



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **200926036**
Release Date: 6/26/09
Date: 3/31/09
UIL Code: 501.32-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
1120
Tax Years:
All

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,

Rob 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: 12/15/2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL

501.32-00 Income Inures v. Does Not Inure to Private Individual
501.30-01 Closely Controlled Organizations
501.33-00 Private v. Public Interest Served
501.35-00 "Exclusively" Test
6001.02-00 Required Records Doctrine

Legend

Individuals Connected to Applicant

I1 -

I2 -

Governing Body Members of Applicant

G1 -

G2 -

G3 -

Entity Connected to Applicant

E - A For-Profit Hotel

Dates

D1 -

D2 -

Address

A -

Money Amounts

M1 -

M2 -

M3 -

M4 -

M5 -

M6 -

State *-

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.

Primary Issue:

Do you qualify for exemption under section 501(c)(3) for the Internal Revenue Code? No, for the reasons described below.

Subsidiary Issues:

- a. Does your conduct of religious services as an integrated part of for-profit hotel E's operation entice potential hotel guests to select this facility over other facilities that do not have religious services? Yes, for the reasons described below. Is this more than insubstantial and not in furtherance of an exempt purpose as described in the Income Tax Regs Section 1.501(c)(3)-(1)(c)(1)? Yes, for the reasons described below
- b. Do the private benefits resulting from the conduct of religious services as an integrated component of the for-profit resort hotel E constitute prohibited inurement as described in the Income Tax Regs Section 1.501(c)(3)-1(c)(2)? Yes, for the reasons described below.
- c. Do you fail to qualify for exemption under section 501(c)(3) because the conduct of religious services as an integrated component of E, a for-profit resort hotel enterprise result in prohibited inurement? Yes, for the reasons described below.
- d. Do you have a substantial commercial purpose that serves private interests rather than public interests and therefore are not operated exclusively for an exempt purpose as described in the Income Tax Regs Section 1.501(c)(3)-1(d)(1)(ii)? Yes, for the reasons described below.
- e. Does your failure to keep relevant financial and operational information including the absence of separate and distinct books and records of revenues and expenditures show that you are unable to adequately describe your programs and activities? Yes, for the reasons described below. Does your lack of relevant financial and operational information constitute a basis that you are unable to show that you meet the requirements to be recognized as exempt under section 501(c)(3) of the Code? Yes, for the reasons described below.
- f. Do your operational plans indicate that you will not comply with the records requirements under Code section 6001 and Income Tax Regs Sections 1.6001 and 1.6033? Yes, for the reasons described below.

Facts:

You filed a Certificate of Incorporation on date D1 in State * under the Non-Profit Corporation provisions of Article 10 of the Religious Corporations Law. You filed a Form 1023, Application for Recognition of Exemption Under section 501(c)(3) of the Internal Revenue Code (Code) eight months after you incorporated. You requested classification as a church described in section 170(b)(1)(A)(i) of the Code for purposes of establishing your status as other than a private foundation under section 509(a).

Your Certificate of Incorporation states that your purposes are exclusively charitable, educational and religious in nature. This filing also includes requirements that upon dissolution

remaining assets will be disbursed to recognized 501(c)(3) organizations, or exclusively for exempt purposes, or to the federal government for a public purpose.

The facility you use is a room in a commercial building that is in use as a hotel. This facility is owned by E, a Limited Liability Corporation (LLC). This for-profit business is operated as a destination type resort hotel in a rural location. Hotel E features grounds suitable for outdoor activities and is adjacent to a large public park. Hotel E was formed approximately one month after you formed. Person I1, an individual connected to you, is the sole member of the for profit hotel E.

Your governing body members are G1, G2, and G3. In the Form 1023 application you stated that your governing body members were not related. In your initial response to our inquiries about your application, you stated that there was no relationship between your governing body members and the owner of the for-profit hotel E. In later responses you admitted that your governing body members are related to each other, that they are also related to person I1 who is E's sole member, and that person I1 and her husband I2, who resides at address A, were your founding members as well as regular attendees of your religious services. The organizational meeting where you formed was held at persons I1 and I2's address A. You also state that your governing member G1 is person I1's mother and that your other two governing body members are person I1's daughter-in-law and son-in-law.

The for-profit hotel E includes a number of separate facilities. The specific facility where you conduct your activities is a 40 person capacity facility and is referred to in the for-profit resort hotel's literature as the manor. Other facilities at hotel E include the cottage, and the motel. The manor is a three story structure, has a kitchen, prep room, den, great room, bathrooms, lobby/entry/hall area with an "existing bar," a room labeled "synagogue" with a rear deck, and other decks that wrap around a portion of the exterior. The manor facility is rented in its entirety including bedrooms and all areas in the building. The manor facility does not feature individual rooms for rent as might be found in a typical hotel operation.

You provided a brochure prepared by hotel E that indicated that the manor is available to groups only and that it has 14 bedrooms and large dining/family rooms. Charges listed for the manor are \$ M1 per weekend, and \$ M2 per week. The weekly rate is approximately twice the weekend rate. The brochure also describes the two other lodging facilities for rent, the cottage with 5 bedrooms offered at \$ M3 per week or \$ M4 per month, and the motel with 5 individual rooms offered per room at \$ M5 the first night, and \$ M6 each additional night.

You conduct a variety of religious activities such as Torah study and prayer services. You have 15 members and the average attendance at your religious activities is 1 and 2/3 times larger than your membership. You follow a 13 point creed of faith. You stated that you do not employ a rabbi but "perhaps in the future we will hire a Rabbi should the members vote to do so." Except for the period when hotel E was being renovated, you have been conducting activities since date D2.

You stated "this neighborhood is a vacation spot, members when anticipating a wedding or bar mitzvah would hold those ceremonies at their primary synagogues." You also stated that you provide prayer services, and have made your religious sanctuary available to the general public

all day for Torah study. You stated that your members congregate for prayers services every Friday, Saturday, and Sunday and occasionally during the week and on Holidays.

You stated that the manor at the E hotel cannot be rented without the "synagogue" area.

You stated that the use of the "synagogue" room at the manor includes hotel E's chairs, tables, utilities and facility accoutrements. You stated that hotel E paid for the renovations of the space that you use, that thus far you have relied entirely upon E and its owners for support and funding, and that you do not have bookkeeping and accounting records that are separate from those of hotel E and its owners. You stated "all occupancy expenses are paid by the owner of the facility." In response to our request for copies of your financial records you stated that "there are no financial records at this time." Also in a later response you stated "we do not have any records of any expenditures or contributions."

You stated that the guests of the manor part of hotel E have use of the entire facility except for the room labeled "synagogue" when you conduct your activities. You stated that during those times, hotel E's guests are welcome to join you if they follow your customs and edicts. A condition of a guest booking the manor includes you using this room for your activities. You stated "anyone renting the manor could use the entire building which includes the synagogue provided that they will allow the congregation to congregate & pray in the one room during scheduled prayer services." You also said that the portion of the manor used for religious services is "at will" so long as the guest does not disturb scheduled services. Access to the "synagogue" portion of the manor facility is from a door to an exterior deck and from doors inside hotel E. You represented that your religious services, "synagogue" room, books, and religious artifacts are available to the public for study or to pray. However, you also stated that this public availability is only made known by word of mouth, and that interested individuals "may call at any time to check if it's open."

You stated that no one monitors the activities of those individuals using the "synagogue" part of the manor facility and that hotel E's guests are allowed to use the materials and religious artifacts in the "synagogue." You stated that the family of person I1 and hotel E own and provide the books in the manor's "synagogue" including those that are shown in pictures of the facility that you provided as part of your application.

You stated that E markets its hotel operation mostly to customers that follow the faith and edicts to which you adhere. You estimated that a high percentage (90%) of hotel E's guests will follow the customs, beliefs and edicts of your faith. You also estimated that 20% of hotel E's guests will attend your services and participate in your activities. You said that you will solicit donations from hotel E's guests who attend your services and activities.

Law - Code and Regulations:

Section 501(c)(3) of the Internal Revenue Code provides, in relevant part, exemption from federal income tax for corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not

participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(a)(1), Income Tax Regs., requires that for an entity to have exempt status it "must be both organized and operated exclusively for one or more of the purposes specified" in section 501(c)(3).

The Treasury Regulations specify three criteria for the operation test.

Section 1.501(c)(3)-(1)(c)(1), Income Tax Regs, an organization must be primarily engaged in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3), so that it is "operated exclusively" for exempt purposes. 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), Income Tax Regs, an organization's net earnings must not be distributed in whole or in part to the benefit of private shareholders or individuals. (The first two criteria, though separate, frequently overlap. See *Canada v. Commissioner*, 82 T.C. 973, 981 (1984)).

Section 1.501(c)(3)-(1)(c)(3) Income Tax Regs, an organization must not be an "action" organization, i.e., one which spends a substantial part of its time attempting to influence legislation.

Section 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs, an organization is not operated exclusively for exempt purposes unless it serves "a public rather than a private interest." To meet this requirement, the organization must demonstrate 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.

Section 1.501 (c) (3)-1(d)(2), Income Tax Regs defines the term "charitable" to include the advancement of religion or education.

Section 6001 of the Code, "Notice or regulations requiring records, statements, and special returns," provides that every person liable for any tax imposed by this title (Title 26 of the United States Code, which is the Internal Revenue Code), or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Section 1.6001-1(a) of the Procedure and Administration Regulations provides, in general, that any person subject to tax under subtitle A of the Code or any person required to file an information return with respect to income shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Section 1.6001-1(c) of the regulations provides that for exempt organizations, in addition to such permanent books and records required by section 1.6001-1(a) with respect to the tax imposed by section 511 on the unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements.

Section 1.6001-1(e) of the regulations, Retention of records, provides that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Section 1.6033-1(h)(2) of the regulation provides that whether or not an exempt organization is required to file an annual return of information, it shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and following), chapter 1 of the Code, and of section 6033.

Law - Revenue Ruling:

Rev. Rul. 77-366; 1977-2 C.B. 192; 1977 held that an organization that conducted winter-time ocean cruises during which activities to further religious and educational purposes were provided in addition to extensive social and recreational activities was not operated exclusively for exempt purposes and did not qualify for exemption. In that case, the organization accomplished both charitable and non-charitable purposes.

Law – Revenue Procedure:

According to Rev. Proc. 2008-9 – 4.03(2), an applicant for exemption 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.

Law - Court Cases:

See Presbyterian and Reformed Publishing Co. v. Commissioner, 743 F.2d 148, 153 (3rd Cir. 1984), citing 26 C.F.R. section 1.501(a)-1(c) (1984). In that case the court defined "private shareholder or individual" broadly as any person "having a personal and private interest in the activities of the organization" and that included the creator of the organization and his family. In addition, the court held that an organization is not operated exclusively for exempt purposes if it serves a private rather than a public interest. Also see Easter House v. United States, below citing Income Tax Regs section 1.501(c)(3)-1(d)(1)(ii), aff'd. without opinion, 846 F.2d 78 (Fed. Cir. 1988).

In Easter House v. United States, 12 Cl. Ct. 476, 487 (1987), the court asserted that it was the responsibility of an organization to establish that it serves a public rather than private interest. The court held that an organization cannot make up for the lack of an affirmative showing on its

part that there is not any inurement or service to private interests by claiming that the IRS has not proven that there is inurement. The court held that the IRS does not have to "prove" anything but rather that it was the plaintiff's burden to prove that its net earnings did not inure to the benefit of a private shareholder or individual or that it did not serve a private interest.

See KJ's Fund Raisers v. Commissioner, T.C. Memo 1997-424 (1997), aff'd, 1998 U.S. App. (2d Cir. 1998). In that case the court held, and the Second Circuit affirmed, that an organization formed to raise funds for distribution to charitable causes did not qualify for exemption under Section 501(c)(3) because its activities resulted in a substantial private benefit to its founders. The founders of the organization were the sole owners of KJ's Place, a lounge at which alcoholic beverages were served. The founders served as officers of the organization and, at times, also controlled the organization's board. The organization altered its board several times and in a letter to the IRS indicated that they would further revise its board so that none of the members were related to the officers of KJ's Place. However, that change was never implemented. Despite these changes and promises to change, the court held that these activities would still be used to the advantage of the Lounge. The court stated that the founders exercised substantial influence over the affairs of the non-profit organization. The non-profit organization's business consisted of selling "Lucky 7" or similar instant win lottery tickets to patrons of KJ's Place. The organization derived most of its funds from its lottery ticket sales. The organization solicited no public donations. The lottery tickets were sold during regular business hours by the owners of the lounge and their employees. From the proceeds of the sales of the lottery tickets, the organization made grants to a variety of charitable organizations. Although supporting charitable organizations may be a charitable activity, the court nevertheless upheld the IRS denial of exemption on the ground that the organization's operation resulted in more than incidental private benefit. The court held that a substantial purpose of the non-profit's activities was to benefit KJ's Place and its owners by attracting new patrons, by way of lottery ticket sales, and by discouraging existing customers from abandoning KJ's Place in favor of other lounges where such tickets were available. Thus, the organization was not operated exclusively for exempt purposes within the meaning of § 501(c)(3).

See est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), aff'd in an unpublished opinion, 647 F.2d 170 (9th Cir. 1981). In that case, the court stated in part that several for-profit organizations that had no formal control over the nonprofit entity in question nevertheless exerted considerable control over its activities. The court found that the ultimate beneficiaries of the nonprofit organization's activities were the for-profit corporations and that the non-profit was simply the instrument to subsidize the for-profit corporations.

In Church By Mail, Inc. v. Commissioner of the Internal Revenue 765 F.2d 1387 C.A.9, 1985, the court found regarding the substantial non-exempt purpose issue that the critical inquiry was not whether particular contractual payments to a related for-profit organization were reasonable or excessive, but instead whether the entire enterprise was carried on in such a manner that the related for-profit organization and its owners benefited substantially from the operation of the non-profit organization. Because the applicant failed to meet both the first and second prongs of the operational test under I.R.C. § 501(c)(3), the court affirmed that denial of exemption was correct.

In Bethel Mennonite Church v. Commissioner, 80 T.C. 352, 360 (1983), on appeal (7th Cir. July 11, 1983), the court stated that the purpose toward which an activity was directed, rather than the nature of the activity itself, determined whether the operational test was satisfied.

See Church of the Transfiguring Spirit v. Commissioner, supra at 5-7 and Levy Family Tribe Foundation v. Commissioner, 69 T.C. 615, 619 (1978). In those two cases the courts found that this fact that organizations were operated partially for religious purposes was not sufficient to override the inurement prohibition.

Per Better Business Bureau v. United States, 326 U.S. 279, 283 (1945), the existence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment challenging the IRS denial of an application for exempt status. The court found that the administrative record supported the IRS denial on the basis that the applicant operated for the private benefit of its founder, who had a history of promoting for-profit schemes. The applicant claimed that the founder had resigned and that it had changed its ways. However, there was little evidence of change other than replacement of the founder with an acquaintance who had no apparent qualifications. The court ruled against the applicant because it had the burden of establishing it was qualified for exemption. The court said, "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant."

P.L.L. Scholarship v. Commissioner, 82 T.C. 196 (1984) concerned an organization that operated bingo games at a bar for the purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The court reasoned that, because the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed that it was independent because there was separate accounting and no direct payments were going to the bar. The court was not persuaded. The court stated that the operations of the two entities showed that the activities of the non-profit organization and the Pastime Lounge were so interrelated as to be functionally inseparable even though there were separate accountings of receipts and disbursements for the two entities. The court concluded that, because the record did not show that the non profit organization was operated for exempt purposes, but rather indicated that it benefited private interests, exemption was properly denied.

Application of Law:

Exemption from federal income taxation is not a right; it is a matter of legislative grace that is strictly construed. See New Dynamics, supra. The applicant bears the burden of establishing that it qualifies for exempt status. 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. "Exclusively" does not mean "solely," but no more than an insubstantial part of an organization's activities may further a non-exempt purpose.

You represented that you have an exclusively religious purpose and you attempted to support this claim with descriptions of religious activities, prayer, and religious study. That you conduct some religious activities is not disputed, but it is evident that you have another non-exempt purpose as well. As the court found in Rev. Rul. 77-366, the tour operator (like you) had a religious purpose and a non-exempt purpose. In the tour operator's situation the non-exempt purpose resulted from the social and recreational activities; in your situation the non-exempt purpose is furthering the commercial operation of the for-profit resort hotel E. Where an organization accomplishes both charitable and non-charitable purposes it does not qualify as tax exempt under 501(c)(3).

In P.L.L. Scholarship v. Commissioner the court found that activities were so interrelated as to be functionally inseparable. The manner of your operations, joint use of the facility, common hours of operation, guest concessions to allow you to use the facility during lodging rentals, significant funding from the facility operator and owners, commingled funds and lack of separate accounting records and systems shows that you are an integrated component of the resort hotel E, a for-profit commercial enterprise. The extent of your integration with E is substantial and pervasive. The for-profit E is in a position to direct and control your operations to ensure that your activities function as a component of its overall resort hotel operation. The court found in Better Business Bureau v. United States that activities not furthering an exempt purpose will be regarded as incompatible with charitable exempt status if the manner and extent of such conduct demonstrates the existence of some independent non-exempt purpose. This prevents 501(c)(3) exemption even though you do conduct some religious activities.

According to your application, your facility and religious activities are suitable, convenient, and desirable for the market that hotel E targets. Your conduct of religious activities as an integrated component of E functions as an additional amenity of the overall for-profit resort hotel operation, in a manner similar to other hotel amenities such as a pool, workout facilities, exercise classes, spa services, concierge services, etc. Typically, not all hotel guests use all of a hotel's amenities, but all of the amenities are still effective in attracting and retaining some lodging guests. Although your religious services are not used by all of hotel E's guests on every visit, that usage is substantial. The application shows that your religious services are attractive to many of hotel E's guests. Thus, you are similar to the organization that was denied exemption in KJ's Fundraisers v. Commissioner where the court found that the non-profit organization served to attract customers for the related profit making business.

Person I1, the owner of E, is considered a "private shareholder or individual" and therefore one of your insiders as described by the court in Presbyterian and Reformed Publishing Co. v. Commissioner. In that case, an insider was described as a person having a personal and private interest in the activities of the non profit organization including situations where the person or family members of the person were the creators of the organization. Person I1 is one of your founders and is one of your members, is related to your governing body members, and is in a position of substantial influence and control, having been the primary source of support thus far for your activities and operations.

The for-profit hotel E and its owner exert substantial influence and considerable control over your activities and programs. You operate in for-profit E's facility at the favor of E's owner, you rely upon E and its owner for your support, you use the religious artifacts and materials of E and its owner, and your governing body members are related to E and its owner. Even though

person I1, hotel E's owner, is not actually on your governing body, she is related to your governing body and is in a position to control, direct, or significantly influence your activities and programs. Your operations rely almost entirely upon hotel E's financial support and upon the provision of E's facilities and services. Your religious activities and programs are a benefit to E and its owner by creating an atmosphere that, like other typical hotel amenities, is inviting, attractive, valuable, and desirable to the hotel guests. Hotel E's owners benefit from your activities and programs. This situation is similar to est Hawaii v. Commissioner where the ultimate beneficiaries of the non-profit's activities were the insiders who controlled the non-profit.

Although you do not make any direct payments to hotel E or its owner, you nonetheless confer significant benefits to E and its owner. As the court found in P.L.L. Scholarship v. Commissioner although there were no direct payments going to the bar and it's owners, the activities of the non-profit were to the advantage of the bar owners. The critical issue as was found is Church By Mail, Inc. v. Commissioner of the Internal Revenue, is not whether particular contractual payments are reasonable or excessive but instead whether the entire enterprise is carried on in such a manner that the related for-profit entity and its owners benefit substantially from the operations of the non profit organization. Similar to P.L.L. Scholarship and Church by Mail your operations benefit the owners of E. This substantially benefits an insider, and therefore constitutes prohibited inurement.

Prohibited inurement cannot be corrected by the presence of some religious activities. See Church of the Transfiguring Spirit v. Commissioner and Levy Family Tribe Foundation v. Commissioner where the courts found that the presence of religious activities were not sufficient to overcome inurement.

As the court found in Easter House v. United States, 12 Cl. Ct. 476, 487 (1987), you are not operated exclusively for exempt purposes because you serve private rather than public interests. It was your burden to prove that you do not serve private interests and that earnings do not inure to the benefit of private shareholders or individuals. You are similar to Easter House because you have not shown that your activities do not further the private interests hotel E and its owners. The fact that you have no books and records apart from those of hotel E affirms that your activities and programs are an integral part of hotel E.

Your application shows that you do not maintain sufficient records to detail your activities and programs; therefore you are unable to show that you exclusively further 501(c)(3) exempt activities. Section 6001 of the Code and applicable regulations require that an organization maintain records sufficient to establish whether it is liable for income tax. You have already conducted operations but you have not kept your own records and books to reflect your own operations. See Section 1.6001-1(c),(e) of the Income Tax Regs regarding exempt organizations for the books and records required to be kept and made available to the Service. Even if you actually were a church and therefore not required to file annual information returns on Forms 990, you would still have to maintain your own financial records apart from those of hotel E. Rev. Proc. 2008-9 requires that the IRS must have adequate documents to analyze an applicant's activities, programs and other subjects before granting a favorable determination as to exempt status. Where the applicant fails to provide the information and there are gaps, or vague and inconclusive materials in the record, these omissions prevent the issuance of a favorable as to tax exemption per New Dynamics, supra, which cited "numerous other §7428 cases."

Applicant's Position:

You stressed that you conduct religious activities and programs in a resort area, that you were established to accommodate the general public and that individuals attending your religious activities and programs either own or rent vacation homes in or around the neighborhood in which the E hotel is located or stay at the E hotel.

Despite the connections to the E hotel, you stated that you are not affiliated with, and do not have a special relationship with any other organization.

You stated that you failed to keep separate accounting records apart for the for-profit E hotel because "thus far we have not solicited or distributed any funds. The expenses that came up were privately sponsored by a trustee or member of our organization."

You admitted that that you currently do not have a sign or your own advertisement announcing your religious activities but you said that once the for-profit E hotel starts doing more business, you will begin to advertise your religious activities in a local newspaper.

You stated that E "has absolutely no benefit from this as their guests can pray in any empty room without any official congregation recognition and will be able to maintain their own quorum without any community people when the hotel is in service."

You stated that you were prevented from opening your own bank account because your bank of choice "does not open accounts for organizations before they receive the IRS determination letter."

You stated that regarding the family relationships between person I1 and your governing body members "recommendations for the election of a new board of trustees have been put forth. The members will meet to hold elections prior to the initial bank account opening."

You stated that employees and guests of hotel E are not disqualified from leading religious services and that none of your members are employees of E.

You stated that the fees for staying at the E hotel are not used to support your religious activities and programs.

You did not dispute that all of the funds for your religious activities and programs are being provided by and through the E hotel, and that there is no separate financial accounting between you and E.

You asserted that your activities at the E hotel do not attract any customers for E.

Response to the Applicant's Position:

Operationally, there is little distinction between your activities and those of hotel E. Your activities and those of E overlap and there is no separation of accounting, books, and records. Your claim that your activities do not attract customers for hotel E is contrary to the facts of the

case, which indicate that E's typical clientele is generally inclined to participate in your activities. Hotel E's guests will constitute a significant portion of the attendance at your activities. Your activities are an integral function of hotel E, a commercial enterprise.

Although you stated that you are considering a change to your governing body, you have not replaced any members yet. Even if you do switch out some board members, you will remain an entity that was created by, and you will remain under the effective control of person I1, hotel E's sole member and owner. In KJ's Fund Raisers v. Commissioner the court held that despite changes to the board of the non-profit, the related for-profit still benefited to a prohibited degree from the activities of the non profit. Similar to that case, changes to your board will not change the fundamental nature of person I1's and E's effective control, authority, and influence over you.

You stated that hotel E does not directly pay fees to you. However, you also said that all of your support has been from E. Your assertions are unconvincing due to the lack of separate accounting records and other documentary evidence to support the burden of proof that you bear in this case.

Specific Conclusions Relative to the Subsidiary Issues Noted on Pages 1 and 2:

- a. Your religious activities and programs on hotel premises function as a hotel amenity. Guests that choose this resort hotel over other resort hotels without religious activities and programs results in increased business, higher rates, increased charges, and larger revenues and profits for E. This benefit is substantial and furthers non exempt section 501(c)(3) purposes. Additionally your religious activities and programs coincide with the resort hotels hours of operations, activities and programs and your activities are included as part of the guest's experience just like the amenities at other hotels which are "at will" for those who choose to participate. You estimate that a substantial percentage of your guest will utilize your religious activities and programs. Support of your activities and programs has been primarily from E. More than an insubstantial part of your activities are not in furtherance of exempt purposes and as provided in the Income Tax Regs Section 1.501(c)(3)-(1)(c)(1) you are regarded as not operating exclusively for exempt purposes.
- b. The individuals that founded you and control you are directly related to the for-profit resort hotel E. The sole member of E is your insider and therefore the private benefits that come from the operation of your religious activities and programs in the resort hotel is inurement prohibited by Income Tax Regs Section 1.501(c)(3)-1(c)(2).
- c. Your operation of religious activities and programs as an integrated component of E's hotel business provides private benefits to insiders. This is prohibited inurement and as a consequence you do not qualify for exemption under Code section 501(c)(3).
- d. Your religious activities and programs have a substantial commercial purpose. Although the purpose of religious activities and programs usually serve a public purpose this is not your only purpose. You also operate in a manner to serve private interests, a purpose to enhance and benefit E, a commercial for-profit resort hotel. Therefore you do not exclusively further an exempt purpose as described in the Income Tax Regs Section 1.501(c)(3)-1(d)(1)(ii).

e. Due to your lack of separate books and records of revenues, expenses, and balance of accounts you have not shown as required by Rev. Proc. 2008-9 that you are operated exclusively for exempt purposes required for recognition under Section 501(c)(3) of the Code.

f. Your lack of financial records shows that you are not now maintaining records as required by Code section 6001. Additionally you have not provided representations that you will in the future maintain records required for all organizations under Code Section 6001 and records required for exempt organizations under Income Tax Regs Sections 1.6001 and 1.6033. Therefore your representations indicate that you will not operate in compliance with the requirements for record keeping as described in Code section 6001 nor as a tax exempt entity described in Income Tax Regs Sections 1.6001 and 1.6033.

Therefore in conclusion we find that you do not qualify as exempt under section 501(c)(3) of the Code.

Protest Rights, Appeal Rights, Forms, Publications, and Notices

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

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

We have mailed a copy of this letter to your current CPA, per the most recent Form 2848 that you filed.

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

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

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

Mail to:

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

Deliver to:

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

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

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements