Internal Revenue Service
Appeals Office

Release Number: **201531022**
Release Date: 7/31/2015
Date: February 27, 2015

Department of the Treasury

Employer Identification Number:
XX-XXXXXXX

Person to Contact:

Employee ID Number:
Tel:
Fax:

UIL: 501.03-33

Certified Mail

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective XXXXXXXXX.

Our revocation was made for the following reason(s):

1. You are not organized for an exempt purpose within the meaning of Internal Revenue Code § 501(c)(3) because your organizational documents do not limit your activities to those in furtherance of exempt purposes within the meaning of Treas. Reg. § 1.501(c)(3)-1(b)(1)(iii).

2. You are not operated in furtherance of exempt purposes, and are operated for the substantial non-exempt purpose of providing commercial financing services to XXXX owners, within the meaning of Treas. Reg. § 1.501(c)(3)-1(c)(1).

3. You are not operated for an exempt purpose within the meaning of Internal Revenue Code § 501(c)(3) because you are not lessening the burdens of government or serving any other charitable purpose within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(2).

4. You are operated more than incidentally for the private benefit of XXXX owners, XXXXXXXXXX XXXXXX LLC, and XXXXX XXXXXXXXX within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

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 Code.

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We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose.* Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

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 matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

XXX XXXXXX
Appeals Team Manager

Enclosure: Publication 892 and/or 556

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Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
400 N 8th Street Rm. 480
Richmond, VA 23219

Department of the Treasury

Date: March 29, 2011

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

ORG
ADDRESS

Certified Mail – Return Receipt Requested

Dear :

We propose to revoke our recognition of your tax exempt status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). We enclose our report of examination explaining why we are proposing this action.

If you accept or proposal, please sign and return the enclosed Form 6018, Consent to Proposed Action – Section 7428, unless you have already provided us a signed Form 6018. We will issue a final revocation letter determining you are not an organization described in section 501(c)(3). After the issuance of the final revocation letter we will publish an announcement that you have been deleted from the cumulative list of organizations contributions to which are deductible under section 170 of the Code. If you do not respond to this proposal, we will similarly issue a final revocation letter. Failing to respond to this proposal may adversely impact your legal standing to seek a declaratory judgment because you may be deemed to have failed to exhaust administrative remedies.

If you do not agree with our proposed revocation and wish to protest our proposed revocation to the Appeals Office of the Internal Revenue Service, then you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest your decision. This written request is called a protest. For your protest to be valid it needs to contain certain specific information which generally includes a statement of facts, the applicable law, and arguments in support of your position. For the specific information needed for a valid protest, please refer to page 6 of the enclosed Publication 3498, The Examination Process, and page 2 of the enclosed Publication 892, Exempt Organizations Appeal Procedures for Unagreed Issues. These documents also explain how to appeal an IRS proposed action.

If you do submit a valid protest, then 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 and Publication 892 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. Please note that Fast Tract Mediation Services referred to in Publication 3498, generally do not apply after issuance of this letter.

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You may also request that we refer this matter for Technical Advice as explained in Publication 892 and an annual revenue procedure. Please contact the individual identified on the first page of this letter if you are considering requesting Technical Advice. If we issue a determination letter to you based on a Technical Advice Memorandum issued by the EO Rulings and Agreements function, then no further administrative appeal will be available to you within the IRS on the matter.

If you agreed with the proposed revocation or if you receive a final revocation letter, you will be required to file Federal income tax returns for the period(s) shown above. File these returns with the Ogden Service Center within 30 days of the date you agreed with the revocation or the date of your final revocation letter, whichever is sooner, unless a request for extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

We will notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code. Currently, only certain states are eligible to receive notification of proposed revocation actions. You can call the person at the heading of this letter to find out if your State is eligible to receive a notice of revocation of your tax-exempt status.

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,

Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

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Form 886-A	U.S. Treasury Department-Internal Revenue Service **EXPLANATION OF ITEMS**	Schedule No. or Exhibit
Name of Taxpayer ORG (ORG)		Year/Period Ended 20XX06

LEGEND
ORG - Organization name XX - Date City - city State - state
President - president Governor - governor CO-1 THROUGH CO-9 - 1ST THROUGH 9TH COMPANIES RA-1 THROUGH RA-8 - 1ST THROUGH 8TH RA DIR-1 THROUGH DIR-7 - 1ST THROUGH 7TH DIR

Revocation

ISSUE:

Does the organization satisfy the operational test for a tax exempt organization per IRC Section 501(a) as described in IRC 501(c)(3)?

Is there inurement or private benefit to officer and/or director per IRC 501(a) as described in IRC 501(c)(3)?

FACTS:

ORG (ORG) was incorporated as a non-stock corporation by DIR-1 and was issued a Certificate of Incorporation by the State Corporation Commission on June 22, 20XX. President is the current President, Secretary, and Service Director of ORG. He is also the founder of the organization.

ORG was established to purchase claims for refund by the fuel tank owners or contractors to clean up fuel spillage from their underground storage tanks which have been approved for reimbursement by the Department of Environmental Quality (CO-9) in State. The fuel tank owners are usually gasoline station owners, fuel distributors, homeowners or farmers. Upon purchase of the approved claims, ORG acquires the right to reimbursement of the clean up costs from CO-9 in the state of State. It charges fees for borrowing costs, management and set up fees which is its source of funding for its operations.

ORG has expanded its operations from State to other states such as State and State.

ORG filed its application for exemption with a Form 1023 signed by President on October 25, 20XX. It was granted tax exempt status per Internal Revenue Code (IRC) 501(a) as described per IRC 501(c)(3) as a charitable organization with a Letter 1045 dated August 22, 20XX.

ORG's purpose is described in its amended articles of incorporation dated September 27, 20XX as follows:
"to provide interim financing of and liquidity of claims filed by owners or operators (as defined in the Environmental Act) and their authorized environmental consultants with state sponsored funds implemented pursuant to the Environmental Act to encourage remediation of leaking underground storage tanks, and related operation and management of such program, and

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shall include any other financing program or activity that the Corporation's board may hereafter determine will provide a positive environmental benefit or otherwise lessen the burdens that state or federal authorities confront in discharging their obligations under the Environmental Act and their environmental laws".

ORG described its stated purpose in its application for exemption on Form 1023 Part IV as follows:

> "lessening the burdens of government by providing low cost liquidity that will speed reimbursements to claimants and consultants from state administered leaking underground storage tank (ORG) funds, and thus encourages continued voluntary compliance with clean up efforts, a better environment, and improved public health". It further states that various ORG funds do not have sufficient cash on hand to reimburse claims in a timely manner. The result is that ORG owners and operators (sometimes referred to as Responsible Parties or RP's) end up waiting months for reimbursement. This can result in reduced voluntary cooperation and a consequential slowdown in the pace of cleaning up ORG. Delays in identifying and removing ORG can result in spreading petroleum plumes, which increase pubic health risks and higher total clean up costs. Finally, payment delays increase the risk that the ORG fund may no longer be deemed a viable mechanism for meeting EPA's financial responsibility regulations. ORG was established to assist these state governments in meeting their obligation to provide timely reimbursement of approved claims, maintaining their ORG clean up programs, and meeting the EPA's financial responsibility requirements".

ORG described its activity on Form 1023 as follows;

> ORG provides liquidity using simple financing technique. Rather than lending money to Responsible Parties (RP), ORG purchases the RP's ORG claims using a two step payment process.
> Step one: The RP assigns a prepared claim for a completed phase of a project claim to ORG concurrently with the claim being submitted to the state governmental agency for processing and approval. Typically, immediately upon the claim being approved, ORG issues an initial payment for a percentage of the amount approved. The amount of the initial payment is typically a large percentage of the amount approved. The specific percentage is determined based on the expected carrying time.
> Step two: The state eventually issues the reimbursement of the approved amount directly to ORG. ORG remits the remaining balance, less the accrued carrying costs to the RP, in the form of a second residual payment. Carrying costs for each claim are determined by allocating costs on a pro rata basis based on the size of each claim and the number of days it takes until the claim is reimbursed. Carrying costs allocated in this manner include: (a) the daily cost of ORG's borrowed money, (b) amortized legal

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and set up costs, and (c) ongoing administrative costs. ORG anticipates that carrying costs will be at least as low as those of the CO-8 program, which have historically been approximately four percent on an annualized basis.
ORG will operate financing program in conjunction with ORG fund programs established by the participating states. ORG will typically not review the claims, but instead will rely upon the determination of the state entity charged with administering the state ORG fund to determine the amount of reimbursement. Financing will typically be made only for claims where the work was previously authorized and/or approved by the applicable state regulatory authority.

Composition of the board of directors, as described in its amended articles of incorporation, further states the following:

Article 4 states and describes the role and responsibilities of the board of directors.

Article 4 B - One of the directors at all times be a person assigned by the Servicer (the "Service Director"). The initial Service Director is President, resident of the City of City, State, who shall continue to serve until replaced by the Servicer as the Servicer Director.

Article 6 A – Servicer requires at all times that operational and investment management services shall be provided to the corporation by a servicer, which shall initially be CO-1. The servicer shall perform its duties pursuant to a written servicing agreement approved by the Board.

Article 6C states that the servicer shall be responsible to maintain books and records relating to the corporation's as well as its own operations and to prepare a budget for the corporation on an annual basis.

The amended Articles of Incorporation deleted the requirement in the original Articles of Incorporation dated June 18, 20XX requiring that the board of directors consist of participant directors and permanent directors each of whom shall have voting powers and one or more non voting directors.

A participant director means a director appointed by the board of directors by any participant representative. A participant representative means a person who is appointed by a political subdivision, instrumentality or other body authorized under the laws of a particular state of the United States or such persons delegate or successor to enforce and administer the state's leaking underground storage tank.

A permanent director means a director appointed to the board of directors by any industry representative. An industry representative means the CO-2 of America and the CO-3.

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Members of the board of directors as of April 1, 20XX are as follows;

DIR-2	Executive Director CO-4***
DIR-3	President CO-2 of America
DIR-4	Finance Director of City of CO-5*** Former Executive Director of State Resources Authority
DIR-5	Chief Financial Officer CO-6
DIR-6*	Chairman CO-7 Compensation Board***
DIR-7	President of XXX Former President of State CO-2
President**	President and Secretary of ORG

*DIR-6 also serves as ORG's Treasurer
**President is the principal in CO-1, ORG's sponsor and program administrator.
***Appears to be officials of state or local government entities. However, there is no information or verification to indicate they were appointed to the board by the state or local entities.

The Amended and Restated Articles of Incorporation of ORG state that the Board of Directors shall consist of not less than three and not more than seven persons. The members of the Board are elected by the directors, except that one director is assigned by the Servicer as the Service Director. Thus, the articles do not require that the members of the board be appointed by state or governmental agencies.

There are members of the board of directors who are state or local government officials but not appointed by their respective state or local agencies in an official capacity. They are serving as private citizens.

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ORG's outside board members have served without compensation through December 20XX.

Related Party Transaction:
ORG disclosed its related party transaction with CO-1 (CO-1) in its application for exemption on Form 1023 as follows;

President is the sole member of CO-1 which is a for profit entity. He is also the founder and officer of ORG(organization).

CO-1 was to provide operational and investment management services. The fee is based on 1% of assets under management + a nominal set up fee for each claim financed. It is the same fee as CO-1's contract with CO-8 program with the state of State. In addition, CO-1 is entitled to reimbursement of all marketing costs.

The servicing agreement with CO-1 was approved and ratified by the board members. It was disclosed in the F-990 return.

The servicing agreement dated 11/20/20XX modified the prior agreement dated 1/31/20XX. It modified the following:

i. Servicing fee means (a) a fee equal to % per annum of the face amount of each Reimbursement Obligation acquired pursuant to the terms and conditions of financing agreement, which shall only be assessed and calculated with respect to any Reimbursement Obligation during the related Holding Period, plus (b) a flat fee not to exceed .% of the face amount of acquired Reimbursement Obligations, further subject to a minimum flat fee of $ and a maximum of $ per Claim. For Reimbursement Payment Obligations financed prior to approval by CO-9 under the Paragon Credit Agreement dated November 20XX, the Servicer may charge a Claim Guaranty Fee not to exceed 1% of the face amount of each claim, subject to a minimum of $ per claim and no maximum. The Servicer may at any time waive all or any portion of its Servicing Fee, provided that any such unpaid amount will remain unabated and be payable at a future date, unless such right of accrual is specifically waived in writing by the Servicer.
ii. Modification was signed and ratified by President as President of ORG and at the same time as Manager and Sole Member of CO-1.

Some of the terms of the servicing agreement between ORG and CO-1 dated 1/31/20XX include:

CO-1 is the servicer who wishes to undertake the servicing duties of the Program. The Program involves providing liquidity for CO-4 Claimants under a

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program administered by the State Department of Environmental Quality(Department) by which such claimants will assign their right to be reimbursed by the Commonwealth of State for approved costs incurred in the clean up of underground petroleum storage tank releases and thereby receive advances against amounts to be reimbursed (Program) and (ii) paying certain issuance and other costs associated with Authority Bond and the ongoing administration of the Program.

Servicing fee means (a) a fee equal to 1% per annum of the Face Amount of each Reimbursement Payment Obligation acquired pursuant to the terms and conditions of the Financing Agreement, which shall only be assessed and calculated during the Holding Period, plus (b) a flat fee not to exceed .% of the Face Amount of acquired Reimbursement Payment Obligations, further subject to a minimum flat fee of $ and a maximum of $ per Claim.

CO-1 as the servicer is to perform ORG's duties under the Financing Agreement to the extent practicable, so as to ensure timely acquisition of Reimbursement Payment Obligations with proceeds of the Loan from time to time and the timely repayment of amounts due on the Loan from the Department's Repayments. ORG delegates to the servicer ORG's duties with respect to the daily operation of the Program.

Section 4.4 – Servicing Fees: Costs of Promotion: As compensation for its activities, the Servicer shall be entitled to the Servicing Fee. The Servicer shall be responsible for the payment of any fees and expenses incurred by the Servicer in connection with the implementation of the Program; provided however, that the Servicer shall be entitled to receive (but only from the ORG fee) reasonable compensation and reimbursement for out of pocket expenses related to promotional activities he may undertake on behalf of ORG.

ORG is currently operating in a consistent manner with the stated purpose in its Articles of Incorporation to provide interim financing to owners, operators of fuel tank owners and consultants who have approved claims to clean up fuel spillage from underground storage tanks.

Review of Form 990 returns filed from 12/31/20XX through 6/30/20XX showed the following:

	20XX12	20XX06	20XX06	20XX06	20XX06	Cum total
Revenues						
Total contributions			$ -	$ -	$ -	
Program service						
Interest on sav & invest						
Total revenue						

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Total Expenses
Excess/Deficit

Analysis of F-990 returns showed the organization had cumulative loss of $ over a 4 ½ year period since it started operations in 20XX through June 30, 20XX.

During the same period, the organization incurred servicing or management fees to CO-1 which is an LLC whose sole member is President.

	20XX12	20XX06	20XX06	20XX06	20XX06	Cum total
Servicing fee						
Management fees						
Total						

ORG issued Form 1099 – Misc to CO-1 in 20XX and 20XX for total amount of $. Taxpayer stated that the servicing fee include reimbursements of expenses incurred by CO-1 on ORG. These amounts are on a calendar year basis. It showed that the payments to CO-1 accelerated from 7/1/20XX through 12/31/20XX.

F-1099 Misc	SSN/Ein	20XX	20XX	Cumulative total
CO-1(CO-1) c/o President				

During the course of the 4 ½ year period of operations, President advanced funds for ORG's operational expenses. Ending balances are:

	20XX12	20XX06	20XX06	20XX06	20XX06
Loans from officer					

Loan from officer for period ending June 30, 20XX was not reported on Form 990 Part X Balance Sheet on Line 22 as Payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons as in prior years. Instead, it was reported on Line 23 as part of Secured mortgages and notes payable to unrelated third parties with a total ending amount of $. Additional information was provided as an attachment to the return with a description of Subordinated Loan from Related Party with an ending balance of $.

To determine how the role of financing activity performed by ORG fits into the Leaking Underground Storage Tank (ORG) Fund program, review of the CO-9 website was performed. It provided the following information:

Laws: State

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The History of the State UST Program

In 1984, President Reagan signed into law Subtitle I of RCRA creating the federal Underground Storage Tank (UST) Program. On May 8, 1985 the federal Interim Prohibition became effective banning nationwide, the installation of corrodible tanks and piping until final federal regulations became effective (December 22, 1988). Since May 8, 1986 each existing UST, any new USTs, any changes to USTs and any closure of USTs must be reported to the CO-9-Water on the new official UST Notification forms. Thus far, the CO-9 has received over 25,000 facility forms representing over 75,000 USTs.

In 1986 (and reauthorized in 1990), Congress amended RCRA to create the federal Leaking Underground Storage Tank Fund (ORG Fund) with $1 billion from a 1/10 cent per gallon gasoline tax for the purpose of cleaning up petroleum UST leak sites nationwide. Thus far, State has received over $18 million of this money for cleanups. Many more sites are being prioritized for future cleanup actions. There have been over 11,000 leaking tank sites reported to CO-9 to date.

Effective July 1, 1987, the State General Assembly created Articles 9 & 10 of the Water Control Law (Sections 62.1-44.34:8-12) which gave the CO-9 general supervision of USTs, set financial responsibility requirements, and established the State Underground Petroleum Storage Tank Fund (State Cleanup Fund).

State's UST Technical Regulation which became effective October 25, 1989 is entitled "UST; Technical Standards and Corrective Action Requirements" (9 VAC 25-580-10 et seq.). The State regulation is very similar to the federal regulation, except it requires notifications from owners of all regulated USTs that remain in the ground.

EPA's final Financial Responsibility (FR) Regulation was published on October 26, 1988 and took effect January 24, 1989. It requires owners/operators of USTs containing petroleum to demonstrate evidence of financial responsibility in the amount of $1 million per occurrence for petroleum marketers/$500,000 for non-marketers to cover corrective action and third party liability costs for accidental petroleum releases from their USTs. You may do this using insurance or any of the other mechanisms permitted in the regulation.

State law was amended effective July 1, 1992 to require all owners/operators to demonstrate financial responsibility based on the total annual gallons pumped through all regulated petroleum

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USTs owned and operated by them in State. The sliding scale financial responsibility requirement ranges from $5,000 for corrective action and $15,000 for third party claims ($20,000 Annual Aggregate) to a maximum of $50,000 for corrective action and $150,000 for third party claims ($200,000 Annual Aggregate). Owners/operators may then use the Fund to demonstrate FR between the State financial responsibility requirement and $1 million to meet the federal requirement.

The federal regulations are the law of the land nationwide, and the CO-9 and local building departments/fire officials implement them in State for the EPA and under State law. There have been no substantive changes to the federal regulations to date. There have been numerous policy calls over the years to EPA and State which have been resolved within the context of the existing regulations.

Regulations: CO-9 & other agencies

What Must I Do When I Have A Release?

When a release occurs from an Aboveground or Underground storage tank, the owner and/or operator of the tank is required to report the release to CO-9 and/or other governmental agencies. Release reporting requirements are dependent upon the statutes and regulation governing the tank from which the release occurred, the contents of the tank, and the nature of the release.

Suspected and Confirmed releases from USTs subject to the requirements of the UST Technical Regulation must be reported to CO-9 within 24 hours of discovery of the release. Discharges of oil from sources other than tanks subject to the UST Technical Regulation (e.g. home heating oil tanks, above ground storage tanks, farm tanks) must be reported to CO-9 immediately upon discovery of the discharge.

Releases must be reported to the appropriate CO-9 Regional Office . For additional information about release reporting, please see Chapter 2 of the Storage Tank Program Technical Manual.

An interview with RA-1 was conducted to get a practical understanding of the Leaking Underground Storage Tank (ORG) program administered by Department of Environmental Quality (CO-9) of the State of State.

She provided the following information:

1. Fuel tank owners are required to report any fuel spillage or leaks from the storage tanks to the environment.

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2. The field offices evaluate the spillage to determine if corrective action or clean up is required in case the water quality is affected.
3. Fuel tank owner can apply for reimbursement of cost of clean up if they are not negligent with regards to the fuel spillage to the environment. They can file a claim subject to inspection of site and approval by CO-9 inspectors.
4. Fuel tank owners have a deductible for reimbursement.
5. Fuel tank owners are not required to file claim for reimbursement.
6. The funds to reimburse claims are from the state's share of the portion per gallon on fuel sold in the state. Therefore, the amount of funding is based on a portion of the number of gallons sold. The funds cannot be reallocated for other state programs.
7. The approval of the amount of a claim allowed the fuel tank owner is not dependent on the amount of funds that CO-9 has on its books.
8. If CO-9 does not have a sufficient amount of funds as compared to the amount of claims approved, the release of funds is delayed until it is replenished from the state's share of the sales of fuel allocated for the program from the federal government.
9. However, there should not be a delay in issuance of funds if the state has a sufficient balance in its account to cover the claims.
10. The state allows the claimants to assign their rights to the approved claims to third parties.

Based upon above interview, it was learned that the amount of claims do not have a bearing on the amount of funds that CO-9 has. It may affect its timing to pay the claim but not the number of approved claims from tank owners. The amount and number of claims are dependent on the fuel spillage reported to the agency.

Filing of claim is not required but the reporting of fuel spillage to the environment is and subject to penalty if not reported.

ORG provided a copy of letter written by RA-2, Director, Office of Spill Response and Remediation with State CO-9 dated November 10, 20XX. It is filed with ORG's position under Exhibit 9. The information on CO-4 (CO-4) is provided in part as follows;

a. Funds collected and deposited in the Federal ORG Trust Fund are separate and independent from funds collected and deposited into CO-4. Federal ORG Trust fund monies are allocated in very limited amounts to states through Cooperative Agreements used to conduct cleanups where the responsible party is unknown, unwilling, or unable to do so. These funds are 100% cost recoverable from the responsible party. CO-4 funds are collected pursuant to state law and maintained in a separate state trust fund.

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Federal regulations require tank owners and operators to maintain evidence of financial responsibility. In response to these regulations, many states created separate state funds to fulfill the federal requirements on behalf of tank owners and operators in their states. The CO-4 is one such fund. This fund is not supported by the federal government. It is the financial responsibility mechanism of State tank owners and operators to demonstrate compliance with the federal financial responsibility requirements.

b. While it is true that CO-4 covers these types of entities, the majority of claims filed are from home heating oil tank owners. Those tanks are not regulated, and have no financial assurance requirements. State law requires owners of home heating oil tanks to report leaks and clean them up. State receives reports of roughly 200 regulated tank leaks annually; in contrast we receive reports of over 1,000 leaking heating oil tanks in the same period.
c. The federal government provides a small amount of funding toward federally regulated cleanups. In State, we receive less than $ annually, while the state fund spends upwards of $ each year. Therefore, it is not accurate to state that the federal government provides the necessary funds. Rather, it is the CO-4 that provides the vast majority of the funding necessary to assure that cleanups are completed. Because federal funds can be used only for cleanups involving federally regulated tanks, the CO-4 is the only funding source for home heating oil tank cleanups.
d. The CO-4 is the financial responsibility mechanism for tank owners in State. Fuel tank owners subject to State's financial responsibility regulations are only required to demonstrate between $ and $ per occurrence for regulated underground storage tanks (the State financial responsibility amount). FR above that amount up to $ is provided by the CO-4. Additionally, the CO-4 funds claims for unregulated tanks such as home heating tanks. These tank owners have no financial responsibility requirements. Therefore, when the CO-4 is unable to pay claims in a timely manner, there is a significant impact on the pace of clean ups.
e. There are many tanks in State whose cleanup costs are covered by the CO-4 but are not subject to any FR requirements. Also, tanks that are subject to FR requirements rely on the CO-4 to perform as their FR mechanism for the majority of the clean up costs. Therefore, it appears that the IRS memorandum is mistaken in its conclusion that tank owners must necessarily be out of compliance with federal requirements if they are in need of CO-4 reimbursement.
f. CO-9 has a statutory burden to protect the environment and public health for the citizens of State by among other things, ensuring the timely cleanup of leaking petroleum tanks. Tank owners and operators are required by law and regulation to clean up contamination caused by petroleum tank releases. However, because of the potentially high cost of petroleum cleanups, the presence of a timely reimbursement program is pivotal to cleanup compliance. Due to limited staff resources to pursue noncompliance, this program relies heavily on prompt reimbursement from the CO-4 to ensure that cleanups occur in a timely

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manner. At this time, the CO-4 is experiencing a reimbursement claim delay of approximately 6 months. It has been my experience that ORG, by providing liquidity to the marketplace, increases the likelihood that tank owners will continue to move forward with cleanups expeditiously. If ORG were to cease functioning in State, CO-9 would likely see a slowdown in the number and progress and cleanups around the state. To date, I am not aware of any financial institutions consistently offering financing for reimbursement claims in State. This eventually would lead to an increased compliance and enforcement burden on CO-9 to ensure that cleanups continue to move forward. This was our situation in 20XX before the CO-8 program was implemented. Accordingly, if ORG were to cease functioning in State, CO-9 would likely seek to restart the CO-8 program.

Also, ORG provided a copy of the Memorandum prepared by RA-2 dated September 14, 20XX on the subject of CO-4 FY20XX Year End Report and FY 20XX Forecast stated in part; "ORG financing represented 55% of the $ in delayed payment. At any given time ORG financing represents between % and % of the delayed payment balance. The presence or absence of ORG does not impact the size of the Fund's delayed payment balance or the number of days to pay the claim. However, if ORG were to cease financing of claims in State, the RP and, in turn, the RP's consultant would not receive any funds until the time the claim is actually paid".

ORG claimed in its application for exemption on F-1023 that its organization is modeled on State's award winning State Resources Authority Accelerated Claim Payment Program. The Commonwealth of State terminated the CO-8 program and authorized ORG to begin providing the services formerly provided by the program on February 1, 20XX.

Contacted CO-8 on 7/26/20XX. CO-8 staff was unable to verify if it has authority as a state agency to authorize or sanction another entity to continue its program.

Research conducted on the internet provided information that CO-8 undertook the Accelerated Claim Payment Program (CO-8 Program) in 20XX. In response to the delay in reimbursement of funds which was running for 10 months at that time, it issued a bond to advance the payment of claims. The CO-8 Program was terminated in 20XX.

CO-8 website showed it is a state agency which provides financing package to state and local governments.

ORG submitted a written letter from RA-3 dated November 10, 20XX. He is a current member of the board of directors of ORG and former Executive Director of State Resources Authority (CO-8). In this letter, he provided a background on State Resources Authority and its CO-8 Accelerated UST Claim Payment Program (CO-8 Accelerated Program). In addition, he also provided comments on the draft IRS Memorandum. The full copy of his letter is shown in

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Exhibit 8 of ORG's position on the proposed revocation of its tax exempt status. Parts of his letter relating to CO-8 are as follows;

"For the record, I was appointed in May 20XX by then Governor as Executive Director of the State Resources Authority (CO-8), an instrumentality of the Commonwealth of State, where I served in the capacity until January 20XX. I currently serve as the City of City Director of Finance & Business Services, and also as one of ORG's outside members on the board of Directors. As set forth herein, I have direct first hand knowledge of the CO-8's Accelerated UST Claim Payment Program (CO-8 Accelerated Program), as well as the transition to ORG in 20XX.

Background Information
In 20XX the CO-4 (CO-4), which is managed by State's Department of Environmental Quality (CO-9), was endeavoring to reduce a significant backlog of unpaid claims, as reimbursement payments were routinely delayed for many months. CO-9 reported that many of the tank owners and environmental consultants (who affect the majority of the ORG clean ups by direct payment) are small companies with limited or no access to traditional financing. CO-9 reported that the inability to pay the claims in a timely manner was causing cash flow problems in the marketplace, and this in turn was leading to a slow down in the pace of clean ups.

Public Safety Implications
After consultation with CO-9 and others, CO-8 determined that the slow down in clean ups caused by the lack of liquidity in the marketplace represented a public policy issue for the Commonwealth. Among other things, the payment delays (a) increased public health and environmental risks from spreading plumes; (b) impeded the timely closing of real estate transactions; and (c) reduced employment among environmental consultants, who were leaving the business; In addition, CO-9 noted that the payment delays caused pricing distortions that increased costs to CO-4. Finally, CO-9 noted that the insolvency of the CO-4 could eventually result in the EPA decertifying it as a federally approved mechanism for demonstrating financial responsibility. Such a decertification would have onerous consequences for this aspect of State's environmental efforts.

CO-8 Accelerated UST Claim Payment Program
CO-8 determined that because there was a lack of traditional bank financing available to the marketplace, CO-8 could assist in expediting this environment effort by developing a financing program to reduce the backlog to a less than 30-day waiting period to proceed with the clean up. CO-8 staff worked with you, CO-9, State's Department of Planning & Budget, State's Treasury Department and outside counsel to create the CO-8 Accelerated Program. CO-8's Board of Directors approved the financing, which was announced by State's then Governor in 20XX. CO-8 offered to purchase any and all outstanding approved claims, plus said it would stand ready to purchase new claims form any tank owner seeking liquidity. Your firm, Commonwealth Acceptance (CO-1) was selected by the CO-8 Board of Directors to act as the servicer of Accelerated Program. The financing program was

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structured to not be debt to the Commonwealth of State, and avoided the necessity of raising taxes to back stop the CO-4.

The public purpose behind the CO-8 Accelerated Program was to (a) provide CO-9 with a financing mechanism that would help it meet its statutory obligation to protect public health and State's environment through the timely clean up of petroleum releases; and (b) assist in allowing the CO-4 to maintain its federal certification while CO-9 worked through the funding imbalance. While there is no doubt that tank owners and environmental consultants benefited from the CO-8 Accelerated Program as they would have benefited after receiving reimbursement payments from the CO-9 after the extended delays. This fact was irrelevant to CO-8's decision to move forward with the Accelerated Program. CO-8's and my focus was on the benefits to the Commonwealth of State. The program proved effective, as was evidenced by the fact that in many months over 70% of all claims were voluntarily assigned to CO-8.

In 20XX, after consultation with CO-9 and RA-4, I recommended to the CO-8 Board of Directors that CO-8 could best serve the Commonwealth of State by handing the program off to ORG. The rationale was, among other things: (a) the backlog of unpaid claims had, at the time, been reduced to approximately match the timing of the CO-8 Accelerated Program, which reduced/eliminated CO-8's benefit to CO-9's CO-4; (b) ORG, which by then was in formation, by doing business with multiple states would likely have a larger program, which would be more cost effective than CO-8 due to the obvious economies of scale and would offer the Commonwealth of State greater efficiencies should State's backlog increases; and (c) we correctly anticipated that within a few years State's periodic backlog of claims had returned. The idea was that by having ORG in place it would avoid a market disruption which could adversely impact CO-9's CO-4 when the backlog increased. Accordingly, in December 20XX, CO-8 and ORG jointly mailed letters to hundreds of stakeholders informing them that effective February 1, 20XX, CO-8 would cease accepting new claims, but that ORG would be available as a financing option. To provide continuity and oversight, I agreed to join ORG's Advisory Committee and later in 20XX agreed to join its Board of Directors, where I continue to serve".

Subsequent parts of DIR-4's letter disputing government's position on the tax exempt status of ORG is shown in Exhibit 8 with taxpayer's position.

ORG submitted various testimonial letters from various sources. They are included as exhibits in its position on the proposed revocation of its tax exempt status.

ORG was accorded with a closing conference with its representative on July 23, 20XX. An unagreed conference with group manager was held on October 12, 20XX. Issue was not resolved.

LAW:

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IRC **SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.**
501(a) EXEMPTION FROM TAXATION. —An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

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

Definition of charitable in the Regulations which include lessening the burdens of the government.
REGS, **§1.501(c)(3)-1(d)(2);**
FINAL-REG, TAX-REGS, **§1.501(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals**
(2) *Charitable defined*. —The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; **lessening of the burdens of Government**; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

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

Treasury Regulation section 1.501(c)(3)-1(d)(1)(ii) prohibits private inurement. It states that an organization is nor organized or operated exclusively for one or more exempt purpose unless it serves a public rather than private interest. To meet the requirements, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests,

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such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by private interest.

Treasury Regulation section 1.501(c)(3)-1(e)(1) states that an organization may meet the requirements of section 501(c)(3) 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. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

Revenue Ruling 68-14, 1968-1 CB 243, (Jan. 01, 1968)
By planting trees in public areas and assisting municipal authorities in their programs to plant trees and keep the city clean, the organization is lessening the burdens of government. The organization's informational program directed to the public, architects, and builders is educational. The overall effect of these activities is to combat community deterioration. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 69-528, 1969-2 CB 127, (Jan. 01, 1969)
Providing investment services on a regular basis for a fee is trade or business ordinarily carried on for profit. If the services were regularly provided by one tax-exempt organization for other tax-exempt organizations, such activity would constitute unrelated trade or business. It is held that this organization is not exempt under section 501(a) of the Code as an organization described in either section 501(c)(2) or section 501(c)(3) since it is regularly carrying on the business of providing investment services that would be unrelated trade or business if carried on by any of the tax-exempt organizations on whose behalf it operates.

Revenue Ruling 70-186, 1970-1 CB 128, (Jan. 01, 1970)
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.

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The lake is a large body of water bordering on several municipalities. It is used extensively by the public for recreational purposes. Along its shores are community-owned public beaches, launching ramps, and other recreational facilities of a public nature.

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.

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. See Revenue Ruling 67-325, C.B. 1967-2, 113, which relates to an organization exempt under section 501(c)(3) of the Code providing recreational facilities to the residents of a township.

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. See Revenue Ruling 66-358, C.B. 1966-2, 218, which relates to an organization exempt under section 501(c)(3) of the Code operating and maintaining a public park with incidental private benefits.

Accordingly, based on the facts presented it is held that this organization is exempt from Federal income tax under section 501(c)(3) of the Code.

This case is distinguishable from a situation where an organization uses its funds primarily to foster private interests and the benefit, if any, to the general public is only incidental.

Revenue Ruling 71-529, 1971-2 CB 234, (Jan. 01, 1971)
A nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3) of the Code; Revenue Ruling 69-528 distinguished.

Revenue Ruling 72-369, 1972-2 CB 245
An organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code; Revenue Ruling 71-529 distinguished.
Providing managerial and consulting services on a regular basis for a fee is trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and

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solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

Accordingly, it is held that the organization's activities are not charitable and therefore the organization does not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 73-126, 1973-1 CB 220
Section 501.--Exemption from Tax on Corporations, Certain Trusts, Etc.
An exempt organization's payment of reasonable pensions to retired employees at the discretion of its board of directors does not adversely affect its exempt status.

Revenue Ruling 74-117, 1974-1 CB 128
Political activities; assisting in transition of office of Governor.--
A nonprofit organization formed to implement an orderly change of administration of the office of Governor of a State by assisting the Governor-elect, during the period between his election and inauguration in screening and selecting applicants for State appointive offices and preparing a legislative message and program reflecting the party's platform and budget, is an "action" organization under section 1.501(c)(3)-1 of the regulations, and does not qualify for exemption.

The government is the party best qualified to decide whether a particular activity is sufficiently in the public interest to warrant its recognition as a legitimate function of government. Unlike some other jurisdictions, this particular jurisdiction has not seen fit to provide services of the type described above for the Governor-elect and thus has not recognized such activities as functions of government prior to his inauguration.

Thus, the activities of the subject organization are not relieving any burden of the government.

Furthermore, while the people of the jurisdiction may well derive a substantial benefit from the activities of this organization, its predominant purpose is to effectuate changes in the government's policies and personnel which will make them correspond with the partisan political interests of both the Governor-elect and the political party he represents.

Since the activities are partisan in nature and are directed to a substantial extent to the adoption of legislation, the organization is an "action" organization as described in section 1.501(c)(3)-1(c)(3) of the regulations.

Accordingly, the organization described above is not exempt from Federal income tax under section 501(c)(3) of the Code.

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Revenue Ruling 75-286, 1975-2 CB 210, (Jan. 01, 1975)
Block Association; public area beautification and preservation.--
A nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, will not qualify for exemption under section 501(c)(3) of Code but may qualify under section 501(c)(4); Rev. Rul. 68-14 distinguished.

Revenue Ruling 85-1, 1985-1 CB 177, (Jan. 01, 1985)
An organization that provides funds to a county's law enforcement agencies to police illegal narcotic traffic lessens the burdens of government and, therefore, qualifies for exemption under section 501(c)(3) of the Code.

Revenue Ruling 85-2, 1985-1 CB 178, (Jan. 01, 1985)
The organization employs attorneys to provide legal advice and representation to the lay volunteers, and operates a training program for the volunteers on how best to represent the interests of abused and neglected children. The organization is supported in part by grants from the juvenile court.

A determination of whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burdens, and whether such activities actually "lessen" such governmental burden.

To determine whether an activity is a burden of government, the question to be answered is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden.

To determine whether the organization is actually lessening the burdens of government, all of the relevant facts and circumstances must be considered. A favorable working relationship between the government and the organization is strong evidence that the organization is actually "lessening" the burdens of the government.

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In this case, the juvenile court requires the appointment of guardians *ad litem.* The court previously undertook to appoint and compensate attorneys to serve as guardians in juvenile court proceedings. After several years of this practice, the court determined that the best way to conduct this activity would be to appoint volunteers and arranged with this organization for the training and legal representation of the volunteers. The court supports this organization through grants and utilizes the volunteers trained by the organization. These facts show that the government considers the activities of the organization to be its burden.

The organization's training of lay volunteers is an integral part of the government's program of providing guardians *ad litem* in juvenile court proceedings. Without the organization's activities, the government could not continue its present program, unless it undertook to train lay volunteers itself, or appointed attorneys to act as guardians as it had in the past. Thus, the organization is actually lessening the government's burden within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

HOLDING
The organization described above, which provides legal advice and training to guardians *ad litem* representing abused or neglected children before a juvenile court, qualifies for exemption from federal income tax under section 501(c)(3) of the Code.

Rev. Proc. 2011-9 (January 7, 2011)
SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION
Revocation or modification of a determination letter or ruling may be retroactive

.01 The revocation or modification of a determination letter or ruling recognizing exemption may be retroactive if there has been a change in the applicable law, the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which § 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. In certain cases an organization may seek relief from retroactive revocation or modification of a determination letter or ruling under § 7805(b). Requests for § 7805(b) relief are subject to the procedures set forth in Rev. Proc. 2011-4.

(1) Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

(2) In the case where a determination letter or ruling is issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted *(see* sections 13 and 14 of Rev.

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Proc. 2011-4), ordinarily, the revocation or modification will be effective not earlier than the date when the Service modifies or revokes the original determination letter or ruling.

B.S.W. Group, Incorporated v. Commissioner of Internal Revenue 70 TC 352, US Tax Ct, May 30, 1978.
The court upheld the Commissioner's denial of exemption under section 501 (c)(3) of the Code. The organization's sole planned activity was to offer consulting services for a fee to nonprofit organizations having limited resources (some of which were exempt organizations) and engaged in various rural-related activities. The organization's goals were to help its clients deal with problems they face regarding the external environments within which they operate, change their priorities, implement realistic internal planning and management policies, and improve their understanding of governmental policy processes and methods for becoming more effective in their work through public and private funding. The organization obtained appropriate individuals to perform research projects for the clients. The organization did not advertise its services. The organization's officers planned for the first few years to serve without compensation. The fees charged by the organization were set at or close to cost and were to some extent based on the client's ability to pay, but as a whole were intended to cover its costs. The organization projected a net profit in its first year of operation. The court considered such factors as the particular manner in which the organization's activities were conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits as relevant evidence of the organization's predominant purpose to conduct a business. The organization failed to show that it was not in competition with commercial enterprises, which the court considered strong evidence of the predominance of a nonexempt commercial purpose. The court contrasted the case to one where an organization, concededly conducting substantial educational, scientific, or charitable activities, also conducts a trade or business related to its exempt functions. The organization's activity of linking researchers with client organizations was not inherently charitable, and the organization failed to show that such research would further exclusively exempt purposes. The organization's sole source of support was fees for services. The organization's clientele was not limited to section 501(c)(3) organizations.

Better Business Bureau of Washington, DC v. Commissioner, 326 US 279, 283. 66 S/ Ct 112. Ed 67 1945 CB 375(1945).
The United States Supreme Court stated that "the presence of a single non exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes."

Gemological Institute of America v. Commissioner, 17TC 1604 (1952).
The court concluded that the taxpayer was not exempt because the salary and royalties contracts between the taxpayer and its founder were characteristic of an enterprise that was conducted as a commercial enterprise for the greater benefit of one person. The net earning

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of the organization inured to the benefit of the officer. Such distribution is prohibited by statute. Therefore, organization failed to qualify for exemption.

EST of Hawaii v. Commissioner, 71 T.C. 1067(1979).
Several for profit EST organizations exerted significant indirect control over est of Hawaii a non profit entity, through contractual agreements. Court case concluded that the for-profits were able to use the nonprofit as an "instrument" to further their for-profit purposes. The fact that amounts paid to the for-profit organizations under contracts were reasonable did not affect the court's conclusion. Consequently, est of Hawaii did not qualify as an organization described in section 501(c)(3).
In addition, the court concluded that the organization engaged in a business and was operated for a commercial purpose. Its income producing activities are not incidental to its educational activities but are the very justification for its business.

Redlands Surgical Services v. Commissioner, TC 47, 74(1999), Aff'd F.3d 904 (9th Cir 2001)
The Court of Appeals adopted tax court's holding that appellant has ceded effective control over the operations of partnerships and the surgery center to private parties, conferring impermissible private benefit. Redlands Surgical Services is therefore not operated exclusively for exempt purpose within the meaning of IRC 501(c)(3). The Court of Appeals also affirmed the tax court's conclusion that the benefit conferred on private parties by the surgery center's operations prevents Redlands Surgical Services from attaining tax exempt status under the integral part doctrine.

American Campaign Academy v. Commissioner, 92 TC 1053, 1069 (1989).
The court determined that petitioner is operated for the benefit of private interests, a non exempt purpose. Because more than an insubstantial part of petitioner's activities further this nonexempt purpose, the petitioner has failed to establish it operates exclusively for exempt purposes within the meaning of section 501(c)(3). Consequently, petitioner is not entitled to an exemption from taxation under section 501(a).

Bob Jones University Museum and Gallery, Inc. v. Commissioner, TC Memo 1966-247, 71-TCM 3120 (1996).
The court ruled that the revenues raised by Bob Jones University Museum and Gallery, Inc. from donations from the public to be used to pay rent to the for profit Bob Jones University does not result in an impermissible private benefit to the University and that the petitioner's net earnings do not inure to the University.

Kentucky Bar Foundation v. Commissioner, 78 TC 921, 926 (1982).
The court ruled that any benefit accruing to the legal profession through the activities to be conducted at the Kentucky Bar Center Headquarters is incidental to the broad charitable

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purposes served by those activities. Thus, the petitioner is an exempt organization within the meaning of section 501(c)(3).

Church of Ethereal Joy v. Commissioner, 83 TC 20 (1984).
Organization has not engaged in any activities, religious or otherwise. It is controlled by a self perpetuating board of three directors, and at least one of its directors participates in the promotion of the organization of mail-order "churches".
The court ruled that organization has not shown it is organized and operated, or will be operated, exclusively for public rather than private benefit of its organizers and petitioner is not entitled to section 501(c)(3) exempt status.

People of God Community v. Commissioner, 75 TC 127, 133 (1980)
Organization is operated as a Christian church. Its ministers are paid predetermined percentages of gross tithes and offerings received. The ministers are also members of the board.
The court ruled that whatever the minister's services are worth, they are not directly related to organization's gross receipts; the value of solace and spiritual leadership cannot be measured by the collection box. By basing the minister's compensation upon a percentage of organization's gross receipts, apparently subject to no upper limit, a portion of petitioner's earnings is being passed on to the minister.
The statute specifically denies tax exemption where a portion of net earnings is paid to private shareholders or individuals. We hold here that paying over a portion of gross earnings to those vested with the control of a charitable organization constitutes private inurement as well. All in all, taking a slice off the top should be no less prohibited than a slice out of net.
We do not, however, mean to imply that all contingent compensation arrangements made by charitable organizations will preclude tax exempt status. Such arrangements are a part of business life and must occasionally be paid by a charity to salesmen, support groups, and even fund raisers. What is prohibited is inurement "to the benefit of any private shareholder or individual". The term "private shareholder or individual" refers to persons who have a personal and private interest in the payor organization. The term does not refer to unrelated third parties.
In other words, section 501(c)(3) denies exempt status to an organization whose founders or controlling members have a personal stake in that organization's receipts. Such is the case here, where petitioner's ministers and Donhowe, in particular control its affairs. Organization therefore fails to qualify for exemption under section 501(c)(3). Its net earnings inure to the benefit of private shareholders or individuals.

General Counsel Memorandum: (Please note that the Government cannot cite General Counsel Memorandums as a precedent in court cases. However, they are included in this report since they were cited by Taxpayer in its updated position dated April 28, 20XX). They include the following;

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General Counsel Memorandum 39347, March 15, 1985
It was determined that the organization which paid for certain expenses of the mayor of a city which are not included in the city's budget, and most of which are not of a type paid by the city in the past years does not lessen the burden of the government since there was no objective manifestation that the city believes that the activity is a burden of the government. Therefore, it does not qualify as a charitable organization per IRC 501(c)(3).

General Counsel Memorandum 39733, February 4, 1988
It was determined that an organization which provided financial assistance to governmental units by refinancing, acquiring, constructing, improving, leasing or selling real or personal property by avoiding paying leasing fees is lessening the burdens of the government and therefore qualifies as tax exempt organization per IRC 501(c)(3).

General Counsel Memorandum 39348, March 15, 1985
It was determined that the Citizens who provided funds to allow the County's undercover agents to purchase drugs in the course of apprehending engaged in illegal drug use and Guardians which provided legal counsel and training to volunteers who serve as guardians ad litem in juvenile court are lessening the burdens of the government and qualify as charitable organizations per IRC 501(c)(3).

General Counsel's Memorandum 39682, September 14, 1987
Organization was established pursuant to a statutory directive of the legislature to hold and distribute funds of the Program in a manner approved by the board. The Program is administered by the State. There are evidences of a government's objective manifestation that it considered the activity of the organization to be a burden of the government. There was also a legislative acknowledgement of governmental responsibility and the activities of the organization were previously funded by the government or a history of government participation in the activity.

TAXPAYER'S POSITION:

An updated taxpayer's formal written position dated April 28, 20XX with attachments as Exhibits 1 through 17 are enclosed in its original form. It was received by the Internal Revenue Service on April 28, 20XX.

GOVERNMENT'S POSITION:

The ORG (ORG) is a State non stock corporation established in 20XX to purchase claims from fuel tank owners that have been approved but not reimbursed by the CO-9. In its application for exemption on Form 1023, it described its activity in part as follows:

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"ORG provides liquidity using a simple financing technique. Rather than lending money to the RP's(Responsible Parties or ORG owners or operators), ORG purchases the RP's ORG claims using a two step payment process.

Step One: The RP Assigns a prepared claim for a completed phase of a project claim to ORG concurrently with the claim being submitted to the state environmental agency for processing and approval. Typically, immediately upon the claim being approved by the state agency, ORG issues an initial payment for a percentage of the amount approved. The amount of the initial payment is typically a large percentage of the amount approved. The specific percentage is determined based on the expected carrying time.

Step Two: the state eventually issues the reimbursement of the approved amount directly to ORG. ORG then remits the remaining balance, less the accrued carrying costs to the RP, in the form of a second, residual payment. Carrying costs for each claim are determined by allocating costs on a pro rata basis based on the size of each claim and the number of days it takes until the claim is reimbursed. Carrying costs allocated in this manner include: (a) the daily cost of ORG's borrowed money; (b) amortized legal and set up costs; and (c) ongoing administrative costs. ORG anticipates that the carrying costs will be at least as low as those of the CO-8 program which have historically been approximately four percent on an annualized basis. ORG believes that economies of scale and the use of tax exempt bonds will likely further reduce the carrying costs to the program participants."

The Amended and Restated articles of Incorporation dated September 27, 20XX under Article 4 B. stated in part, "One of the directors at all times be a person assigned by the Servicer (the "Service Director"). The initial Service Director is President, resident of the City of City, State, who shall continue to serve until replaced by the Servicer as the Servicer Director".

Article 6A on Servicer, stated in part, "At all times, operational and investment management services shall be provided to the Corporation by a Servicer, which shall initially be CO-1. The Servicer shall perform its duties pursuant to a written servicing agreement approved by the Board (acting however without the vote of the Service Director), with due regard to limitations on private inurement applicable to nonprofits".
The main issues are:

1. Is the above principal activity conducted by the organization considered exempt?
2. Does it satisfy the charitable activity for which it was granted as lessening the burden of the government?
   Has the government identified a burden and has the government considered the activities of the ORG as lessening the burden of the government?
3. Does the financing activity of ORG lessen the burden of the government or lessen the burden of the fuel tank owners?

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4. Does ORG demonstrate that the governmental unit considers the organization to be acting on the government's behalf, thereby freeing up government of human, material and financial assets that would otherwise have to be devoted to the particular activity?
5. Is there inurement/private benefit?
6. Effective date of revocation.
7. Reasoning of the Examination Reports has no relevance or merit.

1. Charitable exempt activity:

ORG's principal and sole activity involves the purchasing of claims from fuel tank owners and consultants that have been approved by the CO-9 for reimbursement for a fee.
It charges a fee based on the cost of borrowing money or interest, plus amortized legal and set cost and other administrative costs.

Fuel tank owners are comprised of home owners, gasoline station owners, fuel distributors, refiners, contractors and farmers.

Based upon above facts, a determination is made that ORG's financing activity of providing liquidity to fuel tank owners for a fee does not qualify as a charitable activity per Internal Revenue Code (IRC) 501(c)(3). Financing is an activity that is normally carried on by for profit entities such as banks and investment companies.

In addition, the financing activity is provided to fuel tank owners who do not qualify as a charitable class such as the poor, distressed, elderly, etc. per IRC 501(c)(3).

It its updated position dated April 28, 20XX, organization claimed that even if the financing activity carried on by ORG may be typically considered an unrelated trade or business, but or ORG, the activity is directly related to ORG's exempt purpose and contributes importantly to the accomplishment of that exempt purpose. The financing activity therefore furthers ORG's exempt purpose of lessening the burdens of government. ORG is not organized and operated to carry out financing activities per se. Instead, ORG uses financing activities as the method of carrying out of its primary purpose which is to lessen the burdens of government.
Government respectfully disagrees with ORG's position for the following reasons;

a. ORG does not satisfy the exempt purpose of lessening the burdens of government as addressed later.
b. It's financing activity is not an exempt activity as supported by the following;

1. Per Revenue Ruling 72-369, an organization formed to provide managerial and consulting services at cost to an unrelated.exempt organization does not qualify for exemption under section 501(c)(3) of the code.

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2. B.S.W. Group, Incorporated v. Commissioner of Internal Revenue 70 TC 352, US Tax Ct, May 30, 1978. In this case, the court upheld the denial of exemption of an organization's sole activity to offer consulting services for a fee to non profit organizations having limited resources. The court considered such factors as the particular manner in which the organization's activities were conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits as relevant evidence of organization's predominant purpose to conduct a business. The organization failed to show that it was not in competition with commercial enterprises, which the court considered strong evidence of the predominance of a non-exempt commercial purpose.

   This court case is very relevant to ORG where its financing activity is allowed by the State CO-9 to for profit and non profit entities.

3. Better Business Bureau of Washington, DC v. United States, 326 US, 279, 283 66 S. Ct. 112 90 L Ed 67, 1945 CB 375(1945). The United States Supreme Court stated that "the presence of a single non exempt purpose, if substantial in nature, will destroy the exemption regardless of the number of importance of truly exempt purpose".

4. Revenue Ruling 69-528 made a determination that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for-profit.

5 EST Hawaii v. Commissioner, 71 TC 1067. The court determined that the organization engaged in a business and was operated in a commercial manner. Its income-producing activities are not incidental to its educational activities but are the very justification for its business. Therefore, the organization did not qualify as a charitable organization described in IRC section 501(c)(3).

If ORG was allowed to operate and engage in its financing activity as a tax-exempt organization, it will exert an undue and unfair advantage over for profit-entities. Please note that CO-9 does not limit the assignment of approved claims to charitable organizations.

Another argument put forth to determine if ORG's financing activity qualifies as charitable per IRC section 501(c)(3) is the analogy with the rapid refund program provided by tax preparation businesses for the following factors:

1. The IRS is assigned to carry the burden of government with the collection of taxes and issuance of overpayments, just like the EPA and the CO-9 are assigned to carry out the ORG fund program to clean up the environment.
2. There is a time lag between the filing of tax return and issuance of refunds by the IRS. It is similar to the delay between the times CO-9 approves a claim to the issuance of reimbursement of funds to the fuel tank owners.

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3. The rapid refund program provides liquidity to taxpayers who are in need of cash at the time they file the tax return, just like the purchase of claims by ORG from the fuel tank owners.

Can the rapid refund program conducted by the tax preparation business be considered a charitable activity per IRC section 501(c)(3)? The answer is no.

The analogy can be extended to the defense of the country. The burden to defend our country from foreign threats is assigned to the Department of Defense and the military. The Department of Defense does not build airplanes and aircraft carriers needed to defend the country. Therefore, can we consider building of airplanes and aircraft carriers by the defense contractors and the financing activity by their banks a charitable activity? Again, the answer is no.

ORG considers above analogies as misleading in its updated position dated April 28, 20XX to which the Government disagrees.

Based upon above facts and argument, a determination is made that ORG's financing activity does not qualify as charitable per IRC 501(c)(3).

2. Does ORG's activity satisfy the factors relating to the charitable activity under the lessening the burden of the government?

An activity is a burden of the government if there is an objective manifestation by a governmental unit that it considers the activities of the organization to be its burden.

The government has identified a burden which is to clean up and protect the environment from leaking underground fuel storage tanks. The federal and state governments have enacted laws to provide the necessary funds and administer the clean up of the environment.

The State legislature and the CO-9 have this program in place:

a. The state has enacted laws and regulations to require the following:
    a. Fuel tank owners, with the exception for home heating oil tanks, must demonstrate evidence of financial responsibility to cover corrective action and third party liability costs for accidental petroleum releases from their underground storage tanks;
    b. To report fuel storage spillage to CO-9 regional office.
b. The State CO-9 administers the clean up of fuel spillage from underground storage tanks in the following manner:
    a. After receipt of report from fuel storage owners of the spillage to the environment, it conducts and inspection to:
        i. Determine if fuel tank owner is negligent in relation to the fuel spillage;

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ii. Determine the extent of corrective action required to clean up the environment and its cost.

b. If the fuel tank owner is not negligent with the fuel spillage, the state will reimburse the fuel tank owner for approved cost to clean up the environment by filing a claim.

c. The claim for reimbursement can be assigned by the fuel tank owner to a third party.

The amount of clean up approved by the CO-9 is based upon the cost of the clean up and not on the amount of available funds it has received from the federal government. The source of fund for reimbursement is based upon the 0.1 cent/gallon of fuel purchased in State. If the total amount of claim exceeds the available funds, the reimbursement of claims will be delayed until the funds become available.

The facts showed that the government has identified a burden which is the clean up of the environment from fuel spillage from underground storage tanks and has undertaken the necessary programs to take care of the burden through the EPA and CO-9 in the case of the state of State.

ORG claims it qualifies as a tax exempt organization by participating in acquiring the claims for reimbursement to clean up fuel spills from the fuel tank owners for a fee and thereby lessening the burdens of the government.

Unfortunately, government does not agree with above position for the following reasons;

a. CO-9 and other states allowed for the assignment of approved claims to clean up fuel spills to any third party which is not confined to a tax exempt organization. Therefore, it is available to for profit and not for profit entities.
b. The fact that the assignment of claims is open to for profit and tax exempt entities means that engaging in this activity is not a charitable or tax exempt activity per IRC 501(c)(3).
c. The acquisition of a claim for a fee is a financing activity that is normally undertaken by banks and investment entities as a business.

The above facts and arguments did not show that there was an objective manifestation by the government that it considers the activities of ORG to be its burden. This position is supported by Revenue Ruling 85-2.

ORG has taken the position in its Legal Analysis under Operational Test, A. Lessening the Burdens of Government #1 Objective Manifestation by Governmental Unit that it Considers the Activities to be its Burden on its written positions dated November 10, 20XX and updated on April 28, 20XX as follows;

a. Commonwealth of State and the States of State and State have clearly manifested that they consider the clean up of the environment and improvement of public health to be burdens of state governments. The state governments have acknowledged that the

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government's burden of cleaning up the environment from fuel spillage from underground storage tanks also includes encouraging voluntary compliance with clean up efforts.

b. State CO-9 and State Resources Authority (CO-8) determined that the backlog of unpaid CO-4 (CO-4) claims was resulting in cash flow problems which in turn led to a decrease in voluntary compliance and pace of clean ups. By making this decision to establish the Program, the CO-8 demonstrated that the activity of correcting this problem was a governmental problem.

The government does not accept above position as it relates to the following claims and assumptions;

a. State CO-9 has the statutory burden to protect the environment. It created the CO-4 fund to reimburse fuel tank owners and consultants for to clean up fuel leakage from underground storage tanks not covered by the federal government.
b. The funding mechanism of the CO-4 program allows fuel tank owners and consultants to assign its approved claims to third parties. This assignment of claims is allowed to for profit, non profit or governmental entities engaged in financial transactions. This was made to alleviate the financial difficulty encountered by claim holders in periods where there was a significant delay in the reimbursement by CO-9. Statements provided by RA-5, former Executive Director of CO-8 and RA-1, an employee of CO-9 indicated that the delay in reimbursement will fluctuate from time to time.
c. With the allowance of assignment of approved claims to third parties, CO-8 was able to offer its financial program to fuel tank owners and consultants. Government would like to note that State CO-9 was still managing the approval and disbursements of claims to clean up the environment and has not delegated this activity to CO-8. CO-8 simply acquired approved claims from the fuel tank owners and contractors and therefore has not reduced the burden of State CO-9. CO-8 actually lessened the burden of the fuel tank owners and contractors by receiving its reimbursement up front prior to the completion of the clean up of fuel spill. Therefore, even if ORG was patterned after and took after the financing program of CO-8, it does not mean that it is lessening the burden of the government. Also, it should be noted that CO-8 did not and does not have the authority to endorse ORG as the official successor to its program. This will create an undue competitive advantage over for profit entities such as commercial banks or other lending institutions to participate in this program.
d. In addition, it may not be a healthy environment for CO-8 to continue its financing program with the CO-4 program since it enjoys an undue advantage over for profit entities such as bank and investment companies. The same rationale holds true if ORG were allowed to operate as a non profit entity in providing its financing activity with the CO-4 reimbursement program by not having to pay tax on its profits. Also, it will stifle competition with its ability to avail of tax exempt bond financing.

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Another position by ORG which the government does not agree with pertains to; "The CO-8 established the program when the backlog of claims arose and operated the Program for three years until the backlog of claims diminished. This length of time was significant, given the Program was established once the need for the activity arose. The Program also established a history of the government conducting this activity. The CO-8 purchased claims totaling over $ over the life of the Program. Considering when the backlog of claims arose and the amount of financing provided by the Program, the CO-8 ran the Program for a significant period of time and expended a significant amount of money on the Program before ORG took over the operation of the activities of the Program".

Government does not agree with above position for the following reasons;

a. Three years of operation of the CO-8 program does not constitute a significant amount of time. Revenue Ruling 85-2, stated in part that, "the fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of the government".
b. CO-8's financial program to acquire claims from fuel tank owners and consultants is not an exclusive function of the government. It is an activity that is allowed to any third party that is normally engaged in the business of financing.
c. In other words, CO-8's financial program did not help State CO-9 manage its function of approval and disbursement of claims to clean up fuel spill but rather assisted the fuel tank owners and contractor secure up front financing prior to completion of the work to clean up the fuel spill in the environment. Therefore, CO-8 and ORG's financial activity lessened the burden of the fuel tank owners and contractors more than the burden of the government.

Another position by ORG which the government does not agree with pertains to the position which states in part, "the funding of ORG's activities is a factor in determining whether the government considers the activities to be its burden. The governors of State and State approved the issuance of tax exempt bonds to assist ORG in its activities. ORG does not charge fees to any government for providing these services even though ORG is providing a service that was originally provided by the government. These facts indicate a governmental burden".

Government does not agree with above position for the following reasons;

a. There is no evidence to show that ORG has taken over paying for fees or expenses that CO-9 previously incurred.
b. It does not charge the government fees to acquire claims from fuel tank owners or consultants because it is availing of low interest source of financing. It actually enjoys an unfair advantage over for profit entities who cannot avail of the tax exempt bonds;

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c. However, ORG charges fees to owners of claims for interest, administrative and other overhead costs. It actually reduces the amount of funds and thereby adding costs to clean up the environment.
d. The Governor's Certificate of Approval dated 10/2/20XX and signed by Governor as Governor of State of Stated in part, "The ORG Bonds shall not be a debt of the Commonwealth of State or any political subdivision thereof, other than the Authority. This approval is not intended to be and shall not be construed to be, a determination by or on behalf of the Commonwealth of State as to the soundness, legality, validity or the structure of or security for the ORG Bonds".
e. There is no evidence to indicate that the ORG Bonds was issued. It may have been approved but not issued.
f. ORG does not charge fees to any government for providing its services because it does not help the CO-9 and other state agencies in managing the approval, financing and disbursement of funds to clean up fuel spills. ORG acquires approved claims from fuel tank owners and contractors. Therefore, it lessens the burden of for profit fuel tank owners and contractors rather than the government.

As a final note on this issue #2, it is the government's main position that even if ORG's financing activity may provide liquidity to make the government's reimbursement program a little bit more efficient, it does not reduce the burden of the government in a significant manner to qualify as a tax exempt organization per IRC 501(c)(3) and Reg. 1.501(c)(3)-1(d)(2).

The only thing that ORG has provided is a claim that its financing program increases compliance with the clean up of the environment but there is no data to back this up. It however offered testimony from RA-2, Director of the CO-9 Office of Spill Response and Remediation. She also does not have any data or study to provide how much voluntary compliance was attributable to the ORG financing program.

What she provided in her memorandum dated September 14, 20XX actually supports the government's position that ORG does not reduce the burden of the government with the following statement which stated in part, "The presence or absence of ORG does not impact the size of the Fund's delayed payment balance or the number of days to pay the claim. However, if ORG were to cease financing of claims in State, the RP and, in turn, the RP's consultant would not receive any funds until the claim is actually paid".

In ORG's updated position dated April 28, 20XX, it took the position that there was an objective manifestation by governmental unit that it considers the activities to be its burden. It cited several Revenue Ruling, and General Counsel Memorandums which include;

a. Revenue Ruling 85-1, 85-2;

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b. Revenue Ruling 74-117, 1974-1, CB 128;
c. General Counsel Memorandum 39347;
d. General Counsel Memorandum 39733;
e. General Counsel Memorandum 39348.

Government respectfully disagrees with above position for the following reasons; (Please note that Government cannot cite General Counsel Memorandum's in court cases as precedents but is addressing organization's position)

a. Revenue Ruling 85-1 pertains to an organization which provides funds to the county's law enforcement and therefore, lessens the burden of government.

   In ORG's case, it acquires claims from CO-9 from the fuel tank owners for a fee. It does not pay for expenses incurred by the government. Therefore, organization does not lessen the burden of the government.

   On the contrary, this revenue ruling actually supports the government's position.

   Revenue Ruling 85-2 involves an organization who provides legal advice, representation to lay volunteers and operates a training program for volunteers on how best to represent the interest of abused and neglected children.

   Again, this does not apply to ORG as it does not provide volunteer or free service to CO-9 but rather charges overhead and financing fees to purchase claims from fuel tank owners or contractors. Therefore, it does not lessen the burden of the government.

   On the contrary, this revenue ruling supports the government's position.

b. Revenue Ruling 74-117 relates to an organization that assisted the Governor elect, during the period between his election and inauguration in screening and selecting applicants for State appointive offices and preparing legislative message and program reflecting the party's platform and budget. It determined that the people may well derive a substantial benefit from the activities of this organization but its predominant purpose is to effectuate changes in the government's policies and personnel which will make them correspond with partisan political interests of both the Governor elect and the political party he represents. Therefore, the organization is not relieving the burden of the government and does not qualify as exempt organization.

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The facts and determination of this revenue ruling actually supports the government's position where ORG provides more benefit to the fuel tank owners and contractors and to CO-1 rather than the government.

c. General Counsel's Memorandum 39347 pertains to an organization which pays for the expenses of a mayor of the city which are not included in the city's budget. It was determined that the organization does not lessen the burden of the government and does not qualify as a charitable organization per IRC 501(c)(3). It actually supports the government's position.
d. General Counsel's Memorandum 39733 pertains to an organization which provided financial assistance to the governmental unit by refinancing, acquiring, improving, leasing or selling real or personal property by helping it avoid fees is lessening the burden of the government and qualifies as a charitable organization.
Again, this does not apply to ORG as it does not help CO-9 avoid paying fees. On the contrary, it actually acquires claims from fuel tank owners for a fee.
It actually supports the government's position.

e. General Counsel's Memorandum 39348 pertains to organizations with similar facts to Revenue Ruling 85-1 and 85-2. It actually supports the government's position.

3. <u>Does the financing activity of ORG lessen the burden of the government or lessen the burden of the fuel tank owners and/or contractors?</u>

ORG's position from the time it applied for tax exemption on its attachment to Form 1023 and to the current period is as follows:

"ORG is a State nonstock corporation established in 20XX for the purpose of lessening the burdens of the government by providing low-cost liquidity that will speed reimbursements to claimants and consultants from state administered leaking underground storage tank (ORG) funds, and thus encourage continued voluntary compliance with clean up efforts, a better environment, and improved public health.

Various state administered ORG funds do not have sufficient cash on hand to reimburse claims in a timely manner. The result is that ORG owners and operators (sometimes referred to as responsible parties or RP's) end up waiting months for reimbursement. Delays in reimbursement often cause cash flow problems for RP's, many of which are small independent business owners and homeowners. This can result in reduced voluntary cooperation and consequential slowdown in the pace of clean ups of ORG. Delays in identifying and removing ORG can result in spreading petroleum plumes, which increase public health risks and higher total clean up costs. Finally, payment delays increase the risk that ORG fund may no longer be deemed a viable mechanism for meeting EPA's financial responsibility regulations. ORG was established to assist the state governments in meeting

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their obligation to provide timely reimbursement of approved claims, maintaining their ORG clean up programs and meeting the EPA's financial responsibility requirements".

In summary, organization stated its exempt purpose in its application for tax exemption that it is lessening the burden of the government by increasing voluntary compliance for fuel tank owners since they practically cannot get financing to fund the clean up cost even if reimbursement has been approved by the CO-9.

The Service does not agree with this position for the following reasons:

a. ORG is engaged in a financing activity of acquiring claims from fuel tank owners to clean up the fuel spill from their underground tanks. The CO-9 and other state agencies allowed fuel tank owners to assign their claims to third parties which are not restricted to tax exempt or charitable entities. Claims are also assignable to for profit organizations such as banks. Therefore, government takes the position that ORG's financing activity of acquiring claims which is open to for profit does not equate to engaging in an activity that is charitable per IRC 501(c)(3) as lessening the burdens of the government per Reg. 1.501(c)(3)-1(d)(2).
b. All assumptions that ORG made as to their role in increasing voluntary compliance and cleaning up the environment is not supported by data and may be overstated. It appears that whatever benefit it may contribute to make the CO-9 program efficient is not sufficient to outweigh the benefits it provides to the fuel tank owners, consultants and its founder who are not deemed to be of a charitable class per IRC 501(c)(3). Therefore, government takes the position that ORG provides more relief to the burden of the fuel tank owners and consultants than to the burden of the government.

ORG took and added a position in its protest letter dated November 10, 20XX with regards to the issue if ORG actually lessened the burdens of the Government in part as follows; "ORG actually lessens the burdens of the government by conducting the activities of the Program. The CO-8 had a strong working relationship with ORG as the CO-8 went through the process of handling off the activities to ORG, which evidences that ORG is actually lessening the burdens of government.

Also, the relationship between ORG and the government is not one of a commercial contract for services. Instead, the CO-8 recognized that it would be more cost effective to have ORG conduct the activities. See exhibit 8. ORG lessens the burdens of the government because, if not for ORG, the CO-8 would have to continue conducting activities at a higher cost. This, the CO-8 considered the conduct of the activities to be its burden, and the CO-8 turned over the activities to ORG for the specific purpose of lessening the burden on State by lessening the cost of administering the Program.

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The letters from RA-5 and RA-6 indicate that ORG has been successful in significantly improving voluntary compliance of fuel tank owners and ensuring that the pace of clean up continues, as well as ensuring that the CO-4 continues to be a viable mechanism for allowing fuel tank owners to meet their financial responsibility requirements, See exhibit 8.

The relationship between ORG and the CO-8, the cost-effectiveness of turning over the activities to ORG, and the success of ORG's activities are all facts indicating that the activities of ORG actually lessen the burdens of governments".

Government respectfully disagrees with the above position as of November 10, 20XX for the following reasons;

a. Government does not accept the premise that the success in ORG's program to purchase approved CO-9 claims equates to increased compliance with the fuel tank owners to report fuel spillage to clean up the environment. Please note that ORG only buys approved claims from fuel tank owners or contractors. Since reporting of fuel spillage is required prior to having a claim approved, it means that ORG buys claims from fuel tank owners or contractors who are already compliant with the reporting requirement by the CO-9. In other words, huge success in purchasing of CO-9 claims does not equate to increased compliance. It just means that the fuel tank owners or contractors got paid in advance prior to reimbursement by CO-9 and the state of State still paid the same amount of claim. CO-9 did not reduce the amount of reimbursement as ORG discounts the claims paid to the fuel tank owners or contractors. Therefore, there is no actual hard data to provide evidence of increased compliance or lessening the burden of government in cleaning up the environment due to ORG's financing program.
b. Based on above rationale, all claims by ORG along with written testimony by RA-5 and RA-6 are not supported by data to show that there was an increase in compliance with reporting of fuel spillage due to ORG's financing activity. ORG has to show supporting data that even if there is an increase in compliance with the reporting of fuel spillage, how much of the increase is attributable to the program conducted by its financing program to purchase approved claims.
c. The financing activity performed by the CO-8 and ORG as noted earlier provides more benefit to the fuel tank owners, consultants and CO-1 as personified by President than lessening the burden of the government. Fuel tank owners and consultants benefit by cashing in on their claims before reimbursement by CO-9 and CO-1 benefits with the commission plus reimbursements for administrative costs and marketing costs it earns. As noted earlier, the fuel tank owners, consultants and CO-1 as personified by President do not represent a charitable class per IRC 501(c)(3).

RA-2, Director of Office of Spill Response and Remediation with State CO-9 clarified in a letter dated November 10, 20XX that there are many tanks in State whose clean up costs are

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covered by the CO-4 (CO-4) but are not subject to any financial responsibility requirements. CO-4 funds are collected pursuant to state law and maintained in a separate trust fund.

Even with the clarification of the mechanism of the CO-4 program of the CO-9, the issue remains that ORG's financing activity provides more benefits to the contractors, fuel tank owners and CO-1 than the state or federal government in lessening their burden to clean up the environment.

In fact, the copy of Memorandum provided by ORG dated September 10, 20XX prepared by RA-2 as Director of Office of Spill Response and Remediation with the State CO-9 on the subject of CO-4 FY 20XX Year End Report and FY 20XX Forecast supports government's contention that the ORG financing program lessens the burdens of the fuel tank owner and or contractors rather than the government is cited in part as follows;

"ORG financing represented 55% of the $ in delayed payment. At any given time ORG financing represents between 50% and 60% of the delayed payment balance. **The presence or absence of ORG does not impact the size of the Fund's delayed payment balance or the number of days to pay the claim. However, if ORG were to cease financing of claims in State, the RP and, in turn, the RP's consultant would not receive any funds until the time the claim is actually paid".**

Again, it appears that ORG provides more benefits to the fuel tank owners and consultants rather than lessening the burdens of the federal or state agencies and does not satisfy the requirements of IRC 501(c)(3) and Reg. 1.501(c)(3)-1(d)(2).

The determination that ORG does not satisfy the requirements of lessening the burdens of the government is supported by;
Revenue Ruling 85-1, 1985-1 CB 177, (Jan. 1, 1985)
Revenue Ruling 85-2, 1985-1 CB 178, (Jan. 1, 1985)
Revenue Ruling 74-117, 1974-1 CB 128, (Jan. 1, 1974)

Organization took the position in its letter dated April 28, 20XX that ORG lessens the burden of the government and cited the following;
a. Revenue Ruling 85-1 and 85-2;
b. General Counsel's Memorandum 39682.

The government respectfully disagrees with ORG's position as follows;

1. Revenue Ruling 85-1 and 85-2 actually supports the government's position as noted earlier.
2. General Counsel's Memorandum 39682

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Organization was established pursuant to a statutory directive of the legislature to hold and distribute funds of the Program in a manner approved by the board. The Program is administered by the State. There are evidences of a government's objective manifestation that it considered the activity of the organization to be a burden of the government. There was also a legislative acknowledgement of governmental responsibility and the activities of the organization were previously funded by the government or a history of government participation in the activity.

This memorandum does not apply to ORG since it does not manage the funds of CO-9 but rather acquire claims from fuel tank owners for a fee. Therefore, it does not lessen the burden of the government.

4. Does ORG demonstrate that the governmental unit considers the organization to be acting on the government's behalf, thereby freeing up government of human, material and fiscal assets that would otherwise have to be devoted to the particular activity?

Factors which are deemed relevant to make this determination are as follows:
a. Interrelationship with governmental unit.
b. Activity previously conducted by governmental unit.
c. Payment of governmental expense.
d. Sources of funding.
e. Whether activity is one that could be performed directly by governmental unit.

4. a. Interrelationship with governmental unit

Interrelationship with governmental unit may provide evidence that the governmental unit considers the activity to be its burden. The stronger the control the government has over the activities of the organization, the better the evidence of objective manifestation that it considers the activity as a burden of the government. If a government appoints all directors of the organization that is strong evidence that the government considers the activity to be its burden.

In the case of ORG, it has some members of its board of directors who are state and local government officials. However, they were not appointed by the state or local government to ORG's board of directors to act on its behalf. They are members of the board of directors as private citizens who are in a non official capacity.

ORG performs its activity independently of CO-9. CO-9 allows the assignment of fuel tank operator's claims to any entity in the business of engaging in financing activity. CO-9 did not limit the entities to acquire the claims to tax exempt or charitable entities. Therefore, it did not specifically sanction ORG to purchase these fuel claims.

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Facts showed the government does not have any control over the activity of ORG. There is therefore no clear indication that ORG's financing activity is considered a burden of the government.

ORG's position with rebuttal dated November 10. 20XX, it claimed having a strong relationships with several state governmental units, including State, State and State. It even provided testamentary letters from RA-3, former director of State Resources Authority and RA-2, Director, Office of Spill Response and Remediation.

In State, ORG claimed that it acted as the predecessor to the Accelerated CO-4 Payment Program ("Program") created by the State Resources Authority (CO-8). The "Program" was created in 20XX in response to the backlog of reimbursement of claims approved by the CO-4 (CO-4) to clean up the leaking underground storage tanks. The "Program" paid the claims in two installments. The first installment which represents % of total claim was paid as soon as the State CO-9 reviewed and approved the claim, and the second installment was paid after the State CO-9 paid the CO-8 for the assignment of claim. CO-1 was selected by the CO-8 to act as the servicer of its portfolio claims.

In 20XX, the CO-8, through its then Executive Director, DIR-4, determined that it would cease operating the program and would hand off the program to ORG because the backlog of claims was shrinking to the point where the Program was not cost effective for the CO-8 to run. The CO-8 determined that ORG would be able to conduct the same program more cost effectively by operating in multiple states and would provide continuity if the backlog of claims returned.

A copy of DIR-4's testamentary letter dated November 10, 20XX was included in taxpayer's position as Exhibit 8. It supported the position provided by ORG on this issue.

In addition, a copy of RA-2's testamentary letter dated November 10, 20XX was also included in taxpayer's position as Exhibit 9.

In State, the General Assembly established and amended the underground storage tank petroleum clean up program and allowed payment to an assignee. A copy of the Special Session Public Act No. 05-3, section 91 was included in taxpayer's position as Exhibit 11. The document stated in part, "The commissioner may also make payment from the account to an assignee who in the business of receiving assignments of amounts approved by the board, but not yet paid from the account, provided the party making any such assignment, using a form approved by the commissioner, directs the commissioner to pay such assignee, that no cost of any assignment shall be borne by the account and that the state and its agencies shall not bear any liability with respect to any such assignment".

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ORG also provided a copy of the testamentary letter issued by RA-7, Member, State Leaking Underground Storage Tank Review Board. He claims to write the letter in his capacity as a member of the State's Leaking Underground Petroleum Storage Tank Review Board (Review Board), an instrumentality of the State. Copy of the letter is noted as Exhibit 12.

ORG also provided a copy of the State Governor's Certificate of Approval attached as Exhibit 13.

In State, the General Assembly passed legislation to enable ORG activity in the state. It authorizes the State Environmental Protection Agency to disburse payments from the Underground Storage Tank Fund to persons providing financing to an owner or operator or consultant. Copy of Public Act No 95-403 is attached as Exhibit 14. A copy of letter provided by Representative RA-8 regarding ORG is attached as Exhibit 15.

The government respectfully disagrees with ORG's position and testimonies from third parties for the following reasons;

1. There is no evidence to show there was interrelationship with governmental unit in terms of control. ORG did not have any member of its board who was appointed by a governmental agency in an official manner. ORG had members of the board of directors who are members of the board as private citizens who are in a non official capacity.
   RA-7 claims to have written his testamentary letter as a member of State's Leaking Underground Petroleum Storage Tank Review Board, an instrumentality of the State. Why is it that the letter was written under the letterhead of Gasoline & Automotive Service Dealers of America, Inc.? Please note that he acknowledged that State legislation did not grant ORG exclusivity on claim assignments. It indicates that purchase of claim reimbursements is not an exclusive activity for charitable organizations but rather open to any type of entities engaged in the business of receiving assignments as worded in the legislation.
3. ORG did not officially act as the predecessor to the Accelerated CO-4 Payment Program (Program). CO-8 does not have the authority to officially anoint ORG to take over its Program.
4. ORG may have patterned its operations after the CO-8 Program. However, this does not make it a charitable activity of lessening the burden of the government. The activity of acquiring claims owned by fuel tank owners and consultants undertaken by CO-8 and ORG is allowed by the CO-9 to any type of entity engaged in financing activity. This situation applies to all other states which allowed the assignment of claims to third parties. It did not limit the assignment of claims to tax exempt charitable organizations. It also allowed to for profit entities such as bank and other financing institutions.
   In other words, ORG's financing activity of acquiring approved claims from fuel tank owners and contractors did not relieve CO-9 in State and other states in its burden of inspecting

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fuel spills, approval and disbursements of claims. CO-9 in State and other states which ORG operates continued to engage in managing its programs and was not relieved of any type of burden to manage its program or reduce its expenditures. That is the reason why the Government takes the position that ORG relieves the burden of the for-profit fuel tank owners and contractors rather than the government.

5. DIR-4, wrote a testimonial letter dated November 10, 20XX include a statement in part to indicate that the CO-8 would hand off the Program in 20XX to ORG because the backlog of claims was shrinking to the point where it was not cost effective for CO-8 to run it. Does this statement show that there was no longer a burden to the government when ORG started its financing activity?

   Above statement does not appear to be consistent with statement in updated position taken in letter dated April 28, 20XX on last paragraph on page 17 which stated in part, "In addition, RA-5 stated on behalf of the CO-8 that if ORG had not carried out the activities of the Program, then the CO-8 would have continued to operate the Program".

   Government does not dispute DIR-4's testimony on inner workings of the CO-8 and its program. However, government does not accept his position with regards to his comments regarding the IRS Memorandum. Statements relating to ORG's impact on promoting voluntary compliance, clean up of the environment and lessening the burdens of the government within the meaning of tax exempt organizations per IRC 501(c)(3) not supported by data or evidence are deemed to be opinions.

   And again, the Program undertaken by CO-8 and subsequently ORG is not a charitable activity as it serves to lessen the burden of the fuel tank owners and consultants more than the CO-9 or other state agencies where ORG eventually was allowed to operate.

6. Statements made by RA-2 as Director of Office of Spill Response Remediation with the CO-9 of State with regards to the funding and inner workings of the CO-4 (CO-4) are not disputed by the government. It is used to augment the facts secured from the interview with an employee of the CO-9.

   However, government does not accept any statement she provided relating to the impact on promoting voluntary compliance, cleaning up the environment, enforcement actions and lessening the burdens of the government within the meaning of tax exempt organizations per IRC 501(c)(3) which are not supported by data or evidence are deemed to be opinions.

   Government takes the position that ORG's financing activity to acquire claims provide more benefits to fuel tank owners, consultants and CO-1 more than the lessening of the burden to the government.

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Government cites a statement in a Memorandum prepared by RA-2 dated June 30, 20XX which was submitted by ORG which partly stated, "the presence or absence of ORG does not impact the size of the Fund's delayed payment balance or the number of days to pay the claim. However, if ORG were to cease financing of claims in State, the RP and in turn, the RP's consultant would not receive any funds until the time the claim is actually paid".

7. Government does not agree with the position taken by ORG of being granted access to be reimbursed for approved claims in the states of State and State somehow makes it a charitable organization for easing the burden of the government for the following reasons;
   a. The legislative amendments which allowed ORG to be reimbursed for claims to clean up leakage from underground storage tanks is not exclusive to ORG or charitable organizations. It is allowed to entities which are in the business of purchasing claims or in the financing business. Therefore, granting access to purchase claims to clean up the fuel spills from underground storage tank does not translate to being a charitable activity.
   b. In both states, there is already a program similar to the CO-9 program in State which undertakes the reimbursement of clean ups from fuel spills from underground storage tanks. Therefore, ORG is not easing the burden of the government but rather advancing the reimbursement of claims. It is a financing activity similar to discounting of a loan which is not a charitable activity.

4. b. Activity previously conducted by governmental unit

When a governmental unit engages in an activity on a regular basis for a significant length of time before it is taken over by the organization, the activity may be a burden of government. However, when an organization engages in an activity that is sometimes undertaken by a governmental unit, it is insufficient to establish that a burden of the government exists as noted in Revenue Ruling 85-2.

The State Resources Authority (CO-8) undertook the Accelerated Claim Payment Program (CO-8 Program) in 20XX. In response to the delay in reimbursement of funds which was running for 10 months at that time, it issued a bond to advance the payment of claims. The CO-8 Program was terminated in 20XX.

ORG reported on its application for exemption on Form 1023 as follows:
"ORG is modeled on State's award winning State Resources Authority (CO-8) Accelerated Claim Payment Program (CO-8 Program). The Commonwealth of State terminated the CO-8 Program and authorized ORG to begin providing the services formerly provided by the program on February 1, 20XX".

ORG provided testamentary letter from DIR-4, who was the Executive Director of CO-8 at time the CO-8 Program was created in 20XX and discontinued in 20XX.

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Based upon above facts, government takes the position on this issue as follows;
1. CO-8 Program was created in 20XX and discontinued in early 20XX. Per Revenue Ruling 85-1, "the fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government".

2. The CO-8 Program which involves the acquisition of claims from fuel tank owners is an activity that is allowed by the CO-9 for any type of entity engaged in financing activity, It is not limited to a governmental unit, exempt organization or for profit entity. It is allowed to any type of third party willing to acquire the claim.
3. The statement that made by ORG in its Form 1023 regarding, "the Commonwealth of State terminated the CO-8 program and authorized ORG to begin providing the services formerly provided by the Program on February 1, 20XX is misleading. It conveyed an appearance that the State of State authorized ORG to exclusively acquire claims from fuel tank owners and consultants. As noted earlier, the CO-9 allows any type of third parties to acquire claims for reimbursement.
4. Government cites the statement provided by DIR-4 where he determined that CO-8 would case operating the program and would hand it off to ORG because the backlog of claims was shrinking to the point where the program was not cost effective for CO-8 to run. Does this mean that there was no longer a burden to the government when ORG started its operations? Does it also mean that the Program itself was becoming a burden to the government?

4.c. Payment of governmental expense

Payment of a specific or general governmental expense or part of government's debt is evidence of a governmental burden.

ORG does not pay any part of government's expense or debt to reimburse fuel tank owners or consultants to clean up of fuel spills. It acts as a middle man between the CO-9 and the fuel tank owners or consultants. It actually reduces the amount of proceeds for interest, administrative, legal and set up costs it charges the fuel tank owners or consultants to acquire their claims. It adds to the cost of cleaning up the environment. Therefore it actually adds expenses to and does not lessen the burden of the government.

4.d. Sources of funding

Funding of an organization's activities may indicate a governmental burden. If an organization regularly receives funding from the government in the form of general grants, as opposed to fees for services, it may indicate that the government considers the activity to be its burden. In Rev Rul 85-2, the organization was supported in part by grants from a juvenile court, a governmental unit.

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ORG's primary and main source of funding are the fees it charges to the fuel tank owners and consultants who assign their claims. The fees are based on their borrowing and administrative costs to purchase and hold the claim until it receives reimbursement from the state. It does not raise funds from grants or donations from the public or government agencies.

The government takes the position that the fees which ORG charges to the fuel tank owners and consultants as its source of funding reduces the amount available for cleaning up the environment and therefore does not lessen but add to the burden of the government.

4.e. Whether activity is one that could be performed directly by government unit
ORG cited State Resources Authority's Accelerated Claim Payment Program as its business model. The program was initiated in 20XX and discontinued in 20XX.

The government respectfully disagrees with ORG's position as follows;
1. Unlike in Revenue Ruling 85-2, it does not appear that the government (EPA and CO-9) could not continue its ORG Fund program unless it undertook the financing activity of ORG to purchase its claim from fuel tank owners.

2. The financing activity conducted by CO-8 and ORG to acquire claims from fuel tank owner is allowed to any type of third party who is engaged in the business of financing. It is allowed to banks and other financing entities. Therefore, ORG's activity is not a charitable activity per IRC 501(c)(3) for lessening the burden of government per Reg. 1.501(c)(3)-1(d)(2).

3. Per copy of Memorandum from RA-2 dated September 14, 20XX provided by ORG, it stated in part, "As of June 30, 20XX, ORG financing represented 55% of the $ in delayed payment. At any given time ORG financing represents between 50% and 60% of the delayed payment balance. **The presence or absence of ORG does not impact the size of the Fund's delayed payment balance or the number of days to pay the claim. However, if ORG were to cease financing of claims in State, the RP and, in turn, the RP's consultant would not receive any funds until the time the claim is actually paid".**

The statement above supports the government's position that ORG is not lessening the burden of the government within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. It therefore does not qualify as a tax exempt organization per Internal Revenue Code section 501(a) as described in section 501(c)(3).

5. Is there inurement?

ORG is a tax exempt charitable organization which does not generate any support from public donations or government grant. Its revenue is generated from fees with its principal and sole activity of acquiring approved claims for reimbursement by CO-9 from fuel tank owners or

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consultants. In other words, it purchases approved claims to clean up of fuel leakage from underground fuel tanks for a fee. Its fee is based upon;

a. Daily cost of ORG's borrowed money;
b. Amortized legal and set up costs;
c. Ongoing administrative costs.

ORG in turn outsources this principal and sole financing activity to CO-1 for a fee. President is the single member of CO-1 and the officer and founder of ORG. ORG is to pay CO-1 for based upon its servicing agreement for;

a. 1% per annum of the face amount of reimbursement obligation acquired pursuant to the terms and conditions of financing agreement; plus;
b. Flat fee not to exceed % of the face amount acquired reimbursement obligations, further subject to a minimum flat fee of $ and a maximum of $ per claim.
c. In addition, CO-1 is entitled to reimbursement of all marketing costs.

With the above business or operational model, the system is set up for;

a. ORG to expend and recoup its interest or borrowing cost, legal, organizational, administrative and marketing expenses from its financing activity;
b. ORG turns around and subcontracts or hands over its lucrative personal servicing activity to CO-1 as personified by President.
c. From another perspective, the facts show that ORG appears to be a shell or a front for the servicing or financing business activity of CO-1 as personified by President. Other facts which support this determination include;
    a. From the time of its inception, ORG has designated President, as a member of the board of directors as a Service Director in its Articles of Incorporation.
    b. The Articles of Incorporation initially designated CO-1 as its servicer to provide operational, recordkeeping, financial reporting and management to ORG.
    c. President advanced funds to provide start up costs to establish ORG. These funds are not donations to ORG but rather as loans that were repaid over time. With President ensured as the director, officer and servicer for ORG in its Articles of Incorporation, this advance of start up costs appears to be an indirect investment in ORG by President.
    d. From the time it started operations in 20XX through period ending June 30, 20XX, ORG incurred cumulative loss of $() while at the same time paying President through CO-1 with servicing and management fees with cumulative amount of $. These payments advanced for calendar years 20XX and 20XX for a total amount of $. In other words, while ORG incurred losses in its operations, President earned substantial servicing fees from ORG through CO-1.
    e. The bigger the financing operation, the bigger net earnings to President. Therefore, if ORG can expand its financing activity to fully utilize the $ Tax Exempt Bonds from the State Small Business Financing Authority, CO-1 as personified by President can

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earl $ plus administrative fees plus reimbursement of marketing costs. This is a great business model to benefit President with the use of tax exempt bonds through ORG as a charitable organization.

This position is evidenced by the following financial results;

Review of Form 990 returns filed from 12/31/20XX through 6/30/20XX showed the following:

	20XX12	20XX06	20XX06	20XX06	20XX06	Cum total
Revenues						
Total contributions			$ -	$ -	$ -	
Program service						
Interest on sav & invest						
Total revenue						
Total Expenses						
Excess/Deficit						

Analysis of F-990 returns filed showed the organization had cumulative loss of $ over a 4 ½ year period since it started operations in 20XX through June 30, 20XX.

During the same period, the organization incurred servicing and management fees to CO-1 which is an LLC whose sole member is President.

	20XX12	20XX06	20XX06	20XX06	20XX06	Cum total
Servicing fee						
Management fees						
Total						

ORG issued Form 1099 – Misc to CO-1 in 20XX and 20XX for total amount of $. Taxpayer stated that the servicing fee include reimbursements of expenses incurred by CO-1 on ORG. These amounts are on a calendar year basis. It showed that the payments to CO-1 accelerated from 7/1/20XX through 12/31/20XX.

F-1099 Misc	SSN/Ein	20XX	20XX	Cumulative total
CO-1(CO-1) c/o President				

During the course of the 4 ½ year period of operations, President advanced funds for ORG's operational expenses. Ending balances are:

	20XX12	20XX06	20XX06	20XX06	20XX06
Loans from officer					

Based upon the above facts cited, a determination is made that the organization was created for the private benefit of President and the cumulative service fees represented inurement of

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organization revenues, assets and earnings. Regardless of whether ORG makes a profit, the earnings stream of CO-1 as personified by President is guaranteed.

It showed that organization was not exclusively operated for an exempt purpose since its earnings inure in whole or part to the benefit of President who is a considered an insider as the founder or officer of ORG per IRC 501(c)(3), Treasury Regulation section 1.501(c)(3)-1(d)(1)(ii) and Treasury Regulation 501(c)(3)-1(c)(2). Therefore, a recommendation to revoke its tax exemption per IRC 501(a) as described per IRC 501(c)(3) is warranted.

This determination is supported by the court case of Gemological Institute of America v. Commissioner, 17TC 1604 (1952). The court concluded that the taxpayer was not exempt because the salary and royalties contracts between the taxpayer and its founder were characteristic of an enterprise that was conducted as a commercial enterprise for the greater benefit of one person. The net earning of the organization inured to the benefit of the officer. Such distribution is prohibited by statute. Therefore, organization failed to qualify for exemption.

The court case of EST Hawaii v. Commissioner, 71, TC 1067(1979) also applies in ORG's situation with regards to its finding that for profit organizations exerted significant indirect control over EST of Hawaii, a non profit entity, through contractual agreements. The Tax Court concluded that the for-profits were able to use the nonprofit as an instrument to further their for profit purposes. The fact that amounts paid to the for-profit organizations under the contracts were reasonable did not affect the court's conclusion. Consequently, the EST of Hawaii did not qualify as an organization described in section 501(c)(3).

ORG disagreed and claimed in its protest letter dated April 28, 20XX with the following positions;
a. Private inurement does not occur where reasonable compensation is paid for services actually rendered. It cited Revenue Ruling 73-126, 1973-1 CB 220 and added that payment of such compensation does not constitute the improper use of an organization's charitable resources, nor does it constitute inurement of the organization's net earnings to private individuals.
Private benefit applies to disinterest persons as well as insiders and cited court case of Redlands Surgical Services v. Commissioner, 113 TC 47, 74(1999), aff'd, 242 F.3d 904 (9th Cir 2001) and American Campaign Academy v. Commissioner, 92 TC 1053, 1069 (1989).
b. Private benefit recognizes that certain incidental private benefit will not cause loss or denial of exempt status. See Bob Jones University Museum and Gallery, Inc. v. Commissioner, TC Memo 1966-247, 71 TCM (CCH) 3120 (1996) and Kentucky Bar Foundation v. Commissioner, 78 TC 921, 926 (1982). It further cited; Revenue Ruling 70-186, 1970-1CB 128, Ginsberg v. Commissioner, 46TC 47 (1966), Revenue Ruling 75-286, Revenue Ruling 68-14, 1968-1.

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Government respectfully disagrees with taxpayer's position that there was no evidence of inurement since the compensation paid to President through CO-1 were reasonable and approved by the board of directors. The issue at hand is not whether the salary or contractual obligation to CO-1 is reasonable but rather the earnings of ORG inured for the benefit of its founder and officer.

As noted earlier, this position is supported by the court case of EST of Hawaii v. Commissioner, 71, TC 1067 (1979) which concluded in part that the for-profits were able to use the nonprofit as an "instrument" to further their nonprofit purposes. The fact that the amounts paid to the for-profit organizations under contracts were reasonable did not affect the court's conclusion. The organization did not qualify as exempt per IRC 501(c)(3). In addition, the court concluded that the organization engaged in a business and was operated for a commercial purpose. Its income producing activities are not incidental to its educational activities but are the very justification for its business. In the case of ORG, it has one and only activity which is a financing activity that was also operated as a business that is competing with for profit entities with an added advantage as a tax exempt organization and having access to tax exempt bonds.

The court of Gemological Institute of America v. Commissioner further provides support to the government's position where it ruled that the taxpayer was not exempt because the salary and royalties contracts between the taxpayer and its founder were characteristic of an enterprise that was conducted as a commercial enterprise for the greater benefit of one person. The net earning of the organization inured to the benefit of the officer. Such distribution is prohibited by statute. Therefore, organization failed to qualify for exemption.

Government actually agrees with the court case cited by the taxpayer such as Redlands Surgical Services v. Commissioner, 113 TC 47, 74(1999), aff'd, 242 F.3d 904 (9th Cir 2001) and American Campaign Academy v. Commissioner, 92 TC 1053, 1069 (1989). The court cases ruled that the exempt organizations conferred private benefit to private interests and parties which is impermissible for tax exempt organizations.

Another case cited by taxpayer in its protest letter dated April 28, 20XX that is being used by the government to highlight the presence and prohibition of inurement for private benefit of the officer and founder is People of God Community v. Commissioner, 75 TC 127 (1980). In this case, the organization is operated as a Christian church. The ministers, who are members of the board are paid a predetermined percentage of gross tithes and offerings.
The court ruled that whatever the minister's services are worth, they are not directly related to the organization's gross receipts. By basing the minister's compensation upon a percentage of organization's gross receipts, with no upper limit, a portion of organization's earnings is passed on to the minister.

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The statute specifically denies exemption where a portion of net earnings is paid to private shareholders or individuals.

Payment of a portion of gross earnings to those vested with the control of charitable organization constitutes private inurement. Taking a slice off the top should be no less prohibited than a slice out of net. We do not mean to imply that all contingent compensation arrangements made by charitable organizations will preclude tax exempt status. Such arrangements are part of business life. What is prohibited is inurement to the benefit of private shareholder or individual. The term private shareholder or individual refers to persons who have a personal and private interest in the payor organization. The term does not refer to unrelated third parties.
In other words, section 501(c)(3) denies exempt status to an organization whose founders or controlling members have a personal stake in that organization's receipts. Such is the case here, where petitioner's ministers and Donhowe, in particular control its affairs. Organization therefore fails to qualify for exemption under section 501(c)(3). Its net earnings inure to the benefit of private shareholders or individuals.
The court case of People of God Community v. Commissioner is relevant and shares similar facts with ORG where President as the founder, officer and member of the board is paid a percentage of the servicing fees. The issue of whether the compensation or fee paid to the officer and founder is reasonable but rather a percentage of the receipts. Therefore, ORG's net earnings inure to the benefit of its officer or founder which is prohibited per section 501(c)(3).

The court case of Church of Ethereal Joy v. Commissioner 83 TC 20 (1984) which is again cited by taxpayer also supports the government's position and court case cited above.

6. <u>Effective date of revocation of tax exempt status:</u>

ORG took to position that retroactive revocation of its tax exempt status is not permissible in its rebuttal letter dated November 10, 20XX and updated on April 28, 20XX for reasons which include;

a. ORG applied for recognition of exempt status under Internal Revenue Code (IRC) section 501(c)(3) and received a determination letter from the IRS dated August 22, 20XX. his letter is effective as of June 22, 20XX.
b. ORG has operated in the same manner as stated in its Form 1023 (Application for Recognition of Exemption) and there has been no material change, inconsistent with exemption, in the character, purpose, or method of operation.
c. ORG did not engage in prohibited transactions.
d. ORG did not omit or misstate any material facts in its Form 1023.
e. Therefore, ORG is entitled to rely on its determination letter until the IRS issues a Notice to ORG revoking or modifying the determination letter.

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Government takes the position that the revocation of ORG's tax exempt status per IRC 501(c)(3) be effective July 1, 20XX which is the first day of the Form 990 return examined by the IRS which established the following;

a. There was a finding of inurement as prohibited per IRC 501(c)(3) and Treasury Regulations 501(c)(3)-1(c)(2) and 501(c)(3)-1(d)(1)(ii).
b. There was a material misstatement of fact claimed in its Form 1023 which include in part that, "it was established to lessen the burdens of the government and thus encourage continued compliance with clean up efforts, a better environment and improved public health and the Commonwealth of State terminated the CO-8 Program and authorized ORG to begin providing the services formerly provided by the program on February 1, 20XX".

Determination is based upon Rev Proc 2011-9 section 12.
In its protest letter dated April 28, 20XX, taxpayer stated an alternative position in the event that the Internal Revenue Service (IRS) revokes the tax exempt status of ORG that revocation be effective as of March 29, 20XX which is the date the Internal Revenue Service issued the Examination Report. It also reserves its right to request for technical advice to limit the retroactive effect of the revocation.

Government strongly believes that the effective date of the revocation of tax exempt status of ORG July 1, 20XX based upon the 1st day of the Form 990 return that was examined is within the guidelines of Revenue Procedure 2011-9, IRC 501(c)(3), Treasury Regulations 501(c)(3)-1(c)(2) and 501(c)(3)-1(d)(1)(ii) as noted above.

7, The reasoning of the examination reports has no relevance or merit.

In taxpayer's protest letter dated April 28, 20XX, it took the position and arguments addressed in the examination report to which the government respectfully disagrees. Taxpayer's position include the following;

A. ORG's activities are charitable because they lessen the burdens of government.
Government respectfully disagrees with position taken by the taxpayer as addressed in this examination report.
B. ORG's activities are not conducted in a commercial manner.
Government respectfully disagrees with position taken by the taxpayer as addressed in this examination report.
C. ORG's activities primarily benefit the governments whose burdens are lessened, rather than fuel tank owners.
Government respectfully disagrees with position taken by the taxpayer as addressed in this examination report.

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D. The facts support ORG's claim that its activities serve to increase voluntary compliance. Government respectfully disagrees with position taken by the taxpayer as addressed in this examination report.

E. ORG reduces the cost of cleaning up.
Government respectfully disagrees with position taken by the taxpayer as addressed in this examination report.

F. ORG's earnings do not inure to CO-1 or provide private benefit to President.
Government respectfully disagrees with position taken by the taxpayer as addressed in this examination report.

Additional notes:

Testamentary statements made by DIR-4, current Executive Director of ORG and former Executive Director of State Resources Authority in a letter dated November 10, 20XX and shown on Exhibit 8 regarding IRS Memorandum are deemed not consistent with the Internal Revenue Code on matters pertaining to tax exempt organizations.

Testamentary statements made by RA-2, Director, Office of Spill Response and Remediation with the Department of Environmental Quality (CO-9) of Commonwealth of State in a letter dated November 10, 20XX and shown as part of Exhibit 9 relating to claims that ORG's financing activity will increase voluntary compliance and reduced enforcement burden on CO-9 are opinions not backed up by data or studies as to;
-Was there an increase in reporting and clean up of fuel spills and clean up from underground fuel tanks since ORG started its financing activity?;
-If there was an increase in compliance activity, how much was attributable to the service provided by ORG?
-If there was an increase in compliance activity attributable to the financing activity offered by ORG, how much is its contribution to the improvement to the environment?
-How much is its contribution to the reduction in enforcement burden of CO-9?

These questions are raised in light of the following facts;
-The initial step in compliance with the fuel clean up is the reporting of the fuel spillage from underground storage tanks.
-Claims for reimbursements are approved only after CO-9 has inspected the fuel spill and determined the extent and cost of clean up of the fuel spill.
-ORG is providing service to fuel tank owners or consultants who have already complied with the reporting requirements of CO-9. Government is conceding the fact that there is a possibility that ORG's financing activity encourage voluntary compliance, but the question is how much and is it significant enough to lessen the burden of the government?

CONCLUSION:

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ORG (ORG) did not satisfy the operational test and there is inurement and/or private benefit to the founder and officer. Therefore, it does not qualify for tax exempt status per Internal Revenue Code section 501(a) as described in section 501(c)(3). A recommendation is made to revoke its tax exempt status effective on July 1, 20XX.

The determination is based upon the following issues;

1. ORG's activity of acquiring claims to clean up fuel spills from underground storage tank for a fee is a financing activity normally engaged in by for profit entities such as banks and investment companies and not a charitable activity per IRC 501(c)(3).

This determination is supported by the following;
Revenue Ruling 72-369
Revenue Ruling 69-528
BSW Group, Inc. vs Commissioner of Internal Revenue 70 TC 352, US Tax Ct. May 30, 1978
Better Business Bureau of Washington, DC vs. United States, 326 US, 279, 283 66 S Ct 112 90 L Ed 67, 1945 CB 375(1945)
EST Hawaii vs. Commissioner, 71, TC 1067 (1979)

2. The owners of claims for reimbursements being served by ORG such as fuel tank owners and consultants do not represent a charitable class per IRC 501(c)(3).

3. The federal and state governments who have the statutory burden to protect the environment have identified the problems caused by fuel spill from underground storage tanks. They have programs in place to protect the environment which;
a. Require fuel tank owners to report fuel spillage from fuel storage tanks in a timely manner;
b. Require government agencies to inspect the fuel spillage if clean up is warranted, estimate the cost of clean up and determine if fuel tank owner can qualify for reimbursement from the government;
c. Allow fuel tank owners to file claims for cost of clean up of fuel spillage from underground fuel tank owners. Fuel tank owners are allowed to assign the reimbursement claims to a third party entity who are engaged in the business of financing activity.

ORG's financing activity to acquire claims from fuel tank owners does not qualify as a charitable activity per IRC 501(c)(3) as lessening the burden of the government per Reg. 1.501(c)(3)-1(d)(2) since it is an activity that is allowed by CO-9 and other state agencies to any third party that is in the financing business. It is open to for profit entities such as banks and finance companies. It is an activity that is not exclusive to a governmental agency or charitable organization. Therefore, there is nothing inherently charitable about its financing activity.

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ORG's financing activity of acquiring claims actually lessen the burden of fuel tank owners and consultants more than the government by advancing the funds to the fuel tank owners and consultants prior to reimbursement by the CO-9. This is similar to other financing activities such as the rapid tax refund which is not a charitable activity.

The above statement is supported by the statement in a memorandum dated September 14, 20XX by RA-2, Director of Office of Spill Response and Remediation of the State CO-9, it stated in part, "The presence or absence of ORG does not impact the size of the Fund's delayed payment balance or the number of days to pay the claim. However, if ORG were to cease financing of claims in State, the RP and, in turn, the RP's consultant would not receive any funds until the time the claim is actually paid".

This determination is supported by;
Revenue Ruling 85-1, 1985-1 CB 177, (Jan. 1, 1985)
Revenue Ruling 85-2, 1985-1 CB 178, (Jan. 1, 1985)
Revenue Ruling 74-117, 1974-1 CB 128, (Jan. 1, 1974)

4. ORG's financing activity and its relationship with CO-9 does not demonstrate that the governmental unit considers the organization to be acting on the government's behalf, thereby freeing up government of human, material and fiscal assets that would otherwise have to be devoted to the particular activity as determined in Revenue Ruling 85-2, 1985-1.

a. There is no interrelationship with the governmental unit. There is no oversight of any governmental unit. The members of the boards who happen to be government officials were not appointed to the board in an official manner on behalf of the governmental unit.

b. ORG claims to have been patterned after the CO-8 program. However, the CO-8 program was only been in operation from 20XX through early 20XX. Revenue Ruling 85-2 stated in part, "the fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government".

Even if ORG's operation was patterned after the CO-8 model, the financing activity to acquire claims from CO-9 and other state agencies are allowed for any type of third parties who are in the business of financing. It is an activity that is not exclusive to charitable organizations or government agencies. In fact, it is an activity that is normally performed by banks and other for profit entities;

c. ORG does not pay for governmental expense or part of government's debt and therefore does not relieve the government of its burden. ORG actually charges fuel tank owners or consultants who assign their claims for interest, administrative, set up and legal costs thereby

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reducing the amount of funds available to clean up fuel spills. It therefore adds to the cost of cleaning up the environment.

d. ORG's main source of funding is from fees it charges to the fuel tank owners or consultants who assign their claim. Therefore, the amount received by fuel tank owners and consultants to clean up the environment are reduced by these fees and add to the burden of the government.

e. Unlike in Revenue Ruling 85-2, it does not appear that the government CO-9 could not continue its ORG Fund program unless it undertook the financing activity of ORG to purchase claim from fuel tank owners.

Per copy of Memorandum from RA-2 dated September 14, 20XX provided by ORG, it stated in part, "As of June 30, 20XX, ORG financing represented 55% of the $ in delayed payment. At any given time ORG financing represents between 50% and 60% of the delayed payment balance. **The presence or absence of ORG does not impact the size of the Fund's delayed payment balance or the number of days to pay the claim. However, if ORG were to cease financing of claims in State, the RP and, in turn, the RP's consultant would not receive any funds until the time the claim is actually paid".**

The statement above supports the government's position that ORG is not lessening the burden of the government within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. It therefore does not qualify as a tax exempt organization per Internal Revenue Code section 501(a) as described in section 501(c)(3).

5. ORG is not exclusively operated for an exempt purpose since its earnings inure in whole or part to the benefit of President, its founder and officer per IRC 501(c)(3), Treasury Regulations 501(c)(3)-1(c)(2) and 501(c)(3)-1(d)(1)(ii).

ORG's sole and principal activity is to acquire and purchase claims for reimbursement to clean up fuel spills from fuel tank owners and consultants for a fee. Its fee structure is based upon the recovery of its daily cost of borrowing the funds, amortized legal and set up costs and ongoing administrative costs.

ORG turns around and outsources this financing activity to CO-1, LLC whose sole member is President, He happens to be the founder and officer of ORG. ORG pays CO-1 a 1% of the face amount of reimbursement obligation on an annual basis, plus a flat fee not to exceed % of the face amount of acquired reimbursement obligations with a minimum flat fee of $ and a maximum amount of $ per claim and reimbursement for all marketing costs.

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ORG reported the results of its operations on its Form 990 return from January 1, 20XX through June 30, 20XX a cumulative loss of $(). For the same time period, it paid servicing and management fees to CO-1 for a cumulative amount of $.

ORG issued Form 1099 misc to CO-1 in 20XX for $ and in 20XX for $ for a total amount of $. This represents servicing, management fees and reimbursement for marketing fees over the two year period.

With ORG's business model, the bigger financing activity, the bigger earnings for President. If ORG can expand its financing activity to fully utilize the $ Tax Exempt Bonds from State Small Business Financing Authority, CO-1 as personified by President can earn $ plus administrative fees, plus reimbursement for marketing costs.

This is a great business model to benefit President with the use of tax exempt bonds through ORG as a tax exempt organization.

This determination is supported by the court cases of;
Gemological Institute of America v. Commissioner, 17TC 1604(1952)
EST Hawaii v. Commissioner, 71, TC 1067 (1979)
Church of Ethereal Joy v. Commissioner, 83 TC 20 (1984)
People of God Community v. Commissioner, 75 TC 127, 133 (1980)

6. Effective date of revocation of tax exempt status:

Effective date of revocation of tax exempt status of ORG is effective July 1, 20XX.

ORG took to position that retroactive revocation of its tax exempt status is not permissible in its rebuttal letter dated November 10, 20XX and as updated on April 28, 20XX for the reasons which include;

a. ORG applied for recognition of exempt status under IRC section 501(c)(3) and received a determination letter from the IRS dated August 22, 20XX. Tax exempt status is effective as of June 22, 20XX.
b. ORG has operated in the same manner as stated in its Form 1023 (Application for Recognition of Exemption) and there has been no material change, inconsistent with exemption, in the character, purpose, or method of operation.
c. ORG did not omit or misstate any material facts in its Form 1023.
d. Therefore, ORG is entitled to rely on its determination letter until the IRS issues a Notice to ORG revoking or modifying the determination letter.

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Government takes the position that the revocation of ORG's tax exempt status per IRC 501(c)(3) be effective July 1, 20XX which is the first day of the Form 990 return examined by the IRS for the following reasons;

a. There was a finding of inurement as prohibited per IRC 501(c)(3) and Treasury Regulations 501(c)(3)-1(c)(2) and 501(c)(3)-1(d)(1)(ii).

b. There was a material misstatement of fact claimed in its Form 1023 which include in part that it was established to lessen the burdens of the government and thus encourage continued compliance with clean up efforts, a better environment and improved public health and the Commonwealth of State terminated the CO-8 Program and authorized ORG to begin providing the services formerly provided by the Program on February 1, 20XX. Examination of operations of ORG showed it was established to lessen the burden of fuel tank owners and consultants more than that of the government.

In addition, the statement regarding the State of State authorizing ORG to begin providing the services formerly provided by the CO-8 program implies ORG was granted exclusivity by the State of State to acquire claims from fuel tank owners and consultants which is not true.

The above determination is based upon Rev Proc 2011-9 section 12.

In its protest letter dated April 28, 20XX, taxpayer stated an alternative position in the event the Internal Revenue Service (IRS) revokes ORG's tax exempt status, it should be effective as of March 29, 20XX which is the date the Internal Revenue Service issued the Examination Report. It also reserves its right to request for technical advice to limit the retroactive effect of the revocation.

Government strongly believes that the effective date of the revocation of tax exempt status of ORG July 1, 20XX based upon the 1st day of the Form 990 return that was examined is consistent with the guidelines of Revenue Procedure 2011-9, IRC 501(c)(3), Treasury Regulations 501(c)(3)-1(c)(2) and 501(c)(3)-1(d)(1)(ii) as noted above.

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