



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: 200931059

Release Date: 7/31/2009

Date: 5/6/2009

UIL: 501.03-00, 501.03-05, 501.03-15, 501.03-30

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

1120

Tax Years:

All

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.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & 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

Date: 2/19/2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

- A = Original Board Member1
- B = Original Board Member2
- C = Original Board Member3
- D = Trustee
- E = New Board Member1
- F = New Board Member2
- G = volunteer bookkeeper
- M = a State
- X = a city in M
- Y = a foreign country
- Z = a foreign organization
- x = date of incorporation
- y = date that the foreign organization Z was formed

UIL Numbers:

- 501.03-00
- 501.03-05
- 501.03-15
- 501.03-30

Dear _____ :

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

Primary Issue

Do you qualify for exemption under section 501(c)(3) of the IRC? No, for the reasons described below.

Subordinate Issues

- 1) Have you established that the persons receiving or benefiting from your distributions in the foreign country of Y are in fact needy or otherwise deserving objects of charity? No, for the reasons described below.

- 2) Do you use proper control and discretion when distributing your funds in order for contributions to be deductible under 170 of the IRC?
- 3) Does your inadequate exercise of discretion and control over foreign conduit-type payments constitute a supporting basis for denial of exemption under IRC 501(c)(3)?
- 4) Does your method of allowing an individual in the foreign country of Y to cash large checks and distribute the funds with no oversight or recordkeeping procedures create the potential for inurement, which would preclude you from qualifying from exemption under Section 501(c)(3) of the IRC?

Alternative Issue

If, upon appeal, you were found to qualify for exemption under IRC 501(c)(3), would you be a foreign conduit, which, while enjoying exemption from income tax, would not be eligible to receive tax deductible donations under IRC 170? Yes, for the reasons described below.

Facts

You were incorporated pursuant to the Religious Corporation Law pursuant to Article 10 of the State of M on x. Your articles indicate that you were formed, in part:

- a. To establish a place of worship.
- b. To disseminate the study of Torah by means of lectures or any other means.
- c. To raise funds by solicitation or other legal means for the carrying out of the above stated objectives.

Article II of your Bylaws state that you were formed to raise money to provide benefit to aid poor students with living expenses attending the programs of the foreign organization Z for religious education.

As a part of your application for recognition of exemption you submitted a narrative description of activities which states that "the foreign organization did not cause our organization to be formed. It was formed independently". You went on to state that "our contributions are not earmarked for a foreign organization. They do not receive any funds from us. Our purpose is to help the poor and needy students [sic] of the foreign organization Z. We have no other purpose". You also indicated that you estimate the monthly living expenses for the average student to be approximately \$100 per month per student. You stated that you will give more aid to special cases. You said that students are given aid on a "first come first serve" basis and that you do not bypass any qualified student. You said that all students selected are reviewed and approved by your organization, but that you do not currently have a selection committee. Rather, you said that the students come from an open ended group and are not pre-selected. All funds are given to the individual recipients.

You also indicated that the student body of the foreign organization Z in the foreign country of Y is primarily from poor families. You said that they and their parents are without financial basis and that the foreign organization Z provides all their needs. Your "criterion for assistance is that

by providing living expenses they will not drop out and continue on through graduation". The students apply by contacting your organization.

As you were incorporated on x, we asked why you waited until February 14, 2006 to apply for exemption. Your response was that "the application was filed timely, within 27 months from the time that we were legally formed".

The Bylaws that you submitted with your application for exemption appear to be boiler plate and are not fully complete. There are blank spaces throughout the document that were never completed. When we asked for you to explain why your Bylaws were not fully completed, you simply responded that "Bylaws are not required by the State of IRS. As a result, they are not an organizing document; they are just used internally by our organization". It appears that the Bylaws are not a legitimate governing document of the organization, as you initially purported.

You did not provide a list of board members with your initial application for exemption. However, your Certificate of Incorporation listed three Trustees. All three of these individuals were located in the United States. We then asked for a list of the current members of the governing body and you provided the following:

- a. A
- b. B
- c. C
- d. D is the trustee

We asked for you to describe the duties of D, as he was referred to as a "Trustee" rather than a member of the governing body. We asked if he was placed on the board just to complete the Form 1023. You responded that "I am the accountant for the Organization. I prepare and file all necessary tax returns and other information needed by various government agencies. I also advise the board on IRS rules and regulations required to operate a not for profit organization".

You indicated that the foreign organization Z was formed on x. We asked how you learned of the foreign organization and you responded that "on a trip to the foreign country of Y we visited the foreign organization Z and were very impressed with the quality of their programs. We then decided to form an organization to raise funds to support the students with living expenses as they live below poverty level."

We asked what specific process your organization uses to determine to which organizations you make contributions. You responded that "we only contribute to this one organization". You indicated that funds are distributed via check only and that they are delivered via airmail." You also said that none of the members of the governing body of your organization work for, serve on the board or attend the foreign organization Z. You said that there are 52 students that attend the foreign organization Z in the foreign country of Y. You provided a listing of the students to whom you had made contributions since the inception of your organization. That listing included 20 students.

You said that the foreign organization Z notifies the students that funds are available from your organization and they then apply for the funds. You said that after the students apply for funds, your organization interviews the selected students. The selection committee consists of your organization together "with the member of the foreign organization Z".

In November 2006 we had asked for a listing of each distribution that you had made in 2006. You provided the following information regarding these distributions:

- a. January '06 \$6,522
- b. April '06 \$5,000
- c. August '06 \$1,001
- d. October '06 \$1,400

You said that each of these four distributions were "made strictly for the students of this organization". We asked for you to provide a breakdown of how much money each individual student has received. You said, "for the year January 1, 2006 – December 31, 2006 we have distributed \$696.15 to each of the 20 students, for a total of \$13,923 for the year.

As the terms "needy" and "poor" are subjective, we asked for you to provide detailed criteria that you use to make the determination that an individual is eligible to receive assistance. You responded that "we classify a student as being needy by determining that he lives below the poverty level". We later asked you what specific pieces of information the students have to provide to you in order to receive a grant and whether or not you require documentation of income. Rather than respond to my specific questions you said that "they provide information as to family income, which we verify with the foreign organization Z".

We asked if you provide funds directly to the individuals or to the foreign organization Z on behalf of the individuals. You said that "our person in the foreign country of Y has control and discretion over the funds and then works with the foreign organization Z to distribute the funds to the needy student". You further stated that you make a trip once a year to the foreign country of Y to ensure proper use of the funds. We then told you that it appeared that if you did not have control and discretion over the use of the funds as your "person in the foreign country of Y has control and discretion over the funds", but none of your board members live in the foreign country of Y. At this point you indicated that the person in the foreign country of Y, contrary to your previous correspondence, is one of your directors. You indicated that her name is E. You further stated that your organization mails checks to her home address in the foreign country of Y, which she deposits in your bank account that is maintained in the foreign country of Y. She then pays each student by check from this account. She does not give any money to the foreign organization Z".

We then asked for you to explain the discrepancy regarding the non-inclusion of E in your board listing. You responded that "E was added to the list after November 30, 2006." However, your response received by us on November 30, 2006 is the one that said that you had a "person in the foreign country of Y", presumably E, that has control and discretion of the organizations funds. We asked for minutes from the meeting where she was elected into her position. You responded that "we do not have minutes for our board meetings because we have a very small organization. We do everything verbally". Article V Section 7 of your Bylaws state that the secretary shall keep the minutes of the board of directors and also the minutes of the members.

At a later date we asked for you to provide the specific date that E was added to the board. You said that she was added to the board on December 15, 2006. We asked who, specifically, voted on the addition of this board member. Rather than specify, you said, "the members of the board". We also asked for the address where the meeting took place. You provided the

address that was listed on the bank statements, which you said belonged to a volunteer, and not a board member. We then also asked what E's position is with the bank in the foreign country of Y. You said that she is an officer of the bank. At this time, October 2007, we asked for a complete listing of your current board. The listing included A, B, E and F. The listing omitted D. We later asked about this omission and you said that D is a board member of the organization.

We asked what E's role is with regard to your organization and you responded that "she is the representative to supervise the money in the foreign country of Y". We asked for you to provide a resume for E. You responded by simply saying that "E has worked in a bank in the foreign country of Y for many years and has amassed much experience in financial matters". We asked if E is employed by, a volunteer for or serves the foreign organization Z in the foreign country of Y in any way. You indicated that she is not a volunteer, nor an employee of the foreign organization Z in the foreign country of Y.

We then asked how the cash is handled, as E cashes the checks. You said that "she uses the cash to distribute it to the needy students of the foreign organization Z. In the same response that you described E's distribution of the cash (emphasis) you provided, upon our request, a copy of a cancelled check. The check is written to Z, not to E or cash. We later inquired about a specific check that was written for \$6522 in January 2006. We asked if E actually cashed this check and handed out cash to the students. You responded "yes". At this time, E was not on your board. We further asked if someone from the foreign organization signs the checks over to E, before she cashes them, as the checks are actually written to the organization. You said, "I'm not familiar with the foreign bank's procedures, so I do not know how it works".

In February 2007 you indicated that you maintain a bank account in the foreign country of Y. We had previously asked whether or not you have a bank account in the foreign country of Y and you said "no". We then asked about the discrepancy as to whether or not you have a bank account in the foreign country of Y, and you responded that the organization "does not have a bank account in the foreign country of Y. Because E works for a bank, as a courtesy to her, they allow her to cash our checks there. I therefore, assumed that the organization had a bank account. This was an error on my part".

We asked for evidence that the foreign organization is a registered non-profit in the foreign country of Y. You said that "the foreign organization is not recognized as a non-profit organization in the foreign country of Y".

When we indicated that it didn't appear that contributions to your organization would be deductible as it appeared that you were operating as a foreign conduit you then stated that your previous response "has a typing error" and that it should read "we only contribute to poor students of this organization". The error you refer to is the statement you had previously made that "we only contribute to this one organization".

You submitted copies of the organization's bank statements to us and we asked to whom the statements were mailed, as the X, M address on the bank statements didn't match any of the addresses of the board members. You responded that "the bank statements are received by a volunteer, who is not a board member of the organization, and who handles the mail for us." We then asked for you to provide the name of this "volunteer". You said that G is that person. We asked why an individual that is not on the board of your organization is receiving the bank

statements and you responded that G volunteers to be the bookkeeper of the organization". We asked how you can exercise control and discretion of your funds if an unrelated party receives the bank statements. You said that the "bookkeeper makes a copy of the bank statements and gives the original statements to the Board of Directors". It is also noted that the cancelled check that you provided clearly shows that the front of the check was signed by G, not one of your officers.

We also pointed out to you that the surname of this volunteer, G, is a part of your organization's name. We asked for you to indicate G's relationship with the foreign organization. You said that "G is only a volunteer bookkeeper, and has no relationship to the foreign organization Z".

Law

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations 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 section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(2) of the Regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

Section 170(a) of the Code provides, subject to certain limitations, a deduction for charitable contributions as defined in Section 170(c), payment of which is made within the taxable year.

Section 170(c)(2) of the Code defines a charitable contribution to include a contribution or gift to or for the use of a corporation, trust, or community chest, fund or foundation which is (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States; (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and (D) which is not disqualified for tax exemption under § 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or

intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 170(c)(2) of the Code further provides that a contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of paragraph 170(c)(2) only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph 170(c)(2)(B).

Section 6001 of the Code states that "Notice or regulations requiring records, statements, and special returns," provides that every person liable for any tax imposed by this title (Title 26 of the United States Code, which is the Internal Revenue Code), or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Section 1.6001-1(a) of the Procedure and Administration Regulations provides, in general, that any person subject to tax under subtitle A of the Code or any person required to file an information return with respect to income shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

Section 1.6001-1(c) of the regulations provides that for exempt organizations, in addition to such permanent books and records required by section 1.6001-1(a) with respect to the tax imposed by section 511 on the unrelated business income of certain exempt organizations, every organization exempt from tax under section 501(a) shall keep such permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursements.

Section 1.6001-1(e) of the regulations, Retention of records, provides that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Rev. Rul. 56-304, 1956-2 C.B. 306 states that an organization which otherwise meets the requirements for exemption from Federal income tax are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. However, organizations of this character which make such distributions should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Rev. Rul. 63-252, 1963-2 C.B. 101, holds that contributions to certain domestic charitable organizations are deductible if it can be shown that the gift is, in fact, to or for the use of the domestic organization, and that the domestic organization is not serving as an agent for, or conduit of, a foreign charitable organization. In reaching this conclusion, the revenue ruling states that it seems clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient.

Rev. Rul. 66-79, 1966-1 C.B. 48, amplifies Rev. Rul. 63-252 to provide that contributions to a domestic charity that are solicited for a specific project of a foreign charitable organization are deductible under section 170 of the Code if the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. This conclusion is reached because the contributions received by the domestic charity are regarded as for the use of the domestic organization and not the foreign organization receiving the grant from the domestic organization.

Rev. Rul. 68-489, 1968-2 C.B. 210, held that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980). In an action for declaratory judgment pursuant to section 7428(a), the Tax Court considered an adverse ruling by the IRS on an application for exempt status as a church. The applicant had declined to furnish some information, and made answers to other inquiries that were vague and uninformative. On the basis of the record, the Court held that the applicant had not shown that no part of its net earnings inure to the benefit of the family or that petitioner was not operated for the private benefit.

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of its application for exempt status. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes. The organization's petition claimed that the founder had resigned and it had changed. However, there was little evidence of change other than replacement of the founder with an acquaintance who had no apparent qualifications. The court resolved these questions against the petitioner, who had the burden of establishing it was qualified for exemption. If the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant".

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

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990) the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978) the court found that the organization's officers received amounts of money in the form of "grants." These grants carried with them no legal obligation to repay any interest or principal. Petitioner contended, as it had during the administrative proceeding before the IRS, that the grants were made in furtherance of a charitable purpose: to assist the poor who were in need of food, clothing, shelter, and medical attention. However, petitioner was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant which was specified as either unemployment, moving expenses, scholarship, or medical expense. This information was insufficient in determining whether the grants were made in an objective and nondiscriminatory manner and whether the distribution of such grants was made in furtherance of an exempt purpose. The failure to develop criteria for "grant" disbursements or to keep adequate records of each recipient can result in abuse. Accordingly it was found that the organization failed to establish that their disbursements constituted an activity in furtherance of an exempt purpose.

Western Catholic Church v. Commissioner of Internal Revenue, 73 T.C. 196 (1980). The petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals, while its primary activity was investment of funds. The directors borrowed money in its name, but used some of it for automobiles and to pay off personal loans. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court held that petitioner had not shown it was operated exclusively for exempt purposes or that no part of its earnings inured to the benefit of its officer.

In Rameses School of San Antonio, Texas v. Commissioner of Internal Revenue, T.C. Memo. 2007-85, 2007 WL 1061871 (U.S. Tax Ct. 2007) the court held that IRS properly revoked the exempt status under section 501(c)(3) of the Code of a school on the grounds that its earnings

inured to the benefit of its founder, who also served as its executive director, president, and CEO. The record showed that the founder issued numerous organization checks to herself and withdrew cash from organization accounts for which the record showed no documented business purpose. Neither did the organization's records show that there was any documented system for either loans to and repayments for loans by the founder and reimbursements from the school.

Application of Law

Section 6001 of the Code requires organizations exempt from tax to retain records sufficient to detail their exempt function activities. To qualify for exempt status an organization must make a convincing case that they qualify for tax exempt status under Code section 501(c)(3). Section 501(c)(3) of the IRC provides for the exemption from federal income tax for organizations described in if they are organized and operated exclusively for religious, charitable, and educational purposes. An organization that is unable to demonstrate they have now or will have in the future sufficient records to show operations exclusively further exempt purposes will not be found to meet the operational test under Section 501(c)(3) of the Code. In New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006) the court explains that the burden is on the applicant to establish that it meets the statutory requirement under Section 501(c)(3) of the IRC. An organization is entitled to federal tax exemption only if, inter alia, it is organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Failure to satisfy any of these requirements results in an organization being disqualified from tax exemption.

You have provided very little information regarding how you operate. You allow the foreign organization Z in the foreign country of Y to make the determination and keep the records as to whether a student is classified as needy. You allow a non-board member to control the day to day financial operations of the organization. The criterion for your grants and the amounts of the grants were not clear and were without specific basis. The procedures that you described for distribution of money to the students also lacked transparency. Where you claim ignorance, are silent, or provide vague and general responses when specific detailed answers are required results in a mere theoretical proposition supporting exemption that is insufficient to clearly demonstrate that you meet the requirements for tax exempt status under Section 501(c)(3) of the IRC. On several occasions you "made an error" regarding prior responses or just "didn't know" the details of how you operate.

Where you have explained how you operate your programs you describe that you have delegated much of your authority, responsibility, and operations to other individuals and entities. You allow the foreign organization Z in the foreign country of Y to make the determination regarding who is eligible for your assistance. You allow the foreign organization Z in the foreign country of Y to keep the records regarding the students to whom you give stipends. You allow non-board members, who have no official responsibility or obligation to report or answer to your officers or board, to control the day to day finances of your primary program of providing stipend assistance to students. You have allowed individuals with no official connection to your organization to write checks for your organization and to cash large checks on behalf of your organization.

To be exempt under Section 501(c)(3), an organization must be both organized and operated for one or more exempt purposes specified in the Section. Although "exclusively" does not

mean "solely" or "without exception," the presence of a single nonexempt purpose, if substantial, will preclude exemption regardless of the number or importance of exempt purposes, as indicated in Better Business Bureau, Easter House, supra. 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 purposes specified in Section 501(c)(3). Neither is an organization operated exclusively for one or more exempt purposes if its net earnings inure to the benefit of private shareholders or individuals, or its activities further private rather than public interests.

As stated in New Dynamics, supra, exemption from federal income taxation is not a right; it is a matter of legislative grace that is strictly construed. The applicant bears the burden of establishing that it qualifies for exempt status. An applicant must prove that it is organized and operated exclusively for exempt purposes and not for the private benefit of its creators, designated individuals or organizations controlled by such private interests, as in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Again, exclusively does not mean "solely," but no more than an insubstantial part of an organization's activities may further a non-exempt purpose.

An applicant for exempt status must provide sufficient information for the IRS to make an informed decision as indicated in National Association of American Churches, supra. It must respond to questions completely and candidly. You did not respond openly and candidly to many of our questions. As in Basic Bible Church, supra, the responses must include details, figures, and documentation. You did not provide adequate details regarding the method of selecting the students that receive stipends, the manner in which the money was handled and dispersed, or the specific amounts of cash that was given to each of the students. As in Bubbling Well Church, supra, you have given answers to our inquiries that were vague and uninformative. Accordingly, we can not determine that you are not operated for the private benefit of the individuals in the United States and the foreign country of Y that you have allowed to control your finances.

In contrast to the broad generality of the purposes stated in your charter, the name of your corporation suggests a purpose to assist a named foreign organization. Article II, Section B of your Bylaws stated that the purpose of your organization is to support poor students with living expenses attending the programs of the foreign organization Z. You stated that the individuals who organized your corporation had become interested in furthering the work of the named foreign organization by assisting students attending the foreign organization Z in the foreign country of Y. You purport that you do not give money to the foreign organization, but rather, you give cash to needy students attending the foreign organization Z in the foreign country of Y. However, the cancelled check that you submitted was written directly to the foreign organization Z, not to the students.

You indicated that you support only needy students while they attend a particular religious foreign organization Z in the foreign country of Y. However, you do not seek applications or specific financial documentation from the students. Because you require no documentation to verify the financial status of the student, nor do you require an application, you do not meet the operational test of Section 501(c)(3) of the Code which requires that you operate exclusively for exempt purposes.

The cancelled check that you provided also showed that a non-board member writes the checks for your organization. An individual in the foreign country of Y, who until we asked about her,

was an unauthorized individual, cashes large checks and hands the cash out to the students. This demonstrates a clear lack of control and discretion to let an outsider of the organization to financially control your organization.

It is also noteworthy that the individual that you refer to as the "volunteer bookkeeper" that receives the organization's bank statements, writes the checks and holds meetings at their home, has the last name . You indicated that there is not relationship between this bookkeeper and organization, but the name suggests otherwise.

Rev. Rul. 56-304, 1956-2 C.B. 306 states that if an organization gives money to individuals in need, they must keep adequate records. These records must include the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service. You do not keep adequate records. You allow the foreign organization to select the recipients and keep the records. You allow an individual located in the foreign country of Y to cash large checks and distribute the cash and do not have any method of tracking who received what amount. You state that each student receives an equal amount, but as large amounts of cash are being handed out by an individual, it would seem hard to track where the cash really went.

Rev. Rul. 63-252 states that contributions to certain domestic charitable organizations are deductible if it can be shown that the gift is for the use of the domestic organization, and the domestic organization is not serving as an agent for the foreign organization. Your organization appears to have little or no control over who receives the cash, or how much they receive. Your organization appears to be a fundraising arm in the United States whose purpose is to fund individuals attending the foreign organization Z in the foreign country of Y. Your organization does not appear to have control and discretion over the use of the funds, as an unrelated individual receives your bank statements and writes checks on behalf of your organization.

As in Harding Hospital, Inc. v. United States, *supra*, you have the burden of proving that you satisfy the requirements of the Code. You have failed to provide enough information to prove to us that you are operating in a manner that would allow for you to qualify for exemption under Section 501(c)(3) of the IRC.

In Western Catholic Church v. Commissioner, *supra*, the Court held that because of the petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, the petitioner had not shown it was operated exclusively for exempt purposes or that no part of its earnings inured to the benefit of its officer. Also, the Court held that the IRS properly revoked the exempt status in Rameses School of San Antonio, Texas v. Commissioner, *supra*, under section 501(c)(3) of the Code on the grounds that its earnings inured to the benefit of its founder. The record showed that the founder issued numerous organization checks to herself and withdrew cash from organization accounts for which the record showed no documented business purpose. You allow an individual to cash large checks with no substantiating documentation regarding the distributions. Much like the above cited case, we are not able to conclude that the money that you distribute is spent exclusively for exempt purposes or not inuring to the benefit of an insider.

Applicant's Position

You state that all contributions to your organization are distributed properly in accordance with Revenue Ruling 63-252. Your citation also included Rev. Rul. 66-79, which states that contributions to a domestic charity described in Section 170(c)(2) of the Code which are solicited for specific projects of a foreign charitable organization are deductible under Section 170 of the Code where the domestic charity has reviewed and approved the projects as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. The third citation that you provided was Rev. Rul. 68-489, which states that an organization will not jeopardize its exemption under Section 501(c)(3) of the Code, even though it distributes funds to nonexempt organization, provided it retains control and discretion over the use of funds for Section 501(c)(3) purposes. You further stated that "contributions to a foreign organization are disallowed only when sent directly to the organization without any control and discretion by the domestic organization".

Service's Response to Application Position

Although you say that per Rev. Rul. 63-252, 66-79 and 68-489, you are acting with proper control and discretion, the facts tell a different story. You allow a non-exempt organization, located in the foreign country of Y, to determine who is qualified to receive your stipend. The foreign organization is also the one responsible for keeping records to verify qualification for the stipend. Contrary to what you say, you do not keep adequate records, as large sums cash are handed out by an individual. Until our inquiry regarding this individual, she was not a member of your governing body. Another individual in the United States writes the checks and receives the organizations bank statements at their home. Your explanation of how the cash is controlled is that "our person in the foreign country of Y has control and discretion over the funds". At the time you made this statement, there were no members of your governing body that were located in the foreign country of Y.

Primary Conclusion

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(3) of the IRC as outlined below.

Conclusion Regarding Subordinate Issues

1) You were formed to provide stipends to needy students the foreign organization Z located in the foreign country of Y. However, you do not request an application, keep records or verify that the recipients are "needy". You allow a foreign organization to select the recipients and keep the required records. You allow individuals that are not members of your governing body to write and distribute large sums of cash to the students. You are not operating in a manner that would allow for you to qualify for exemption under Section 501(c)(3) of the IRC.

2) Section 501(c)(3) of the IRC requires that you have in place a system for proper control and discretion when distributing funds to individuals. You do not keep adequate records as required by the Code, Regulations, Revenue Rulings and Court Cases cited above. Section 6001 of the Code requires organizations exempt from tax to retain records sufficient to detail their exempt function activities. You have failed to provide relevant information. This is sufficient

basis for both the Service and the Courts to refuse to recognize the organization as exempt under section 501(c)(3) of the IRC.

3) You do not exercise adequate discretion and control over payments to students at the foreign organization Z located in the foreign country of Y. You allow an individual that is not a member of your governing body to control all of your financial matters; therefore, you are not exercising adequate discretion and control regarding your disbursements. Your lack of control and discretion is a basis for denial under Section 501(c)(3) of the IRC.

4) You allow an individual located in the foreign country of Y, who is now a board member, to cash large checks and personally distribute the cash to the students of the foreign organization Z. Like the organizations in the precedent cited above, your operations show factors indicative of prohibited inurement and private benefit. There is no oversight of the individual in the foreign country of Y or record keeping procedures regarding your cash disbursements. Therefore, you have not established that you are operated exclusively in furtherance of section 501(c)(3) purposes.

Conclusion Regarding the Alternative Issue

If you were found to qualify for tax exempt status under IRC 501(c)(3), you would meet the definition of a foreign conduit, which, while enjoying exemption from income tax, would not be eligible to receive tax deductible donations under IRC 170. Your decisions are not independent or solely within your jurisdiction with regard to the disposition of the funds donated to you, as you let an outsider to your organization control and dispense funds. You state that you monitor the use of the funds given to students, but as large amounts of cash are distributed, it would seem difficult, if not impossible, to monitor the funds. The requirements of section 170(c)(2)(A) of the Code are nullified if contributions inevitably committed to go to a foreign organization, or components thereof, were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient. As the name of your organization implies, you were formed to support a foreign organization. You do this through giving stipends to the students attending the foreign organization Z. You seek contributions in the United States. You momentarily hold the contributions, but the ultimate purpose is to support the students of the foreign organization. You are only nominally the donee. The real donees are the individual students. Because you do not review and approve the disbursements and because you do not maintain control and discretion over the use of the funds you receive, you are not considered the recipient of the funds. Therefore, the requirements of section 170(c)(2)(A) of the Code are nullified and contributions to your organization are not deductible.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

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

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

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

Mail to:

Internal Revenue Service
EO Determinations, Group 7830
Room 4-504
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations, Group 7830
550 Main Street, Room 4-504
Cincinnati, OH 45202

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

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements