



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Release Number: 201447049  
Release Date: 11/21/2014  
UIL Code: 501.03-03

Date: June 19, 2009

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:

LAST DATE TO FILE A PETITION  
IN TAX COURT: September 17, 20XX

CERTIFIED MAIL – RETURN RECEIPT

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated May 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective December 1, 19XX.

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

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You did not operate exclusively for exempt purposes because your assets inured to, and served the private interests of, your creators. The entire amount of your assets was loaned to your creator. There was no indication that the loan was secured or the creator ever made any payments. The loan was used to pay for the business and personal expenses of your creator. The loan was made at a favorable rate and terms which served the financial interests of your creator. He has operated you for his own personal benefit. You were controlled by your creator and you were established and operated to enable your creator to engage in financial activities which are beneficial to him. Facts that show a charity's investments are decided in part by the needs of private interests indicate the charity may not be operated exclusively for exempt purposes. Western Catholic Church v. Commissioner, 73 T.C. 196, 214 (1979), aff'd 631 F. 2d 736 (7<sup>th</sup> Cir. 1980).

Contributions to your organization are no longer deductible under IRC §170 after December 1,

**19XX.**

**You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending November 30, 20XX, and for all tax years thereafter in accordance with the instructions of the return.**

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

**If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91<sup>st</sup> Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:**

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

**You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:**

**See the enclosed Notice 1546, Taxpayer Advocate Service - Your Voice at the IRS, for Taxpayer Advocate telephone numbers and addresses.**

**We will notify the appropriate State Officials of this action, as required by Code section 6104(c). You should contact your State officials if you have any questions about how this final determination may affect your State responsibilities and requirements.**

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

**Sincerely,**

**Sunita Lough  
Director, EO Examinations**

**Enclosures:  
Publication 892  
Publication 1546**

**Internal Revenue Service**

**Department of the Treasury**

Date: November 24, 2008

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:  
November 30, 20XX and 20XX

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

**Certified Mail - Return Receipt Requested**

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

**Letter 3618 (Rev. 11-2003)**  
Catalog Number: 34809F

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Vicki L. Hansen  
Acting, Director Exempt Organizations Examinations

Enclosures:  
Publication 892  
Publication 3498  
Report of Examination

Name of Organization:  
Form:                      FYE:

Agent:  
Date: 1/30/20XX

W/P Index L-4

OTHER  
EXEMPT STATUS

The following is the Revenue Agent Report sent to the taxpayer via 30 day letter, L3618, on November 24, 20XX. The Organization agreed to the retroactive revocation and submitted a signed Form 6018 on 12/22/20XX.

**ISSUE:** Whether the IRC § 501(c)(3) tax exempt status of the should be revoked because it is not operated exclusively for tax exempt purposes.

**FACTS:**

Trust Instrument

The (the "Organization") was created with a Declaration of Trust (Declaration) by (hereinafter collectively referred to as the "Donor" and sometimes referred to as "Trustee"), on December 27, 19XX. The Declaration provides that the Organization was created for the purpose of establishing an organization which is described in IRC §§ 501(c)(3) and IRC 509(a)(3). The Declaration states that it shall be irrevocable, and the Donor hereby expressly waives the right and the power to alter, amend, revoke, or terminate the Trust or any of the terms of this Declaration. The Declaration provides that the Donor hereby renounces any power to determine or control, by alteration, amendment, revocation, termination, or otherwise, and the Donor renounces any interest in, either vested or contingent, including any reversionary interest or possibility of reverter, the income or principle of the trust estate.

The Declaration requires that each year the Trustee shall distribute % of the adjusted net income of Organization to , (the "Primary Charity"). It is intended that the distributions to will help perform its functions and carry out its purposes. In order to insure that this happens, the Board shall meet with the governing body of , or a representative thereof, to determine the use of such distributions. It is intended that the distributions will be used in a similar fashion each year to fund a project or carry out a function . Prior to making any donation, grant or distribution to , the organization shall obtain written confirmation that is then currently recognized as a tax exempt organization under Section 501(c)(3) of the Code.

In addition to the distribution to be made pursuant to the above regarding the required distribution, each year, the Trustee shall distribute a total of of the net income of this Trust to one or more of the organizations listed on , which by this reference is made a part hereof, or to as is directed by the Board in writing signed by at least members of the Board, provided that each such

Name of Organization:  
Form:                      FYE:

Agent:  
Date: 1/30/20XX

#### W/P Index L-4

distribution shall be a distribution which can be made by an organization described in Section 509(a)(3) of the Code. Each such distribution shall be made on or before the end of the                      month immediately following the year in which the income was earned. There are                      charities listed on                      to the Declaration, including the primary charity,

Upon winding up and dissolution of this Trust, after paying or adequately providing for the debts and obligations of the Trust, the remaining assets shall be distributed to a non-profit fund, foundation, or corporation which is organized and operated exclusively for charitable, educational, religious, and/or scientific purposes and which has established its tax exempt status under Section 501(c)(3) of the Code. In the event that the Trust does not obtain exempt status under 501(c)(3) and 509(a)(3) of the Code, the assets of the Trust shall go to the                      , as defined, as a contingent remainder.

In the event the Trustee determines, in the Trustee's sole and complete discretion, that the Trust Fund is too small to economically administer, then in such event the Trustee shall distribute the Trust Fund in its entirety outright to such organization or organizations as described in §170(c)(2) of the Code.

The Declaration provides that the Board shall be the governing body of the Trust and that the members of the Board shall consist of                      members and be determined as follows:

Board member shall be appointed by

Board members shall be from the class consisting of                      and                      and each of their descendants (the                      ), provided that there are then at least                      members of the                      who are willing and able to so act.

Other remaining members of the Board, including any vacancies caused by not having at least                      members as designated from the                      , shall be appointed by a majority vote by the remaining members of the Board. The initial remaining Board members shall be

#### Governance

                    is the Organization's trustee.                      is a substantial contributor and, therefore, a disqualified person with respect to the Organization. The Organization's initial board of directors was comprised of                      members as follows:

                    , a disqualified person because he is a substantial contributor;  
                    , also a disqualified person;

Name of Organization:  
Form: FYE:

Agent:  
Date: 1/30/20XX

W/P Index L-4

All Board members were disclosed on the Form 990, for the tax year ended November 30, 19XX. On the 20XX through 20XX tax returns only and were disclosed as Board members, no other Board members were disclosed.

**Operations**

Application for Recognition of Exempt Status

By letter dated May 30, 20XX, the Organization was recognized by the Service as exempt from Federal income tax under section 501(a) as an organization described in section 501(c)(3). The Service also determined that the Organization met the requirements of section 509(a)(3) and classified it as a supporting organization rather than a private foundation. The Service's determination letter was based on the Organization's representations made in its application and supplemental materials. During the application process, the Organization did not disclose that it would lend all of its assets to disqualified persons.

Years Before Exam

19XX

The Organization provided a copy of the Board meeting minutes for December 27, 19XX. These were the only meeting minutes provided by the Organization.

The Organization filed its initial tax return on October 18, 20XX, for the year ended November 30, 19XX.

Initial Contributions to the Organization Per Form 990 for the year ended November 30, 19XX.

Cash	\$
Stock	\$
Dividends	\$
From Stock	\$
Gain on Sale of	\$
Contributed	\$
Stock	\$
Total	\$

Name of Organization:  
Form:                      FYE:

Agent:  
Date: 1/30/20XX

W/P Index L-4

On November 19, 19XX, the Organization issued a loan<sup>1</sup> to the Trustee in the amount of . This was the total amount of assets for the Organization. A copy of the Note, dated November 19, 19XX, provided by the Organization indicated the following terms:

Amount:        \$  
Rate:           % apr  
Due upon demand.

The loan to Trustee was disclosed on line , page , of the Form 990 for the year ended November 30, 19XX, and on the . The information disclosed on was "Loan to ".

20XX

There was no income or expenditures reported on the Form 990, for the year ended November 30, 20XX, filed by the Organization.

The loan to Trustee was disclosed in the same manner as described above for the year ended November 30, 19XX.

20XX

There was no income or expenditures reported on the Form 990, for the year ended November 30, 20XX, filed by the Organization. The loan was reported as a receivable from officers on , page , of the tax return. On a statement attached to the tax return the Organization disclosed the name of the borrower and terms of the loan.

20XX

The 20XX tax return was filed identical to the 20XX return. No income or expenditures disclosed and the loan was disclosed on a statement attached to the return.

There was no indication the Organization made any grants to the Primary Charity or any other charity. The returns do not indicate that any income was received or any expenditures were made.

\* \* \* \*

<sup>1</sup> Through the course of the initial interview and the examination of the books and records there was no indication the Trustee made any payments on the loan to the Organization and the money received by the Trustee was used to pay for his business and personal living expenses.

Name of Organization:  
Form:               FYE:

Agent:  
Date: 1/30/20XX

W/P Index L-4

Years under Exam

20XX and 20XX

Through the course of the initial interview and examination of the books and records there was no indication the Organization made any grants or received any income. The Organization did file Forms 990 disclosing the receivable from the Trustee.

<u>Tax return information</u>	20XX	20XX
Line		
Total revenue	\$	\$
Line		
Total expenses	\$	\$
<b>Balance Sheet</b>		
Line		
Receivables from officers, directors, Trustees, and key employees	\$	\$
Line		
Total assets	\$	\$
Line		
Total liabilities	\$	\$
Line		
Paid in capital surplus	\$	\$
Line		
Total liabilities and net assets	\$	\$

LAW:

IRC § 501(c)(3) exempts from Federal income tax: corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

W/P Index L-4

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

Regulation section 1.501(c)(3)-1(c)(2) 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. The words "private shareholder or individual" refer to persons having a personal and private interest in the activities of the organization.

Regulation section 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, 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 the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the United States Supreme Court held that regardless of the number of truly exempt purposes, the presence of a single substantial non-exempt purpose will preclude exemption under section 501(c)(3).

In Revenue Ruling 67-5, 1967-1 C.B. 123, it was held that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities which were beneficial to them, but detrimental to the foundation. It was further held that the foundation was operated for a substantial non-exempt purpose and served the private interests of the creator and his family. Therefore, the foundation was not entitled to exemption from Federal income tax under section 501(c)(3).

**GOVERNMENT'S POSITION:**

**Issue**

The IRC § 501(c)(3) tax exempt status of \_\_\_\_\_ (the "Organization" ) should be revoked because it is not operated exclusively for tax exempt purposes.

The Organization was funded with \_\_\_\_\_ in Cash and Stock by the Trustee, \_\_\_\_\_, from December 28, 19XX, through November 30, 19XX. On November 19, 19XX, a loan was issued from the Organization to the Trustee in the amount of \_\_\_\_\_ the entire amount of the Organization's assets. There was no indication of any board approval. The lack of a board approval process prior to the transactions demonstrate that \_\_\_\_\_, Donor, had full control of the assets.

Name of Organization:  
Form:                      FYE:

Agent:  
Date: 1/30/20XX

#### W/P Index L-4

There was no indication that the loan was secured or the Trustee ever made any payments. The Organization provided documentation stating the loan was used to pay for the business and personal expenses of \_\_\_\_\_, Trustee.

The entire contribution by \_\_\_\_\_ was loaned back to him, the Donor and disqualified person at a favorable rate and terms which served the financial interests of the Trustee. Facts that show a charity's investments are decided in part by the needs of private interests indicate the charity may not be operated exclusively for exempt purposes. Western Catholic Church v. Commissioner, 73 T.C. 196, 214 (1979), aff'd 631 F.2d 736 (7<sup>th</sup> Cir. 1980).

The facts show that the Organization is not operated exclusively for a tax exempt charitable purpose. Rather, \_\_\_\_\_, has operated the Organization for his own personal benefit. The facts of the case show that \_\_\_\_\_ established the Organization and claimed tax benefits in the form of charitable contribution deductions under IRC § 170.

The Organization, which is controlled \_\_\_\_\_, was established and operated to enable \_\_\_\_\_ to engage in financial activities which are beneficial to him. Accordingly, it is operated for a substantial non-exempt purpose. See Revenue Ruling 67-5.

An organization is described in section 501(c)(3) only if no part of its net earnings inures to the benefit of any private shareholder. The inurement prohibition is designed to insure that charitable assets are dedicated to exclusively furthering public purposes. An organization is not operated exclusively for exempt purposes if its net earnings inure to the benefit of private shareholders or individuals.

A gift to a charitable organization must be a voluntary transfer of money or property without the receipt of adequate consideration, made with charitable intent. Hernandez v. Commissioner, 490 U.S. 680, 690 (1980). To claim a deduction under section 170, a donor must surrender dominion and control over the gift. United States v. Estate Preservation Services, 202 F.3d 1093, 1101 (9<sup>th</sup> Cir. 2000). \_\_\_\_\_ transferred assets to the Organization and claimed a deduction under section 170. A charity's assets are required to be irrevocably dedicated to charitable purposes. Treas. Reg. § 1.501(c)(3)-1(b)(4). The inurement prohibition serves to prevent the individuals who operate the charity from siphoning off any of a charity's income or assets for personal use. By transferring the assets back to a disqualified person, purportedly as a loan but as a distribution, the Organization breached the dedication requirement and its net earnings have inured to the benefit of the disqualified person.

Whether a particular transaction actually constitutes a loan is determined upon consideration of all the facts. Fisher v. Commissioner, 54 T.C. 905, 909 (1970). For a payment to constitute a loan, when the payments are received, the recipient must intend to repay the amounts and the transferor must intend to enforce payment. Haag v.

Name of Organization:  
Form: FYE:

Agent:  
Date: 1/30/20XX

#### W/P Index L-4

Commissioner, 88 T.C. 604, 615 (1987), aff'd without published opinion, 855 F.2d 866 (8<sup>th</sup> Cir. 1988); Beaver v. Commissioner, 55 T.C. 85, 91 (1970). In Greg R. Vinikoor v. Commissioner, T.C. Memo 1998-152, the Tax Court provided the following factors to determine whether a transfer was made with a real expectation of repayment and an intention to enforce the debt:

- (1) There was a promissory note or other evidence of indebtedness;
- (2) Interest was charged;
- (3) There was security or collateral;
- (4) There was a fixed maturity date;
- (5) A demand for repayment was made;
- (6) Any actual repayment was made;
- (7) The transferee had the ability to repay;
- (8) Any records maintained by the transferor and/or the transferee reflected the transaction as a loan; and
- (9) The manner in which the transaction was reported for Federal tax purposes is consistent with a loan.

There was no intent by the Trustee to pay the loan back and no demand by the Organization to demand payment. The Trustee made no payments on the loan which was issued in 19XX, the Note states "Due upon demand", there was no interest charged or accrued, no fixed maturity date, and no collateral, the entire amount constitutes a distribution.

Although the inurement prohibition is stated in terms of net earnings, it applies to any of a charity's assets that serve the interests of its private shareholders. Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1072 (6<sup>th</sup> Cir. 1974). The transfer of funds directly to the disqualified person, served the financial interests of the disqualified person and/or his business. Facts that show a charity's investments are decided in part by the needs of private interests indicate the charity may not be operated exclusively for exempt purposes. Western Catholic Church v. Commissioner, 73 T.C. 196, 214 (1979), aff'd 631 F.2d 736 (7<sup>th</sup> Cir. 1980).

#### Conclusion

Accordingly, the Organization's status as an organization described under section 501(c)(3) should be revoked because it did not operate exclusively for exempt purposes because its assets inured to, and it served the private interests of, its creators and other private persons.

Name of Organization:  
Form:                      FYE:

Agent:  
Date: 1/30/20XX

#### W/P Index L-4

This determination is effective beginning December 1, 19XX. The Organization did not disclose in its exemption application that it would be making a loan with all of its assets. It failed to disclose that it would distribute monies to the Trustee, a disqualified person. Thus, retroactive revocation is applicable.

Form           , U.S. Income Tax Return for Estates and Trusts should be filed for tax years ending November 30, 20XX, 20XX, 20XX and 20XX. Subsequent returns are due no later than the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the trust's accounting period.

Returns should be sent to the following mailing address:

Internal Revenue Service

For tax year ending November 30, 20XX Form            is due March 15, 20XX, should be sent to the following address:

Internal Revenue Service

#### **RETROACTIVE DATE OF REVOCATION**

The effective date of revocation is retroactive because the Organization did not disclose in its application for exempt status that it would loan essentially all of its assets to the Founder within a year of his contribution to the Organization. Therefore, retroactive revocation to the first taxable year which begins December 1, 19XX, is appropriate.

#### **Memo to File**

A memo was created to memorialize the actions required by the Organization to accept agreement. It was later determined through conference call with            and manager that the Org was not required to substantiate repayment of the loan prior to agreeing to revocation. The Org submitted Form 6018 on 12/22/20XX. Results of examination is Disposal Code           , agreed revocation.

Refer to Exhibit L-4-1 for copy of Memo to File.

**Conclusion:** The result of the examination is proposed revocation based on inurement. The Founder, Donor and Trustee,            created the Organization in late 19XX, and contributed about            to the Organization. A year later the Organization issued a loan to the Founder for all of its assets,           , and            did not make any

Name of Organization:  
Form:                      FYE:

Agent:  
Date: 1/30/20XX

**W/P Index L-4**

payments on the loan. The statute of limitations for the IRC § 4958 issue had expired prior to the opening of the examination. See workpaper J-8 for more more information on this issue.

The Organization agreed to retroactive revocation to the first taxable year of the Organization which is December 1, 19XX. The Organization submitted a signed Form 6018 on 12/22/20XX. Retroactive revocation is applicable in this case as the Organization did not disclose in its application for exempt status that it would loan all of its assets to a Disqualified Person, the Founder, , at favorable terms; made no payments on the loan. IRC § 501(c)(3), Treas. Reg. 1.501(c)(3)-1(c)(1 -2), and 1.501(c)(3)-1(d)(1)(ii), Revenue Ruling 67-5, 1967-1 C.B. 123, and Better Business Bureau v. United States, 326 U.S. 279 (1945).