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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **201414021**
Release Date: 4/4/2014

Date: January 6, 2014

Uniform Issue List Number:
501.03-00

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 under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s):

> You have failed to establish that you will be operated exclusively for exempt purposes as required by section 501(c)(3) of the Code. You have failed to establish that no part of your net earnings will inure to the benefit of private individuals. You have failed to establish that you will serve public rather than private interests.

Because 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. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

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.

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,

Karen Schiller
Acting Director, Exempt Organizations
Rulings and Agreements

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

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: February 7, 2012

Uniform Issue List Number:

501.03-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Husband =
Wife =
B =
C =
D =
E =
Center =
College =
For-Profit College 1 =
For-Profit College 2 =
For-Profit College 3 =
For-Profit College 4 =
Investment Company =
Network =
w =
x =
Y =
Z =
Letter 1 =
Letter 2 =

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.

Facts:

You were organized by Husband and Wife under state law exclusively for religious purposes, including making distributions to organizations that qualify as exempt under § 501(c)(3) of the Code. Your articles of incorporation describe your purpose as that of a Judeo Christian church dedicated to helping people live better lives, globally, through education. Further, they state that you are a unique digital media church with relevant face-to fact outreach programs and practices, and that you provide outreach via the Internet, social gatherings, and places of worship based on the three pillars of literature distribution, education, and support of affiliated minister/missionaries.

In your application, you describe the following activities:

- conducting religious services and Bible study classes;
- arranging for pastors/missionaries to personally visit new believers who contact you over your website;
- distributing literature;
- posting a Red Letter Devotional on your website;
- purchasing books authored by Wife to sell at meetings;
- providing funding and advisory services to Christian colleges and universities; and
- operating a "Scholarship and Enrollment Center" using web-based technology to help people find scholarships, a faith-based educational institution, and appropriate academic programs.

You also told us that you had not found a worship facility, and that you have no contracts with pastors and missionaries and no agreement to acquire ownership of, or to purchase, Wife's books.

To illustrate your educational activities, you provided a copy of an "Advisory and Funding Agreement" between you and College, under which you agree to provide College with $700,000 in seasonal operating capital, $250,000 in "donations" for the costs associated with establishing an extension site at Center, $800,000 to allow College to pay off all existing debt, and $1,150,000 as a future operating advance. In return, you would earn a quarterly "advisory and funding fee" of 15 percent of the net tuition of College. You also expected revenue in the form of 8 percent interest on an operating three-year loan to College.

In Letter 1, you told us that the "advisory and funding fees" and "university funding and advisory activities" are "no longer part of the organization." You told us that your current activities consist of:

- conducting religious activities;
- distributing literature; and
- awarding scholarships.

You said that your intention to enter into a substantial education ministry relationship with College did not materialize. Furthermore, you said that you "will not enter any definitive asset purchase agreements to buy any educational facilities. All of these transactions are between Husband and these institutions independent of [you]."

In Letter 2, you told us you had prepared a series of video programs, Z, to be aired by Network. These programs emphasize the value of a Christian higher education and regularly feature speakers such as E (who is reported to be employed as a fundraiser for For-Profit College 1), as well as faculty, students, and graduates of For-Profit College 1. At the end of each program, viewers are encouraged to visit your website, x, to request guidance on pursuing higher education and to apply for a scholarship. Further, you state that—

> [A]ll inquiries received ... for educational assistance are screened first by [your] offices.... Those who expressed an interest in a particular field of study were given a list of schools that catered to these programs and whose students were interviewed on past Network programs. They were then referred to the specific school or university of their choice. Those who had general questions about educational opportunities and scholarships available were referred to the staff of For-Profit College 1 to assist them since [you do] not have qualified staff to provide assistance.... In return for these services For-Profit College 1 was given the right to provide the student information regarding their educational programs.... [You] then complete the loop when ... another college or university, or For-Profit College 1 asks [you to] consider helping the particular student that it has referred with a scholarship. The resources for those scholarships have been loaned directly from [your] founders (Husband and Wife) to the scholarship program at the particular institution or funds loaned to [you] to provide the scholarship. No grants or funds have been provided by [you] to For-Profit College1 or to any other for profit institution affiliated with Husband.

In Letter 2, you state that you had received 4206 scholarship/inquiry applications and that two scholarships had been awarded.

As of the date of this letter, your website, x, had the following content:

- A video stream featuring speakers who are identified with various colleges, among them For-Profit College 1;
- Under the heading "Need help with achieving your dreams through education?", a rotating sequence of pictures of people who are identified as participating in various degree programs at For-Profit College 2 and For-Profit College 3;
- A contact form;
- A brief description of your mission and a "value statement;"
- A brief statement that you distribute literature and digital media, but no information beyond that.
- A brief statement about holding church services and sponsoring ministers/missionaries, but no information beyond that.

You are managed by your board of directors. Your bylaws provide that each director shall serve a regular term of three years, except the Founding Directors, Husband and Wife, who are authorized to serve an indefinite term. Your bylaws also provide for a Nominating Committee consisting of at least three directors, including all Founding Directors. The duties and responsibilities of the Nominating Committee are to nominate directors, officers of the board, and members of the Standing Committees (i.e., the Executive and Finance Committee and the Investment Committee).

Your organizational chart dated "6/29/2010" shows Husband and Wife as your "Founders." It also shows a five-person board of directors, with Husband designated as "chairman" and Wife designated as "vice-chairman." In addition, the chart shows five "key staff," including B, C, and D, as well as "advisors," including E as "policy advisor and television program hosting."

Husband has been interviewed on the TV program Y. In a transcript of that interview (available at w), Husband is identified as "an 'education entrepreneur' investing in failing universities, injecting them with large amounts of capital, and when they go public, he can make big money. His investments include For-Profit College 3, For-Profit College 4, and For-Profit College 2." According to other information found on the Internet (including information taken from the website of Investment Company), Husband is the chairman of Investment Company. Husband is the principal investor and "catalyst" behind Investment Company acquiring at least six financially-struggling non-profit colleges and turning them into successful for-profit education companies. These companies include For-Profit College 1, For-Profit College 2, For-Profit College 3, and For-Profit College 4 (collectively, the "For-Profit Colleges"). B is the president and CEO of Investment Company, the Treasurer and a member of the board of directors of For-Profit College 1, and a member of the board of For-Profit College 4. C is the president of For-Profit College 1. D is the president and CEO of For-Profit College 4.

Law:

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

Section 501(c)(3) of the Code describes organizations that are organized and operated exclusively for religious, charitable, and other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") states that, in order to qualify under § 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes.

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

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of § 501(c)(3), it is necessary for an organization to establish that it is not 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.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held 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.

In Founding Church of Scientology v. United States, 412 F.2d 1197, 1199-1200 (Ct. Cl. 1969), cert. denied, 397 U.S. 1009 (1970), the Court said that the statutory language of § 501(c)(3) makes it eminently clear that Congress intended to extend the exemption only when the sole beneficiary of the institutional operations was the public at large. The congressional intent behind the conditional language of § 501(c)(3), coupled with the burden of proof placed upon the taxpayer in these circumstances, requires plaintiff to clearly demonstrate its right to exemption.

In Basic Bible Church v. Commissioner, 74 T.C. 846, 858 (1980), the Tax Court said that when an organization's financial decisions are controlled by one person, "there exists the opportunity for abuse which in turn evinces a need for open and candid disclosure of all the facts.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531, 535 (1980), aff'd, 670 F.2d 104 (9th Cir. 1981), the Tax Court denied exemption to a small family church. The court found that the close family relationship of the organization's three board members – a husband and wife and their son – who also controlled 100 percent of the entity's voting rights, put them in a position to "without challenge ... dictate [the organization's] program[s] and operation[s], prepare its budget, and spend its funds, and [that they] could continue to do so indefinitely. The court said that while the domination of an organization by a small, closely-related board alone was not enough to deny tax exemption, it provides an obvious opportunity for abuse of the claimed tax-exempt status, and calls for open and candid disclosure of all facts bearing on the entity's organization, operations, and finances to ensure that there is not abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the entity fails to meet the requirements of § 501(c)(3). In light of the organization's vague and uninformative responses to questions about expenditures, membership, and activities, the Court said that denial was appropriate because the organization has the burden of showing that it was organized and operated exclusively for religious or charitable purposes, and the administrative record as stipulated by the parties did not meet the organization's burden of showing the absence of private benefit to its individual members.

In Kentucky Bar Foundation, Inc., v. Commissioner, 78 T.C. 921, 925-26 (1982), the Petitioner operated a lawyer referral service. A person seeking a lawyer is interviewed by a bar association staff member and then referred to a participating member of the referral service who is selected on a rotating basis within a convenient geographic area. The Respondent argued that such activity serves a substantial nonexempt purpose, namely that of promoting, protecting and enhancing the legal profession by helping young law school graduates establish a practice. The Tax Court disagreed, noting that the referral service is open to all responsible attorneys, and that there was no evidence a selected group of attorneys are the primary beneficiaries of the service. The referral service is intended to benefit the public and not to serve as a source of referrals. Therefore, the court found that any nonexempt purpose served by the referral service and any occasional economic benefit flowing to individual attorneys through a referral incidental to the broad charitable purpose served.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), an organization operated a school which trained persons for careers as professional staff in political campaigns. Most of the graduates of the school supported Republican Party candidates. The court concluded that the school provided substantial private benefit to Republican Party entities and candidates. The court distinguished between the beneficiaries of the primary private benefit – the students – and the beneficiaries of the secondary private benefit – the political candidates who employed the graduates. The court explained that the secondary private benefit accruing to the Republican political candidates caused the school to fail the operational test, agreeing with the respondent's assertion that "where the training of individuals is focused on furthering a particular targeted private interest, the conferred secondary benefit ceases to be incidental to the providing organization's exempt purposes." 92 T.C. at 1074. The Republican political candidates, the beneficiaries of the secondary private benefit, were thought to be a "select group."

Section 4.03 of Rev. Proc. 2012-9, 2012-2 I.R.B. 261, provides that exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the [Internal Revenue] Service that it qualifies for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling.

Analysis:

Lack of Exempt Purpose

To qualify for exemption under § 501(c)(3) of the Code, you must be organized and operated exclusively for an exempt purpose. Regs. § 1.501(c)(3)-1(a)(1). You are not considered to be "operated exclusively" for an exempt purpose unless you engage primarily in activities that accomplish an exempt purpose. Regs. § 1.501(c)(3)-1(c)(1). Based on the information contained in your application and subsequent letters, we find that you are not engaged primarily in activities that further an exempt purpose.

You say that you will conduct religious services and bible study classes, yet you have taken no steps to acquire a church building or to institute any church services, whether in-person or in cyberspace. You claim to be a digital media church, yet your website contains no information about worship services or any other form of religious activity. You say that you will arrange for pastors/missionaries to personally visit new believers anywhere in the world, yet you have not entered into any arrangements with pastors or missionaries to provide such services, and your website provides no information about such service.

You say that you will distribute literature and post a Red Light Devotional on your website, yet we find no Devotional on your website, nor do we find any other religious literature or any means of acquiring the same.

Since you do not appear to engage in the foregoing activities, they cannot serve as a basis for exemption. But even if you were to engage in these activities, you have described them in such general, uninformative terms, and with such a total lack of supporting documentation, as to preclude us from determining whether such activities are in furtherance of exempt purposes. Thus, you do not meet the standard for recognition of exemption under § 4.03 of Rev. Proc. 2012-9.

And while we find that you do engage in one activity – the operation of a "Scholarship and Enrollment Center" – we also find that this activity is not conducted in a manner that furthers any exempt purpose. For while you claim to provide guidance and scholarships to people who contact you through your website, it would seem that you provide neither. Rather, you admit that you do not have qualified staff to provide assistance, so you refer inquiries to the schools featured in your video program Z (which include For-Profit College 1), and refer general questions about educational opportunities and scholarships to For-Profit College 1. Furthermore, you do not provide scholarships out of your own resources. Rather, you have told us that scholarship money is "loaned" by Husband and Wife, either directly to a particular educational institute or to you. Since you provide neither guidance nor scholarships, but merely serve to funnel website inquiries to For-Profit College 1 and other For-Profit Colleges, you are not conducting any activity that accomplishes charitable purposes and, therefore, are not operated exclusively for exempt purposes within the meaning of § 1.501(c)(3)-1(c)(1).

Presence of Substantial Non-Exempt Purpose

Unlike non-profit educational institutions whose sole purpose is to educate its students, a for-profit educational institution exists for the additional purpose of making a profit for its investors. By choosing to direct referrals to For-Profit College 1 and to facilitate the awarding of scholarships to be paid to For-Profit College 2 and For-Profit College 3, you would appear to have a substantial non-exempt purpose of enhancing the profitability of for-profit businesses for the benefit of private investors.

Your Enrollment and Scholarship Center serves to direct potential students and scholarship funds mainly to the For-Profit Colleges. Unlike the lawyer referral service described in Kentucky Bar Foundation, Inc., v. Commissioner – a service open to all practicing attorneys and not merely to a select group of attorneys – your educational referral service does not provide referrals to all colleges and universities selected on a rotating or other nondiscriminatory basis, but primarily to a select group of for-profit colleges – For-Profit College 1 and the other For-Profit Colleges featured in your video program Z. Consequently, under the reasoning of the court in American Campaign Academy v. Commissioner, the secondary private benefit you provide to the For-Profit Colleges by directing students and scholarship money to them cannot be considered incidental to the primary benefit provided to the students, because those referrals are focused on furthering a particular targeted private interest – the investors in the For-Profit Schools. Thus, we find that you are engaged in a substantial non-exempt purpose and are not primarily engaged in activities that accomplish exempt purposes. The presence of a single non-exempt purpose, if substantial, is sufficient to disqualify you from exemption under § 501(c)(3). See Better Business Bureau of Washington, D.C., Inc v. United States.

Serving Private Interests

Investors in the For-Profit Colleges include Husband. In Letter 2, you referred to Husband entering into definitive asset purchase agreements to buy educational facilities. According to information found on the Internet – including information on the website of Husband's Investment Company as well as information found in transcripts of Husband's interview on the TV program Y, Husband forms entities like Investment Company through which he buys failing non-profit Christian colleges and converts them to profitable for-profit entities. Through Investment Company, Husband has invested in For-Profit College 1, For-Profit College 2, For-Profit College 3, and For-Profit College 4. Husband has installed B as the CEO of Investment Company and as a director of For-Profit College 1 and For-Profit College 4. C is employed as the president of For-Profit College 1, and D is employed as the president of For-Profit College 2. E is employed as a fund-raiser for For-Profit College 1. Your organizational chart identifies B, C, and D as three of your five "Key Staff," and identifies E as one or your advisors.

You are not operated exclusively for exempt purposes unless you serve a public rather than a private interest. To qualify for exemption under § 501(c)(3) you need to show that you are not operated for the benefit of private interests. Regs. § 1.501(c)(3)-1(d)(1)(ii).

Since your Enrollment and Scholarship Center operates to direct consumers (students) and money (scholarships) to businesses (the For-Profit Colleges) in which certain of your directors (Husband), key staff (B, C, and D), and advisors (E) have a private business or financial interest, we find that you are operated for the benefit of private interests within the meaning of § 1.501(c)(3)-1(d)(1)(ii).

Our concerns over substantial private benefit were only heightened by your seeming lack of forthrightness in divulging any information about Husband's connections to the For-Profit Colleges. As founding and permanent members of your Board of Directors and Nominating Committee, Husband and Wife effectively control your activities. Because you are dominated by these two individuals, it is incumbent on you to openly and candidly disclose all the facts in your application so that we are assured that there are no opportunities for abuse. See Basic Bible Church v. Commissioner. But when we asked you whether your board members, key staff, or advisors, have any relationships with one another (and, if so, to explain in detail), your only response was that the members of the board of directors have many business relationships, but that these "have no material effect on [your] operation." This dismissive answer does not permit us to determine whether such business relationships have a material effect on your right to exempt status under § 501(c)(3) of the Code. Given the questions surrounding these relationships, it cannot be said that you have satisfied your burden of proving that the sole beneficiary of your operations is the public at large. See Founding Church of Scientology v. United States. And when we asked whether you had any relationships or had entered into any transactions with For-Profit College 2 or For-Profit College 3, you replied that you did not, though your website implies that you have awarded scholarships to students to attend those schools. You did not disclose Husband's investment relationships with For-Profit College 2 or For-Profit College 3, nor did you describe the terms of the loans that Husband and Wife make to fund scholarships to the For-Profit Colleges.

It is not solely the referrals to the For-Profit Colleges that evince a design to benefit Husband's investment interests. The Advisory and Funding Agreement that you intended to enter into with a struggling non-profit Christian college, College, clearly shows that Husband formed you primarily to benefit properties that Husband had acquired (the For-Profit Colleges), or might later acquire (College), as an investment. While the ostensible purpose of the Advisory and Funding Agreement was for you to provide College operating capital and funds to pay off debt and to establish an extension site at Center, the ulterior purpose appears to make you the means by which Husband uses charitable contributions to create a business model attractive to the investment community should there be a need to convert College to a for-profit entity with "professional" money.[1]

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[1] In an interview on the TV Program Y, Husband discussed his "deal" with College.

Interviewer:

Husband:
[College], [Center],

Interviewer:

Husband:

*****

Interviewer:

Conclusion:

Based on our analysis that you do not further a charitable purpose, but that you further substantial non-exempt purposes, we conclude that you are not operated exclusively for exempt purposes within the meaning of § 501(c)(3) of the Code. In addition, we have determined that your activities benefit the private interests of Husband more than incidentally. For this reason, too, we conclude that you are not operated exclusively for exempt purposes and, consequently, are not described in § 501(c)(3).

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.

Your protest statement should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative,* if you have not already done so. For more information about representation, see 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 protest 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.

Husband:

College
Center

College

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 this address:

Internal Revenue Service
TE/GE

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also 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,

Lois G. Lerner
Director, Exempt Organizations