



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201310047**
Release Date: 3/8/2013
Date: December 11, 2012

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

U.I.L. 501.26-00 No Third Party Contacts

Dear

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(d).

We made this determination for the following reason(s): You are not a religious organization described in § 501(d) because you advocate and engage in activities that are illegal and contrary to public policies.

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



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

No Third Party Contacts

Date: October 2, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

U.I.L. 501.26-00

Legend:

- P =
- Q =
- X =
- Y =
- Z Church =
- Founder =
- State 1 =
- State 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- X =
- XX =
- XXX =
- XXXX =

Dear

We have considered your letter of application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(d) of the Code. Based on the information provided, we have concluded that you do not qualify for exemption under section 501(d). The basis for our conclusion is set forth below.

You were created on Date1 under the provisions of a document called Declaration of Trust of the X. On Date 2, your trustees issued an Amended and Restated Declaration of Trust of X. The trust instrument subscribes to the laws of State 1.

The preamble of the trust instrument states that you were formed as a religious trust. You exist to preserve and advance the religious doctrines and goals of Y. You indicate that P is the doctrine and law found in your holy books, which are the guiding tenets by which you operate.

Membership in your organization is limited to members of Y and is granted and revoked by your Board of Trustees. In this regard, you state that the privilege to be a member in the organization is intended to be limited to persons who share the same religious beliefs. Your membership admission policy is also intended to limit residents in your facilities to persons who subscribe to the doctrine, beliefs and practices of the organization.

You require consecration or unconditional dedication to you by accepted members of their properties, time, talents, money and materials. Your members consecrate their real property to you by deeds of conveyance.

Your members live in the facilities of your community and they work in the businesses you operate. You represent that you maintain a common treasury in which profits generated by your businesses are deposited and from which the expenses of the organization are paid. Your Trust instrument provides that each year members must include in their gross income their pro rata share of your taxable income, whether distributed or not.

In 20 , you reported income of \$x received from business and \$xx from consecration, and a loan receipt of \$xxx. You reported total expenses of \$xxxx for payment primarily of expenses classified as farm expenses, health care, members' living provisions and expenses, transportation, and utilities (excluding payment of property taxes of \$xxx from above loan receipt from one individual).

You operate eighteen (18) companies, most of which engage in components of the housing construction industry. Some engage in other businesses that include software development, mobile technology equipment service and repair, animal husbandry, furniture manufacturing and sales and clothing. Four other companies manage your agriculture concerns, utility needs, member labor, and the medical needs of members. All operated businesses, except one, are formed as limited liability companies (LLCs). The other one is formed as a trust and solely to manage your established businesses. The LLCs are all treated as disregarded entities with you as the sole member.

You are governed by three Trustees who are also your officers and religious leaders. All three are also officers and religious leaders of Q, which you described as a separate church entity that is authorized to function regionally by Y.

All your officers, religious leaders and members are members of Y. Y follows the beliefs and practices that were the original beliefs and practices of Z Church established and set forth by Founder. When Z Church departed from many of these beliefs, practices and teachings of Founder, some members separated from Z Church and established Y. You believe that Y is the continuation of Z Church established by Founder and has authority of the true successor to the divine authority of Founder.

These beliefs and practices include polygamy or plurality of wives. You stated that you "...have a religious belief known as 'Celestial Marriage' which includes a plurality of wives." You describe "Celestial Marriage" as a private religious relationship between consenting parties of legal age which is not recognized as a marriage by state authorities. You said that you do not allow your members to seek multiple marriage certificates from state authorities, thus, you do

not believe that your religious practice "constitutes bigamy or multiple 'state recognized' marriages as defined under applicable state law.... "

A news article from Examiner.com on Date 3, reported that a court in your state found a leader of Y with three wives under "celestial marriages" guilty of bigamy. We asked that you comment on this article, but you did not respond.

Applicable Law

Section 501(a) of the Code provides that an organization described in subsection (c) or (d) or section 401(a) shall be exempt from federal income tax unless such exemption is denied under section 502 or 503.

Section 501(d) of the Code provides that the following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

Rev. Rul. 75-384, 1975-2 C.B. 204 holds that an organization formed to promote world peace that planned and sponsored protest demonstrations at which members were urged to commit acts of civil disobedience did not qualify as tax exempt.

Rev. Rul. 71-447, 1971-2 C.B. 230, states that under common law, the term "charity" encompasses all three major categories of religious, educational, and charitable purposes. All charitable trusts, educational or otherwise, including religious trusts, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy. Citing Restatement (Second), Trusts, (1959) Sec. 377, Comment c: "A Trust for a purpose the accomplishment of which is contrary to public policy, although not forbidden by law, is invalid". Restatement (Second), of Trusts, Section 377 states that a charitable trust cannot be created for a purpose which is illegal. The first comment illustrates the rule, indicating that where the trust estate is to be used for a criminal purpose, the trust is invalid. Thus, "a trust for the promotion of polygamy...is invalid."

Rev. Rul. 58-66, 1958-1 C.B. 60, provides that the marital status of individuals as determined under state law is recognized in the administration of the Federal income tax laws. Therefore, if applicable state law recognizes common-law marriages, the status of individuals living in such relationship that the state would treat them as husband and wife is, for Federal income tax purposes, that of husband and wife.

Section 2.401(a)(2) of State 1 Family Code provides as proof of informal marriage when in a judicial, administrative or other proceeding, a man and a woman agreed to be married and after the agreement they lived together in this state as husband and wife and represented to others that they were married.

Section 25.01(a) of State 1 Penal Code provides that an individual commits an offense of bigamy if ---

(1) he is legally married and he:

(A) purports to marry or does marry a person other than his spouse in this state under circumstances that would, but for the actor's prior marriage, constitute a marriage; or

(B) lives with a person other than his spouse in this state under the appearance of being married.

Section 25.01(b) of State 1 Penal Code defines the term "under the appearance of being married" to mean holding out that the parties are married with cohabitation and intent to be married by either party.

In Reynolds v. United States, 98 U.S. 145 (1879), the Supreme Court held it is a law in the United States that plural marriage shall not be allowed and indicated that such law is within the legislative power of Congress, is constitutional and valid. After resolving the constitutionality and validity of the anti-polygamy law, the court stated ---

This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.

In Potter v. Murray City, 585 F. Supp. 1126, (D. Utah 1984), the court indicated that the landmark decision in the area of freedom of religion in connection with polygamy is Reynolds v. United States, *supra*, in which the Supreme Court confirmed a conviction even though the defendant believed that the practice of polygamy was his religious duty and of divine origin and he had received permission from the authorities of his church to enter into the polygamist marriages.

Also, the court indicated that a long line of decisions beginning with Reynolds, *supra*, had either expressly approved statutes forbidding the practice of plural marriage, or approved them in other contexts as subsisting authority in the area of the free exercise clause of the First Amendment. See, e.g., Miles v. United States, 103 U.S. 304, 26 L. Ed. 481 (1881); Cannon v. United States, 116 U.S. 55, 6 S. Ct. 278, 29 L. Ed. 561 (1885); Snow v. United States, 118 U.S. 346, 6 S. Ct. 1059, 30 L. Ed. 207 (1886); Davis v. Beason, 133 U.S. 333, 10 S. Ct. 299, 33 L. Ed. 637 (1890); Late Corporation of Latter-Day Saints v. United States, 136 U.S. 1, 10 S. Ct. 792, 34 L. Ed. 478 (1890); State v. Hendrickson, 67 Utah 15, 245 P. 375 (1926); Lovell v. City of Griffin, 303 U.S. 444, 449, 58 S. Ct. 666, 668, 82 L. Ed. 949 (1938); Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 (1940); State v. Barlow, 107 Utah 292, 153 P.2d 647 (1944), appeal dismissed for want of substantial federal question, 324 U.S. 829, 65 S. Ct. 916, 89 L. Ed. 1396 (1945), reh'g. denied, 324 U.S. 891, 65 S. Ct. 1026, 89 L. Ed. 1438 (1945);

Cleveland v. United States, 146 F.2d 730 (10th Cir.1945); State v. Musser, 110 Utah 534, 175 P.2d 724 (1946); Cleveland v. United States, 329 U.S. 14, 67 S. Ct. 13, 91 L. Ed. 12 (1946); In re State in Interest of Black, 3 Utah 2d 315, 283 P.2d 887 (1955); Braunfeld v. Brown, 366 U.S. 599, 81 S. Ct. 1144, 6 L. Ed. 2d 563 (1961); Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972); Paris Adult Theatre I v. Slaton, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973); United States v. Carroll, 567 F.2d 955 (10th Cir.1977); United States v. Ogle, 613 F.2d 233 (10th Cir.1979); United States v. Lee, 455 U.S. 252, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982); Bob Jones University v. United States, 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983). Id. Further, at no time has Reynolds, supra, been overturned by the Supreme Court. Id.

Bronson v. Swensen, 394 F. Supp. 2d 1329 (2005) indicated that the court in Potter v. Murray City, supra, analyzed the continuing validity of Reynolds v. United States, supra, by stating that Reynolds continued to be cited with approval by the Supreme Court in subsequent decisions, including Potter, as clear evidence that it was still the law of the land on the illegality of polygamy.

In Bob Jones University v. United States, 461 US 574 (1982), the Supreme Court upheld the Service's revocation of the tax exempt status of two schools because of their racially discriminatory policies. In reaching its decision, the Court indicated that entitlement to tax exemption depends on meeting certain common law standards of charity -- namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy. If an organization engages in activities in direct contravention of public policy, it may not be seen as providing a public benefit and cannot qualify as charitable, and therefore not exempt. Moreover, the Court agreed that IRS was correct in its position that it would be wholly incompatible with the concepts underlying tax exemption to grant tax-exempt status to an organization with purposes or policies contrary to established public policy, whatever may be the rationale of such organization. In that case, a private school's racial discrimination in education was held contrary to public policy.

In Twin Oaks Community v. CIR, 87 T.C. 1233 (1986) discussed the legislative history and purpose of section 501(d) to provide tax relief by eliminating the corporate level of taxation and leaving a single tier of individual tax. The Tax Court quoted an opinion of the Ninth Circuit that the only requirements for the exemption are that there be a common treasury, that the members of the organization include pro rata shares of organization income when reporting taxable income and, implicitly, that the organization have a religious or apostolic character. (Kleinsasser v. U.S., 707 F.2d 1024, 1029 (9th Cir 1983.))

Analysis

You have applied for exemption under section 501(a) of the Code as an organization described in section 501(d) which applies to a religious or apostolic organization. To be described in section 501(d), an organization must be created and operated for religious or apostolic purposes, and must have a common treasury, and if it engages in business for the common benefit of the members, the members must include in their individual tax returns their pro-rata share, whether distributed or not, of the taxable income of the association or corporation. The requirement that the organization be religious or apostolic is implicit, created by the title of section 501(d) and supported by legislative history. See, Kleinsasser v. U.S., supra.

You require members to consecrate or unconditionally dedicate to you their property, time, talents, money and materials. Members live in the facilities of your community and they work in the businesses you operate. You maintain a common treasury that includes the assets consecrated by your members and the income generated by your businesses from which the expenses of the community and member benefits are paid. Your trust document provides that your members must include in their gross income their entire pro rata share of your taxable income. Thus, you meet certain requirements of section 501(d).

We next consider the requirement that the organization be religious or apostolic. Your trust instrument indicates that you were formed as religious trust in preserving and advancing the religious doctrines and goals of Y, which, among other things, advocates the practice of polygamy or plurality of wives. Your members are limited to members of Y. You and your members follow the belief and practice of polygamy.

In the administration of federal income tax laws, the marital status of individuals is determined under state law pursuant to Rev. Rul. 58-66. Your state civil law provides that proof of informal (or what is also known as common-law) marriage in any proceeding is shown when a man and a woman agreed to be married, then lived together as husband and wife in the state, and represented themselves as such to others. See State 1 Family Code §2.401(a)(2). Your state criminal law provides that an individual commits bigamy if he is legally married and purports to marry or does marry another person other than his spouse; or lives with a person other than his spouse in the state under the appearance of being married. Your state defines the term "the appearance of being married" as holding out that the parties are married with cohabitation and intent to be married by either party. See State 1 Penal Code sections 25.01(a)(1), and 25.01(b). Thus, for federal income tax purposes, we must consider polygamous marriage as bigamy, and therefore, illegal in your state.

Moreover, the legality of polygamy has been litigated in federal and state courts for one hundred and thirty years. Federal and state courts have consistently held that polygamy is contrary to federal public policy, and that even the constitutional protection for freedom of religion does not prevent a state from proscribing it.

You affirm the practice polygamy or plurality of wives through "Celestial Marriage", which you indicate is your religious belief on plurality of wives. The "Celestial Marriage" proceedings appear to create informal or common-law marriages as defined by your state law. The religious ceremony shows intent to marry, and the parties thereafter live together and hold themselves out to the community as married. When undertaken with multiple partners, the proceedings and subsequent actions appear to constitute bigamy and violate your state penal code. See State 1 Penal Code sections 25.01(a)(1)(A), 25.01(a)(1)(B) and 25.01(b). Thus, you are promoting illegal acts under your state laws.

You claim, however, that because you tell your members not to obtain multiple marriage certificates, they do not violate your state bigamy law. It appears that the absence of state-issued certificate for your proceedings does not affect their recognition as informal or common-law marriages under your state laws and persons who are party to such marriages commit bigamy under your state laws. Also, a State 1 court recently confirmed that a man who had been married by your ceremony of "celestial marriage" to multiple wives and lived with them was guilty of bigamy under the law of State 1.

The practice of polygamy is also contrary to federal policy. In 1879, the Supreme Court held in Reynolds v. United States, *supra*, that the law ruling polygamy illegal was constitutional and valid. Further, the Court held that persons who practice polygamy as part of their religious belief cannot be relieved of the consequences of committing a crime proscribed by the law. Subsequent court decisions have unanimously followed and applied Reynolds, although there is no longer a federal statute forbidding polygamy. See Potter v. Murray City, other court cases cited therein, and Bronson v. Swensen.

The common law of trusts specifies that a charitable trust cannot be created for an illegal purpose. See Restatement (Second) of Trusts, section 377. In fact, Restatement specifically identifies promotion of polygamy as an illegal purpose in comments to that section. Because you advocate and engage in activities that contravene state laws and state and federal public policy, you cannot be a valid religious trust. Because you are not a valid religious trust, you cannot be recognized as a religious or apostolic association under 501(d) of the Code, notwithstanding that you have a common treasury and engage in business for the common benefit of members.

You also fail to meet the common law standards for charitable organizations. Although section 501(d) does not require explicit proof of charitable purposes, as does section 501(c), courts have found an implicit requirement. See Kleinsasser v. U.S., *supra*. Similar to the organization described in Bob Jones University v. United States, you also fail to meet the common law standards of charity that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy. See also Rev. Rul. 75-384, and Rev. Rul. 71-447.

Accordingly, we conclude that you are not exempt from federal income tax under section 501(a) as an organization described in section 501(d).

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 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

1111 Constitution Ave, N.W.
Washington, DC 20224

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

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

This letter supersedes our letter dated June 21, 2012.

Sincerely,

Holly O. Paz
Director, Rulings and Agreements