



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201242014**  
Release Date: 10/19/2012

Date: July 24, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.00-00; 501.03-00; 501.03-05; 503.00-00

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.

Since 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.

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.

Letter 4038(CG) (11-2005)  
Catalog Number 47632S

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,

Lois Lerner  
Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: May 4, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**Legend:**

B = individual  
C = individual  
D = individual  
E = individual  
F = business  
G = church  
j = dollar amount  
X = date  
Y = state

**UIL Numbers:**

501.00-00  
501.03-00  
501.03-05  
503.00-00

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.

**Issues**

- 1) Does your lack of control and discretion preclude you from qualifying for exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
- 2) Does your inability to adequately establish operations as exclusively charitable preclude exemption under IRC 501(c)(3)? Yes, for the reasons given below.

**Facts**

You were formed by Articles of Incorporation on date X in Y by individuals B, C and D. You were formed, in part, to:

- (a) conduct and maintain a house of worship in accordance with Orthodox Jewish custom and traditions

- (b) to promote the religious, intellectual, moral and social welfare among your members and their families
- (c) to promote and increase interest in the study of the Torah, by arranging for study groups, and providing lectures and instruction regarding the customs, traditions and mode of worship of the Orthodox Jewish faith
- (d) to provide stipends as necessary to members of the Orthodox Jewish faith for the intensive study of Torah as needed
- (e) to aid and assist worthy indigent members of the corporation with loans and other kinds of support.

You list your activities as daily worship and prayer in order to promote the furtherance and dissemination of Orthodox Jewish Torah Study and practice. You are dedicated to providing a sanctuary for daily prayers and study of the Torah and traditional Talmudic texts by individuals on a consistent basis.

You do not have Bylaws. Rather, you asserted that "current trustees elect succeeding trustees." In the almost two years since inception you have held no board meetings. We asked for a detailed description of how you operate, since you do not have Bylaws. You responded, "the organization conducts itself as a regular synagogue six days per week with the board of directors managing the smooth operation of the facility." Further stating:

The Board of Directors ensures that services are conducted in a consistent manner and that individuals attend. The Board also ensures proper upkeep of the facility and that its [sic] used in the appropriate manner consistent with the needs and goals of the congregation. Services are conducted, individuals engage in Torah study and religious practices are conducted six days a week along with prayer services three times each day.

Your board of directors consists of B, C and D, each with the title of trustee. You have no written policies setting forth the duties and responsibilities of your trustees or specifically for B, C or D.

In response to our request for resumes for your board and a description of their activities you responded, "While the trustees ...have no formal resumes, all individuals involved with the congregation have a vested interest ...and volunteer their capabilities and services when needed..."

You later said "services are held six days a week in the afternoon and evening"; only twice a day. Services are held "every day of the week except Friday night and Saturday." B, your Rabbi, leads those services.

You may provide stipends to scholars to study the Torah, in those instances where the recipients are needy, as is customary among Jewish Orthodox congregations. You do not pay living expenses of an individual unless he would meet the special criterion as follows:

- 1.) You will distribute stipends to those in financial need when you have sufficient funds to make such distributions.
- 2.) Recipients will be selected based on financial need.
- 3.) Your board members will make the selections.
- 4.) Word of mouth in the close knit community in which you operate will be sufficient to inform those in need of the availability of funds.
- 5.) Distributions will be made to cover basic needs of a recipient and distributed based on available funds.
- 6.) Based on each individual's needs the funds will be distributed in the manner best suited to them.

You have no method in place for confirming the charitable status of a potential recipient. Prior to any distribution, procedures will be developed that will confirm that all recipients of funds are in fact needy individuals. You define "needy" as those who are unable to meet the financial obligations associated with every day necessities such as food and shelter". The monetary limit to the stipends will be no more than what is needed to cover recipient's basic needs.

Multiple requests were made for interior and exterior photographs of your facility. The photographs you first sent were all interior photographs, followed by up-close photographs of a door, then finally exterior photographs that showed a residential home. You confirmed your facility is a two-story residential home.

You are located in the same structure as synagogue, G, which you said "conducts services only on the weekends, observed as the Sabbath, and Jewish Orthodox holidays". However, you provided copies of a flyer which said the following information which contradicts your assertion that you do not conduct activities on the Sabbath (Saturday):

We hereby invite anyone who prays and attends our congregation to come and partake in a post Sabbath meal.

When asked about this discrepancy you responded:

Regardless of whether or not we hold services over the Sabbath, we use the facility once the observance of Sabbath on Saturday evenings is completed. Customary post Sabbath meals on a Saturday night are done by our Congregation.

You further stated you now occupy the existing synagogue on a daily basis for worship and study. The "address is a residence as well as housing the synagogue," located in a primarily residential area. The physical structure resembles a house with a separate area for the synagogue beneath the housing area. We asked for a detailed diagram of the floor plan of the facility, including:

- a. Rooms for worship
- b. Manner in which worship is divided by male and female
- c. Location of the alter and Torah
- d. Administrative offices
- e. Classrooms for study
- f. Library
- g. Social hall
- h. Restrooms and Exits

To this specific request you provided photographs that showed a dark room with only one window and a drop ceiling.

We asked a second time for a detailed diagram of your facility showing the entrances and exits and the separate areas of the two story home. You submitted more photographs that showed an open front door exposing what appeared to be two additional doors. Neither door contained signage to indicate which one belonged to you and which one leads to the residential portion.

While you initially indicated you only share the facility with G you later disclosed that you also share your facility with organization F. Regarding this discrepancy, you said while you share your congregational facility with G, the other floor of the structure is occupied by F. You said F uses the facility as a "residential facility which they control." We asked for you to provide the names of the individuals living in the home. You said you are "not informed of the residents as that is in the control" of F.

The photographs you submitted show a sign with your name by the front exterior door of the house, which is on the first (main) floor of the home. You said the portion of the property you use is the basement. You later said you use the entire facility to conduct your activities. When asked about this discrepancy you responded by saying the following is true regarding your location:

- a. The upper portion of the facility is rented out to F.
- b. The other occupant is F.

- c. The congregation occupies the lower level of the facility.

When asked how congregants access the basement, you stated:

The first floor of a structure is often referred to as the basement, when the area below ground is not inhabited as is the case here. The congregation uses the first floor which is above ground and as noted is often referred to as the basement.

Your facility is owed by individual E. You use the facility free of charge and you provided a signed statement from individual E to that effect.

Regarding your relationship with the congregation that uses your facility on Friday night and Saturday, G, you said the only relationship that exists between you and G is that Rabbi B's brother-in-law is involved with the latter.

You went on to later state that per Orthodox Jewish customs and traditions, services are conducted three times per day seven days per week, and there are other customs observed on Friday and Saturday. Worship and prayer services are consistently practiced throughout the week and are relevant on a daily basis. You concentrate your services during the week since what you have to offer the public is most suitable during that time.

We asked you to describe the formal and informal educational programs which current or future religious leaders will need in order to qualify as leaders of your congregation. No such programs occur as of yet, but you plan on conducting such programs once a permanent facility is acquired.

You do not currently engage in any of the following: congregation dinners, holiday celebrations, joint activities with other congregations, adult study groups, social activities, charitable activities or youth groups. However, you previously confirmed the hosting of Sabbath dinners.

As part of your initial application for exemption you provided a Statement of Revenues and Expenses. This information included a statement regarding your revenue. Specifically, you were "in the process of attempting to acquire a facility" of your own. Accordingly, for this purpose you had "received and projects (sic) to receive additional contributions." You said the projections represented funds needed to purchase the new facility and service the mortgage, etc. You hoped to "acquire a location and construct a structure as soon as sufficient funds are raised." To that effect you said:

At present light fund-raising as well as efforts to increase the number of members is being conducted. However, there is no strict time-line as to when a facility will be acquired as our present location is sufficient to accommodate the amount of congregants as well as any immediate increase in membership.

Occupancy expenses accounted for approximately 48% of your total expenses. When we requested a statement of revenue and expenses for your recent tax year, you replied no taxable year had been completed.

You submitted a Balance Sheet for a nearly completed fiscal year with your initial application for exemption showing assets of nearly \$500,000. The Balance Sheet included a cash reserve of j dollars, which you stated was a reserve set aside towards the acquisition of a facility. However, when asked about bank accounts you said all of these numbers were projections that turned out to be overly optimistic since you had not received any cash to date. "Most of the monies that were to be set aside as projected have in fact been pledged but the pledges do not wish to submit these monies" until after you secure a favorable determination from the Internal Revenue Service.

We asked about the discrepancy regarding your balance sheet and your assertion that you do not have any cash. You said at the time of filing your application for exemption you were "pledged the specified amounts and therefore it was though that they in fact had received such amounts." You went on to say "... these funds were not placed in a bank account belonging..." to you due to the fact that you had not received exemption. You asserted "the contributors did not wish to make a direct contribution to this congregation until after such exemption is obtained." You further said "while these funds have been set aside and are intended for use by this congregation, they have been placed in another account to be transferred to the congregation at a later date." You concluded by saying "the application filed with the IRS correctly reflected funds that were pledged and are thought to have been actually received by the congregation. However, as it turned out, they were to be transferred to the congregation at a later date." We asked in which account these funds were placed and you responded "as we have only been pledged these funds pending the approval for the application for exemption we have no knowledge as to where these funds were placed until such time."

Rabbi B has not been ordained and is otherwise employed part-time with another congregation to perform kosher supervision one or two days per week. During later correspondence when describing Rabbi B's employment, you said he only works one day per week for the other organization. There is no set schedule for his other work; rather, it is dependant on the needs of the other congregation.

You initially represented on Schedule A of Form 1023 you had 25 members, and an average of 25 regular attendees at your services. You later stated that you have 12 regular attendees at your services, but 50 individuals can fit in the facility. Since inception you have not had an increase in membership. Attracting new members occurs "through word of mouth in a close nit [sic] community, word is being spread that this congregation is hoping to attract younger men in the community to worship." You submitted a membership directory and we pointed out to you that your board members are not members of your congregation. You said "individuals responsible for maintaining the upkeep of the congregation are not required to be actual members of the congregation." We also asked for a current membership listing, which you omitted. You

did indicate that some of your members attend the services of G on the Sabbath. In your most recent response, you indicated 15–20 regular attendees at your services.

We asked for resumes of your board members and for you to describe the activities conducted by these individuals. You said “while the trustees of the organization have no formal resumes, all individuals involved with the congregation have a vested interest in its success and volunteer their capabilities and services when needed to maintain the running on a day to day basis of the congregation.”

To support your claim for exemption you said you have “been forthcoming, informative and direct in response to any inquiries the IRS has made.” Additionally, you are “prepared to provide documentation that illustrates substantial sources of income dependent upon the securing of exemption to place the Congregation in a solvent position with which to commence its charitable activities without any financial hindrance.” Rather than provide any of the aforementioned documentation, you provided the exact same assertion that you are “prepared to provide documentation that illustrates substantial sources of income dependent upon the securing of exemption to place the Congregation in a solvent position with which to commence its charitable activities without any financial hindrance.” We then specifically asked for you to provide this documentation to which you kept referring. You said you had included it twice, yet you continued to omit the information.

#### **Law**

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the 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(d)(1)(ii) of the Regulations states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Rev. Proc. 2011-9 provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Section 4.02 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. It further states:

(1) The applicant is responsible for the accuracy of any factual representations contained in the application.

(2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Section 4.03 of that Rev. Proc. states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court upheld the denial of exemption on an organization that made grants to individuals. The organization asserted that its grants were made in furtherance of a charitable purpose: to assist the poor. The organization was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant. The court held that this information was insufficient in determining whether the grants were made in furtherance of an exempt purpose.

In American Guidance Foundation v. U.S., 490 F. Supp. 304 (D.D.C. 1980), the court said that, at a minimum, a church must include a body of believers that assemble regularly in order to worship. It must also be reasonably available to the public in the conduct of worship, in its educational instruction, and in its promulgation of doctrine. An organization of a few family members who attend worship services at a relative's apartment was held not to be a church under sections 509(a)(1) and 170(b)(1)(A)(i) because it did not meet these requirements. In addition, it was held that when the assets of an organization are used to pay for the living expenses of an individual(s) denial of exemption is appropriate. Generally, there are fourteen criteria used in determining whether or not an organization qualifies as a church. These criteria are as follows:

- a. A distinct legal existence
- b. A recognized creed and form of worship
- c. A definite and distinct ecclesiastical government
- d. A formal code of doctrine and discipline
- e. A distinct religious history

- f. A membership not associated with any other church or denomination
- g. Ordained ministers ministering to its congregation
- h. Ordained ministers selected after completing prescribed studies
- i. Literature of its own
- j. Established place of worship
- k. Regular congregation
- l. Regular religious services
- m. Sunday schools for religious instruction of the young
- n. Schools for the preparation of ministers

The court stated that courts in cases where church status has 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.

In Basic Unit Ministry of Alma Karl Schurig v. Commissioner, 511 F. Supp. 166 (D.D.C. 1981), *aff'd*, 670 F.2d 1210 (D.C. Cir. 1982), the court upheld IRS's denial of exempt status as a religious organization in a declaratory judgment action. The court held that in factual situations where there is evident potential for abuse of the exemption provision, a petitioner must openly disclose all facts bearing on the operation and finances of its organization. Here Plaintiff did not proffer sufficiently detailed evidence of its charitable disbursements, or the extent of its support of its members. Rather, plaintiff continually responded that it had already provided the data, or could not furnish anything further. Therefore, the court found that the applicant did not meet its burden to positively demonstrate that it qualifies for the exemption. The Court of Appeals for the District of Columbia Circuit, in affirming that the organization had not met its burden of establishing that no part of its net earnings inured to any private individual, observed :

"taxpayer confuses a criminal prosecution, in which the government carries the burden of establishing the defendant's guilt, with a suit seeking a declaratory judgment that plaintiff is entitled to tax-exempt status, in which the taxpayer, whether a church or an enterprise of another character, bears the burden of establishing that it qualifies for exemption."

In National Association of American Churches v. Commissioner, 82 T.C. 18 (1984), the court denied a petition for declaratory judgment that the organization qualified for exempt status as a church. In addition to evidence of a pattern of tax-avoidance in its operations, the court noted that the organization had failed to respond completely and candidly to IRS during administrative processing of its application for exemption. An organization may not declare what information or questions are relevant in a determination process. It cited a number of declaratory relief actions that upheld

adverse rulings by the Service because of the failure of the applicants to provide full and complete information on which the Service could make an informed decision.

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), the court upheld the Service's determination that an organization failed to establish exemption when the organization failed to provide requested information. The court stated "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities .... Such generalizations do not satisfy us that [applicant] qualifies for the exemption."

### **Application of Law**

Section 501(a) of the Internal Revenue Code provides for exemption for organizations operated exclusively for religious, charitable, and educational purposes. Section 1.501(c)(3)-1(a)(1) of the regulations states that if an organization fails to meet either the organizational test or the operational test, it is not exempt. We cannot determine and you are unable to substantiate that your programs are furthering exclusively 501(c)(3) purposes; therefore you are not described in section 501(c)(3) of the Code. Because you are not described in section 501(c)(3) you fail the operational test and are not exempt.

To be exempt an organization must serve public rather than private interests. (1.501(c)(3)-1(d)(1)(ii) of the Regulations) You initially indicated large projections of income particularly for land acquisition. When asked for documentation, your projections changed – you stated you had no bank account, you'd received no cash and had not completed a tax year despite being in operation for over two years. The pledged funds had been set aside in another account. However, you stated if funds were needed you would raise those funds and use them to pay for things. You also stated you were prepared to provide documentation illustrating substantial sources of income, but this information was never received. Given the contradictory responses provided regarding your financial data, it is unclear who may or may not benefit from transactions, what your sources of income and expenses will be, or how you intend on maintaining control over your accounts. Because we cannot determine how you will use or control income or what you may expense we cannot conclude who benefits from these transactions. As it is unclear who will benefit you have not proven your assets will not inure to insiders or be used to privately benefit certain individuals.

As required by Rev. Proc. 2011-9 you have not established that you are organized and operated exclusively for exempt purposes and not for the private benefit of your creators. We asked multiple times for you to describe in detail how you are operated, as you do not have Bylaws. Your responses to our inquires regarding your operational procedures were inconsistent and vague. To date you have held no formal meetings. When asked you were unable to provide resumes describing the backgrounds of your board. As far as an election process for your board, current officers will select new officers. There is no formal structure to your operations outside of the three trustees who have unlimited control and terms. The close control held by a few individuals,

without a system for public oversight, creates an environment for potential abuse and insider benefit as there are no defined roles or responsibilities for your board or policies setting forth their duties and the handling of your finances. The ability of your three current officers to remain in office until they choose to remove themselves and be replaced by someone of their own choosing provides a window of opportunity for private benefit.

Further, Section 4.02(3) of this Rev. Proc. states that the failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling. You provided inconsistent information regarding your location in your facility as well as the days and times that you provide services. For example, you stated services occur twice a day on weekdays, then possibly on Saturdays, then later that you occupy the facility on a daily basis, then services were held three times daily seven days a week. You stated you used the entire facility, then only the main floor, which is actually the basement, and two other entities use this facility as well. Multiple times inconsistent information was provided in comparison to other portions of the administrative record. As a result, we cannot consider the administrative record complete and subsequently your failure to disclose material facts does not demonstrate that your operations further exempt purposes.

In Church in Boston the court upheld the denial of exemption on an organization that made grants to individuals when information was insufficient in determining whether the grants were made in an objective and nondiscriminatory manner and whether the distribution of such grants was made in furtherance of an exempt purpose. Like the organization in that ruling, your method of distributing grants shows no manner of objective selection and you've provided no documentation demonstrating your distributions will further an exempt purpose. You have indicated funds will be given to those in need, yet you have provided no definition or criteria for what constitutes need. You have provided no details on amounts that will be given, stating only that funds will cover what is needed. You do not advertise your program outside of word of mouth in the community. There is no set method or control function for actually distributing funds; they will be given based on the 'manner best suited' to the recipient. Finally, you have no set procedures for your grant making activity, nor for keeping records on those distributions, stating that prior to making a distribution procedures will be developed. You have no method for determining the charitable status of a potential recipient and for the above reasons your fund distribution program does not further an exempt purpose.

As in the above-cited cases of Basic Unit Ministry of Alma Karl Schurig and Peoples Prize, you have the burden of showing you come squarely within the terms of the law conferring the benefit sought, and whether you have satisfied the operational test is a question of fact. You did not respond openly or candidly to our questions as evidenced by the repeat requests for documentation of your facility. In fact, we asked the same questions multiple times and continually received little or no details regarding certain details of your operations or responses contradicted information previously given. An

applicant seeking exempt status must provide sufficient information for the Service to make an informed decision, as indicated in National Association of American Churches. You must respond completely and candidly. You have given answers to our inquiries that were vague and occasionally contradictory.

American Guidance Foundation provides, at a minimum, a church must include a body of believers that assemble regularly in order to worship in an established location, must be reasonably available to the public in the conduct of worship, in its educational instruction, and in its promulgation of doctrine:

We are unable to conclude the exact times you may be conducting services. Initially, you stated you hold services three times per day, six days a week. That later changed to twice daily, six days a week. Church G operates from the same facility, on the Sabbath, hosting services. Instead of your hosting Sabbath services, you provide a post-Sabbath meal, admittedly representing that you do not conduct service on the Sabbath. It is unclear from your responses if you are conducting regular religious services.

We are unable to conclude you have an established facility for religious services. Initially, you were operating from the first floor of the facility you indicated was yours. You then stated you were in the basement, later clarifying that the basement was actually the first floor and it was common practice to refer to it in this manner. You then disclosed that you are sharing the facility with two other entities, one of which is conducting Sabbath services where you have stated your regular activities take place. We are unable to determine who has access to your facility, or when. You have no materials or literature advertising your services to the public. It is unclear from your responses that you have an established, regular location for religious services reasonably available to the general public.

We are unable to conclude you have an established congregation that regularly assembles for worship services. You originally said you have an average attendance of 25 at your services, but later said you have 12 regular attendees. In later correspondence you said you have between 15 – 20 attendees at your services. Your trustees themselves are not congregants and you were unable to submit a current listing of members. You have also stated you have members that attend the Sabbath services of G, the other church using your facility. You have provided varied numbers of attendees and have had no increase in attendance in over three years, which calls into question whether you have an established body of believers. As a result it is unclear from your responses that you have an established and regular body of worshipers.

While you meet some of the 14 points as listed in American Guidance your lack of or inconsistency of information has not conclusively demonstrated the existence of the basic tenets required for obtaining status as a church – regular worship services conducted at a regular location with a regular congregation.

### **Applicant's Position**

You state that you clearly qualify "under the requirements listed in the rules." You went on to state you have the following relative to the 14 points cited American Guidance Foundation:

- a. The congregation has regular members that assemble six days a week in order to worship;
- b. The congregation is made available to any person who wishes to engage in Jewish Orthodox worship services;
- c. The congregation has a regular house of worship dedicated only to worship services and related lectures and Torah study and nothing else;
- d. The organization does not pay living expenses of an individual unless he would meet the special criterion as follows:
  - 1.) The organization will distribute stipends to those in financial need.
  - 2.) When the organization has sufficient funds to make such distributions.
  - 3.) Recipients will be selected based on financial need.
  - 4.) Board members of the organization will make the selections.
  - 5.) Word of mouth in the close knit community in which the organization operates will be sufficient to inform those in need of the availability of funds.
  - 6.) Distributions will be made to cover basic needs of a recipient and distributed based on the organizations available funds.
  - 7.) Based on each individuals needs the funds will be distributed in the manner best suited them.
- e. Jewish Orthodox congregations of this nature do generally not require that the officiating clergy be ordained. Rather and much more important it requires that such clergy have substantial background in Jewish law and doctrine, which is in fact far more than what an ordained clergyman would ordinarily have.
- f. The congregation has a formal doctrine and literature that is far larger than what any other congregation that is not of the Jewish faith would have. Its doctrine is based on the Torah whose literature and laws are vast. This statement of yours of the absence of doctrine and literature is totally off base.

You said "this organization clearly qualifies as a church under Sections 509(a)(1) and 170(b)(1)(A)(i)."

### **Service's Response to Applicant's Position**

Although you state that you qualify for exemption under Section 501(c)(3) of the Code as a church you have continually failed to provide consistent and detailed information to substantiate your claims. You have indicated you conduct worship activities but have waived on when these actually take place. In combination with the fact that some of your members attend the services of synagogue G, operating out of the same location, there is doubt as to if and when services occur. You share your facility not only with

synagogue G, but also with another entity for whom you could provide little detail. You only advertise the availability of your services through word of mouth and have failed to increase your membership for at least three consecutive years. Based upon the photographs of your facility, the general public would have no way of knowing in which portion of the residential facility you are located. Since you have been unable to sufficiently establish when services are being held and exactly where these are being held, or if your members are attending your services or those of G, you do not meet the important points necessary to establish church status.

### **Conclusion**

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(3) of the IRC. Your responses to inquiries were vague, uninformative, and inconsistent. Without complete and candid information we cannot determine you qualify for 501(c)(3) purposes. You lack documentation, records and evidence that distributions will be made and used for exclusively 501(c)(3) purposes. You lack internal controls for your everyday operations. You fail the operational test, and are disqualified from exemption under Section 501(c)(3) of the IRC.

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](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 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

**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,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure: Publication 892