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Date June 7, 1993

Surname [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

APR 26 1993

Employer Identification Number: [REDACTED]
Key District: Brooklyn

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 have also requested classification as other than a private foundation on the basis that you are a church within the meaning of section 170(b)(1)(A)(i). For the reasons stated below, we conclude that you do not qualify for tax exemption under section 501(c)(3). Your protest rights are also explained below.

You were incorporated on [REDACTED], under Section [REDACTED] of the Not-for-Profit Corporation Law of [REDACTED]. Your specific purposes are set out in Article Third of your incorporating instrument, as follows:

To cultivate, foster, encourage and otherwise develop the natural inherent power of the human mind to promote the application of higher spiritual and material values common to all mankind; to create, establish and conduct workshops, seminars and other such programs aimed at the development of mystical elan essential to man's serene existence; to render such service to mankind by the aforesaid activities to accomplish the goal of world peace; to give primacy to the human spirit and generally to improve human existence through mystical ideals, teachings and principals.

Article Fifth lists your three initial Directors as [REDACTED], his wife [REDACTED], and

[REDACTED]. Article Sixth states that you are organized exclusively for one or more purposes under Code section 501(c)(3) and that you shall not carry on activities which are impermissible for a section 501(c)(3) organization. Article Seventh provides that no part of your net earnings shall inure to the benefit of any member, trustee, director, officer, or any private individual, except that reasonable compensation may be paid for services rendered to you. Article Eighth contains appropriate limitations on proscribed lobbying and political activities under section 501(c)(3). Article Ninth provides that upon your dissolution, all of your remaining assets shall be distributed to an organization which is tax exempt under section 501(c)(3) or to the federal government, or to a state or local government, for public purposes.

A letter dated [REDACTED], from your authorized representative, [REDACTED], CPA, states that you have always been an active member of [REDACTED] of [REDACTED], an organization which was recognized as tax exempt under section 501(c)(3) by the Service in [REDACTED]. However, this organization is not presently included in IRS Publication 78, which contains a comprehensive listing of section 501(c)(3) organizations, and our internal records do not indicate that the organization is presently exempt. [REDACTED] states that the present application is based on a desire to establish the above church in the [REDACTED] metropolitan area.

You rent space in a two-family house in [REDACTED], which is owned by your founder, [REDACTED], and his wife [REDACTED]. You represent that this space is used to accommodate your administrative offices. Your submission of [REDACTED], contains a copy of a Draft Rental Agreement (unsigned and undated) providing that you as Tenant shall pay \$[REDACTED] per month to Owners ([REDACTED] and his wife) for use of the following property:

- a. [REDACTED] square feet of library in basement.
- b. Parking area during hours of 8am - 6pm weekdays.
- c. Front door and front entry way.
- d. Front three rooms first floor.
- e. Bathroom and rear exterior door and entryway off bathroom.
- f. Sufficient portion of front yard to place zoning approved sign.

[REDACTED]

The mortgage agreement for the house owned by the [REDACTED] is dated [REDACTED], and shows a sale price of \$[REDACTED]. The Settlement Statement provides for a monthly payment on the property of \$[REDACTED]. This includes principal, interest, taxes and insurance.

In the submission of [REDACTED], you state that religious services are conducted in the basement of the above house on Sundays from 11:00am to 1:00pm and from 7:00pm to 9:00pm. You represent that [REDACTED] (■) people are regularly in attendance, although you have not identified any of them. You also state that every Thursday night, [REDACTED] holds a special spiritualist healing and studies meeting consisting of group spiritual prayer, mystical studies, and interpretation of biblical passages.

In response to our query, you state that [REDACTED] has not conducted any baptisms, weddings, and funeral services because he does not have the "proper building" in which to perform such services. However, you state that you have future plans to find and establish a building for "such sacred acts".

In response to another query, you state that you publicize your activities through the distribution of hand bills and posting of notices on public bulletin boards. You represent that, at present, you cannot afford to mail out any of your literature because of the high cost of printing, postage, and obtaining names from a mailing list.

Aside from the \$[REDACTED] monthly rental (\$[REDACTED] per annum) which [REDACTED] and his wife receive from you from the property described above, you represent in Form 1023, exemption application, that [REDACTED] is not compensated for his services to you. However, on the annual information return, Form 990 EZ, which you filed for [REDACTED], Line 13 shows an expense item of \$[REDACTED] for "Professional fees and other payments to independent contractors". Under Part IV of Form 990 EZ, [REDACTED] is listed as Minister with annual compensation of \$[REDACTED]. It is also stated that he devotes 50 hours per week, on average, to this position.

Form 990 EZ for [REDACTED] gives a figure of \$[REDACTED] as total income, derived from "Program service revenue." However, your submission of [REDACTED], lists income for [REDACTED] as derived from contributions in the amount of \$[REDACTED] and "spiritual literature" in the amount of \$[REDACTED]. This totals \$[REDACTED], which is considerably less than the \$[REDACTED] reported on Form 990 EZ. Further, there is a discrepancy in the sources of revenue reported.

Form 990 EZ for [REDACTED] lists the following expenses: \$ [REDACTED] on Line 13 (see above); \$ [REDACTED] for rent; [REDACTED] for printing, publications and postage; and \$ [REDACTED] for "computer software-hardware". Total expenses are \$ [REDACTED]. In response to our inquiry on your computer expenses, you furnished copies of relevant receipts, but these totalled \$ [REDACTED], or over \$ [REDACTED] short of the listed expense. Also, you did not explain how the computer is used in furtherance of your stated religious purposes.

Your submission of [REDACTED], shows total expenses of \$ [REDACTED] in [REDACTED], which conflicts with the total of \$ [REDACTED] reported on Form 990 EZ. Rental expense of \$ [REDACTED] is consistent with that reported on Form 990 EZ, but otherwise there are considerable discrepancies in the listed expenses. Specifically, your recent submission omits the following expenses: compensation of [REDACTED] in amount of \$ [REDACTED]; computer expense of \$ [REDACTED]; and \$ [REDACTED] for printing, publications, and postage. Also, the recent submission includes the following expenses which were not on Form 990 EZ: telephone expense of \$ [REDACTED]; other utilities in amount of \$ [REDACTED]; supplies totalling \$ [REDACTED]; and subscription of \$ [REDACTED].

Schedule A [REDACTED] is a questionnaire for organizations seeking church status. On this Schedule, you have indicated that your organization does not have a written creed or statement of faith; does not have a formal code of doctrine and discipline for its members; does not require prospective members to renounce other religious beliefs or their membership in other churches or religious orders; and does not have a school for the religious instruction of the young. You indicate that aside from worship services, you conduct baptisms, weddings and funerals. However, in your later submission of [REDACTED], you stated that you have not conducted any of the noted sacerdotal functions. In Schedule A, you state that you have [REDACTED] active members and that the average attendance at worship services is [REDACTED]. However, the [REDACTED] submission represents that only [REDACTED] ([REDACTED]) people are regularly in attendance at your religious services.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated "exclusively" for religious, charitable, educational, or 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 provides that in order to qualify for exemption under Code section 501(c)(3), an organization must be both organized and

operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for a section 501(c)(3) exempt purpose unless it serves a public rather than a private interest. Thus, it is necessary that the organization establish that it is not operated for the benefit of private individuals. An organization will not satisfy the operational test if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. See section 1.501(c)(3)-1(c)(2). Under section 1.501(a)-1(c), the term "private shareholders or individuals" refers to persons having a personal and private interest in the activities of the organization.

In general, an organization which applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular Code section under which it has applied. See Kenner v. Commissioner, 318 F. 2d (7th Cir. 1963) and Cleveland Chiropractic College v. Commissioner, 312 F. 2d 202, 206 (8th Cir. 1963). This includes proof that no part of an organization's assets or net earnings inure to the benefit of any private individual. Furthermore, courts have interpreted the statute's prohibition against inurement of net earnings to be absolute in nature, i.e., the amount or extent of benefit is not a determining factor. See The Founding Church of Scientology, 412 F.2d. 1197 Ct. Cls.) and Spokane Motorcycle Club v. United States, 222 F. Supp. 151 (E.D. Wash. 1963).

With respect to your own exemption application, we conclude that you have failed to demonstrate that no part of your net earnings will inure to the benefit of private individuals. The evidence in the administrative file indicates that you are operated, to a substantial extent, to benefit [REDACTED], who is your founder, minister, and for all intents and purposes, your controlling Director. This contravenes the requirement of section 1.501(c)(3)-1(d)(1)(ii) of the regulations that a section 501(c)(3) organization be operated primarily to further a public, rather than a private, interest. Further,, there are certain aspects of your operations, as noted below, which indicate that your net earnings may inure to the benefit of [REDACTED], in contravention of section 1.501(c)(3)-1(c)(2). As set forth above, the prohibition against inurement of an

organization's net earnings to the benefit of "private shareholders or individuals" is absolute. Specifically, we point to the following in support of our position:

You pay rental of \$ [REDACTED] per month (\$ [REDACTED] over a year's time) for use of certain property, as described above, which is part of a house owned by [REDACTED] and his wife. This payment is in excess (by \$ [REDACTED]) of the monthly mortgage payment of \$ [REDACTED] (principal, interest, taxes, and insurance) required of the [REDACTED] at the time the entire property was purchased by them. There is no indication that the rental of the premises in question has been negotiated on an arm's length basis nor have you furnished any evidence as to its fair rental value. Also, despite the fact that the rental payment constitutes a very significant part of your annual expenditures, you have stated that the rental space is not suitable for the conduct of various sacerdotal functions.

We also note that you have not satisfactorily documented the listed computer expenses of \$ [REDACTED] for [REDACTED] and you have not provided any explanation as to how these expenses further your ostensible religious purposes, despite our specific request that you do so.

Finally, we take into account the significant discrepancies in reported sources of income and listed expenses between your Form 990 EZ for [REDACTED] on the one hand and information later furnished by you in connection with your exemption application on the other. These discrepancies, which include the amount of compensation for [REDACTED], have been detailed above.

We conclude that you do not meet the operational test under Code section 501(c)(3). Under section 1.501(c)(3)-1(a)(1) of the regulations, an organization will not qualify for exemption under section 501(c)(3) if it fails to meet either the organizational test or the operational test.

Based on the foregoing, we hold that you are not exempt from federal income tax under section 501(c)(3) of the Code. Therefore, contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns on Form 1120.

If our proposed denial of your application for recognition of tax exempt status under section (c)(3) is finalized by us or sustained by a court of law, then your request for classification as other than a private foundation on the basis that you are a "church" within the meaning of section 170(b)(1)(A)(i) becomes moot. However, in light of the possibility that you may


eventually be recognized as tax exempt under section 501(c)(3), we are herein addressing your request for classification as a church.

While the Service to date has not published any regulations or revenue ruling defining the term "church", nevertheless certain criteria have been developed to determine which organizations will be recognized as "churches" within the meaning of section 170(b)(1)(A)(i). All the facts and circumstances are considered and no one criterion is conclusive in making this determination. We are not concerned with the nature of the particular religious beliefs professed by an organization. However, we should be reasonably satisfied that such stated beliefs are sincerely held by the organization's members or adherents.

In Chapman v. Commissioner, 48 T.C. 358 (1967), the court determined that a more limited concept was intended for the term "church" than that denoted by the term "religious organization". It stated that Congress did not intend "church" to be used in a generic or universal sense but rather in the sense of a "denomination" or "sect."

For an organization seeking to be classified as a "church" under Code section 170(b)(1)(A)(i) (as opposed to the more generic concept of a religious organization), the Service will utilize the following 14 criteria in determining whether church status is appropriate:

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

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

The above 14 criteria are not a mechanical checklist for churches; rather, they provide an entry into thinking about what is essential, what is really critical for an organization to be classified as a "church". Thus, all the criteria need not be present for an organization to be a "church". In addition, varying importance may be accorded to each of the criteria. If few of the elements are present, or they exist in name only, then the organization is unlikely to qualify as a church. Also, factors other than the 14 criteria listed above may be considered.

An excellent example of the type of analysis necessary in this area is offered in American Guidance Foundation, Inc. v. United States, 490 F. Supp. 304 (D.D.C. 1980). The organization in this case consisted of a married couple acting as ministers and their family. They prepared documentation that would ostensibly satisfy most of the 14 criteria looked to by the Service. Services were conducted in their home, recorded religious messages were distributed by their answering machine, and each week their son was coached by his father in what was claimed to be Sunday school. Similar facts are not atypical of mail order ministries.

In considering the 14 points, the Court stated:

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. . . . 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.

In holding that this organization was not a "church", the Court stated:

It is not enough that a corporation believes and declares itself to be a church. Nor is it sufficient that the applicant prepares superficially responsive documentation for each of the established IRC criteria. To hold otherwise would encourage sham representations to the IRS and result in adverse tax consequences to the public at large. In this instance, AGF does not employ recognized, accessible channels of instruction and worship. There is little if any evidence that it seeks to reach or serve a congregation. Private religious beliefs, practiced in the solitude of a family living room, cannot transform a man's home into a church.

With respect to your own application, the evidence in the administrative file does not support your claim of church status under Code section 170(b)(1)(A)(i). Specifically, you have indicated that you do not have a written creed or statement of faith; you do not have a formal code of doctrine and discipline for your members; you do not perform any sacerdotal functions, such as baptisms, marriage ceremonies, and funeral services; you do not conduct a Sunday school for the religious instruction of the young; you have furnished conflicting information about the number of individuals who attend your worship services; and your members (whomever they may be, because none have been identified) are not required to renounce affiliation with other churches. Finally, your religious hierarchy basically consists of one individual, [REDACTED], who appears to be in total control of your operations. In summary, you do not satisfy many of the criteria for church status enumerated in the American Guidance Foundation case and you have not established that you are a distinct "sect" or "denomination" within the meaning of the Chapman case (both cases cited above). Accordingly, we hold that even if you eventually qualify for tax exemption under section 501(c)(3), you still do not qualify as a "church" within the meaning of section 170(b)(1)(A)(i).

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 officers, must be submitted within 30 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 officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

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 7428(b)(2) of the 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 U.S. Court of Federal 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.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director, Brooklyn, New York, which is your key district for exempt organization matters. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director. The appropriate State officials will be notified of the action in accordance with section 6104(c) of the Code.

When sending a protest or other correspondence with respect to this case, you will expedite its receipt by using the following address on the envelope:

Internal Revenue Service
1111 Constitution Avenue
Washington, DC 20224
Attn: [REDACTED]

Sincerely yours,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
Rulings Branch 4