



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201420020**  
Release Date: 5/16/2014

Date: February 20, 2014

UIL: 501.03-00; 501.03-20

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

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,

Karen Schiller  
Acting Director, Exempt Organizations  
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: January 9, 2014

UIL: 501.03-00  
501.03-20

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

State =  
Date 1 =  
Date 2 =  
Church =  
Website =  
Pastor/Director 1 =  
Director 2 =  
Director 3 =  
Director 4 =  
Director 5 =  
Director 6 =

Dear :

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

**FACTS**

You are incorporated as a religious corporation under State law as of Date 1. Your Articles of Incorporation (hereinafter "Articles") state that you are organized exclusively for religious purposes within the meaning of § 501(c)(3). Specifically, you are organized "to provide church and spiritual services to those who do not have a church affiliation or denomination." You filed Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on Date 2.

You state that your purpose is “to introduce or re-introduce individuals to Christianity without the pressure of denomination or dogma and rites to hinder the words of the Bible.” Accordingly, you identify yourself as “non-denominational.”

You have a written creed, statement of faith, or summary of beliefs similar to standard Protestant Christian beliefs. Specifically, you state that “[t]he statement of beliefs for Christians is one god in all of existence and he created the universe and Adam and Eve, the original parents” and that you believe in the Holy Trinity (Father, Son, and Holy Spirit). Accordingly, your distinct religious history is the history of Christianity generally. Furthermore, you use the Bible as your religious literature.

You state that you “are focused solely on being a church and [do] not at this time nor do [you] foresee in the future any outside activities which would prevent [you] from devoting 100% of [your] time to the veneration of the God and his three distinct forms: The Father, the son and the Holy Spirit.” Nonetheless, you indicate that:

- You do not have regularly scheduled religious services;
- You do not have an established place of worship;
- You do not have an organized religious hierarchy or ecclesiastical government;
- You do not ordain, commission, or license ministers or religious leaders;
- You do not issue church charters;
- You are not part of a group of churches with similar beliefs and structures;
- You do not have an established congregation or other regular membership group;
- Your members may be associated with other denominations or churches; and
- You do not provide a school for the religious instruction of the young.

You state that your “established place of worship” is Website. In the future, your goal is to “seek a place of worship and propagate the word of the lord both online and in a brick and mortar location.” However, you provide no timeline for the accomplishment of this goal.

At this time, your only activity is recording religious sermons and messages for viewing online at Website. You state that your congregation “worships together on Sunday for a common day of worship.” However, you also state that your “services are prepared for viewing by [your] congregation when they have time to reflect upon the word of the day and teachings as provided by [Pastor],” that your congregation “worships together at the convenience of the individual,” and that your videos “are not scripted for a time or place.”

Your spiritual leader is Pastor. Pastor received formal training from and was ordained by Church. Pastor records and uploads your videos, which focus on “the Word and not a Eucharistic service.” You do not state how many videos you have posted. Additionally, you do not clearly state how often these videos are recorded and uploaded. You refer to your services as “daily services” but the videos on Website are titled “weekly message” and appear to be uploaded only two to three times a month.

You state that you do not have a formal membership process and that you “maintain a roster of those who participate in [your] worship and the members of [your]” congregation. However, you

failed to indicate how many members you have. Furthermore, your videos may be viewed on your website without first signing into an account.

You indicate that you conduct baptisms, weddings, funerals, and other religious rites but do not indicate when and where these rites are conducted.

Your Bylaws state that your Board of Directors consists of seven individuals, but you list only six individuals in your Form 1023. Pastor serves as Director 1. You state that Director 1 and Director 2 are related by marriage. However, Director 3, Director 4, Director 5, and Director 6, also appear to be related to each other by blood or marriage.

Currently, you fund your activities solely through contributions from Pastor. In the future, you intend to conduct formal fundraising activities. Specifically, you state that you will fundraise via word of mouth and mobile marketing. Additionally, you intend to solicit donations in the form of tithes and offerings through Website. Your suggested tithe is 10 percent of a member's income.

## LAW

I.R.C. § 170(b)(1)(A)(i) describes a church or convention or association of churches.

I.R.C. § 501(c)(3) exempts from taxation any corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in I.R.C. § 501(c)(3), 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 or operational test, it is not exempt.

Treas. Reg. § 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 which accomplish one or more of such exempt purposes specified in § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Rev. Rul. 56-262, 1956-1 C.B. 131, provides that an organization qualifies as a church only if its principal purpose or function is that of a church. An organization, whose activities include the conducting of religious services and/or the ministrations to the sick or mentally retarded, may have characteristics of a church and a hospital, and an educational institution, but where the principal purpose or function of such an organization is not that of a church or association of churches, or an educational organization, or a hospital, it will not qualify under any of the classes of organizations set forth in § 170(b)(1)(A)(i), (ii) or (iii).

Rev. Rul. 68-563, 1968-2 C.B. 212, provides that a religious broadcasting station that did not sell commercial or advertising time qualified for recognition under § 501(c)(3) even though it operated on a commercial license. Ordained ministers formed and directed the organization for

religious purposes. The organization operated a radio station to broadcast worship services and other programs having religious content. The ministers conducted Sunday services and daily chapel hours over the air. The organization devoted the remaining broadcast time to religious guidance and inspirational music. Contribution from the organization's listening public supported the organization. The organization did not sell time for commercial purposes. The ruling determined that, under these circumstances, the organization carried on religious activities by broadcasting worship services and other programs having religious content. Accordingly, the organization qualified for recognition under § 501(c)(3) as a religious organization.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945), the Supreme Court determined that the presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under § 501(c)(3) regardless of the number or importance of any other exempt purposes.

In Foundation of Human Understanding v. United States, 614 F.3d 1383 (Fed. Cir. 2010), the Court of Appeals affirmed the Court of Federal Claim's determination that the organization did not qualify as a "church" under § 170(b)(1)(A)(i). The Court of Appeals discussed the 14 criteria but ultimately decided that the associational test was more appropriate for determining church status, even though the two tests overlap. The associational test "defines a church as an organization that includes a body of believers who assemble regularly for communal worship"; in other words, the associational test requires that a church must create, as part of its religious activities, the opportunity for members to develop fellowship by worshipping together. The Court of Appeals therefore found that the organization did not satisfy the associational test because the organization did not conduct regular meetings or have a regular congregation. Furthermore, the Court of Appeals found that disseminating religious information through an "electronic ministry" to a "virtual congregation" did not fulfill the associational role required to be classified as a church under § 170(b)(1)(A)(i).

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991), the Court of Appeals affirmed the Tax Court's determination that the organization was not a "church" under § 170(b)(1)(A)(i). Adopting the 14 criteria, the Court of Appeals determined that the organization did not meet enough of the criteria to qualify as a church. The organization lacked an established congregation, an organized ministry, and religious education for the young. Regarding the congregation, the Court of Appeals found that the organization did not have an established congregation because "nothing indicate[d] that the participants considered [the organization] their church."

In American Guidance Foundation, Inc. v. Commissioner, 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 applied a fourteen criteria developed by the Internal Revenue Service to evaluate applications for church status. The fourteen 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 church or denomination;
7. An organization of ordained ministers;
8. Ordained ministers selected after completing prescribed studies;
9. A literature of its own;
10. Established place of worship;
11. Regular congregations;
12. Regular religious services;
13. Sunday schools for religious instruction of the young; and
14. Schools for the preparation of its ministers.

No one factor is controlling, and not all fourteen may be relevant to a determination. However, the court noted that several factors are of central importance: (1) the existence of an established congregation served by an organized ministry; (2) the provision of regular religious services; (3) religious education for the young; and (4) the dissemination of a doctrinal code. At a minimum, a church includes a body of believers or communicants that assemble regularly in order to worship.

## RATIONALE

An organization seeking tax-exempt status under § 501(c)(3) must be organized and operated exclusively for charitable or other exempt purposes with no part of its net earnings inuring to the benefit of any private shareholder or individual. See also Treas. Reg. § 1.501(c)(3)-1(a)(1). The presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under § 501(c)(3) regardless of the number or importance of any other exempt purposes. Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945); see Treas. Reg. § 1.501(c)(3)-1(c)(1). The materials you submitted state that you are seeking recognition of tax-exempt status under § 501(c)(3) and classification as church under § 170(b)(1)(A)(i). Based on a review of your activities, you are described in § 501(c)(3) because of your religious activities. However, you failed to establish that you meet the classification requirements as a church under § 170(b)(1)(A)(i) as explained below.

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

You request classification as a church under § 170(b)(1)(A)(i). In order to qualify as a church under § 170(b)(1)(A)(i), an organization must be described in § 501(c)(3). An organization may be an organization described in § 501(c)(3) if it is organized and operated exclusively for religious purposes. Neither the Code nor the Treasury Regulations define the term "religious." However, the revenue rulings and case law provide examples of religious organizations. For instance, Rev. Rul. 68-563 determined that a nonprofit religious broadcasting station that did not sell commercial or advertising time qualified for recognition under § 501(c)(3) as a religious organization because the organization carried on religious activities by broadcasting worship services and other programs having religious content. Similarly, Foundation for Human Understanding v. United States involved an organization recognized under § 501(c)(3) as a religious organization operating an "electronic" ministry. 614 F.3d 1383 (Fed. Cir. 2010). The Foundation broadcast sermons over the radio and internet at set times. The government disputed the organization's classification under § 170(b)(1)(A)(i), not its qualification under § 501(c)(3). Like the organizations in Rev. Rul. 68-563 and in Foundation for Human Understanding, your sole activity is recording religious sermons and messages for viewing

online at Website. Accordingly, you engage exclusively in religious activities because you conduct an electronic ministry. Therefore, you are described in § 501(c)(3).

## 2. Qualification as a “Church” under § 170(b)(1)(A)(i)

However, even if an organization is organized and operated for religious purposes within the meaning of § 501(c)(3), it is not necessarily a “church” within the meaning of § 170(b)(1)(A)(i). An organization qualifies as a church only if its principal purpose or function is that of a church. Rev. Rul. 56-262. The courts generally explain that “Congress intended a more restricted definition for a ‘church’ than for a ‘religious organization.’” E.g., Foundation of Human Understanding, 614 F.3d 1383. The difference between a religious organization and a church is “[t]he means by which an avowedly religious purpose is accomplished.” Id.

The Service does not define “church” but rather employs 14 criteria when considering whether an organization is a “church” within the meaning of § 170(b)(1)(A)(i). E.g., American Guidance Foundation, Inc. v. Commissioner, 490 F. Supp. 304 (D.D.C. 1980). No controlling weight is given to any one factor. However, there are several criteria that are of central importance: “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. The courts generally call these requirements the “associational test,” “which defines a church as an organization that includes a body of believers who assemble regularly for communal worship.” Foundation for Human Understanding, 614 F.3d 1383. In Foundation for Human Understanding, the Court of Appeals for the Federal Circuit stated that “[w]hile the associational test does not demand that religious gatherings be held with a particular frequency or on a particular schedule, it does require gatherings that, by virtue of their nature and frequency, provide the opportunity for members to form a religious fellowship through communal worship.” Id. Other factors, such as educational instruction or promulgation of doctrine, do not satisfy the requirements of the associational test. American Guidance Foundation, 490 F. Supp. 304.

For example, in Spiritual Outreach Society v. Commissioner, the United States Court of Appeals for the Eighth Circuit determined that the Spiritual Outreach Society did not qualify for recognition as a church. 927 F.2d 335 (8th Cir. 1991). The organization conducted bi-monthly musical programs featuring gospel music and congregational singing on Saturdays so as to not conflict with its participants’ church attendance on Sundays. The Service determined, and the court agreed, that the organization did not qualify as a church. Specifically, the organization failed to show that it had an established congregation and an organized ministry. The organization also did not provide for the religious education of the young. Therefore, the organization did not qualify as a church for federal tax purposes. See, e.g., Foundation for Human Understanding, 614 F.3d 1383 (determining that the Foundation failed to satisfy the minimum associational requirements with its “electronic” ministry).

Like the organization in Spiritual Outreach Society, you fail to meet the most important of the 14 criteria—the minimum associational requirements. You state that you do not have an established congregation because your “services” occur entirely through the internet. As determined by Foundation for Human Understanding, the associational component is not satisfied when worship occurs solely over the radio or internet. 614 F.3d 1383. Furthermore, you fail to provide information establishing that you have regular services. Instead, you state

that you post your messages and sermons for your members to view at their own convenience. Additionally, nothing indicates that your members consider you to be their church. Rather, you do not require your members to give up ties to or membership in other religious organizations. Furthermore, you do not have an organized ministry or a school for the preparation of your ministers. Your ministers are neither required to be ordained nor to complete a prescribed course of study, although Pastor is ordained by Church. Finally, you do not provide religious instruction for the young.

Nonetheless, you do meet some of the 14 criteria. For example, you have a distinct legal existence as a religious corporation under State law, a formal code of doctrine and discipline based on the Christian faith, and a distinct religious history. However, the satisfaction of these few criteria is not sufficient in the absence of the associational requirements to qualify you as a "church" within the meaning of § 170(b)(1)(A)(i).

## **CONCLUSION**

Based on the above, we have determined that you fail to meet the requirements necessary to be recognized as a tax-exempt organization under § 501(c)(3) and classified 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.*

**This declaration must be signed by an elected officer, a member of the board of directors, or a trustee rather than an attorney or accountant.**

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](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 protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for

the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

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

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

Internal Revenue Service

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.

Sincerely,

Karen Schiller  
Acting, Director,  
Exempt Organizations  
Rulings and Agreements