



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201310045**
Release Date: 3/8/2013

Date: December 14, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-20; 509.02-04

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.

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,

Holly O. Paz
Director, Rulings and 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: July 16, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL: 501.03-20; 509.02-04

LEGEND

Taxpayer =
State =
Church =
Website =
Program =
Pastor =
Director 1 =
Director 2 =
Director 3 =
Date 1 =
Date 2 =

Dear

We have considered your application for recognition of exemption from Federal income tax under § 501(a) of the Internal Revenue Code (the "Code"). Based on the information provided, we have concluded that you do not qualify for exemption under § 501(c)(3) of the Code. The basis for our conclusion is set forth below.

FACTS

You state that you are a non-denominational Christian organization, and that your purpose is to help Christians struggling to provide for their spiritual, fellowship, or financial needs. You state that your mission is to insure that every person has a relationship with Jesus Christ which they utilize on a daily basis, and that you strive to make an impact in the lives of at least one person each day while displaying a Christ-like manner and exemplifying Biblical principles.

Organization

You filed your Articles of Incorporation (the "Articles") on Date 1 pursuant to the nonprofit corporation statute of State. Your Articles do not contain a statement limiting your purposes and activities to those described under § 501(c)(3), but you state that you will amend your Articles to include such a provision if your application for tax exemption is approved. Your Articles also do not contain a clause stating that your assets are irrevocably dedicated to exempt purposes, but you state that you will amend your Articles to include such a provision if your application for tax exemption is approved.

Operations

Your operations are divided into three "divisions." You state that these divisions are separately managed and engage in different activities, but that each division furthers your religious beliefs and organizational purpose. The divisions of your organization are: (1) the Ministry Division; (2) the Consulting Division; and (3) the Merchandising Division.

Ministry Division

You state that the Ministry Division is the center of the entire organization. Your activities related to the Ministry-Division are carried out primarily through Church and Website.

You made no mention of Church in your original application, but in subsequent correspondence you told us that you "planted" Church on Date 2. You state that Church is not an independently organized entity. Instead, you state that Church is a "ministry element under [your] corporate structure" and that it is intended to permanently exist as a part of your ministry efforts. You state that "[w]hile Church is subordinate to [you], there is a corporate business relationship and spiritual partnership that helps the two work together."

Church has its own "constitution," which states that Church is autonomous and is not subject to the control of any external ecclesiastical body or board. You state that "the Spiritual development of the church/day-to-day business is determined by its pastors, elders, and body of believers." You also state that "[you have] no control over Church and/or its Board of Directors" that "there is nothing in writing giving [you] 'authority' over Church" and that you "fully understand[] that Church could completely break-away from [y]our corporation; become incorporated itself; and there's nothing [you] can do about that." Despite your lack of formal control over Church, you state that Church is prohibited from acting in a manner that would compromise or be in violation of your tax exempt purpose, and you "fe[e]l that Church leadership/membership w[ill] support any corporate requirements levied upon them by [you]."

Church's Board of Elders functions as overseers of Church, and evaluates its effectiveness and direction. The Elders "have final say in any and all matters concerning the overall direction of [Church]." Church's Senior Pastor is a permanent member of the Board of Elders.

The Senior Pastor is the leader of Church. The Board of Elders may not terminate the Senior Pastor. The Senior Pastor is accountable to the Pastor Accountability Team, a group of individuals selected by the Senior Pastor and approved by the Board of Elders.

Members of the Pastor Accountability Team serve for an indefinite term, but must be reaffirmed annually by the Board of Elders. Currently, Pastor serves as Senior Pastor of Church. You state that "there is a lay-leader within Church that's being mentored to assume the role of pastor at a later date" but you did not specify who that individual is, who is mentoring that individual, or the timeline for such a transition.

You also operate Website as a part of the Ministry Division. Website is under development, but completed portions provide links to the Bible and specific selected passages therein, list a daily devotional message, tell stories of encouragement, provide links to blogs, and allow the user to submit a prayer request, among other content. You further state that Church sermons will be uploaded to Website for broadcast and access by the general public.

Website serves as the platform for Program, your internet-based religious education program. You state that Program is under development, and that program-specific information and/or content are not currently available. You state that Program will provide online learning courses and weekly lessons roughly similar to a Sunday school or small group Bible studies. You state that Program will utilize discussion boards and real-time group chats to deliver coursework online to students.

Program will be administered by volunteers and will be open to the public. Program is offered at no charge to students, but you state that outside, third-party organizations may be charged a small fee (\$ initial setup charge and \$ per year thereafter). You state that any profits or proceeds from Program will be used to further your overall ministry purpose.

Consulting and Merchandising Divisions

The Consulting Division and the Merchandising Division will be managed separately from the Ministry Division. You state that the targeted audience is private, Christian organizations (both for-profit and non-profit), specifically churches. However, you state that the goal would be to "expand into the secular marketplace."

The Consulting Division has three "branches." The Education Branch provides seminars and classes about team building, conflict resolution, and process improvement, all incorporating Biblical principles into the corporate or church workplace. The Coaching Branch provides executive and life-coaching services that incorporate Biblical truths. The Recruitment Branch, which is in a conceptual phase, would connect Christian job-seekers with Christian organizations, and you also would use this service to reach non-Christian's with your ministry outreach.

The Merchandising Division "is for public awareness and advertising [your] overall ministry efforts." To accomplish this goal, it focuses on producing and/or selling items that promote the "brands" of you, Website, and Church (including pens, shirts, crosses, hats, etc.). These items are affixed with logos and names, as well as Bible verses. You believe that the public's primary purpose for buying these items would be to help generate funds to promote and support the ministry.

The Merchandising Division has three branches. The Marketing Branch seeks to promote your organization and Website using traditional advertising mediums. The Sales Branch is responsible for physically moving merchandise from production to the

consumer, and sells merchandise at trade shows, craft shows, and local fairs, among other places. The Productions Branch is responsible for determining the most efficient manner in which to produce merchandise that promotes you, Website, and Christian awareness in general.

You intend to generate income from both your Merchandising Division and your Consulting Division activities. You state that all income from these activities will be "used for the overall organization that exists for a ministry purpose."

Governance

Your Bylaws state that the organization will have a board of directors (collectively the "Board" and individually the "Directors"). The Board currently has four members: Pastor; Director 1; Director 2; and Director 3. Directors are appointed for life, but may be removed with or without cause by a two-thirds vote of disinterested directors. The organization has three officers: the President; the Secretary; and the Treasurer. Only Directors are eligible to serve as officers.

Pastor serves as your Chief Executive Officer and President, and is responsible for all ministry aspects of your organization. Pastor serves as pastor of both you and Church "to insure [that] both remain committed and focused on God's work per Biblical principles in a Spiritual role." You state that neither you nor your Board "ha[s] any control over Pastor in his role as Senior Pastor of Church." You further state that "[t]here are no corporate controls neither built into the design nor captured in writing anywhere" that would enable you to govern Pastor's conduct in his capacity as Senior Pastor of Church.

Director 1 serves as your Director of Education, and is responsible for the educational aspects of your operations. Director 1 is married to Pastor. Director 2 serves as your Director of Administration, and is responsible for administrative duties such as scheduling and recording meetings and maintaining your records. Director 2 is the great-nephew of Director 1 and Pastor. Director 3 serves as your Director of Marketing. You did not indicate that Director 3 is related to the other Directors.

You adopted a conflict of interest policy to protect the organization's tax-exempt interests when engaging in transactions or arrangements that may benefit the private interest of an officer or director, or result in an excess benefit transaction.

Members

You state that your members consist of individuals no longer active in a church, as well as people who are actively involved within a church but who seek to enhance or to supplement their worship by way of their involvement with you. You did not provide information about your membership, but you state that Church has members. You state that Website and Program further expand the membership of Church, but you were not able to provide specific details about the roles of Website and Program in growing Church.

Funding

You state that your operations are funded by donations from members of Church. You state that you intend to generate additional funding through donations made on Website

and from the proceeds derived from Program, but to date neither source has generated more than nominal income. You also will generate revenue from the Consulting and Merchandising Divisions.

LAW

Section 501(a) exempts from federal income taxation organizations described in § 501(c).

Section 501(c)(3) describes organizations organized and operated exclusively for charitable, religious, and other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 509(a)(1) provides that the term "private foundation" does not include an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

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

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (the "Regulations") states that in order to be exempt as an organization described in § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that 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)(1)(i) states that an organization is "organized exclusively" for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iii) states that an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to carry on, as more than an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes. Section 1.501(c)(3)-1(b)(1)(iv) further provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in § 501(c)(3).

Section 1.501(c)(3)-1(b)(4) states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, 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, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in § 501(c)(3) of the Code.

An organization will not be regarded as exempt 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) 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, who are defined in § 1.501(a)-1(c) as persons having a personal and private interest in the activities of the organization.

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

Rev. Proc. 2012-9, 2012-2 I.R.B. 261, section 4.01, states that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from Federal income tax is claimed. Section 4.03 states that exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

For an organization claiming the benefits of § 501(c)(3), "[t]ax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions." Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 854 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973). The applicant for tax exempt status under § 501(c)(3) has the burden of showing it "comes squarely within the terms of the law conferring the benefit sought." Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958).

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), involved an organization operating a donor advised fund. The Service determined that the organization was operated for personal rather than public benefit based on a review of the organization's promotional materials, operations, finances, and records of activities. The court upheld the Service's denial of § 501(c)(3) status, emphasizing that the taxpayer carries the burden of demonstrating entitlement to tax exemption, and that "[i]t is well-accepted that, in initial qualification cases . . . , gaps in the administrative record are resolved against the applicant. . . . [and] 'courts can draw inferences adverse to a taxpayer seeking exempt status where the taxpayer fails to provide evidence concerning its operations, or where the evidence is vague or inconclusive.'" Id. at 802 (citations omitted).

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 (2009), involved an organization that operated a pooled trust. One individual served as the organization's sole director, officer, employee, and member, and thus, was vested with all of the organization's decision making power. The organization's bylaws included meeting and voting procedures. However, it had only one member. The organization had a stated

conflict of interest policy and its articles of incorporation contained a prohibition against private inurement. However, there were no procedures in place to enforce the conflict of interest policy, and there were no personnel in place to ensure that private inurement would not occur. And although the organization stated that the sole member would not receive compensation, its articles of incorporation expressly authorized payment for services rendered to the corporation. The Service denied exemption to the organization based on these factors, as well as the organization's failure to adequately respond to various requests for additional information. The Tax Court upheld the Service's determination, finding that the organization "provided only generalizations and conclusory statements in response to repeated requests . . . for more detail regarding its proposed activities." *Id.* at *13. The court stated that such responses "d[id] not provide sufficient detail to determine that [the organization would] be operated exclusively for charitable purposes" and that "the record d[id] not demonstrate that there [was] oversight to prevent the organization from being operated to benefit [its sole member]." *Id.* at *19, 21.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), *aff'd*, 670 F.2d 104 (9th Cir. 1981), the Tax Court denied exemption to a small family church. The court stated that meeting the taxpayer burden requires an "open and candid disclosure of all facts bearing upon [the applicant's] organization, operations, and finances . . . [and if] such disclosure is not made, the logical inference is that the facts, if disclosed, would show that [the applicant] fails to meet the requirements [for exemption]." *Id.* at 534-35. The court found that the close family relationship of the organization's only three board members, who also controlled 100% of the entity's voting rights, put them in a position to "without challenge, [] dictate [the organization's] program[s] and operation[s], prepare its budget, and spend its funds, and [that they] could continue to do so indefinitely." *Id.* The court acknowledged that the presence of a small, closely-related board alone was not enough to deny tax exemption. However, when combined with the organization's vague and uninformative responses to questions about expenditures, membership, and activities, denial was appropriate, because the organization failed to meet its burden of showing the absence of private benefit to its individual members.

In National Association of American Churches v. Commissioner, 82 T.C. 18, 34 (1984), the Tax Court held that the combination of unfavorable facts and circumstances and the applicant's failure to provide "full and complete information from which [the Service could] make a well-informed determination" was sufficient to deny exemption. In so holding, the court emphasized the need for open and candid disclosure by organizations applying for exemption.

In Church by Mail, Inc. v. Commissioner, T.C. Memo 1984-349, *aff'd*, 765 F.2d 1387 (9th Cir. 1985), an organization sought § 501(c)(3) exemption and claimed it was a church where its main activity was mailing literature that focused on the ministry of one of its reverends. That reverend served as an officer of the church along with another reverend. In addition, the two reverends were the sole shareholders of an ad agency through which the church mailings were obtained. The two reverends received commissions on each order placed through the agency. The two reverends also were the sole shareholders of a computer services business, which, through the ad agency, provided services to the church. The ad agency marked up the cost of the computer services and then billed the church at the increased rate. Finally, the two reverends operated another ministry that was very similar to but nevertheless distinct from the

applicant-church. The church, the ministry, and the ad agency all shared office space, and the two reverends carried out effectively all responsibilities associated with the various entities. Furthermore, several family members of the reverends received payments from these entities. The church received over \$3 million in "contributions" in one tax year, but after taking deductions for its mailings and other expenses, it reported a net loss. The Tax Court held that the business relationships between the church and the outside entities facilitated the flow of private financial benefits to the two reverends, their outside entities, and their families. The court gave particular attention to the substance of the relationships between the various entities and individuals, and focused on the potential for the enablement of "current as well as potential abuse through manipulation of the arrangements between those entities." Id. at *34.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that a trade association did not qualify for exemption, because it had an underlying commercial motive that distinguished its educational program from the type provided by a university. In so holding, the Court ruled that the presence of a single non-exempt purpose, if substantial in nature, destroys an organization's basis for tax exemption, regardless of the number or importance of that organization's truly exempt purposes.

In American Guidance Foundation, Inc. v. United States, 490 F. Supp. 304 (D.D.C. 1980), the court held that a religious organization exempt under § 501(c)(3) was not a church described in § 170(b)(1)(A)(i). The court discussed the "14 criteria" developed by the Service to aid in the evaluation of applications for church foundation status. Those 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/a complete organization of ordained ministers ministering to their congregations; (8) ordained ministers selected after completing prescribed courses of study; (9) literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) Sunday schools for the religious instruction of the young; and (14) schools for the preparation of its ministers. Id. at 306. The court stated that "[a]t a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship" and reasoned that certain criteria are of central importance in distinguishing a "church" from other forms of religious organizations –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. Id. With respect to the existence of a regular congregation, the court held that a congregation consisting of the organization's organizer and his immediate family members "d[id] not constitute a 'congregation' within the ordinary meaning of the word." Id. at 306-07.

In Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 924 (1986), the Tax Court said that "although fundamental to determining whether an organization is a church, religious purposes alone do not serve to establish it as a church. Equally important are the means by which its religious purposes are accomplished." The court then defined a "church" for purposes of § 170(b)(1)(A)(i) as "a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs." The court further stated that "a church's principal means of accomplishing its religious purposes must be to assemble regularly a group of

individuals related by common worship and faith." Id.

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991), the Eighth Circuit upheld a Tax Court decision denying church status to an organization because it failed to meet the factual requirements of being a church under § 501(c)(3). The court cited the 14 criteria, and gave particular emphasis to the facts that the organization did not regularly provide religious services or religious education for the young and did not disseminate a doctrinal code. Moreover, the court found that the organization lacked an established congregation, because "nothing indicates that the participants considered [the organization] to be their church." Id. at 339.

In Foundation of Human Understanding v. United States, 614 F.3d 1383 (Fed. Cir. 2010), cert. denied, 131 S. Ct. 1676 (Mar. 21, 2011), the Court of Appeals for the Federal Circuit affirmed a decision by the Court of Federal Claims denying an organization church status under § 170. The court rejected the organization's argument that "a religious organization should be treated as a church under § 170 as long as 'there is a body of followers beyond the scope of a "family church" . . . [who] seek the teachings of the organization and express or acknowledge an affiliation with its religious tenets.'" Id. at 1389. The court held that "more than mere affiliation by a number of people with an organization espousing a particular belief system" is necessary to qualify as a church within the meaning of § 170. Id. Instead, "a religious organization must create, as part of its religious activities, the opportunity for members to develop a fellowship by worshipping together." Id.

ANALYSIS

1. Qualification as an Organization Described in § 501(c)(3)

To qualify for exemption as an organization described in § 501(c)(3), an applicant must be both organized and operated exclusively for one or more of the purposes specified in that section. § 1.501(c)(3)-1(a). A favorable determination letter will not be issued to an organization unless its application and supporting documents establish that it meets the particular requirements of the section under which it claims tax exemption. Rev. Proc. 2012-9, supra.

"Tax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions." Christian Echoes, 470 F.2d at 854; see also Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. Ohio 1974) ("An exemption is an exception to the norm of taxation. An organization which seeks to obtain tax exempt status, therefore, bears a heavy burden to prove that it satisfies all the requirements of the exemption statute. The Supreme Court repeatedly has said that exemptions from taxation are not granted by implication. The Tax Court has stated consistently that '[a] statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power.'"). Meeting this burden requires an "open and candid disclosure of all facts bearing upon [the applicant's] organization, operations, and finances . . . [and if] such disclosure is not made, the logical inference is that the facts, if disclosed, would show that [the applicant] fails to meet the requirements [for exemption]." Bubbling Well, 74 T.C. at 535.

You have not met your burden of proving that you qualify for tax exemption as an organization described under § 501(c)(3), because your application and your responses

to our requests for additional information do not establish that you meet the particular requirements for exemption under that section. See Rev. Proc. 2012-9, supra; Christian Echoes National Ministry, 470 F.2d at 854; Nelson, 30 T.C. at 1154. You have not established that you are organized exclusively for one or more exempt purposes. § 1.501(c)(3)-1(b)(1)(i). You likewise have not met your burden of proving that you will operate exclusively for one or more exempt purposes, and that you will not operate for the benefit of private individuals or shareholders. §§ 1.501(c)(3)-1(c)(1), (c)(2), (d)(1)(ii). Accordingly, you do not qualify for exemption from Federal income tax as an organization described under § 501(c)(3).

A. Organizational Test

An organization is "organized exclusively" for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes, and do not expressly empower the organization to engage (other than insubstantially) in activities which are not in furtherance of one or more exempt purposes. § 1.501(c)(3)-1(b)(1)(i).

Your Articles do not contain a purpose clause that properly limits your activities to those described in § 501(c)(3). § 1.501(c)(3)-1(b)(1). Your Articles also lack a sufficient dissolution clause. § 1.513-1(b)(4). Although, you state that you will amend your Articles to include the required purpose and dissolution clauses, you have yet to make such amendments.

Accordingly, you do not satisfy the organizational test under § 1.501(c)(3)-1(b).

B. Operational Test

An organization is "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in § 501(c)(3), and if not more than an insubstantial part of its activities furthers a non-exempt purpose. § 1.501(c)(3)-1(c)(1); see also Better Business Bureau, 326 U.S. at 283 (construing a similar provision of the Social Security Act such that "[t]he presence of a single [non-exempt] purpose . . . [that is] substantial in nature[] will destroy the exemption"). An organization will not be regarded as operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals, or if it serves a private rather than a public interest. §§ 1.501(c)(3)-1(c)(2), (d)(1)(ii).

1. Failure to Adequately Describe Activities That Accomplish Exempt Purposes

You have not provided clear and unambiguous descriptions of your activities sufficient to meet your burden of proving qualification for § 501(c)(3) status, and we are unable to conclude that you meet the requirements for exemption under that section. Rev. Proc. 2012-9, supra; New Dynamics Foundation, 70 Fed. Cl. 782.

Although you recently "planted" Church, you did not provide sufficient detail about the relationship between its activities and your overall operations. Specifically, you did not explain how you will maintain adequate control over the activities and operations of Church given its general independence from you and your Board, and you did not demonstrate that Church actually operates as a component of you –as opposed to

operating as an entirely independent entity that is related to you merely because you claim that it is a part of your Ministry Division.

Moreover, you failed to provide sufficient explanations of your activities associated with the operation of Website and your Merchandising and Consulting Divisions. You also did not explain how these aspects of your operations are related to and help to accomplish your exempt purpose (other than through the generation of income). Instead, you merely state that all income from these activities "is used for the overall organization that exists for a ministry purpose." Such "generalizations and conclusory statements in response to [our] repeated requests . . . for more detail regarding [your] proposed activities" are not sufficient to establish qualification for tax exemption. Ohio Disability Association, T.C. Memo 2009-261, at *13.

Thus, you failed to provide "full and complete information from which [we could] make a well-informed determination" regarding your application for tax exemption. National Association of American Churches, 82 T.C. at 34. As the court stated in New Dynamics Foundation, 70 Fed. Cl. at 802, "gaps in the administrative record are resolved against the applicant. . . . [and] inferences adverse to a taxpayer seeking exempt status [can be drawn] where the [applicant] fails to provide evidence concerning its operations, or where the evidence is vague or inconclusive." See also Ohio Disability Association, T.C. Memo 2009-261, at *13.

We expressly stated our specific areas of concern and you had multiple opportunities to provide the information needed for us to make a determination on your application. Your responses to our inquiries generally were broad and uninformative, and lacked the specificity needed to support an application for tax exemption. See Bubbling Well, 74 T.C. 531; National Association of American Churches, 82 T.C. 18. To continue proceeding in this manner "would be to encourage [you] to play a tight-lipped form of 'cat and mouse' with [our] information requests." New Dynamics Foundation, 70 Fed. Cl. at 802.

Because you did not provide us with enough information to gain a complete understanding of the relationship between you and Church, it is unclear how Church fits within your overall organizational and administrative structure. As a result, we cannot assess how, if at all, the activities of Church should be evaluated in the context of your qualification for tax exempt status. Moreover, because you did not clearly and unambiguously explain the nature and extent of your activities conducted through Website, the Merchandising Division, and the Consulting Division, we cannot determine whether these largely commercial activities will be, as you suggest, a minor part of your overall operations.

Accordingly, you have not satisfied your burden of proving qualification for tax exempt status under § 501(c)(3).

2. Substantial Part of Activities Not in Furtherance of Exempt Purposes

Based on the information you have provided it appears that more than an insubstantial part of your activities are or will be devoted to furthering non-exempt purposes. § 1.501(c)(3)-1(c)(1).

Your Church-related activities represent the only aspect of your operations that are directed toward a clearly exempt purpose. As described above, it is unclear how Church fits within the overall structure of your operations, and we are unable to determine whether the operation of Church constitutes your primary activity. And since "Church could completely break-away from [y]our corporation; become incorporated itself; and there's nothing [you] can do about that" it is possible that you would continue to function in such an event without any true exempt purpose. In addition, you refer to the "Church brand" and the "Taxpayer brand" in a manner that suggests Church could serve as a mere conduit through which to promote and expand your other, more commercial, activities. Thus, we cannot conclude that you are operated exclusively for one or more of the exempt purposes described in § 501(c)(3).

Even if we were to assume that the operation of Church constitutes a substantial part of your overall activities, and that this aspect of your operations is devoted primarily to the achievement of one or more exempt purposes, it nevertheless appears that more than an insubstantial part of your overall activities furthers non-exempt purposes. For example, your sale of pens, caps, shirt, and so forth, albeit affixed with your name and perhaps also religious themes or messages, appears to be directed primarily toward advertising the "brands" of Taxpayer, Church, and Website, and the generation of income to fund your operations. In fact, you admitted as much in your responses to our inquiries about the relationship between these activities and the accomplishment of your exempt purpose. In addition to your frequent references to Taxpayer, Church, and Website as "brands," you described the majority of your activities in the context of business models, supply chains, marketing strategies, and other, typically business-oriented approaches. Moreover, you plan to engage in these activities on a continuous basis via Website, and even if such activities are a small part of your operations at the present time, your responses suggest that they will be expanded and that more time will be devoted to them in the future.

Specifically, it appears that the Merchandising and Consulting Divisions will be operated primarily for commercial purposes. Although you provided an organizational chart summarizing the operation of these Divisions within the overall context of your organization, you provided only general descriptions of the types of activities in which they will engage. Nevertheless, even these vague descriptions clearly indicate the commercial character of your intended activities.

Your Consulting Division would operate in both religious and corporate settings, and the executive training and life-coaching services it provides closely resemble similar services offered by for-profit entities. And even though the Recruitment Branch is in a conceptual phase, the description you provided suggests that it would function similar to an online job placement service, such as Monster.com or LinkedIn.com. This view is supported by the fact that you intend to use this service to reach non-Christian's, and while you state that you would do so to enhance your ministry outreach, you provided no information to explain how you will incorporate your religious message and ministry outreach into this service.

You state that the purpose of your Merchandising Division "is for public awareness and advertising [your] overall ministry efforts," but to achieve this end, the Division will focus on producing and/or selling items that promote the "brands" of Taxpayer, Website, and Church. There is nothing inherently religious about the majority of items you described (such as pens, shirts, and hats), and you admittedly would engage in your

Merchandising Division activities primarily as a means for generating revenue. As its name would imply, the activities of the Merchandising Division are primarily commercial in nature. Moreover, you intend to use Website to enhance these activities and to devote a greater portion of your time to the operation of this Division in the future. Thus, it appears the primary purpose of this aspect of your organization is to engage in non-exempt, commercially driven activities.

Furthermore, you did not provide sufficient information to demonstrate that Program is not operated primarily for commercial purposes. Such information is particularly important under the circumstances, due to the predominantly commercial hue of your Merchandising and Consulting Division activities.

The information you provided indicates that more than an insubstantial part of your operations will be devoted to non-exempt and largely commercial activities that are unrelated to the accomplishment of your stated § 501(c)(3) purpose. See Better Business Bureau, 326 U.S. at 283-84 (ruling that the presence of a single non-exempt purpose, if substantial in nature, destroys an organization's basis for tax exemption, regardless of the number or importance of that organization's truly exempt purposes); see also § 513(a) (stating in relevant part that an organization is engaged in an "unrelated trade or business" where the conduct of such activities is not substantially related to the exercise or performance of that organization's exempt purpose, other than from its need for income or funds or the use it will make of the profits it derives); § 1.513-1(d)(2) (stating in relevant part that a trade or business is "related" to exempt purposes only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income), and that such trade or business is "substantially related" only if the causal relationship is a substantial one). Accordingly, you do not satisfy the operational test. § 1.501(c)(3)-1(c)(1).

3. Potential for Inurement and Private Benefit

Based on the information you submitted we cannot conclude that no part of your earnings will inure to the benefit of private shareholders or individuals. § 1.501(c)(3)-1(c)(2). Moreover, you have not established that you are not operated for the benefit of private interests such as designated individuals, the creator or his family, or persons controlled, directly or indirectly, by such private interests. § 1.501(c)(3)-1(d)(1)(ii).

Despite the fact that you consider it to be a part of your Ministry Division, Church is authorized to operate independent of you, and is structured such that nothing would prevent it from operating in a manner that is inconsistent with your exempt purposes. You state that the "constitution" of Church restricts any activities or conduct that would jeopardize your tax exempt status, but since you and your Board "ha[ve] no control over Church and/or its Board of Directors" nor "over Pastor in his role as Senior Pastor of Church" you effectively have no means for enforcing such a restriction. Although you state that you "fe[el] that Church leadership/membership w[ill] support any corporate requirements levied upon them by [you]" a mere feeling alone is not a replacement for formal, structured procedures that are put in place to maintain adequate control over an organization and to ensure that no individual or entity impermissibly benefits from its operations. See Ohio Disability Association, T.C. Memo 2009-261 at *19, 21 (finding that there were no procedures in place to enforce the organization's conflict of interest policy and that there were no personnel in place to ensure that private inurement would not

occur, and thus, the applicant “d[id] not demonstrate that there [was] oversight to prevent the organization from being operated to benefit [its sole member]”). Id. at *19, 21.

Like the organization in Bubbling Well, 74 T.C. 531, you are controlled by a small, family dominated board. Control of your operations is exercised by four directors, three of whom are blood relatives (Pastor, Director 1, and Director 2). Neither the congregants nor the governing members of Church have any control over you or the Board. Thus, your Board is in a position to “without challenge, [] dictate [the organization’s] program[s] and operation[s], prepare its budget, and spend its funds . . . indefinitely.” Id. at 534-35.

Although you adopted a conflict of interest policy, your small, family-controlled Board severely undermines its effectiveness. As such, you are structured in a manner that could facilitate “current as well as potential [future] abuse” of tax exempt status. Church by Mail, T.C. Memo 1984-349 at *34.

Accordingly, you do not qualify for tax exemption, because you have not met your burden of proving that no part of your net earnings will inure to the benefit of private shareholders or individuals as set forth in § 1.501(c)(3)-1(c)(2) and that your activities will not serve to benefit private interests as set forth in § 1.501(c)(3)-1(d)(1)(ii).

2. Qualification as a “Church” Under § 170(b)(1)(A)(i) of the Code

You request classification as a church under §§ 509(a)(1) and 170(b)(1)(A)(i). To be classified as a church, you must first be recognized as an organization that is organized and operated for religious purposes within the meaning of § 501(c)(3). Above, we determined that you do not qualify as an organization described in § 501(c)(3). But even if we had determined that you qualified as an organization described in § 501(c)(3), you still would not have qualified as a church described in § 170(b)(1)(A)(i), because you do not satisfy the associational test and the 14 criteria that guide this determination.

A. The Associational Test

In American Guidance, 490 F. Supp. at 306, the court stated that “[a]t a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship.” This associational role, the court reasoned, is what “separates a ‘church’ from other forms of religious enterprise.” Id. at 306; see also Church of Eternal Life, 86 T.C. at 924 (“a church’s principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith”). Thus, if an organization does not serve this associational role, it fails to achieve the minimum characteristics of a “church,” and instead must be viewed simply as a “religious organization” subject to the filing requirements of § 6033.

Initially, you resembled the organization that was denied recognition as a church in Foundation of Human Understanding, 614 F.3d 1383, because you planned to engage primarily in internet-based religious activities. Such activities, standing alone, amount to the same type of “mere affiliation by a number of people with an organization espousing a particular belief system” that the court in Foundation of Human Understanding deemed insufficient for church classification under § 170. However, you “immediately discovered that [you] would need a traditional church structure and support group to help [you]

deliver all the products and services the online ministry requires." Therefore, you "planted" Church on Date 2.

As explained above, we cannot conclude that the activities of Church should be deemed a part of your operations under these circumstances. You state that Church is operated as a part of your Ministry Division. Nevertheless, Church has its own "constitution," its own operational and governance procedures, and its own controlling members. Moreover, you state that "Taxpayer has no control over Church and/or its Board of Directors" that "the Spiritual development of the church/day-to-day business is determined by its pastors, elders, and body of believers" and that you "fully understand[] that Church could completely break-away from [you]; become incorporated itself; and there's nothing [you] can do about that." Consequently, it appears that Church more closely resembles a separate entity than it does a subordinate part of your organization. This is problematic under the circumstances, because the activities of Church represent the only aspect of your operations that physically brings people together in order to worship. Moreover, it appears that your operation of Website, Program, and the Merchandising and Consulting Divisions easily could overshadow the operation of 50-member Church, thus trivializing its role in the context of your operations as a whole.

Thus, even with the presence of Church, you continue to resemble the organization in Foundation of Human Understanding, 614 F.3d 1383. There the court concluded that the organization failed the associational test because its role in bringing together people to worship was incidental to its main function of disseminating its religious message through radio and internet broadcasts and written publications. Likewise, it appears that the activities associated with Church are (or will be) secondary to your main function of operating Website and Program, and your activities associated with the Merchandising and Consulting Divisions. In other words, the operation of Church appears to be separate from and incidental to your other functions. See also De La Salle Institute v. United States, 195 F. Supp. 891, 901 (D.C. Cal. 1961) (finding that the organization's "operation of . . . chapels [wa]s incidental to [its] principal activities. . . . [and that t]he tail cannot be permitted to wag the dog. The incidental activities of [an organization] cannot make [it] a church").

As the court stated in Foundation of Human Understanding, 614 F.3d 1383, the associational test is the minimum standard an organization must satisfy to obtain status as a "church" under § 170. You do not satisfy this minimum standard. Accordingly, you are not a "church" within the meaning of § 170(b)(1)(A)(i).

B. The 14 Criteria

If an organization satisfies the associational test, the analysis then moves to the total facts and circumstances embodied within the 14 criteria. See American Guidance, 490 F. Supp. 304; Spiritual Outreach, 927 F.2d 335. Even if the activities carried out by Church were sufficient to satisfy the associational test, the balance of the 14 criteria weighs against classification as a church under these circumstances.

You have a distinct and independent legal existence under the laws of State, and you have a written creed, statement of faith, or summary of beliefs, as well as a formal code of doctrine and discipline. However, you state that you do not have a distinct religious history. You also state that you do not have schools for the preparation of ordained ministers or religious leaders, and that you do not ordain, commission, or license such

individuals. Moreover, you state that you do not have any literature of your own (other than the posting of devotionals and messages on Website, at least some of which is the republication of religious text available from or through other sources).

Furthermore, our inability to determine whether Church should be considered a part of your operations or instead viewed as a separate and independent entity clouds the analysis of the 14 criteria. For example, if Church is justifiably considered a part of you, then you would satisfy the criterion of an "established place of worship." However, if Church is, as it appears, a separate and distinct entity from you, then you would not satisfy this important factor. Likewise, if Church is not a part of you, you would not have "regular congregations" or "regular religious services." And although Church has a "definite and distinct ecclesiastical government," your Board operates using a more business-like governance structure.

Thus, you do not satisfy the majority of the 14 criteria used by the Service to determine qualification for "church" status under § 170(b)(1)(A)(i).

CONCLUSION

In light of the foregoing, we have determined that you do not qualify for exemption from Federal income tax under § 501(a) as an organization described in § 501(c)(3), and that you do not qualify for classification as a "church" under § 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 will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code 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 Internal Revenue Service.

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
Attn:

1111 Constitution Ave NW
Washington DC 20224-0002

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

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations