



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **200926049**
Release Date: 6/26/09
Date: March 30, 2009
UIL Code: 501.32-00
501.32-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: Jan 23 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

B = Person #1
C = Person #2
M = Ministry
O = State
P = City

UIL #'s

501.32-00
501.32-01

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

1. Does the M qualify for tax-exempt status under IRC 501(c)(3)?
2. If M did qualify under IRC 501(c)(3), would it qualify for an IRC 170(b)(1)(A)(i) foundation status as a church?

Facts

You, M, filed a Form 1023 application for IRC 501(c)(3) tax-exempt status as a religious organization and requested a church foundation status (IRC 170(b)(1)(A)(i)).

You filed Articles of Incorporation with the State of O on May 17, 2006. Your purposes per the articles are "to evangelize the unsaved by the proclaiming of the Gospel of the Lord Jesus Christ; educate believers in a manner consistent with the requirements of Holy Scripture, pray for the sick and provide Christian education".

B is your sole Officer/Director. B's daughter, C, has been named as a minister.

There is an Internet site cited on your Form 1023 application; however, attempts to access the site

have not been successful.

All of your worship services are conducted via teleconference. Meetings or "services" are held every Tuesday and Friday at 6:00-9:30 pm and Sunday 8:00-11:00 via telephone conference with approximately twenty members, guests or other participants located throughout the United States. You attract new members through word of mouth

All telephone services and other religious activities take place in the apartment of B, your Pastor and sole Officer/Director. The apartment is described in the application as a luxury apartment with two bedrooms and a living area of 500 square feet. You pay the entire \$per month rent for the apartment.

The following distributions entered on line 15, Page 9, of the Form 1023 application are estimated distributions made to B for the projected apartment rental expenses.

<u>Tax Year</u>	<u>Amount</u>
	\$
	\$
\$	

Correspondence received from you indicated that there were no current plans to add new board members to the organization but B was open to the idea.

B has no religious training other than daily bible study. B believes that she has been instructed by a higher power to minister over the telephone and to preach the gospel both nationally and internationally. Supplemental information submitted with the application indicates that both B and C were "automatically" ordained as ministers of the organization by virtue of their being chief stewards of the ministry.

You submitted monthly bank statements. A typical month occurred in December of 2006. During this month you had card purchases and ATM withdrawals of \$ electronic withdrawals of \$ and checks paid of \$ Transactions over \$100 included the following:

Western Union	\$
Sprint	\$
Time Warner Cable	\$
Western Union	\$
MC-Ladwp	\$
U-Haul	\$
Stater Brothers	\$
Fry's Electronics	\$
USPS	\$
Fry's Electronics	\$
Fry's Electronics	\$

Other expenses included items such as grocery store, restaurant and department store purchases. All items appeared to be personal expenses.

Correspondence issued to B on July 8, 2008 noted that the financial data submitted during the

application indicated that your expenses were limited to rent, telephone conference calls and compensation [in the form of personal expenses] paid to B. Further verification of your expenses was requested but none has been received.

Law

501(c)(3) Exempt Status Law:

Section 501(c)(3) of the Code sets forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3).

To satisfy the operational test, you must be operated exclusively for one or more exempt purposes.

Treasury Regulation 1.501(c)(3)-1(c)(2) provides that:

“An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words ‘private shareholder or individual’, see paragraph (c) of §1.501(a)-1.”

Treasury Regulation 1.501(a)-1 (c) defines private shareholder as:

“persons having a personal and private interest in the activities of the organization.”

Treasury Regulation 1.501(c)(3)-1(d)(1) (ii) states that:

“An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.”

Rev. Rul. 69-266, 1969-1 C.B. 151, finds that an organization that was formed and controlled by a doctor engaged in the practice of medicine in which he transferred assets, including his medical practice, his home, and his automobile, to the organization and who was "hired" to conduct "research programs," which consisted of the doctor examining and treating patients at the prevailing fees, does not qualify for exemption from federal income tax under section 501(c)(3) of the Code because the organization's primary function is to serve the private interest of its creator rather than a public interest.

Rev. Rul. 89-74, 1989-1 C.B. 311 states that “churches” such as those described in Rev. Rul. 78-232, 1978-1 C.B. 69 and Rev. Rul. 81-94, 1981-1 C.B. 330 are “tax shelters” within the meaning of section 6661 of the Internal Revenue Code. In Rev. Rul. 78-232, the taxpayer, claiming to be a duly ordained minister, formed a “church.” The original members of the church consisted of the taxpayer, the taxpayer’s spouse and two minor children, and a few family friends. The taxpayer was employed full-time by a state government, and continued in this employment after the church was formed. The taxpayer’s salary checks were received by the taxpayer and deposited into the church’s bank account. The funds from the church bank account, however, were primarily used to furnish the taxpayer with lodging, food, clothing, and other living expenses. In Rev. Rul. 81-94, a professional nurse formed a “church” and became a minister by purchasing a “certificate of ordination” and a

church charter from an organization selling such certificates and charters. Pursuant to a vow of poverty, all the nurse's assets, including a house and an automobile, were transferred to the church. In addition, the nurse's wage income was deposited into the church bank account. In return, the church assumed all the nurse's existing liabilities, such as the home mortgage and all outstanding credit card balances. The church also provided the nurse with a full living allowance sufficient to maintain or improve the nurse's standard of living and permitted the nurse to use the house and automobile for personal purposes.

If part of the net earnings of an organization, no matter what its purpose, inures to the benefit of any private shareholder or individual, tax exemption under section 501(c)(3) will not be allowed. An organization bears the burden of proving that it is not operated for the benefit of private interests such as that of the founder or his family. Basic Bible Church v. Commissioner, 74 T.C. 846 (1980).

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104 (9th Cir. 1981), the court affirmed the tax court's decision that held that the organization supplied no evidence showing that the payments to its controlling members were reasonable and the court also found that the potential for abuse created by the family's control of the organization required open and candid disclosure of facts.

Prohibited inurement is strongly suggested where an individual or small group is the principal contributor to an organization and the principal recipient of the distributions of the organization, and that individual or small group has exclusive control over the management of the organization's funds. The Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 927 (1986).

In Herbert Byrd v. Commissioner, T.C. Memo. 1986-385, 1986 WL 21595 (U.S. Tax Ct.), the church operated out of the property which Mr. Byrd individually owned. The ground level of the property was subsequently dedicated for use by the Church. Funds received from Mr. Byrd represented the bulk of, if not the sole, support received by the Church. The Church maintained a checking account over which petitioner had sole signatory control. The Church paid the mortgage and property taxes on the property as well as all utility bills. The Church also repaid Mr. Byrd's personal loan to a finance company. Mr. Byrd used an automobile owned by the Church to commute to and from his day time job and the Church paid for all automobile expenses. Mr. Byrd deducted his contributions to the church on his individual tax return. The Service disallowed this deduction claiming that: (1) the Church was neither organized nor operated exclusively for religious purposes; (2) Church funds were used for Mr. Byrd's benefit; and (3) Mr. Byrd did not relinquish dominion and control over the funds contributed to the Church.

Mr. Byrd then challenged the Service's position. In its opinion the Court stated, in part, that:

"Section 170(a) allows as a deduction a contribution or gift made within the taxable year to those entities described in section 170(c). To qualify as an entity described in section 170(c), the Church must satisfy both an organizational and operational test. Stephenson v. Commissioner, 79 T.C. 995, 1002 (1982), affd. per curium 748 F.2d 331 (6th Cir. 1984); Section 1.501(c)(3)-1(a)(1), Income Tax Regs.

If the Church fails to satisfy either test, it does not qualify. Here, the Church satisfied neither test. The Church failed to satisfy the organizational test because under its Charter, as in effect for 1981, its assets were not irrevocably dedicated to an exempt purpose. Sec. 1.501(c)(3)-1(b)(4), Income Tax Regs.

The Church also failed to satisfy the operational test because its earnings inured to the benefit of a private individual (i.e., petitioner). Sec. 1.501(c)(3)-1(c)(2). Many of the petitioner's (Mr. Byrd's) personal expenses, including the expense of maintaining his home (e.g., mortgage, real estate taxes and utilities) were paid by the Church. Additionally, the Church-owned automobile was used by him to commute to and from his day job.

In addition to failing both the organizational and operational tests, petitioner did not part with dominion and control over the monies contributed to the Church; he was the sole signatory over the Church's checking account. This factor alone also would result in the denial of a deduction to petitioner for his contributions to the Church. See Stephenson v. Commissioner, supra."

Foundation Status Law:

Treasury Regulation 1.170A-9 (a) states that "An organization is described in section 170(b)(1)(A)(i) if it is a church or a convention or association of churches."

In American Guidance Foundation v. Commissioner, 80-1 USTC P 9452, the Court stated, in part, that:

"Although it is settled that Congress intended a more limited concept for "church" than for the previously identified 'religious organization,' Congress has offered virtually no guidance as to precisely what is meant."

The Court discussed the fourteen criteria developed by the Internal Revenue to evaluate applications for church foundation status as follows:

"Faced with the difficult task of determining whether or not religious organizations are in fact churches, the IRS has developed fourteen criteria which it applies on an ad hoc basis to individual organizations. While some of these are relatively minor, others, e. g. the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance. The means by which an avowedly religious purpose is accomplished separates a "church" from other forms of religious enterprise. See Chapman v. Commissioner of Internal Revenue, supra, 48 T.C. at 367 (Tannenwald, J., concurring). At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship. Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill this associational role.

The criteria applied are as follows:

- (1) a distinct legal existence
- (2) a recognized creed and form of worship
- (3) a definite and distinct ecclesiastical government
- (4) a formal code of doctrine and discipline
- (5) a distinct religious history
- (6) a membership not associated with any other church or denomination
- (7) an organization of ordained ministers
- (8) ordained ministers selected after completing prescribed studies
- (9) a literature of its own

- (10) established places of worship
- (11) regular congregations
- (12) regular religious services
- (13) Sunday schools for religious instruction of the young
- (14) schools for the preparation of its ministers.

No single factor is controlling, although all fourteen may not be relevant to a given determination. See Speech of Jerome Kurtz, IRS Commissioner, at PLI Seventh Biennial Conference on Tax Planning, Jan. 9, 1978, reprinted in Fed. Taxes (P-H) P 54,820 (1978)."

In The Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, Tax Ct., Judge Williams incorporated Judge Tannenwald's concurrence statement in Vaughn v. Chapman and Mildred E. Chapman v. Commissioner in his OPINION as follows:

"Although fundamental to determining whether an organization is a church, religious purposes alone do not serve to establish it as a church. Equally important are the means by which its religious purposes are accomplished. Chapman v. Commissioner, supra, at 367 (Tannenwald, J., concurring); American Guidance Foundation, Inc. v. United States, 490 F. Supp. 304, 306 (D.D.C. 1980). A church is a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs. In other words, a church's principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith.

(T)he word 'church' implies that an otherwise qualified organization BRING PEOPLE TOGETHER AS THE PRINCIPAL MEANS of accomplishing its purpose. The objects of such gatherings need not be conversion to a particular faith or segment of a faith nor the propagation of the views of a particular denomination or sect. The permissible purpose may be accomplished individually and privately * * * but it may not be accomplished in physical solitude. * * * (48 T.C. at 367; emphasis in original.)

To qualify as a church an organization must serve an associational role in accomplishing its religious purposes."

In Foundation Of Human Understanding v. Commissioner, 88 T.C. 1341 (1987), it was noted that the term 'church' is not defined in either the Code or Regulations. It was further stated that "It seems clear, however, that Congress intended the that word 'church' have a more restrictive definition than the term 'religious organization'."

In Vaughn V. Chapman and Mildred E. Chapman v. Commissioner, U.S.T.C., 48 T.C 358, Filed June 21, 1967, Judge Tannenwald in concurring with the Court's decision stated

"I agree with the conclusion that the Missionary Dentist is neither a church nor a hospital nor an educational organization but I disagree as to some of the reasoning which has been adopted to support that conclusion. My main difficulty with the majority opinion stems from its definition of 'church' as requiring an organizational structure in terms of a denomination or sect. Granted that Congress clearly intended that the word 'church' have a restrictive meaning, I do not think that this should be the touchstone any more than I think that an organization must own or utilize buildings or other physical facilities to be so considered. In approaching the question of what Congress had in mind, we should take a common sense approach and posit our conclusion on the meaning of 'church' in ordinary, everyday

parlance.

In this context, we should look not only at the purposes of the organization but the means by which those purposes are accomplished. Clearly, religious purposes and means are not enough. Otherwise there would have been no necessity for Congress to distinguish between a 'religious organization' and a 'church.' There is no question but that propagation of the faith coincides with the purpose of a 'church.' But not every evangelical organization is a church in the sense with which we are concerned herein.

In my opinion, the word 'church' implies that an otherwise qualified organization bring people together as the principal means of accomplishing its purpose. The objects of such gatherings need not be conversion to a particular faith or segment of a faith nor the propagation of the views of a particular denomination or sect. The permissible purpose may be accomplished individually and privately in the sense that oral manifestation is not necessary, but it may not be accomplished in physical solitude. A man may, of course, pray alone, but, in such a case, though his house may be a castle, it is not a 'church.' Similarly, in my opinion, an organization engaged in evangelical activity exclusively through the mails would not be a 'church.'

Application of Law

501(c)(3) Exempt Status:

Section 501(c)(3) of the Code sets forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3).

Your articles of incorporation include language conforming to the requirements of section 501(c)(3) of the Code. Therefore, you pass the organizational test.

Your founder is your sole officer and director. Your "services" are telephone conversations with other "members". Your facility is the leased home of the director. Your organization pays the \$6,395 per month rent for the facility. During the last three years you have paid rental expenses of the director of \$241,940. The file indicates that your expenses appear to be personal expenses of the director. Therefore, you are not operated exclusively for purposes described in section 501(c)(3).

You are like the organization in Rev. Rul. 69-266, 1969-1 C.B. 151, in that your primary function is to serve the private interests of your creator.

You are like the "churches" described in Rev. Rul. 78-232, 1978-1 C.B. 69 and Rev. Rul. 81-94, 1981-1 C.B. 330 in that funds from your account are used to furnish your director with living expenses.

Your net earnings inure to your founder, who is also your sole officer and director. You have not proved that you are operated for public interests. An organization bears the burden of proving that it is not operated for the benefit of private interests such as that of its founder. Basic Bible Church v. Commissioner, 74 T.C. 846 (1980).

You are similar to the organization in Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104 (9th Cir. 1981). In that case the organization supplied no evidence showing that the payments to its controlling members were reasonable and the potential for abuse was created by the family's control of the organization.

Prohibited inurement is strongly suggested where an individual is the principal contributor to an organization and the principal recipient of the distributions of the organization, and that individual has exclusive control over the management of the organization's funds. The Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 927 (1986). Your sole director is your principal contributor and recipient of your distributions and has exclusive control over the management of the organization's funds.

In Herbert Byrd v. Commissioner, T.C. Memo. 1986-385, 1986 WL 21595 (U.S. Tax Ct.), the church operated out of the property which Mr. Byrd individually owned and many of the Mr. Byrd's personal expenses, including the expense of maintaining his home, were paid by the Church. Your organization operates out of the property of your founder and many of her personal expenses are paid by you. Like the organization controlled by Mr. Byrd, you serve private and not public interests.

Foundation Status:

Although foundation status will not apply because you are not qualified for IRC 501(c)(3) status, we will analyze the legal case against church foundation status as it applies to you.

You hold your services over the telephone. Each attendee sits alone at their location, typically their home.

In The Church Of Eternal Life and Liberty, Inc. v. Commissioner, Judge Williams incorporated the opinion Judge Tannenwald from Chapman v. Commissioner in his analysis of his case. Judge Tannenwald is quoted as follows: "The word 'church' implies that an otherwise qualified organization bring people together as the principal means of accomplishing its purpose." The permissible purpose may be accomplished individually and privately **** but it may not be accomplished in physical solitude." Those individuals participating in your teleconferences do not gather together physically for worship.

In Foundation Of Human Understanding v. Commissioner it was noted that the term 'church' is not defined in either the Code or Regulations. It was further stated that "It seems clear, however, that Congress intended that the word 'church' have a more restrictive definition than the term 'religious organization'." Individuals sitting at home holding a "service" over the telephone does not meet the more restrictive definition of a church.

As explained in Vaughn V. Chapman and Mildred E. Chapman v. Commissioner, U.S.T.C., 48 T.C. 358, the word 'church' implies that an otherwise qualified organization bring people together as the principal means of accomplishing its purpose. The permissible purpose may be accomplished individually and privately in the sense that oral manifestation is not necessary, but it may not be accomplished in physical solitude. Your services consist of individuals sitting alone in their homes conversing via the telephone.

Your participants do not assemble regularly, which is a minimum requirement for church foundation status that is noted by Judge Gesell in American Guidance Foundation v. Commissioner.

With further regard to American Guidance Foundation v. Commissioner, and the Commissioner's Fourteen Points cited therein, you do not meet the points listed below.

- (2) a recognized creed and form of worship
- (3) a definite and distinct ecclesiastical government
- (5) a distinct religious history

- (7) an organization of ordained ministers
- (8) ordained ministers selected after completing prescribed studies
- (10) established places of worship
- (13) Sunday schools for religious instruction of the young
- (14) schools for the preparation of its ministers.

Considering the above citations, and the fact that those "attending" the services held by you are doing so over the telephone instead of physically gathering as a group in an established place of worship, leads to a conclusion that if you qualified for 501(c)(3) status you could not be assigned a foundation status as a church under IRC 170(b)(1)(A)(i).

Applicant's Position

You did not offer a response to our position presented during the July 8, 2008 telephone conversation, which is documented in file with a follow-up letter issued on that date. Nor did you submit any additional information as the July 8, 2008 follow-up letter requested.

Conclusion

Your funds inure to the benefit of your founder and sole director, B. You are not operated exclusively for exempt purposes. In fact, you are operated to serve the private interests of B. Therefore, you do not qualify for exempt status under section 501(c)(3) of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120.

Even if you were to qualify for exemption, you do not qualify for church foundation status because you do not operate a church as defined in the applicable law cited above.

Protest Rights

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Pub 892