



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **200912039**  
Release Date: 3/20/2009

Date: December 22, 2008

UIL Code:  
170.07-01  
170.07-02  
501.03-00  
501.03-30

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 are operated exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Code. You also failed to establish that you are not operated for the private interests of your creator, the creator's family, or other private interests. Even if you had met the requirements of section 501(c)(3), we would determine that you are a private foundation under section 509(a) because you are not a church, described in section 170(b)(1)(A)(i); or, in the alternative, not an educational organization, described in section 170(b)(1)(A)(ii) and section 1.170A-9(b)(1) of the Income Tax Regulations.

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 91<sup>st</sup> 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.

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



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: June 7, 2007

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL Code:

170.07-01

170.07-02

501.03-00

501.03-08

501.03-20

501.03-30

Legend:

B =

X =

Y =

Z =

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) of the Code. Based on the information submitted, we conclude that you have not established that you are organized or operated exclusively for the exempt purposes described in section 501(c)(3). The basis for our conclusion is set forth below.

Facts

You were formed under state law as a religious corporation "to educate and train ministers, and supply these ministers with the necessary knowledge and materials to perform their ministerial tasks." You state that your religious denomination is B.

Your bylaws provide that you are managed by your Board of Directors and that you must have at least three members on your Board. Each Board member is selected for a term of five years. Your officers are elected by your Board. You may amend your bylaws by a two-thirds majority vote of your Board.

Your founder is Y, who is also your Senior Pastor, President and one of your Board members. In 1994, Y became an ordained minister through the B. (B is not tax-exempt under section 501(a) of the Code because it is not an organization described in section 501(c)(3).) Currently, your Board is comprised of seven individuals, who also serve as your officers. Three of your seven Board members are related to each other, including Y's parents. Y selected all of the Board members. You operate out of Y's personal residence.

You have a total of        members in your organization, seven of whom are the members of your Board and your officers. You do not charge a membership fee in order to join your

organization. You do, however, sell Membership Certificates for \$ to those who wish to purchase them. The membership certificate does not currently grant your members any special status.

Your bylaws state that you have a civil structure and an ecclesiastical structure. Your civil structure is composed of your officers, who are also your Board members. Your ecclesiastical structure is also composed of your Board members. You do not have a formal code of doctrine and discipline for your members. You do not have a religious hierarchy or ecclesiastical government. You do not require prospective members to renounce other religious beliefs or their membership in other churches or religious orders to become members of your church. In addition, you do not directly license or otherwise ordain ministers or issue church charters.

You state that your purpose is "to offer training, materials and fellowship to any minister who wishes it." You state that your major program is your "seminary." You indicate that your next most important service is having an Internet forum for your "seminary students" to talk to each other, and to talk to other B ministers. You sell a variety of materials for your "seminary" and for your organization. These include "training videos, books, and other materials essentials [sic] for ministers to perform their chosen duties."

You conduct your activities entirely on the Internet through your website, X, which was developed by your founder, Y. You claim to conduct religious services on the Internet and to operate a "seminary" on the Internet. You have no building in which you hold religious services and you do not have an established place and time of worship. Instead, you state that your congregation meets solely on the Internet. You have a regular forum on your website through which your members and anyone else can congregate electronically and engage in fellowship. You also indicate that you offer sermons only on the Internet. You provide weekly guest sermons on your website for anyone who cares to read them.

You do not conduct Sunday school classes for children in a building or at another physical location. Instead, your Sunday school classes are available solely on the Internet. The material is posted and available to anyone interested in reading it. Students do not register for class and do not have to communicate with instructors. Students are not required to take tests or examinations.

You describe your creed or statement of faith, as follows:

You are not a chartered member of the B, rather, B is a separate denomination of its own. Your "seminary" is separate from the activities of the B headquarters. You state that five of your seven Board members are B ministers.

You state that 60 percent of your activities are "church" activities and 40 percent are "seminary" activities. You receive almost all of your revenues from two sources: fees from the Internet sale of "religious products" to the public and fees from the sale of materials for your online "seminary" classes. Only a small portion of your revenues have been from donations, and this is expected to continue in the future. You plan no fundraising programs. Dues from members are not required. You indicate that your minister is available for weddings, baptisms, and other religious functions.

You are treated as a nonprofit religious corporation under state law and receive a religious exemption from meeting the educational requirements of your state's Education Code statute. You state that your "seminary" has nearly 650 students currently enrolled. Enrollment appears to be accomplished through the purchase of a course from your website. You state that you offer scholarships to some of your students for some of your courses. A complete list of your seminary courses and the purchase price of the materials appears on your website.

You sell ordination certificates through the B on your website. The section of your website entitled \_\_\_\_\_ allows anyone who wants to become a minister to complete an online application and submit it through a link directly to the B. An applicant is not required to take any classes or complete any formal training or education program to purchase an ordination certificate from the B.

Z is a for-profit company that publishes books and other written materials. Z is owned by members of Y's family. Z has been operating for approximately eight years, and sells publications to various entities in addition to you. Y writes books and creates other publications for Z. (Y also sells her books as an independent author.) You sell the publications you purchase from Z on your website. About 30 percent of the products your sales on your website were products you purchased from Z, and the majority of your expenses are for the purchase of these materials. You also sell on your website religious products purchased from the B. Previously, Z provided you with a loan to form your organization and create your website. This loan is still outstanding.

You pay Y a salary to work 30 hours per week providing services as Senior Pastor, webmaster, administrator, teacher, sermon writer, and marketing coordinator. No one else receives any compensation. Presently, you use none of your revenues for the Senior Pastor's living expenses. However, you state that if your income is sufficient, you may use up to \$1,000 per month toward the Senior Pastor's living expenses.

Law

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

Section 1.170A-9(b)(1) of the Income Tax Regulations states that an educational organization is described in section 170(b)(1)(A)(ii) of the Code "if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on."

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, 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 which accomplish one or more of such exempt purposes specified in section 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(c)(2) of the regulations 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.

Section 1.501(c)(3)-1(d)(1)(i) of the regulations states that an organization may be exempt as one described in section 501(c)(3) of the Code if it is organized and operated exclusively for one or more purposes, such as religious, charitable or educational purposes.

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

Section 1.501(c)(3)-1(d)(3) of the regulations states that the term "educational" relates to: "(a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community."

In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial

in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Rev. Rul. 77-366, 1977-2 C.B. 192, states that a religious tour which had extensive social and recreational activities is not operated exclusively for exempt purposes and thus does not qualify for exemption.

In Rev. Rul. 81-94, 1981-1 C.B. 330, a nonprofit organization formed by a professional nurse (who is also the organization's minister, director, and principal officer) that is used as a vehicle for handling the nurse's personal financial transactions was not exempt under section 501(c)(3) of the Code because it serves the private interests of a designated individual rather than a public interest.

In Universal Life Church, Inc. (Full Circle) v. Commissioner, 83 T.C. 292 (1984), the Tax Court held that Full Circle Church, a charter organization of the Universal Life Church, did not qualify for exemption under section 501(c)(3) of the Code. Nothing in the administrative record showed that the Church had a regular place of worship, held regular worship services, or performed any religious functions.

Universal Life Church, Inc. v. U.S., 13 Cl. Ct. 567 (1987), aff'd without opinion, 862 F.2d 321 (Fed. Cir. 1988), involved the parent Universal Life Church. In this case, the court granted the Government's motion for summary judgment on the basis that the Universal Life Church was not being operated exclusively for exempt purposes but, rather, that it had the substantial non-exempt purposes of giving tax advice not incidental to religious purposes and promoting tax avoidance.

American Guidance Foundation v. U.S., 490 F. Supp. 304, (D.D.C. 1980), affirmed in an unpublished opinion (D.C. Cir. 1981), the court recognized the Internal Revenue Service's 14-part test in determining whether a religious organization was a church. The 14 criteria are:

1. A distinct legal entity
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. A complete organization of ordained ministers ministering to their congregations
8. Ordained ministers selected after completing prescribed courses of study
9. Literature of its own
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 court in American Guidance stated that courts in cases where church status have been litigated have more heavily weighted certain criteria. It considered the following factors to be especially important:

- A membership not associated with any other church or Denomination
- Established places of worship
- Regular religious services.

Referring to these 14 points, the court in American Guidance stated, at 306:

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 Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8<sup>th</sup> Cir. 1991), the Court of Appeals upheld the Tax Court's decision that an organization was not a church because it failed to meet the factual requirements of being a church under section 501(c)(3) of the Code. The Appeals Court cited the 14 factors used in American Guidance Foundation, *supra*, supporting its analysis. It looked particularly at the facts that Applicant did not have an established congregation, or classes to teach religious classes to youth, as reasons to deny Applicant church status.

In Foundation for Human Understanding v. Commissioner, 88 T.C. 1341 (1987), *acq.*, 1987-2 CB 1, an organization operated a radio ministry and established local congregations. The U.S. Tax Court held that the taxpayer was a church because it met most of the 14 IRS criteria for determining church status. It did not adopt these criteria as a definitive test. Rather, it explained that the IRS will consider all facts and circumstance that may bear upon an organization's claim for church status under section 170(b)(1)(A)(i) of the Code.

Living Faith v. Commissioner, 950 F.2d 365 (7<sup>th</sup> Cir. 1991), *aff'g* T.C.M. 1990-484, concluded that an organization that operated vegetarian restaurants and health food stores in a manner consistent with the religious beliefs of the Seventh-Day Adventist religion did not qualify for recognition of exemption under section 501(c)(3) of the Code because its operations evidenced a substantial nonexempt commercial purpose.

In Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 924 (1986), the Tax Court defined a church for purposes of section 170(b)(1)(A)(i) of the Code as "a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs." The court stated that a church's primary means for achieving these goals is by a group of individuals related by common worship and faith meeting regularly.



## Analysis

An organization qualifies as one described in section 501(c)(3) of the Code if it is organized and operated exclusively for one or more exempt purposes, such as religious, charitable, or educational purposes, and thus may not serve a substantial non-exempt purpose. Sections 1.501(c)(3)-1(c)(1) and 501(c)(3)-1(d)(1)(i) of the regulations. In addition, its earnings must not inure in whole or in part to the benefit a private shareholders or individuals. Section 1.501(c)(3)-1(c)(2). Furthermore, it must serve a public rather than a private interest. Section 1.501(c)(3)-1(d)(1)(ii).

An organization that meets the requirements of a church under section 170(b)(1)(A)(i) of the Code likely operates exclusively for religious purposes under section 501(c)(3) of the Code. However, an organization that does not qualify as a church may, nevertheless, operate exclusively for religious purposes.

In determining whether an organization qualifies as a church under section 170(b)(1)(A)(i) of the Code, the Internal Revenue Service uses 14 criteria as guidelines for making this determination. These criteria are helpful in deciding what constitutes a church for federal tax purposes, although they are not a definitive test. American Guidance Foundation v. U.S., *supra*; Foundation for Human Understanding v. Commissioner, *supra*; Spiritual Outreach Society v. Commissioner, *supra*. See also Church of Eternal Life and Liberty, Inc. v. Commissioner, *supra*.

The court in American Guidance Foundation v. U.S., stated that many courts weigh some criteria more heavily than others. In fact, the following factors are considered to be especially important:

- A membership not associated with any other church or denomination
- Established places of worship
- Regular religious services.

Referring to these fourteen points, the court in American Guidance stated, at 306:

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.

You have a distinct legal existence, and you have your own literature. However, because these criteria are common to both churches and non-church religious organizations, they are not relevant in establishing whether you qualify as a church under section 170(b)(1)(A)(i) of the Code.

In Universal Life Church, Inc. (Full Circle), *supra*, the Tax Court held that that the Full Circle Church, \_\_\_\_\_, did not qualify for exemption under section 501(c)(3) of the Code. Nothing in the administrative record showed that Full Circle Church had a regular

place of worship, held regular worship services, or performed any religious functions. You are substantially similar to Full Circle Church in that you have not shown that you possess these characteristics.

Your Board of Directors governs your organization. Your bylaws state that you have a civil structure and an ecclesiastical structure. However, Y also serves on your Board, and is your founder. Thus, both these structures are composed entirely of your Board members. Thus, you have no definite and distinct ecclesiastical government. You stated that you do not have a formal code of doctrine and discipline for your members.

Your Senior Pastor, Y, received her ordination from B; you have B as part of your name; your website refers to and is linked to a B website; and your theology, history, and formation are based on B principles. \* \* \*

\* \* \*, you too do not have a distinct religious history.

You state that you do not require prospective members to renounce other religious beliefs or their membership in other churches or religious orders to become members of your church. There are only      members of your church. This membership is insufficient to be treated as a regular congregation.

Your services are held only on the Internet. This is not a building or a physical place. Thus, you have no established places of worship. In addition, your sermons are posted on your website weekly. Viewers can read your website at any time. However, your members do not meet for religious services at any specific time. Thus, you do not conduct regular religious services.

You have one minister, Y, ministering to your "congregation," which is composed of only      people. Thus, you do not have a complete organization of ordained ministers ministering to their congregations.

You have no school for youth that meets in a building or at another physical location. Your Sunday school classes exist entirely on the Internet. Students read your website whenever they choose to do so. Students may choose to never talk to any teacher, or ask questions of any teacher, and do not have to answer any questions that a teacher may have of them to see if they are learning their lessons. Because there are no tests or final examinations required of these students, there is no way to establish that the students are learning their religious lessons. Thus, as a practical matter, you have no Sunday schools for the religious instruction of the young.

Therefore, because you fail to meet most of the 14 criteria, especially those that are considered the most important, you are not a church within the meaning of section 170(b)(1)(A)(i) of the Code. In addition, you have not established that you otherwise qualify for exemption as an organization operated primarily for religious purposes within the meaning of

section 1.501(c)(3)-1(d)(1)(i) of the regulations. Your primary activity is the sale of products through your website. This includes the sale of books and other written materials. You buy these products from Z, a for-profit business, which is owned by Y and her family. You expend a substantial portion of your time and resources in your publishing and sales activities. Although you may engage in some religious activities, your primary activity appears to be the operation of a for-profit commercial enterprise. Because you operate primarily for the purpose of furthering your founder's commercial business rather than primarily for religious purposes, you do not qualify as a religious organization described in section 501(c)(3) of the Code. See also Living Faith v. Commissioner, supra.

In addition, you are not operated primarily for educational purposes within the meaning of section 1.501(c)(3)-1(d)(1)(i) and section 1.501(c)(3)-1(d)(3) of the regulations. Although you may provide some educational activities to individuals on your website, this is not your primary activity, especially because you spend significant time and resources selling various products on your website.

Further, you state that you purchase about 30 percent of the products you sell on your website directly from Z and you purchase additional products from B. Facilitating sales by Z, a for-profit business owned by Y and her family, and selling products produced by B, a non-exempt organization, are commercial activities, which evidence that you are operated to further a substantial non-exempt purpose. Therefore, you do not satisfy the operational test under section 1.501(c)(3)-1(c)(1) of the regulations. See Rev. Rul. 77-366, supra; Better Business Bureau of Washington, D.C. v. U.S., supra; Living Faith v. Commissioner, supra.

We conclude further that your operations confer on Y and her family more than an incidental level of private benefit in violation of the prohibitions in section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You are operated in a manner that is similar to the organization in Rev. Rul. 81-94, supra. Accordingly, we cannot conclude that you serve a public rather than a private interest within the meaning of section 1.501(c)(3)-1(d)(ii) of the regulations.

Lastly, you have not established that your method of calculating the compensation you pay to your Senior Pastor, Y, is reasonable and will not result in prohibited inurement under section 1.501(c)(3)-1(c)(2) of the regulations. Y has appointed the Board of Directors and selected her parents as officers. There is no independent compensation committee. The information you submitted indicates that your entire net income is paid to Y and that as your income grows, Y's compensation will grow proportionately.

Based on the information you have provided, you have not established that you are an organization described in section 501(c)(3) of the Code. Therefore, we conclude that you do not qualify for exemption as an organization described in section 501(c)(3) and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

As explained above, we have concluded you fail to meet most of the 14 criteria the IRS uses as guidelines for church classification, especially those that are considered the most

important. Thus, even if you otherwise qualified as a religious organization under section 501(c)(3) of the Code, you would not be classified as a church under section 170(b)(1)(A)(i) of the Code.

In addition, even if you qualified as an educational organization under section 501(c)(3) of the Code, you would not be classified as a school under section 170(b)(1)(A)(ii) and section 1.170A-9(b)(1) of the regulations because you do not normally have a regularly enrolled body of pupils or students in attendance at the place where your educational activities are regularly carried on.

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  
SE:T:EO:RA:T:1

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