

5/11/81

Same

EIN: [redacted]
KD: Philadelphia

APR 23 1981

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were formed [redacted] as an unincorporated association for "charitable, religious, educational and scientific purposes, including for such purposes, the making of distributions to organizations under section 501(c)(3) of the Internal Revenue Code...."

You have represented that you are a religious group, whose purpose is communal service to its members, at present numbering [redacted] persons. You claim that you are a "church", that is a religious organization described in section 170(b)(1)(A)(i) of the Code.

You follow the tenets of The Thelodic movement, a mystical doctrine stressing the individual fulfillment of the self.

You advise that your adherents may still retain affiliation with another church or faith, that "Thelodic Knowledge is a flexible doctrine" and applicable to other religious philosophies with little adjustment." Also, you note that "a Christian is already a Thelodite in practice if he truly observes the Christian ethic".

According to information in the file, you rent the premises at [redacted] (Answer number 9, letter of [redacted]), although you do not specifically reflect a rental item in your financial statement submitted with your [redacted] letter. Presumably, the [redacted] listed generally under "all expenditures to date" includes any money paid for rentals.

You conduct your activities at the rear section of the premises which is mainly occupied by a retail business known as [redacted] which sells occult books, artifacts and supplies. This business is owned and operated by your chairman and hierophant (priest) as sole proprietor.

The hierophant and his wife both are represented on your governing board, comprising two of the five members of the board.

Among the categories of tax exempt organizations defined in section 501(c)(3) of the Internal Revenue Code are those organized and operated for religious purposes.

Common to all organizations exempt under 501(c)(3) is the requirement that no part of their net earnings inures to the benefit of any private shareholder or individual.

In order to qualify under Code section 501(c)(3), an organization must be both "non-profit" and "operated exclusively for one or more purposes specified in that section. As specified in the Internal Revenue Regulations at section 1.501(c)(3)-1(a)(1), if the organization fails to meet either the organizational or operational test, it is not exempt.

Regs. 1.501(c)(3)-1(a)(1) provides that an organization is operated exclusively for one or more specified purposes, including "religious", purposes if it engages primarily in activities which accomplish those purposes. It is not so operated if more than an insubstantial part of its activities is not in furtherance of such purposes.

The term "private foundation" is defined in Code section 509(a) to apply to every domestic or foreign organization described in Code section 501(c)(3) other than an organization referred to in Code sections 509(a)(1), (2), (3), or (4). Thus, if an organization is described in Code section 501(c)(3) it is also a private foundation unless it falls into one of the four noted categories under section 509(a).

Among organizations excluded from private foundation status under Code section 509(a) are those described in section 170(b)(1)(A)(i) covering "a church or a convention or association of churches."

The regulations do not define "church" as Congress has not provided guidance. However, some Federal court decisions are useful. In CHURCH v. COMMISSIONER, 48 F.O. 350 (1967), The Tax Court declared that Congress used "church" more in the sense of a denomination or sect than in a generic, or universal sense and added that it did not intend to imply that to be considered a church a group must have an organizational hierarchy or maintain church buildings. The Tax Court then concluded that a group of missionary workers drawn from many Christian churches could not be said to be a church. The group was interdenominational and independent of any connection with the churches with which its members were affiliated. It did not seek converts other than to the principles of Christianity generally and if successful urged those converts to establish their own native churches. It was merely a religious organization comprised of individual members who were already affiliated with various churches.

Regs. 1.501(c)(3)-1(d)(1)(ii) provides that, to meet the operational test, an organization must be engaged in activities furthering "public" purposes, rather than private interests. It must not be operated for the benefit of designated individuals or the persons who created it, as specified in Regs. 1.501(c)(3)-1(d)(1)(ii).

Generally, an organization applying for exemption has the burden of proof to show that it satisfies the requirements for exemption.

This principle was applied by the Tax Court in Bubbling Well Church v. Universal Love, Inc. v. Commissioner, 74-2 U.S. 39 (6-3-50), in holding that an organization claiming to be a church did not meet its burden of proof. The court attached significance to the fact that the organization was controlled by members of one family, which was not subject to any outside control from a denomination or ecclesiastical body. The court noted that while this type of control did not necessarily disqualify the organization for exemption, it provided an obvious opportunity for abuse of tax exempt status.

In the case of American Synagogue Foundation, Inc. v. U.S.A., 80-1 USTC 9452 (D.D.C. 1980) the court found that a nonprofit corporation was not a "church" for charitable contribution purposes even though it was exempt as a religious organization. Its membership did not extend beyond the immediate family of the minister and all religious services and activities were conducted at his residence. They concluded that a married couple praying together in the physical solitude of their home did not constitute a "congregation" within the ordinary meaning of the word but the organization had made no real effort to convert others or to extend its membership beyond the immediate family of the founder. In summation, the organization was engaged in a private religious enterprise, and therefore could not fulfill the associational rule normally identified with the term "church".

It is noted that you are located in a back room of a shop selling occult literature and paraphernalia. The store is owned by your religious leader and chairman of the board as sole proprietor. Rental payments on this property are paid, to some degree, by you. The store is open to the general public. To the extent that rentals are paid on the property by the church, these payments inure to the private benefit of your chairman in that it alleviates his business from paying rentals.

The excessive control vested in the husband and wife who serve as your chairman and treasurer, respectively, as well as the dual use of the premises where you conduct your activities indicates that the principal activity at that location consists of operation of a bookstore.

Accordingly, it appears that the religious function is operated in conjunction with a business enterprise owned by a member of your governing board, another member of which is his wife.

As indicated in the Bubbling Well Church case cited above, where there is a closely controlled church, the potential for abuse places the burden of proof upon the organization to show that the organization was not used to benefit the private interests of those controlling the policies and operations. The fact that the founder/chairman/religious leader's business is the principal occupant of the premises, requires that you demonstrate that you exclusively serve religious purposes, as opposed to the private interests of designated individuals. The file does not show any segregation of assets and functions between the two activities. Accordingly, you appear to serve the private interests of your chairman and, as such, do not qualify for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Also, you do not distinguish your beliefs and doctrines from that held by various christian denominations and, in fact, you indicate that your members retain their affiliation with other churches and denominations while participating in your activities. Further you consist of a small closed group of members, all of whom also serve as your board of directors. The file indicates that you do not actively seek additional members. As shown by the Chapman and the American Guidance Foundation cases cited above, organizations that essentially engage in a private religious enterprise, such as yours, do not fulfill the associational role normally identified with a "church".

Thus, if you did qualify as an organization described in section 501(c)(3), you would be a private foundation because you are not a church within the meaning of section 170(b)(1)(A)(i) and this is the only basis upon which you claim non-private foundation status.

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

You are required to file Federal income tax returns for tax years beginning with 1980.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted in duplicate within 21 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices requirements.

If we do not hear from you within 21 days, this ruling will become final and copies of it will be forwarded to the District Director, Philadelphia. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7429(b)(2) of the Internal Revenue Code provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

Section 6104(e) of the Code requires that we notify the appropriate State officials in the event, that this ruling becomes final.

Sincerely yours,
(Signed) [REDACTED]

[REDACTED]
Chief, Rulings Section 1
Exempt Organizations
Technical Branch

cc: DD Philadelphia
Attn: EO Group

