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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **201044019**
Release Date: 11/5/2010

Date: August 9, 2010

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UIL: 501.03-01; 509.01-01

Contact Person:
Xxxxxxxxx
Identification Number:
Xxxxxxx
Contact Number:
Xxxxxxxxxxxxxx
Employer Identification Number:
Xxxxxxxxxx
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.

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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: May 24, 2010

Contact Person:
Xxxxxxxxx
Identification Number:
Xxxxxxx
Contact Number:
Xxxxxxxxxxxxx
FAX Number:
Xxxxxxxxxxxxx
Employer Identification Number:
xxxxxxxxxx

Xxxxxxxxxxxxxxxxxxxxx
Xxxxxxxxxxxxxxxxx
Xxxxxxxxxxxxxxxxxx
Xxxxxxxxxxxxxxxxx

Legend:

A= xxxxxxxxxx
B= xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
C= xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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 on February 17, 20 , as an unincorporated association located in the state of A. Your Constitution, which consists of one page, provides that you were formed to provide spiritual guidance and charity to those who are in need. Further, it provides that you will hold monthly online discussions followed by weekly studies.

Your Constitution does not include a provision for the distribution of assets in the event of dissolution. Your bylaws provide that upon dissolution, your assets will be distributed to C, an organization which is not described in section 501(c)(3) of the Code. Further, your bylaws do not contain a contingency clause with respect to whether at the time of your dissolution, the named recipient of your assets is no longer exempt under section 501(c)(3), no longer in existence, or is unwilling to accept your assets.

Article 2 of your bylaws provides that you are governed by a five member board of directors composed of your founder, her two daughters, her son-in-law, and her fiancé. Your directors serve for a term of five years. Your founder and her two daughters serve as your officers.

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You completed Schedule A of Form 1023 indicating that you are seeking classification as a church described in 170(b)(1)(A)(i) of the Code. Your founder serves as your minister. She was ordained by B. B is not a tax-exempt organization under section 501(c)(3). You operate out of your founder's personal residence.

You indicate that you will engage in two activities, the operation of an internet program you characterize as a church and a program of distributing funds to the needy.

You state that your regularly scheduled religious services will consist of a weekly online discussion centered on a topic that will be posted by your minister. Visitors to your website will be able to discuss the topic by posting comments. To date, you have not posted any topics or engaged in activities using your website. Based on your representations, your only activity thus far, except for establishing your website, has been to distribute funds to individuals.

Your financial statements indicate that you received a total of $ in 20 and 20 . Eighty percent of that amount was provided by your founder. An additional five percent was provided by her fiancé. You did not specify the source of the remaining fifteen percent. You indicate that once a PayPal account is established on your website, you will solicit donations from the public.

With respect to your program of distributing funds to the needy, neither your application nor your subsequent submissions describe this program, specify the criteria you will use to determine whether an individual is needy or indicate how individuals are referred to you. Further, the minutes of the quarterly meetings of your board of directors do not refer to a program of distributing funds to the needy nor do they contain any discussion of funds actually being distributed.

In your letter dated November , 20 , you represent that you distributed $ to the needy in 20 and $ in 20 . You list check numbers and amounts, as well as charges to a Visa account, that you claim represent distributions to the needy. With respect to the amounts listed:

- You provide nothing to evidence that the checks were actually issued, who they were issued to and the purpose for each distribution.
- You do not indicate whether the Visa account is registered in your name.
- You do not indicate what the charges were for, on whose behalf they were made and the purpose of each charge.
- You do not indicate whether the recipients were members of a charitable class.
- You do not describe the relationship, if any, between the recipients and your directors, officers or their family members.

With respect to the operation of a church, you describe your creed or statement of faith as follows, "We are all sons and daughters of the same universe. Our doors are open to all. We make no demands of our members. We offer freedom of faith. We seek to unite and instill the truth that everyone is equal." You describe your formal code of doctrine and discipline as follows, "Do unto others as you would have them do unto you." You indicate that your form of worship consists of meditation and communication.

At Schedule A of Form 1023, you represent that you:

- do not have a distinct religious history describing your establishment and major events in your past;
- do not have any literature including any writings about your beliefs, rules, or history;
- have regularly scheduled religious services but do not describe such services;
- do not know the average attendance at your services;
- do not have an established place of worship;
- do not know how many members you have; and,
- do not have a school for the religious instruction of the young.

You established your two-page website more than eighteen months after your formation. The first page contains a vague description of your beliefs and invites visitors to your website to "Bring Your Religion". It does not contain the word "church" nor does it refer to any worship services. That page provides a link, entitled "Discussion (forum)", to the second page of your website. The second page of your website consists of one paragraph, "We are currently creating content for this section. In order to be able to keep up with our high standards of service, we need a little more. Please stop by again. Thank you for your interest!"

In your letter of November , 20 , you represent that your congregation consists of six individuals, the members of your governing board and your founder's father. Further, you provide that your congregation will consist of those people who regularly log into your website to participate in discussions.

You provide that while you are starting out and do not have the resources to pay a predetermined salary to your officers, they will be compensated as much as funding will allow. Amounts will be determined by a unanimous vote of your board of directors. Neither your Constitution nor your bylaws describes the method used to determine compensation of your officers.

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Law:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable and 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(b) of the regulations provides that to meet the organizational test an organization must meet three sets of requirements. First, its articles of organization must (a) limit its purposes to one or more exempt purpose and (b) not expressly permit substantial activities that do not further those exempt purposes. Second, its articles must not expressly permit (a) substantial lobbying, (b) any participation in the campaign of a candidate for public office, and (c) objectives and activities that would characterize it as an "action" organization. Third, its assets must be irrevocably dedicated to exempt purposes. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes.

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(a)-1(c) defines private shareholder or individual as a person having a personal and private interest in the activities of the organization.

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

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

Rev. Proc. 82-2, 1982-1 C.B. 367, identifies the states and circumstances in which the Service will not require an express provision for the distribution of assets upon dissolution in an exempt organization's articles of organization to satisfy the "organizational" test in section 1.501(c)(3)-1(b)(4) of the regulations.

The revenue procedure provides that, with respect to unincorporated nonprofit associations, none of the fifty-one jurisdictions provides certainty by statute or case law, for the distribution of assets upon the dissolution of an unincorporated nonprofit association. Therefore, any unincorporated nonprofit association needs an adequate dissolution provision in its organizing document to satisfy the requirements of section 1.501(c)(3)-1(b) (4) of the regulations.

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 exempt purpose.

Rev. Rul. 56-304, 1956-2 C.B. 306 held that organizations which otherwise meet the requirements for exemption from Federal income tax are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. However, organizations of this character which make such distributions should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a members of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions are made to individuals can be substantiated upon request by the Internal Revenue Service.

In *Universal Life Church, Inc. v. Commissioner*, 83 T.C. 292 (1984) (*Universal Life Church)* 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 Full Circle Church had a regular place of worship, held regular worship services, or performed any religious functions.

In *American Guidance Foundation, Inc. v. Commissioner*, 490 F. Supp. 304 (D.D.C. 1980), (*American Guidance Foundation*), affirmed in an unpublished opinion (D.C. Cir.

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1981), the court held that a religious organization exempt under section 501(c)(3) of the Code was not a church described in section 170(b)(1)(A)(i). The court discussed the 14 criteria developed by the Internal Revenue Service to evaluate applications for church foundation status. The 14 criteria 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. A complete organization of ordained ministers ministering to their congregations
9. Ordained ministers selected after completing prescribed courses of study
10. Literature of its own
11. Established places of worship
12. Regular congregations
13. Regular religious services
14. Sunday schools for the religious instruction of the young
15. Schools for the preparation of its ministers

The court reasoned that certain criteria, namely the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are of central importance in distinguishing a "church" from other forms of religious organizations.

The court also discussed the criteria with respect to a regular congregation. In *American Guidance Foundation,* the corporation's directors were the organizer, his wife, his mother, his sister and his brother-in-law. The corporation represented that it had a congregation and that the congregation consisted of the organizer and his immediate family members. The court held that these individuals do not constitute a "congregation" within the ordinary meaning of the word.

In *Spiritual Outreach Society v. Commissioner*, 927 F.2d 335 (8^{th} Cir. 1991), (*Spiritual Outreach Society*) 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 criteria used in *American Guidance Foundation, supra*, of its analysis. It looked particularly at the facts that the organization did not have an established congregation, the provision of regular religious services and religious education for the young and the dissemination of a doctrinal code, as reasons to deny church status. With respect to whether the organization had a congregation, the Appeals Court found that the organization did not have an established congregation because "nothing indicates that the participants considered [the organization] to be their church."

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

Analysis:

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. See section 1.501(c)(3)-1(a)(1) of the regulations.

With respect to the organizational test, section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization's assets must be irrevocably dedicated to exempt purposes. An organization's assets will be considered irrevocably dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's organizing instrument or by operation of law, be distributed for one or more exempt purposes. If a named beneficiary is to be the distributee of an organization's assets, it must be one that would qualify and would be exempt within the meaning of section 501(c)(3) of the Code at the time the dissolution takes place. Since the named beneficiary at the time of dissolution may not be qualified, may not be in existence, or may be unwilling or unable to accept the assets of the dissolving organization, a provision should be made for distribution of the assets for one or more exempt purpose in the event of any such contingency.

Your organizing instrument, your Constitution, lacks a dissolution provision. There is no statute or case law in the state of which provides for the distribution of assets upon dissolution of an unincorporated nonprofit association which satisfies the requirements of section 1.501(c)(3)-1(b)(4) of the regulations. See Rev. Proc. 82-2, *supra*.

Even if the dissolution provision which appears in your bylaws appeared in your Constitution, you would not meet the requirements of section 1.501(c)(3)-1(b)(4) of the regulations. C, the named beneficiary, is not an organization which has been recognized as described in section 501(c)(3) of the Code. Even if C were described in section 501(c)(3), your dissolution provision does not contain the contingency provision described above.

Thus, since neither your Constitution, state law nor case law provide for the adequate distributions of your assets upon dissolution, you do not meet the organizational test described in section 1.501(c)(3)-1(b) of the regulations.

With respect to the "operational test", 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. See section 1.501(c)(3)-1(c)(1) of the regulations.

You indicate that you will engage in charitable and religious activities. To date, you have not established that you have engaged in any such activities.

In your application, you state that your religious activities will consist of weekly online discussions centered on a topic provided by your minister. Although you have been in existence for more than two years, you have not engaged in these activities.

Your sole activity, aside from establishing a two page website, has been the distribution of funds to unidentified individuals. You assert that these funds were distributed to the "needy". Neither your application nor your subsequent submissions describe this program, specify the criteria you use in determining whether an individual is needy or explain how individuals are referred to you. Further, the minutes of the quarterly meetings of your board of directors do not refer to a program of distributing funds to the needy nor do they contain any discussion of funds having been distributed for that purpose. You have not provided information evidencing that you maintain adequate records and case histories to support your claim that distributions were actually made, and that distributions, if any, were made to a charitable class. You have made no representation concerning whether funds were distributed to your directors and officers or their family members. Thus, you have not established that you operate in a manner similar to the organizations described in Rev. Rul. 56-304, *supra*.

Accordingly, you have not established that you have engaged in any charitable or religious activities. Therefore, you do not meet the operational test described in section 1.501(c)(3)-1(b) of the regulations.

You further represent that you plan to compensate your officers. You have not established criteria to determine how compensation will be determined and to ensure that compensation is no more than the fair market value based on the qualification of the individuals being compensated, the duties assigned and the hours devoted to those duties. In fact, you represent that your officers will be compensated as much as funding will allow. Compensation will be determined by the individuals being compensated as well as their family members. This arrangement results in a conflict of interest. Thus, you have not established that your compensation arrangement will not result in private benefit and private inurement to your officers as described in section 1.501(c)(3)-1(c)(2) of the regulations.

Even if you were an organization described in section 501(c)(3) of the Code, you would not be classified as an organization described in section 170(b)(1)(A)(i).

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. See *American Guidance, Foundation for Human Understanding and Spiritual Outreach Society, supra.*

In *Universal Life Church, American Guidance Foundation* and *Spiritual Outreach Society, supra,* the courts held that the existence of a regular place of worship and regularly held worship services were of central importance in determining whether an organization qualifies for church status.

Based on the information submitted, you have not engaged in any religious activities to date. You represent that, in the future, topics will be posted on your website by your minister. Visitors can read these topics at any time and post comments on your website. These types of activities do not constitute a worship service. Individuals will not come together at a specific time and there will be no interaction between individuals and your minister. Further, these activities will be held solely on the internet rather than at a physical location. Accordingly like the organizations described in *Universal Life Church, American Guidance Foundation* and *Spiritual Outreach Society, supra,* you lack regularly held worship services and a regular place of worship.

The presence of a congregation has also been determined to be a criterion of central importance in determining church status. See *American Guidance Foundation* and *Spiritual Outreach Society, supra.*

The court held in *American Guidance Foundation, supra* that a group consisting of the founder and his family members does not constitute a congregation within the ordinary meaning of the word. Like the organization described in *American Guidance Foundation* your members, with the exception of your founder's fiancé, are limited to your founder and members of her immediate family.

In *Spiritual Outreach Society, supra* the court held that the organization did not have an established congregation because "nothing indicates that the participants considered [the organization] to be their church." There is nothing to indicate that the visitors to your website will consider you to be their church. Your website, your sole source of contact with prospective members, does not refer to you as a church. You do not require prospective members to renounce other religious beliefs or membership in other churches. In fact, you invite these individuals to bring their own religion. Further, your creed states that you make no demands on your members and you offer freedom of faith.

Thus, like the organizations described in *American Guidance Foundation* and *Spiritual Outreach Society, supra,* you do not have a congregation.

You do not have a program of religious education for the young. See *American Guidance Foundation* and *Spiritual Outreach Society, supra,* which identify religious education for the young as a criterion of central importance in determining church status.

In addition to failing to meet the criteria described above, you do not have distinct religious history describing your establishment and major events in your past and you do not have literature about your beliefs, rules, or history.

Conclusion:

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.

We have also conclude that you fail to meet most of the 14 criteria the Internal Revenue Service uses as guidelines for determining church classification, especially those the courts considered most important. Thus, even if you otherwise qualified as an organization described in section 501(c)(3) of the Code, you would not be classified as a church under section 170(b)(1)(A)(i).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief,*

the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative,* if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney.* All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

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

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

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

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:x)
xxxxxxxxxxxxxxx
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.

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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