



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

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

date a =

B =

date c =

date d =

E =

F =

G =

H =

Dear _____ :

This letter supersedes and replaces our letter to you dated date a.

We have considered your request to reclassify B as a church described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Internal Revenue Code. Based on the information provided, we have concluded that B does not meet the requirements for classification as a church described in sections 509(a)(1) and 170(b)(1)(A)(i). The basis for our conclusion is set forth below.

Facts

B was incorporated in date c as a nonprofit, non-membership corporation under the laws of the State of _____. In date d, the Internal Revenue Service recognized B as an organization described in the predecessor to section 501(c)(3) of the Code. Subsequently, the IRS classified B as a public charity described in sections 509(a)(1) and 170(b)(1)(A)(vi).

B establishes new churches and conducts other missionary activities, including evangelism, radio broadcasting, Bible translation, publishing Christian literature, and educating missionary children, primarily in E. Its purpose, as set forth in Article IV of its Restated Articles of Incorporation, is:

. . . carrying on evangelical missionary work in [E], [F] [G], and any other country among any other peoples, including the training and support of missionaries, the training and education of the peoples of such countries, the establishment of indigenous churches, the operation of such institutions as are necessary for this purpose and for other exclusively religious, charitable, educational and missionary purposes as its Board of Directors may from time to time designate.

B's Mission, as set forth on its web site, is "to produce and empower committed followers of Jesus Christ in Spanish-speaking areas to reach the world." See attached pages from web site. Its Objectives, also set forth on its web site, are: (1) to enable the outreach of the North American church through strategic partnerships; (2) to evangelize those who have not yet come to saving faith in Christ; (3) to establish biblically based, culturally relevant, reproducing churches; (4) to equip leaders for the work of the ministry; and (5) to extend the Gospel by mobilizing national churches for worldwide missions.

B is governed by a self-elected Board of Directors. Its Bylaws provide that "there shall be no members or membership in the corporation."

B employs missionary-ministers who establish new churches, then train indigenous persons to take over leadership of each church. B believes that churches established by missionary-ministers should become independent from those missionary-ministers as the churches mature and need less spiritual and practical guidance from the missionary-ministers. B's H document states, "Official positions held by missionaries in local churches or associations of churches shall be considered temporary, with the goal of transferring responsibilities to the appropriate long-term leadership for continued growth and outreach." Local churches are responsible for establishing their own governments. B's H document also states that its missionary-ministers should encourage a biblical form of government in new churches, but respect the form of government such churches adopt.

B requires each of its missionary-minister candidates to have taken 30 or more hours of Bible training at a Bible college or seminary, in addition to language study and cultural orientation, as a condition of being appointed a B missionary-minister. However, these ministry personnel do not have to be ordained ministers. B does not ordain or license ministers of the local churches it establishes. Nor does B establish uniform formal qualifications for the granting of ordination status for ministers of these local churches. Local churches are responsible for ordaining their own ministers. B recommends that these churches' ministers attend one of the several seminaries and other educational institutions with which B is affiliated.

B exercises oversight and authority over its missionary-ministers, but does not exercise any direct control over its affiliate churches that those missionary-ministers help to establish. Rather, B seeks to influence its affiliate churches through the work of its missionary-ministers. However, B's H document states that its missionary-ministers are not agents of B. These missionary-ministers provide preaching, teaching, spiritual counseling, assistance in beginning Sunday school programs, and other leadership to new affiliate churches in their start-up phase, and train indigenous church leaders and ministers to lead independent churches. After such leaders assume leadership and the affiliate churches become independent of the missionary-ministers, the churches generally remain affiliated with B. Some of these churches participate in special events or conferences organized by B, and church leaders and their children often

attend seminaries and other training programs affiliated with B. However, these churches are not “members” of B, and their affiliation with B is typically not formalized. B does not impose any reporting requirements on its affiliate churches, except for those churches to which it has made grants.

B disseminates a code of doctrine, its “doctrinal statement.” However, it has not shown evidence of having a code of discipline. For instance, B’s literature does not describe its use of any traditional means of ecclesiastical discipline (e.g., confession, counseling, withholding of sacraments, excommunication) utilized by churches. Although B missionary-ministers assist affiliate churches in resolving disciplinary issues, it is the churches—not B—that are responsible for disciplining their members.

B describes itself as a “non-denominational missions agency” and a “faith mission” that “serves in partnership with churches, related organizations and friends . . .” B does not identify itself to the public as a church. It describes itself in its H document as a “non-denominational missions agency,” but not as a church. B distinguishes itself from local churches by requiring that each of its missionary-ministers be involved in a local church compatible with B doctrine.

Law

Section 509(a)(1) of the Code provides that the term “private foundation” means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

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

Section 170(b)(1)(A)(vi) of the Code describes a tax-exempt organization that normally receives a substantial part of its support from a government unit or from direct or indirect contributions to the general public.

In De La Salle Institute v. United States, 195 F.Supp. 891 (N.D. Cal. 1961), the court held that a nonprofit corporation composed of non-clerical members of a religious order that operated schools, a winery, and a chapel, among other activities, was not a church. It explained that although the corporation was closely affiliated with the Roman Catholic Church, it was separate and distinct from that church for federal tax purposes. Id. at 901. The corporation’s operation of a chapel did not convert it into a church, as this activity was incidental to the corporation’s primary activities of operating the school and winery. The court noted, “[t]he tail cannot be permitted to wag the dog. The incidental activities of plaintiff cannot make plaintiff a church.” Id. at 901-02.

In Chapman v. Commissioner, 48 T.C. 358 (1967), an interdenominational organization sent out evangelical teams to preach throughout the world and to establish small indigenous churches. These teams used dental services as the initial means by which they contacted prospective converts to Christianity. The court held that the organization was not a church for federal tax purposes, in part because it was interdenominational and independent from the churches with which its members were affiliated. The organization’s religious services and preaching, though functions normally associated with a church, were not its primary activities and therefore were not determinative of church status. Id. at 364. The court characterized the group as an

“evangelical organization” and a “religious organization comprised of individual members who are already affiliated with various churches,” but not as a church. It noted that although every church may be a religious organization, not every religious organization is a church. Id. at 363.

In American Guidance Foundation, Inc. v. United States, 490 F.Supp. 304 (D.D.C. 1980), the court recognized the Internal Revenue Service's 14-part test in determining whether a religious organization was a church. The 14 criteria are:

- 1) a distinct legal existence;
- 2) a recognized creed and form of worship;
- 3) a definite and distinct ecclesiastical government;
- 4) a formal code of doctrine and discipline;
- 5) a distinct religious history;
- 6) a membership not associated with any other church or denomination;
- 7) an organization of ordained ministers;
- 8) ordained ministers selected after completing prescribed studies;
- 9) a literature of its own;
- 10) established places 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.

The court in American Guidance stated that “while some of these [criteria] are relatively minor, others, e.g., the existence of an established congregation served by an organized ministry, the provision of regular worship services and religious education for the young, and the dissemination of a doctrinal code, are of central importance.” Id. at 306.

In Foundation of Human Understanding v. Commissioner, 88 T.C. 1341 (1987), the court found that an exempt organization that operated a radio ministry and established local congregations qualified as a church for federal tax purposes, because it met most of the 14 IRS criteria for determining church status. Although the court found these 14 criteria to be helpful in deciding what constitutes a church, it did not adopt them as a definitive test. It explained that the IRS will also consider any other facts and circumstances that may bear upon the organization’s claim for church status under section 170(b)(1)(A)(i) of the Code. Id. at 1358. Although the organization’s broadcasting and publishing functions constituted a large percentage of its total receipts and expenditures, these functions did not overshadow its church activities, which the court found to be more than incidental. Id. at 1360-61. The court noted that many of the organization’s followers looked upon the organization as their only church. Id. at 1359.

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991), the court noted that of central importance in determining whether an organization constitutes a church for federal tax purposes is the existence of an established congregation served by an organized ministry. The court found that the organization did not have an established congregation because “nothing indicates that the participants considered [the organization] to be their church.” Id. at 339.

Analysis

B claims that it is a church as described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code because it meets most of the 14 criteria the IRS uses in determining whether an organization qualifies as a church for federal tax purposes. See American Guidance Foundation, 490 F.Supp. at 306, note 2. These criteria are helpful in deciding what constitutes a church for federal tax purposes, but are not a definitive test. See Foundation of Human Understanding, 88 T.C. at 1358.

B meets several of these 14 criteria. For instance, it has a distinct legal existence, a formal code of doctrine, a recognized creed, a distinct religious history, and literature of its own. It is also closely affiliated with several Bible schools and seminaries. However, these are not distinctive characteristics of a church, but are common to both churches and non-church religious organizations. Meeting these criteria is not sufficient to establish B as a church within the meaning of section 170(b)(1)(A)(i) of the Code.

B's primary activity is the establishment and support of new churches in E. B essentially serves as an incubator for and advisor to its affiliate churches, providing spiritual and practical guidance and training through its missionary-ministers and other resources. These churches are initially led by B missionary-ministers who train indigenous leaders to assume leadership of each church, which then operates independently from the missionary-ministers. Although B exercises oversight and authority over its missionary-ministers, it does not have any formal authority over the churches or their leaders, or even a formal affiliation with most of the churches. Like the missionary society in Chapman, supra, B is interdenominational and independent from the local churches with which its missionary-ministers are affiliated. Chapman, Id. at 364. Thus, B and its affiliate churches are not united by a definite and distinct "ecclesiastical government."

Because B's affiliate churches are separate and distinct from B, their members, worship services, and other church activities are also separate and distinct from those of B. See De La Salle Institute, 195 F.Supp. at 901. Thus, B does not have a regular congregation of its own that engages in regular worship services in an established place of worship.

B does not require its missionary-ministers to renounce their membership in other churches or religious orders to become missionary-ministers of B. In fact, B requires its missionary-ministers to be involved in a local church (not necessarily a B-affiliated church) that is compatible with B doctrine. As in Spiritual Outreach Society, 927 F.2d at 339, B has failed to establish that its missionary-ministers, its affiliated churches, or those churches' members consider B to be their church. Accordingly, B has neither a regular congregation nor a "membership not associated with any other church or denomination."

B has not shown evidence of having a code of discipline. For instance, B's literature does not describe its use of any traditional means of ecclesiastical discipline (e.g., confession, counseling, withholding of sacraments, excommunication) utilized by churches. Although B missionary-ministers assist certain B-affiliate churches in resolving disciplinary issues, these affiliates—not B--exercise discipline over their members.

Although B has established training requirements for and provides some training to the missionary-ministers it appoints, it does not require them to be ordained or licensed. Nor does B ordain or license ministers of the local churches it establishes. Rather, its affiliate churches

are responsible for ordaining their own ministers. Thus, B is not an “organization of ordained ministers.”

Although B provides training for missionary children and helps its affiliate churches to establish Sunday school programs, it has not established that it operates its own Sunday schools or comparable programs for the religious instruction of the young.

Further, B does not identify itself publicly as a church. Neither its organizing documents, its web site, nor any of the literature it provided (other than its reclassification request letter to the IRS) refers to B as a church. Rather, B describes itself as a “non-denominational missions agency.” This undermines B’s contention that it is a church.

Conclusion

B does not meet most of the criteria for classification as a church described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code that courts have recognized as being of central importance: the existence of an established congregation, the provision of regular worship services and religious education for the young, and the dissemination of a doctrinal code. See American Guidance Foundation, Inc., 490 F.Supp. at 306; Spiritual Outreach Society, 927 F.2d at 339. Although B disseminates a doctrinal code (its “doctrinal statement”), it does not meet the other central criteria. In particular, it does not have a regular, established congregation of members who meet together, as a church, for regular worship services and instruction of the young.

Nor does B meet most of the other criteria the IRS considers in determining whether to classify an organization as a church described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code. In particular, B does not ordain ministers, operate Sunday schools for religious instruction of the young, or have a code of discipline, a distinct ecclesiastical government, an established place of worship, or a membership not associated with other local churches or denominations.

Although B’s affiliate churches may meet most of the criteria for classification as a church, B is separate and distinct from those churches.

Accordingly, based on all the facts and circumstances, B has failed to establish that it meets the requirements for classification as a church described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code. Instead, B will continue to be classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(vi).

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.

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.

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

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

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

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

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:1)

1111 Constitution Ave, N.W., PE:3Q2
Washington, DC 20224

You may also fax your statement to the person whose name and fax number are shown in the heading of this letter.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure: B web site pages