner asked what activity conducted in . Per the Treasurer and POA, back in , the organization was in before moving to . The payments were payroll taxes made to .
- Examiner asked what gaming activities conducts. Per the Treasurer, the gaming consists of raffles and sweepstakes. The gaming was played on . Anybody who is of age and older can play the games, but the organization will check the ID when someone wins. All the employees work the gaming operations. Income from gaming is recorded as debit or cash to raffles and sweepstakes. Expenses are recorded as credit to cash and debit to cost to sweepstakes. Everything is done . There isn't a separate account for gaming and the organization has bank account.
- Raffles were conducted times in . The winners received , such as a , , and the winners also have cash option. The winner who opted for cash received less for the book value of the . kept a list of the winners. Per the Treasurer, the organization did not issue W-2Gs, but the Treasurer created some on own and mailed them to the winners.

recorded the minutes to the board meetings for . Based on the review of the board meeting minutes, examiner noticed does not have a board. The President is the Officer/Director on the board making decisions. In the first quarter of , the President had a meeting with his CPA and discussed 401k matching options, non-profit directors, officer's insurance, and an increase in President's compensation. After compensation comparisons, the President increased his salary to \$ per month with an opportunity for quarterly bonuses of \$ based on organization's performance and growth.

official website is . It appears the website stopped being operational at some point in , and web search using keywords " " indicates is permanently closed. While the website was operational, it provided a wealth of information on activities. Per the website, main programs were:



Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
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website provided the following information about operations:

"

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
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Examiner reviewed bank account activity and referred to \_\_\_\_\_ general ledger to determine how \_\_\_\_\_ was operating in \_\_\_\_\_ (exam year). The following table below provides \_\_\_\_\_ revenue breakdown for \_\_\_\_\_ - \_\_\_\_\_ :

Revenue Breakdown for _____ - _____		
Description	Amount	% of Total
	\$	%
ATM Check Deposit	\$	%
Donation	\$	%
Payment Return	\$	%
Edeposit IN Branch/Store	\$	%
Payment	\$	%
Interest Payment	\$	%
Transfer	\$	%
Total =	\$	%

Per the bank statements and the general ledger, total deposits in \_\_\_\_\_ were \$ \_\_\_\_\_.  
 Per the bank statements, majority of income ( \_\_\_\_\_ %) came in from \_\_\_\_\_ (" \_\_\_\_\_").  
 \_\_\_\_\_ is a payment processing company. \_\_\_\_\_ processes \_\_\_\_\_ income from selling raffle tickets \_\_\_\_\_. Examiner noted that all other \_\_\_\_\_ income is miniscule compared to the raffle/gaming income.

The following table below provides \_\_\_\_\_ expense breakdown for \_\_\_\_\_ - \_\_\_\_\_ :

_____'s Expenditure breakdown for _____ - _____		
Description	Amount	% of Total
Notes Payable ( _____ Note payable & _____ )	\$	%
Cost of Sweepstake prizes (prizes given to participants)	\$	%
Sweepstakes: Costs ( _____ / _____ advertising costs)	\$	%
_____, Fees for services: Accounting fees	\$	%
Pay _____	\$	%
Pay _____	\$	%
Pay _____	\$	%
Pay _____	\$	%

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

Rent/Lease, and Travel expenses	\$	%
Amber Clute Fees for services: Contractors	\$	%
Payroll Liabilities & Federal Taxes (941/944)	\$	%
Leasehold Improvements -	\$	%
Bank Withdrawals (no information provided in the General ledger)	\$	%
Main Office Occupancy costs (Rent, Lease, Maintenance, Internet)	\$	%
Program Expenses ( provided)	\$	%
<b>Total</b>	<b>\$</b>	<b>%</b>

Total expenses in were \$ . Per the bank statements, total deposits in were \$ . Deposits minus withdrawals equals \$ of net income. As stated, raised funds primarily by way of advertising and conducting raffles for high-end motor vehicles. Examiner noted expenses related for prizes on the bank statements.

Examiner noted cash withdrawals were made and categorized as " " Examiner noted expenses related to advertising and promotion. Direct gaming expenses (raffle prizes/advertising) were \$ , which is % of total expenses.

Multiple contractors were paid for work performed on the property. This property was a single-family residence titled in President's name. There appears to have been extensive improvements made on that property in , to include the installation of a pool, patio, and garage (and renovations to the bathrooms, ceilings, and walls). President/CEO signed all the checks directed towards property improvements. Total costs associated to the leasehold improvements of that property were \$ , which is about % of total expenses. President was leasing this residence to for \$ a month during .

Examiner noted some cash withdrawals that were not categorized at all in the general ledger. There was no explanation provided in the general ledger for how the money was spent for those withdrawals, so the nature behind those withdrawals is unclear. Total amount of uncategorized withdrawals in question is \$ , which is about % of total expenses. Together, property improvements and uncategorized withdrawals make up % of total expenses.

Expenses directed towards President/CEO pay, bonuses, reimbursements, and lease was \$ which is about % of total expenses. Overall, expenses associated with gaming, property improvements, uncategorized withdrawals, and lease, pay and reimbursements to President total to \$ , which is % of total expenses in (see excerpt on the next page for details).

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

Description	Amount	% of Total
Cost of Sweepstake prizes (prizes given to participants)		
Sweepstakes: Costs ( advertising costs)		
Total		
Description		
Bank Withdrawals ( no information provided in the General ledger)		
Leasehold Improvements -		
Total		
Description		
Pay		
Rent/Lease, and Travel expenses		
Total		
Total		

It is important to report that the Department of Justice (DOJ) indicted President on mail and wire fraud charges among others. The to the DOJ's

Department of Justice alleges generated more than \$ in cash flow that went through a bank account under wherein President/Owner was the sole person on the account. The DOJ also alleges was the sole member of the non-profit's board of directors. The indictment says misrepresented everything from his salary and compensation to how the money was spent. This indictment was filed on , and encompasses periods from around or beginning of , through at least in or around of . Since the exam year is , this indictment covers the period during the exam and is relevant to the exam.

Note: . The defendant is presumed innocent until proven guilty. The details of the are described on the next several pages of this report.

#### THE GRAND JURY CHARGES THAT:

1. in or around of , through at least in or around of , the defendant, (" "), was the founder, Chief Executive Officer (CEO), Chief Financial Officer (CFO), and sole board member of a charity named (" "). incorporated as a non-profit corporation in the State of on or about , .



Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

under that domain - to include \_\_\_\_\_ and \_\_\_\_\_  
to correspond with members of the public on \_\_\_\_\_ behalf.

10. \_\_\_\_\_ described \_\_\_\_\_ mission (via the charity's website and the \_\_\_\_\_ ) as the following: "Our vision is to build \_\_\_\_\_ (or \_\_\_\_\_ ) where homeless \_\_\_\_\_ can find shelter, food, counseling and job skills training."

The \_\_\_\_\_ website further informed viewers that: "

"

11. \_\_\_\_\_ primary fundraising method consisted of advertising and selling raffle tickets for high-end automobiles and cash prizes, typically through the use of advertisements on the \_\_\_\_\_ and the \_\_\_\_\_ website. \_\_\_\_\_ solicited raffle ticket purchases with the claim that the raffle proceeds (other than necessary advertising and operating expenses) would go to benefit in-need \_\_\_\_\_ of the \_\_\_\_\_.
12. Individuals who decided to purchase raffle tickets from \_\_\_\_\_ would do so by selecting a payment link on the \_\_\_\_\_. Those \_\_\_\_\_ purchases would then be processed by a payment processing company (to include \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_), with the funds eventually deposited into the \_\_\_\_\_ Bank Account. \_\_\_\_\_ typically conducted the raffles \_\_\_\_\_ doing so in live video feeds streamed to the public on the \_\_\_\_\_.
13. Over the course of \_\_\_\_\_ activities, between \_\_\_\_\_ of \_\_\_\_\_, through at least \_\_\_\_\_ of \_\_\_\_\_, individuals in all \_\_\_\_\_ states and commonwealths purchased raffle tickets from \_\_\_\_\_ through the \_\_\_\_\_. Between \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ charitable raffles generated more than \$ \_\_\_\_\_ in proceeds, the entirety of which flowed into the \_\_\_\_\_ Bank Account.
14. From in or around \_\_\_\_\_, through in or around at least \_\_\_\_\_ of \_\_\_\_\_, within the \_\_\_\_\_ of \_\_\_\_\_ and elsewhere, \_\_\_\_\_, the defendant, devised and intended to devise a scheme and artifice to defraud individuals, and to obtain money and property from the same, by means of materially false and fraudulent pretenses, representations, and promises concerning numerous aspects of \_\_\_\_\_ operations.
15. It was part of the scheme to defraud that \_\_\_\_\_, when advertising upcoming raffles, corresponding with potential and current raffle ticket purchasers, and responding to queries from members of the general public, made repeated misrepresentations about the nature of \_\_\_\_\_ and basis for the financial compensation that \_\_\_\_\_ was drawing from the \_\_\_\_\_.

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

16. For the \_\_\_\_\_ year of \_\_\_\_\_ existence, spanning at least \_\_\_\_\_ of \_\_\_\_\_ until in or around \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ consistently represented in his public postings that \_\_\_\_\_ was not drawing financial compensation from the charity, and was instead-like all the charity's staff-a "volunteer." \_\_\_\_\_ made these claims to both induce further raffle ticket sales and quell criticism of \_\_\_\_\_ fledgling charity.

\_\_\_\_\_ typically issued these representations on the \_\_\_\_\_, often in the context of directly refuting allegations by other \_\_\_\_\_ posters that \_\_\_\_\_ was using the charity's raffle ticket proceeds to enrich \_\_\_\_\_ or that \_\_\_\_\_ was dissipating the charity's proceeds in unseemly or outright fraudulent fashion.

17. Those representations included the following statements, issued by \_\_\_\_\_ on the \_\_\_\_\_:

18. In truth and fact, however, \_\_\_\_\_ had begun withdrawing funds from the \_\_\_\_\_ Bank Account (for reimbursement and \_\_\_\_\_ salary) beginning in at least \_\_\_\_\_ of \_\_\_\_\_.

19. \_\_\_\_\_ did not announce that \_\_\_\_\_ would be paying \_\_\_\_\_ a salary from the \_\_\_\_\_ Bank Account until in or around \_\_\_\_\_ of \_\_\_\_\_ did not acknowledge at that point (or any time afterwards) that \_\_\_\_\_ had in fact already been paying \_\_\_\_\_ with funds from the \_\_\_\_\_.

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
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Bank Account, to include drafting a series of payroll checks to (covering the months of the calendar year) months before his announcement.

20. It was further part of the scheme and artifice to defraud that misrepresented the purported justification for decision to begin paying a salary with charity funds. explained to the public that would begin drawing a salary from when the charity became sole employment- that is, at the point that left previous job "for good."

21. In announcing in late of that had decided to begin paying a salary, represented that would soon be resigning from current employer. At that point, claimed, would commence working for " hours [a week] full-time," and so would begin paying a salary.

a. indicated that the timing of departure from current employment was imminent in a posting on , "

."

b. subsequently announced resignation from his previous job in a posted to the on , .

22. In truth and fact, however, had not left government contractor employer. Instead, continued to work for that employer for approximately more months, submitting resignation to that employer on , . Between of and of , continued to receive regular, salary payments from his (purportedly former) employer.

23. It was further part of the scheme and artifice to defraud that , after announcing that had decided to start paying a salary from , misrepresented the purported justification for the amount of that forthcoming salary. Specifically, claimed in public postings on the that " and therefore would pay a salary that was limited to the same amount had earned at his previous employment.

public statements to this effect included the following public postings:

See excerpt on the next page for details!



Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
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24. In truth and fact, however, knowingly misrepresented the amount of previous salary in order to provide ostensible justification for paying a significantly higher salary from charity's bank account.

25. At the time that incorporated, was employed by a government contractor. maintained that employment through of . During tenure at this employer, received a salary of approximately \$ in ; approximately \$ in ; and approximately \$ in .

26. ultimately paid a total of \$ in salary and discretionary " payments from the Bank Account for the calendar year. Contrary to representations to the public that salary would be consistent with "current living," or even "less than what [ ] made" at previous job, salary for constituted an approximate % raise from his previous employment's salary.

27. would later pay approximately \$ in salary and discretionary bonuses in . For the calendar year, explained to accountant in of , ( ) anticipated paying a total of \$ in salary and discretionary bonuses. In of , proposed and approved a compensation package for that included a base salary of \$ and quarterly " payments of \$ —a total compensation package of at least \$ .

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

28. It was further part of the scheme and artifice to defraud that \_\_\_\_\_ misrepresented to potential and current raffle ticket purchasers that tickets purchased from \_\_\_\_\_ for raffle entries were "tax-deductible." In truth and fact, however, \_\_\_\_\_ knew that these statements were false because the Internal Revenue Code does not permit tax deduction claims for purchases of games-of-chance tickets (bingos, raffles, etc.), whether from profit or non-profit organizations. \_\_\_\_\_ deliberately circumvented this IRS prohibition, however, by structuring the receipts that \_\_\_\_\_ provided to raffle ticket purchasers so that the receipts concealed the true nature of the financial transaction in question. That is, the \_\_\_\_\_ receipts characterized the \_\_\_\_\_ patron's purchase of a raffle ticket instead as a charitable "donation," omitting any reference to raffles or the ticket purchaser's raffle ticket number.
29. \_\_\_\_\_ advertised these knowingly false statements to induce the public to purchase (purportedly tax-deductible) raffle tickets from his organization. In doing so, \_\_\_\_\_ both deliberately misled potential raffle ticket purchasers and simultaneously facilitated the submission fraudulent purportedly tax-deductible "donation" receipts (by witting or unwitting raffle ticket purchasers) to the Internal Revenue Service.
30. \_\_\_\_\_ frequently reassured \_\_\_\_\_ raffle ticket purchasers that (contrary to the clear "charitable donation" language on the ticket purchaser's receipt) the purchasers had not made a "donation" to \_\_\_\_\_, but had instead successfully purchased entries in the upcoming \_\_\_\_\_ raffle. \_\_\_\_\_ misrepresentations regarding this aspect of his scheme and artifice to defraud included the following \_\_\_\_\_ postings:

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

31. It was further part of the scheme and artifice to defraud that \_\_\_\_\_ misrepresented how \_\_\_\_\_ would use the charity's raffle ticket proceeds. In public postings on \_\_\_\_\_ and website, and in correspondence with and promotional materials provided to potential and previous raffle ticket purchasers, \_\_\_\_\_ advertised that \_\_\_\_\_ "direct mission" was raising funds to build " \_\_\_\_\_, " which described as a " \_\_\_\_\_ [square foot] facility in \_\_\_\_\_ " capable of housing "upwards of \_\_\_\_\_ at a time." To that end, \_\_\_\_\_ repeatedly assured the public that a significant portion - " \_\_\_\_\_ " - of all the proceeds generated by the charity's raffle ticket sales were "allocated for our direct mission" and accordingly segregated in a separate, steadily increasing " \_\_\_\_\_ ."

32. In truth and fact, however, there was no " \_\_\_\_\_ ." Instead, \_\_\_\_\_ directed that all raffle ticket proceeds be deposited into a \_\_\_\_\_ bank account (the \_\_\_\_\_ Bank Account). \_\_\_\_\_ thereafter utilized those charitable proceeds as \_\_\_\_\_ saw fit: paying salary and discretionary bonuses; paying \_\_\_\_\_ advertising costs; purchasing the raffle prize \_\_\_\_\_ ; reimbursing \_\_\_\_\_ for various and sundry travel expenses; etc.

The balance in the \_\_\_\_\_ Bank Account, accordingly, increased and decreased according to \_\_\_\_\_ raffle ticket sales and \_\_\_\_\_ expenditures. At no point during the timeframe of this Indictment, contrary to \_\_\_\_\_ representations, had \_\_\_\_\_ established a separate account for the purported " \_\_\_\_\_ , " or otherwise segregated a portion of the charity's raffle ticket proceeds for the purchase and/or construction of " \_\_\_\_\_ ."

33. The \_\_\_\_\_ building purchased by \_\_\_\_\_ during the course of the time frame described above consisted of \_\_\_\_\_ purchase in or around \_\_\_\_\_ of \_\_\_\_\_ (for approximately \$ \_\_\_\_\_ ) of a \_\_\_\_\_ square foot office facility in \_\_\_\_\_ .

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

34. It was further part of the scheme and artifice to defraud that \_\_\_\_\_ misappropriated raffle ticket proceeds to pay for \_\_\_\_\_ personal expenses, and that \_\_\_\_\_ subsequently and knowingly mischaracterized those transactions in \_\_\_\_\_ accounting records and publicly available tax filings in order to present a misleading portrait of the charity's financial decision-making.
35. As the \_\_\_\_\_ signatory on the \_\_\_\_\_ Bank Account, \_\_\_\_\_ regularly utilized funds in the \_\_\_\_\_ Bank Account to pay \_\_\_\_\_ credit card bills. \_\_\_\_\_ assured \_\_\_\_\_ accountant, however - and later, federal agents - that \_\_\_\_\_ used \_\_\_\_\_ funds to pay for credit card expenditures incurred on legitimate, \_\_\_\_\_-serving transactions (or for legitimately reimbursable expenses, such as \_\_\_\_\_ hotel and meals costs while traveling on \_\_\_\_\_ business). \_\_\_\_\_ claimed that \_\_\_\_\_ was careful to segregate \_\_\_\_\_ credit card usage - that is, that \_\_\_\_\_ used personal credit cards for personal expenses, and \_\_\_\_\_ credit cards \_\_\_\_\_ for legitimate \_\_\_\_\_ business.
36. In truth and fact, however, \_\_\_\_\_ utilized \_\_\_\_\_ access to the \_\_\_\_\_ Bank Account to pay for numerous personal expenditures that \_\_\_\_\_ had incurred using either (the purportedly) \_\_\_\_\_-business- \_\_\_\_\_ credit cards or through the issuance of checks drawn on the \_\_\_\_\_ Bank Account. \_\_\_\_\_ later approved the mis-categorization of those personal expenditures in \_\_\_\_\_ accounting records, so that \_\_\_\_\_ personal expenditures were instead categorized as instances of " \_\_\_\_\_ " provided by the charity to homeless or otherwise in-need \_\_\_\_\_. \_\_\_\_\_ also approved the mis-categorization of salary payments to \_\_\_\_\_ staffers so that those payments were instead described as additional instances of financial " \_\_\_\_\_ " provided by \_\_\_\_\_ to in-need \_\_\_\_\_.
37. \_\_\_\_\_ use of the \_\_\_\_\_ Bank Account to pay for personal expenditures (and his subsequent mischaracterizations of those transactions), and \_\_\_\_\_ mischaracterization of payments to \_\_\_\_\_ contractors, included (but were not limited to) the following:

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

38.           understood that the mischaracterization of these personal expenditures and salary payments as being instances of financial "           " provided by the charity to destitute           had the effect of both falsely inflating the amount of           raffle proceeds that appeared to be allocated to the direct assistance of homeless or otherwise disadvantaged           ; and simultaneously decreasing the amount of raffle proceeds that represented were being allocated to pay the salaries or compensation of employees.
39.           also understood that these           accounting records would form the basis for required, publicly available annual tax filing with the IRS—that is, the IRS Form 990. The IRS Form 990 is of especial importance to both the IRS (which describes the Form 990 as the IRS's "primary tool for gathering information about tax-exempt organizations") and those members of the public interested in assessing the financial decision-making and financial priorities exercised by tax-exempt charitable organizations.
40.           subsequently approved the filing of           Form 990 with the IRS on or about           . That filing, which detailed           financial activity throughout the calendar year, incorporated the financial mis-categorizations described above.
41.           posted a filed copy of the           Form 990 on the           website.           subsequently and frequently urged members of the public to view the           Form 990, pointing to the representations on that filed tax form as evidence of           responsible stewardship of its charity raffle proceeds.
42.           understood and intended, when he directed members of the public to view the           Form 990, that the mis-categorization of           personal expenditures and his payments to           staff (among other transactions) as instances of "direct [charitable] relief" to           had the effect of producing an inaccurate summary of how           was in fact allocating the proceeds generated by the charity's raffle ticket sales.
43.           also used funds drawn from the           Bank Account to purchase a residence titled in           name, and to subsequently make extensive improvements on that residence. Specifically,           purchased a residence in           , on or about           ,           wrote a \$           check from the           Bank Account to pay for the "           " deposit on the residence, although           titled the residence in his name.

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

44. began "leasing" this residence (while residing in the home) to his charity in of , paying (as landlord) \$ a month from the Bank Account. also withdrew \$ from the Bank Account to serve as the charity's " on lease of residence. The purported justification for the lease was that residence would at some point be used in the course of of advertised programs--" -which offered the opportunity to stay at the residence for week-long periods.

45. subsequently made extensive improvements to the residence, to include the installation of a pool, patio, and garage (and renovations to the residence's bathrooms, ceilings, and walls). Characterizing these improvements to the residence as "leaseholder improvements" made by the lessee (that is, ), used funds from the Bank Account to fund these home improvement projects. Between and of , withdrew more than \$ in charity funds to complete the aforementioned improvements. resided at the residence until in or about of .

46. utilized the residence to host the " " program from approximately of through of subsequently terminated the lease to and returned to using the house (which had at all times remained titled in name) as full-time personal residence through at least of . did not reimburse his charity for the \$ in charity funds that spent on improvements to the residence at any point prior to learning that his financial management of was under federal criminal investigation.

Examiner discovered that signed the plea deal on , for the aforementioned federal fraud case against agreeing to be sentenced on count of engaging in a monetary transaction with property derived from unlawful activity. The U.S. Attorney's Office agreed to drop other charges, including mail and wire fraud, as part of the deal. is set to be sentenced , and faces up to years in prison and fines more than \$ , though the plea deal stipulates that the government will recommend a lower sentence, likely in line with request for months in prison. must also forfeit any assets possesses that are related to his crime.  
Read more at  
and

Additionally, during the course of the examination, examiner discovered that (DOJ) assessed civil penalties against as part of a settlement agreement involving an illegal raffle enterprise. to the press release and the

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

settlement agreement is here

. The details of the press release are on the next page.  
 — announced ' organizations in the  
 state will soon receive donations as a result of civil penalties assessed as part of a settlement  
 agreement involving an illegal raffle enterprise and the (DOJ)

In a press release, a series of nationwide and raffles were held by  
 non-profit, from - . The  
 Attorney General's office says it was found that the organization was selling raffle tickets in other  
 states where such sales were illegal. Additionally, they applied a substantial portion of raffle  
 proceeds to administrative costs rather than maximizing monies donated to ' charities.  
 voluntarily entered into the settlement agreement and made the payments.  
 As part of the settlement, the chose charities to benefit from the  
 settlement:

- on the , which serves by at  
 (\$ ).
- , based in , which offers guided as a part  
 of the (\$ ).
- , which provides housing and resources for homeless  
 at the in (\$ ).

Under the settlement agreement, \$ will go the state general fund. Additionally,  
 nonprofit raffle registration will be revoked in .

## LAW

Section 501(a) of the Code exempts from federal income taxation organizations described  
 in section 501(c).

Section 501(c)(3) of the Code exempts from federal income tax organizations which are 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 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 insures 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

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

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

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

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

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organizations, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes.

Section 502(a) of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

Section 1.502-1(a) of the regulations provides that, in the case of an organization operated for the primary purpose of carrying on a trade or business for profit, exemption is not allowed under section 501 of the Code on the ground that all of the profits of such organization are payable to one or more organizations exempt from taxation under section 501. In determining the primary



<b>Form 886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
<b>Name of Taxpayer</b>	<b>Tax Identification Number (last 4 digits)</b>	<b>Year/Period Ended</b>

purpose of an organization, all the circumstances must be considered, including the size and extent of the trade or business, and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 501.

Section 512(a) of the Code provides that the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less allowable deductions which are directly connected with the carrying on of such trade or business, computed with certain modifications.

Section 513 of the Code provides that the term "unrelated trade or business" means any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or functions constituting the bases for its exemption under section 501.

In Rev. Rul. 64-182, 1964-1 C.B. 186, the Service published the commensurate test. In this ruling, an organization was organized exclusively for charitable purposes by which it derived its income principally from the rental of space in a large commercial office building which it owned, maintained, and operated. The charitable purposes of the corporation were carried out by aiding other charitable organizations, selected in the discretion of its governing body, through contributions and grants to such organizations for charitable purposes. In the ruling, the Service held that the organization was deemed to meet the primary purpose test of section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations, and was to be entitled to exemption from Federal income tax as a corporation organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code, where it was shown to be carrying on through such contributions and grants a charitable program commensurate in scope with its financial resources.

Rev. Rul. 67-5, 1967-1 C.B. 123, holds that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities that were beneficial to them, but detrimental to the foundation. This resulted in the foundation's ownership of common stock that paid no dividends of a corporation controlled by the foundation's creator and his family, which prevented it from carrying on a charitable program.

Rev. Rul. 70-186, 1970-1 C.B. 129, holds that a nonprofit organization formed to preserve and improve a lake used extensively as a public recreational facility qualifies for exemption under section 501(c)(3) of the Code. The organization was formed to preserve a lake as a public recreational facility and to improve the condition of the water in the lake to enhance its recreational features. It is financed by contributions from lake front property owners, from members of the community adjacent to the lake, and from municipalities bordering the lake. The organization's principal activity is to treat the water, to remove algae, and to otherwise improve the condition of the water for recreational purposes.

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

By treating the water, removing algae, and otherwise improving the condition of the water, thereby insuring the continued use of the lake for public recreational purposes, the organization is performing a charitable activity. The benefits to be derived from the organization's activities flow principally to the general public through the maintenance and improvement of public recreational facilities. Any private benefits derived by the lake front property owners do not lessen the public benefits flowing from the organization's operations. In fact, it would be impossible for the organization to accomplish its purposes without providing benefits to the lake front property owners.

In *Better Business Bureau of Washington, D.C. v. U.S.*, 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single ... [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly ... [exempt] purposes."

In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In *Est of Hawaii v. Commissioner*, 71 T.C. 1067, 1081-82 (1979), the Tax Court held that compensation need not be unreasonable or exceed fair market value to constitute private benefit, stating "[n]or can we agree with petitioner that the critical inquiry is whether the payments made to International were reasonable or excessive. Regardless of whether the payments made by petitioner to International were excessive, International and EST, Inc., benefited substantially from the operation of petitioner."

In *Retired Teachers Legal Defense Fund v. Commissioner*, 78 T.C. 280, 286 (1982) the tax court defined private benefit to include any "advantage; profit; fruit; privilege; gain or interest."

In *Church by Mail v. Commissioner*, 765 F. 2d 1387 (9th Cir. 1985), aff'g 48 T.C.M. (CCH) 471 (1984), the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9th Circuit Court of Appeals, in affirming the Tax Court's decision, stated: "The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church.”

In *Easter House v. U.S.*, 12 Cl. Ct. 476, 486 (1987), aff’d, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization’s argument that the adoption services merely complemented the health-related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization’s operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization’s sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the “business purpose, and not the advancement of educational and charitable activities purpose, of plaintiffs adoption service is its primary goal” and held that the organization was not operated exclusively for purposes described in section 501(c)(3). *Easter House*. 12 Cl. Ct. at 485-486.

In *Living Faith, Inc. v. Commissioner*, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization’s activities were ““presumptively commercial” because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In *Airlie Foundation v. Commissioner*, 283 F. Supp. 2d 58 (D.D.C., 03), the court relied on the “commerciality” doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. As the court stated: Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

### APPLICATION OF LAW

On the basis of the information obtained during the exam, the Internal Revenue Service (the “Service”) contends that \_\_\_\_\_ is not organized and operated exclusively for exempt purposes

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

within the meaning of section 501(c)(3) of the Code. Rather, the Service contends that is organized and operated for the primary purpose of carrying on an unrelated trade or business within the meaning of section 513 of the Code, and, further, that it is organized and operated for the benefit of private interests. Under the "operational test" set out in section 1.501(c)(3)-1(c) of the regulations, an organization must prove that it operates exclusively for one or more exempt purposes within the meaning of section 501(c)(3) by showing that it engages primarily in activities which accomplish one or more of such exempt purposes. The Service contends that fails the operational test set out in section 1.501(c)(3)-1(c) of the regulations because it failed to prove that it operates exclusively for one or more exempt purposes within the meaning of section 501(c)(3).

Section 1.501(c)(3)-1(e) of the regulations explains that an organization may operate a trade or business as a substantial part of its activities and still qualify for exemption under section 501(c)(3), so long as the operation of the trade or business is in furtherance of the organization's exempt purpose and the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. The term "unrelated trade or business", as it applies to an organization described in section 501(c)(3) of the Code, means any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or the use it makes of the profits derived) to the exercise or performance by such organization of its exempt purposes.

The courts have developed guidelines intended to help discern whether an organization has a substantial nonexempt commercial purpose, i.e., if it is conducting unrelated trade or business. See e.g., B.S.W. Group, supra; Easter House, supra; Airlie, supra; Living Faith, supra. Generally, the factors proffered by courts focus on the nature of the activities and how an organization conducts its business. primary activity is gaming, i.e., conducting unrelated trade or business. Gaming includes bingo, beano, raffles, lotteries, pull-tabs, scratch-offs, pari-mutuel betting, Calcutta wagering, pickle jars, punchboards, tip boards, tip jars, certain video games, and other games of chance. Gaming is a recreational activity and, if conducted for a profit, a trade or business. Gaming activities involving the public do not directly further 501(c)(3) exempt purposes. Therefore, 501(c)(3) organization will not continue to qualify for exemption if gaming activities are their primary activities. As the court found in Better Business Bureau of Washington, D.C. v. U.S., the presence of a single, substantial non-exempt purpose will preclude exemption regardless of the number of other exempt activities.

Specifically, raises funds primarily by way of advertising and conducting raffles and sweepstakes for raffles is not substantially related to the exempt purpose of helping struggling , except insofar as it provides the with income. Treasurer stated is funded through raffles and sweepstakes. website provided that is % self-funded and relies on giveaways to generate the revenue needed. Per the bank statements, total deposits in were \$ Substantially all of those deposits ( %) came in from raffle sales. All other income is

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

miniscule compared to the raffle income; moreover, has not received voluntary contributions from the general public.

Income from its raffle and sweepstakes activities (revenues from ) totaled \$ . Of this amount, distributed \$ for charitable purposes, i.e. assistance to needy which is approximately % of total revenues raised for charitable purposes. The amount of \$ was designated as a program service expense.

total expenses in were \$ gaming expenses (raffle prizes/advertising) were \$ , which is % of total expenses. intent was to use raffle funds to provide housing and other assistance to homeless or otherwise destitute Based on the activity in the bank statements, very little (\$ which is less than % of total expenses) was going to and towards other 501(c)(3) charitable purposes.

To summarize, examiner's findings indicate applied a substantial portion of raffle proceeds to gaming expenses and administrative costs rather than to 501(c)(3) charitable purposes. Because approximately % of all revenues were collected via raffles, % of all expenses were spent on raffle prizes/advertising, and just under % of funds were dedicated to charitable work, such as providing to and those less fortunate, purported charitable activities were not commensurate in scope with financial resources, which is a requirement for a section 501(c)(3) fundraising organization as stated in Rev. Rul. 64-182.

Whether an organization is operating a "real and substantial" charitable program, as described in Rev. Rul. 64-182, depends on all the facts and circumstances of the case. One of the significant factors is whether a relatively low charitable payouts reflect private benefit or inurement in the operation of the gaming activity. See, e.g., Rev. Rul. 67-5, 1967-1 C.B. 123, where the Service held that an organization that engaged in activities beneficial to the founder and his family, but detrimental to the foundation, operated for a substantial non-exempt purpose and served the private interests of the founder. Thus, in any case involving possible application of Rev. Rul. 64-182 adverse to the organization, the possibility of private benefit or inurement should be considered.

Under section 1.501(c)(3)-1(d)(1)(ii) of the regulations, an organization is not operated exclusively for exempt purposes unless it serves a public rather than a private interest. Although an organization exempt under section 501(c)(3) of the Code may provide benefits to private individuals, those benefits must be incidental quantitatively and qualitatively to furthering exempt purposes. To be qualitatively incidental, private benefit must be a necessary concomitant of the activity that benefits the public at large; in other words, the benefit to the public cannot be achieved without necessarily benefiting certain private individuals. To be quantitatively incidental, the private benefit must be insubstantial, measured in the context of the overall public benefit conferred by the activity.

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

Considering information obtained from DOJ's indictment and the subsequent plea deal, settlement with Department of Justice's , and examiner's findings, the Service contends that provides substantial, not incidental, benefits to President/CEO . does not have a board. The President is the Officer/Director on the board making decisions. was involved in all of the fundraising, communication with all the external people, and managing the organization. Without any oversight, was able to set his own compensation, increasing his salary to \$ per month with opportunity for quarterly bonuses of \$ . As stated in Est of Hawaii, the Tax Court held that compensation need not be unreasonable or exceed fair market value to constitute private benefit. See also Church by Mail v. Commissioner in which the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. Additionally, as stated in Retired Teachers Legal Defense Fund v. Commissioner, private benefit is any "advantage; profit; fruit; privilege; gain or interest." To summarize, , as the overseer of the organization, had unrestricted authority to set his own compensation, which is a conflict-of-interest transaction and, thus, was in a position to personally benefit from resources.

In addition to setting his own compensation, benefited from the organization's resources by directing funds towards property (the "property"). Specifically, examiner noted that multiple contractors were paid for work performed on the property. This property was a single-family residence purchased by but titled in name. was leasing this residence to for \$ a month, in addition to receiving his regular compensation from . Extensive improvements were made on the property in , to include the installation of a pool, patio, and garage (and renovations to the bathrooms, ceilings, and walls). Characterizing these improvements to the property as "leasehold improvements" made by the lessee (that is, ), used funds from bank account to fund these home improvement projects.

Total costs associated to the leasehold improvements of the property were \$ , which is about % of total expenses. DOJ's indictment alleges that lived at the property until in or about of . Furthermore, DOJ's indictment alleges did not reimburse his charity for funds spent on improvements to the property at any point prior to learning that his financial management of was under federal criminal investigation.

To summarize, purchased the property using funds, titled it in own name, leased it back to , made extensive improvements to the property, and appears to have used it as his personal residence. Considering information obtained from DOJ's indictment/plea deal and examiner's findings, the Service contends that business operations involving the property do not serve to "substantially benefit" and its exempt purpose, rather they serve to substantially benefit President/CEO .

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
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Altogether, spent \$ , which is % of total expenses and % of the gross revenues in , on the leasehold improvements, lease, pay, travel, and reimbursements to President . As stated previously, salary, reimbursements, rent from lease, travel expenses, and any other fringe benefits need not be unreasonable or exceed fair market value to constitute private benefit. See e.g., *Church by Mail v. Commissioner*, *Retired Teachers Legal Defense Fund v. Commissioner*. Private benefit is any "advantage; profit; fruit; privilege; gain or interest." To reiterate, , as the overseer of the organization, used his position of power to personally benefit from the organization's resources.

Unlike the situation described in Rev. Rul. 70-186, *supra*, in which an organization preserved a lake for public recreation and, in so doing, incidentally benefited lakefront property owners, in case the private benefit is substantial and the public benefit is incidental. The Service argues that 's low charitable payouts (less than % of ' total revenues and expenses in ) reflect private benefit to . The Service argues is similar to the organization described in Rev. Rul. 67-5, where the Service held that an organization that engaged in activities beneficial to the founder and his family, but detrimental to the foundation, operated for a substantial non-exempt purpose and served the private interests of the founder. By serving the private interests of , was prevented from carrying on a charitable program.

On a note, examiner noted some cash withdrawals that were not categorized at all in the general ledger. These are large/questionable transactions because there was no explanation provided in the general ledger for how the money was spent, so the nature behind those withdrawals is unclear. Total amount of uncategorized withdrawals in question is \$ which is about % of total expenses. It is not an insignificant amount to say the least, so the Service will consider it in this report. Without adequate records, the Service cannot verify that used the aforementioned funds to further 501(c)(3) charitable purposes. Thus, the Service has no reason to believe that these funds were used for charitable purposes and has not provided any evidence to the contrary.

Overall, expenses associated with gaming, property improvements, uncategorized withdrawals, and lease, pay, and reimbursements to President total to \$ , which is % of total expenses in and % of the organization's gross revenues. To reiterate, purported charitable activities were not commensurate in scope with financial resources, primary activity was gaming, i.e., conducting unrelated trade or business, and failed to prove that it operates exclusively for one or more exempt purposes within the meaning of section 501(c)(3).

### TAXPAYER'S POSITION

The taxpayer's position is solicited.

Form <b>886-A</b> (Rev. May 2017)	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule number or exhibit
Name of Taxpayer	Tax Identification Number (last 4 digits)	Year/Period Ended

### CONCLUSION

For the above reasons, we find that \_\_\_\_\_ is not organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Rather, \_\_\_\_\_ is organized and operated for the primary purpose of conducting an unrelated trade or business. Furthermore, we find that \_\_\_\_\_ provides substantial benefits to private interests in return for a comparatively incidental public benefit. Accordingly, \_\_\_\_\_ does not qualify for exemption as an organization described in section 501(c)(3) of the Code and it must file federal income tax returns. Contributions to \_\_\_\_\_ are not deductible under section 170 of the Code.