



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **200830028**  
Release Date: 7/25/08  
Date: 4/28/08  
UIL Code: 501.30-00  
501.03-20

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.

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.

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, 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.

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,

Robert 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: 3/17/08

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A =

B =

C =

D =

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 formed as a Non-Profit Corporation and have requested classification as a church under sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code. Your stated purposes are to "operate for the advancement of Christianity and for other charitable purposes..."

You have stated that you do not have a regular group of people that come together to worship, nor do you hold regular services. A is not an ordained minister and you do not have an organization of ordained ministers. You do not own or rent a building in which to conduct services. You stated that A conducts some "street ministry" activities but have provided no details about those activities. You also do not maintain a religious school for the education of the young. While you stated that you may set up such a school once you are "fully established" you have not provided any details about the school.

You have made general statements about planned future activities but have provided no specific details. You did not include the required financial information in your application, either actual or proposed. When asked to provide such information, you stated "No financial data to report at this time, but in moving forward the church is expecting to buy equipment such as instruments,[sic] microphone, music, speakers, prograhams,[sic] rental of a building and all the things for operating the church." However, you did not provide any estimates of the costs of these purchases or details about what buildings you will acquire. Similarly, you have provided no details about how you will communicate the presence of your church to the public. You are not listed in the yellow pages or in any other printed or electronic directory.

Your board of directors consists of four individuals, A, B, C, and D. A is the founder of your organization as well as the director and chairman of the board. He also claims to serve as your pastor. B is A's wife and the co-chair, secretary and treasurer. C is A's son and an assistant secretary. D is also A's son and a board member. When asked whether you compensate any of your officers or directors, you stated "No, not at this time." In addition, you have not adopted a conflict of interest policy or bylaws.

In a response to our development letter, you stated that none of your directors or officers were members of another church. However, you then stated that A was an "honorary member and associate pastor" of another church. You also stated that A teaches and occasionally preaches at this church, as well as assisting with its regular functioning. A is affiliated with this church, however you have provided no indication that the church exercises any oversight or influence on you.

### LAW

Section 509(a)(1) of the Code provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 170 (b)(1)(A)(i) of the Code describes a church or convention or association of churches.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, religious and other exempt purposes, provided that no part of its net earnings 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 be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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 that accomplish one or more of such exempt purposes specified in section 501(c)(3). 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 assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically 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. Proc. 2008-9, 2008-2 I.R.B. 258, provides that exempt status may be granted 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. 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. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

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. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational Program from that carried out by a university.

In American Guidance Foundation v. United States, 490 F. Supp. 304 (D.C. 1980), the court referred to the fourteen criteria which are applied by the Service on an ad hoc basis to individual organizations in order to determine whether they can be classified as a church. The fourteen points are:

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.

Referring to these fourteen points, the court stated, "While some of these are relatively minor, others, e.g. the existence of an established congregation served by an ordained ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance."

In Bubbling Well Church of Universal Love, Inc. v. Commissioner of Internal Revenue, 74 T.C. 531 (1980), the court considered an adverse ruling by the Internal Revenue Service on an application for exempt status as a church. The court noted that the only voting members and directors of the organization were a husband and wife and their son, who had no affiliation with any denomination or ecclesiastical body or other outside influence. The court stated that the domination of an organization's board by one family does not necessarily disqualify it for exemption, however it does provide an obvious opportunity for abuse of tax-exemption and therefore there must be open and candid disclosure of all facts of the organization, including its finances and operations. The applicant declined to furnish some information, and made answers to other inquiries that were vague and uninformative. On the basis of the record, the court held that the applicant had not met its burden of showing that no part of its net earnings

inure to the benefit of the family or that petitioner was not operated for the private benefit of the family.

In National Association of American Churches v. Commissioner of Internal Revenue, 82 T.C. 18, (1984), the Tax Court considered an adverse ruling by the Internal Revenue Service on an application for exempt status as a religious organization. The organization provided assistance to family missions wishing to incorporate under state law and in handling tax disputes arising from the missions' claims of tax-exempt status. The court noted that "the potential for the missions to be used as improper tax avoidance vehicles is obvious."

In The Church of Eternal Life and Liberty, Inc. v. Commissioner of Internal Revenue, 86 T.C. 916 (1986), the Tax Court found that a two-person congregation did not satisfy the test for church status. The court stated that an important element of a church is that it encompass "a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs." The determining factor was not that the congregation had only two members but that it had not increased in size since its inception and made no attempts to attract new members. Thus, the fact that a church may be small does not preclude it from receiving church recognition. The inquiry must include whether the organization is attempting to attract new members. Where an organization is limiting its size, a determination that private purposes are being served may be made.

In Foundation for Human Understanding v. Commissioner of Internal Revenue, 88 T.C. 1341 (1987), the U.S. Tax Court held that the taxpayer there was a church. The opinion stated that "At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship.... Where bringing people together for worship is only an incidental part of the activities of a religious organization, those limited activities are insufficient to label the entire organization a church."

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of its application for exempt status. The court found that the actual purposes displayed in the administrative record supported the conclusion of the Internal Revenue Service. If the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant."

### **ANALYSIS**

Based on our analysis of the information you submitted during the application process and in light of the applicable law, we have determined that you do not meet the requirements for exemption as a church under section 501(c)(3) of the Internal Revenue Code.

Exemption from federal income taxation is not a right, it is a matter of legislative grace that is strictly construed. New Dynamics, supra. The burden is on the applicant to prove that it is entitled to exempt status. *Id.* An applicant must prove that it is organized and operated exclusively for exempt purposes and not for the private benefit of its creators, designated individuals or organizations controlled by such private interests. Treas. Reg. 1.501(c)(3)-1(d)(1)(ii). Exclusively does not mean "solely," but no more than an insubstantial part of an organization's activities may further a non-exempt purpose. Better Business Bureau, supra.

An applicant for exempt status must provide sufficient information for the Service to make an informed decision. The application must include details, figures, and documentation. Basic Bible Church, supra. Exempt status may be granted in advance of an organization's operations, but its activities must be described in sufficient detail to permit a conclusion that the organization will clearly meet the requirements for exemption. Rev. Proc. 2008-9, supra.

#### Organization Not Operated in Furtherance of an Exempt Purpose

Section 1.501(c)(3)-1(a)(1) of the regulations provides that an organization must be both organized and operated exclusively for exempt purposes in order to qualify for exemption. Your stated purposes are to "operate for the advancement of Christianity and for other charitable purposes..." The only activity you claim to conduct in support of this purpose is the operation of a church.

There is no definition of "church" in the Internal Revenue Code, however the courts and the Service have identified several factors that will be examined in order to determine whether an organization is a church for tax purposes. Of central importance are the presence of an established congregation served by an ordained ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code. American Guidance Foundation, supra; see also Foundation for Human Understanding, supra.

Other factors may also be considered in order to determine whether an organization is a church. These include whether the organization has a distinct legal existence, a recognized creed and form of worship, a definite and distinct ecclesiastical government, a formal code of doctrine and discipline, a distinct religious history, a membership not associated with any other church or denomination, a literature of its own, established places of worship, Sunday schools for religious instruction of the young, and schools for the preparation of its ministers. Id. While the fact that an organization has a small congregation does not disqualify it from being considered a church, if such an organization is not actively engaged in trying to acquire new members it will not qualify for exemption. The Church of Eternal Life and Liberty, Inc., supra.

You lack all of the significant elements used to determine whether an organization is a church for tax purposes. You do not have a group of people who come together on a regular basis and you do not hold regular religious services. Your organization consists only of four members of a single family and you do not even hold regular services for those individuals. Furthermore, you have provided no evidence that you are actively seeking new members. You have not provided specific details regarding any religious activities sufficient to demonstrate that you are a church. Thus, all of the significant factors used in determining church status weigh against you.

You also lack many of the other elements associated with churches: you do not have an established place of worship, you do not have a membership distinct from another church or denomination, and you do not maintain schools or education activities either for the young or to prepare ministers. You have stated an intention to create a "Sunday School" in the future once you are fully established, but have not provided sufficient details about this planned activity nor given a timeframe. Even if you had, this element would not outweigh the many facts that indicate you are not a church.

You lack all of the significant factors and most of the other factors used to determine whether an organization is a church. Therefore, we have concluded that you are not operating as a church.

You have not identified any other significant activities or asserted that you are organized or operated as any other sort of organization entitled to exemption under section 501(c)(3) of the Code.

Therefore, we have concluded that you are not operated exclusively for any exempt purpose because you do not conduct any activities in furtherance of an exempt purpose.

#### Private Benefit

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization cannot qualify for exemption if it is operated for private rather than public purposes. In addition, this regulation provides that the organization has the burden of demonstrating this by showing that it is not operated for the benefit of private individuals, such as its creator and his family.

Your board of directors consists entirely of A's family and there are no other members of the organization. In addition, you have not stated that none of your family members will be compensated in the future, only that you do not currently intend to do so. Even if no direct compensation is paid to A, B, C, or D, the family exercises complete control over your organization and its assets could be used to benefit the family.

You have not adopted bylaws or provided specific information about the governance of your organization, nor have you adopted a conflict of interest policy. In addition, you do not have any members outside of A's family and no other organization exercises significant influence over you.

The structure of your organization indicates that it can be used to benefit private individuals, such as A and his family, and you lack safeguards that would help to prevent such use. In addition, you have provided no evidence that the organization will not be used for the benefit of private individuals. Therefore, you have not met your burden to prove that you will be operated for public rather than private purposes. See National Association of American Churches, supra; Bubbling Well Church of Universal Love, supra. Consequently, you are not eligible for exemption under section 501(c)(3) of the Code even if you did conduct activities in furtherance of an exempt purpose.

#### Church Status

You applied for classification as a public charity under section 509(a)(1) of the Code based on the assertion that you are a church under section 170(b)(1)(A)(i) of the Code. As discussed above, you do not meet the requirements for classification as a church. Thus, even if you were organized and operated exclusively for exempt purposes, you would not be classified as a public charity under 509(a)(1).

### CONCLUSION

Based on the information you submitted, we conclude that you are not operated for any exempt purposes within the meaning of section 501(c)(3) of the Code. In addition, you have failed to



establish that your organization will not be operated for the substantial benefit of private individuals and therefore we conclude that you are not organized and operated exclusively for public purposes. Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code and you must file federal income tax returns.

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](http://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.

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

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,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements