



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201002041**  
Release Date: 1/15/2010

Date: October 20, 2009

Uniform Issue List Number:  
501.00-00  
503.00-00  
503.03-00

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.

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,

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: August 24, 2009

Contact Person:

Uniform Issue List Number:

501.00-00

503.00-00

503.03-00

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Legend:

Taxpayer =

Founder =

State =

Company =

Book 1 =

Book 2 =

CD =

www.website.com =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code ("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.

FACTS:

You, Taxpayer, are a not-for-profit corporation organized under the laws of State. You filed a Form 1023 seeking exemption under section 501(c)(3) of the Code. You additionally requested public charity status under section 509(a)(2) of the Code.

According to your bylaws, you will provide spiritual counseling, healing, and deliverance services to individuals and groups. Your president, Founder, has been engaged in identical activities for many years. In the three months prior to your incorporation, Founder conducted hundreds of encounters described by you as "healings and deliverances."

In addition to spiritual counseling, you plan to provide prayer cloths, spiritual books, and a spiritual CD to individuals and groups. You will provide the prayer cloths without charge. The spiritual books, Book 1 and Book 2, were written by Founder. While you have given away copies of the books for free on a few occasions, usually you sell them. The first book, Book 1,

was then made into CD. Like Book 1 and Book 2, you occasionally provide CD for free, but typically you sell CD. Book 1, Book 2, and CD are all sold for under \$15.

You market and sell Book 1, Book 2, and CD through your website, www.website.com, and through Founder's speaking engagements. Founder also submitted Book 1, Book 2, and CD to Company, a for-profit organization, "for their consideration to sell them on a fifty-fifty profit basis." While you state that Book 1, Book 2, and CD are self-published by Founder, you plan to spend a significant amount of your overall budget purchasing inventories of Book 1, Book 2, and CD for re-sale to the public. Additionally, you frequently confused your own identity with that of Founder. For example, when asked in a development letter to clarify who owns the copyright to the book since you referred to the books as "[Founder's] book," you answered "I own the copyright to both the books and the CD" and signed the letter as Founder, even though the letter was addressed to Taxpayer.

According to your statement of revenues and expenses, approximately 70% of your total income is derived from gross receipts from admissions, merchandise sold or services performed. In your attachment to the statement of revenue and expenses, you itemized your sources of revenue as being from the sale of Book 1, Book 2, CD, and Founder's speaking engagements. Approximately 30% of your revenue is expected to come from gifts, grants, and contributions.

Your largest sources of income, as well as your largest expense, are Book 1, Book 2, and CD. Yet you do not possess any rights to the income from Book 1, Book 2, and CD. In fact, you are not even legally entitled to receive any revenue from their sale. Rather, Founder possesses the royalty rights and copyrights for Book 1, Book 2, and CD as well as the rights to the income from their sale. You do not have a contract, or any other agreement, between you and Founder that would legally provide for the transfer of profits from the sale of Book 1, Book 2, and CD. When asked whether Founder intended to formally transfer the rights for Book 1, Book 2, and CD to you, you replied that Founder does not plan to transfer the rights to you because there is "no need for transfer and no contracts." While you have requested status as a public charity, you depend primarily upon Founder's donation of these sums and state that they will provide for approximately fifty percent of your total revenue.

According to your financial statements, your second largest source is revenue from Founder's speaking appearances. Founder has been speaking at conferences and other events for a number of years. Founder does not charge a fee for the speaking engagements, but many organizations have paid Founder for these engagements. Like the sums from Book 1, Book 2, and CD, these sums are also donations from Founder since they are voluntarily transferred to you. The total sums donated to you by Founder (between the speaking engagements and the sale of merchandise) account for approximately seventy percent of your total revenue.

At the time you filed for exemption, Founder was your sole director and member. Your bylaws list your initial number of directors as one. Eventually, you added two more board members, which brought the total number of directors to three. One of the new directors is listed as your vice president while the other new director is listed as a Trustee. According to your response to our request for additional information, both new directors are friends of Founder. Since the addition of these two board members, you have neither held a board meeting nor updated your bylaws to reflect their addition. Founder is your president, secretary, and treasurer. Additionally, you state that you will cease to exist when Founder "expires."

LAW:

Section 501(c)(3) of the Code provides that organizations may be exempted from tax if they are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and "no part of the net earnings of which inures to the benefit of any private shareholder or individual . . . ."

Section 509(a)(2) of the Code provides that an organization that normally receives not more than one-third of its financial support from gross investment income and receives more than one-third of its financial support from contributions, membership fees, and gross receipts from activities related to its exempt functions (subject to certain exceptions) qualifies as treatment as a public charity rather than a private foundation.

Section 1.501(c)(3)-1(a)(1) of the Income Tax regulations ("regulations") provides that in order to be exempt under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement of this subsection, the burden of proof is on the organization to show that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(c)(2) of the regulations provides "[a]n organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals . . . ."

Section 1.501(a)(1)-1(c) of the regulations defines a "private shareholder or individuals" as "persons having a personal and private interest in the activities of the organization."

Section 1.509(a)-3 of the regulations provides that an organization will be excluded from private foundation status if the organization meets the one-third support test under section 509(a)(2)(A) and the not-more-than-one-third support test under section 509(a)(2)(B). An organization will meet the one-third support test if it normally receives more than one-third of its support in each taxable year from any combination of: (i) Gifts, grants, contributions, or membership fees, and (ii) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513), subject to certain limitations.

Rev. Rul. 55-656, 1955-1 C.B. 262 provides that operating under the control of one person or a small, related group suggests that an organization operates primarily for non-exempt private purposes, rather than exclusively for public purposes.

The presence of a single . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes." Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945).

An organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. Founding Church of Scientology v. United States, 188 Ct. Cl. 490 (Ct. Cl. 1969).

In Christian Manner International Inc. v. Commissioner, 71 T.C. 661 (1979) the Court determined that a religious organization that sold books written by its founder was not entitled to exemption. In making this decision the Court found that the sale of the books was the organization's primary activity, that the sale was not in furtherance of a religious or educational benefit, and that even if the publication and sale of the books was in furtherance of religious or educational purposes the organization would still fail to qualify for exemption under section 501(c)(3) because "a substantial part of the activity it engaged in was in furtherance of a purpose to benefit [its founder] personally rather than to benefit the public at large and it was commercial in nature."

In Bubbling Well Church of Universal Love v. Commissioner, 74 T.C. 531, 534 (1980), *aff'd*, 670 F.2d 104 (9th Cir. 1981), the court denied exemption to an organization controlled by a small number of individuals in part because those individuals were in a position to perpetuate . . . control of [taxpayer's] operations and activities indefinitely."

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) the Court stated that even though the prohibitions against private inurement and private benefit have common elements, each has separate requirements which must be independently evaluated. See also Goldsboro Art League, Inc. v. Commissioner, 75 T.C. 337 (1980); Church of Ethereal Joy v. Commissioner, 83 T.C. 20 (1984); Canada v. Commissioner, 82 T.C. 973 (1984).

#### RATIONALE:

Based on the information provided in your Form 1023 and your supporting documentation, we conclude that you are not operated exclusively for purposes described in section 501(c)(3) of the Code and in accordance with section 1.501(c)(3)-1(a)(1) of the regulations.

If the earnings of an organization inure in whole or in part to the benefit of private shareholders or individuals, then that organization is not operated exclusively for exempt purposes and cannot be granted exemption under section 501(c)(3) of the Code. I.R.C. § 501(c)(3); Treas. Reg. § 1.501(c)(3)-1(c)(2). Inurement of net earnings may occur through a wide range of means, and is not limited to the actual distribution of dividends or payment of excessive salaries. Founding Church of Scientology v. United States, 188 Ct. Cl. 490 (Ct. Cl. 1969). The burden is on the organization to demonstrate that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, the shareholders of the organizations, or persons controlled, directly or indirectly, by such private interests. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

The Internal Revenue Service has previously determined that control of an organization by a single person, or by even a small related group of individuals, suggests that an organization is operated primarily for non-exempt private purposes. Rev. Rul. 55-656, 1955-1 C.B. 262; See

also Bubbling Well Church of Universal Love v. Commissioner, 74 T.C. 531, 534 (1980), aff'd, 670 F.2d 104 (9th Cir. 1981). Like the organization described in Rev. Rul. 55-656, you are under the control of a small group of individuals. You were originally operated only by Founder. And while you have now added two directors to the organization, these directors are friends of Founder, have not participated in a board meeting, have not reviewed the materials approved by Founder while he was the sole director, and appear to exercise no control over your direction or funds. As your president, Founder has control over all of your business affairs. As your secretary, Founder controls your corporate minutes and records. As your treasurer, Founder is responsible for all of your funds and securities. Because Founder continues to exercise near total control over your operation, you have not met your burden of demonstrating that you are not operated primarily for the benefit of private interests. See Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

The many financial and non-financial benefits that you provide to Founder also demonstrate that you operate for Founder's private benefit. While Founder does not receive a salary for Founder's services, Founder certainly derives benefits through other means. Founder retains the royalty rights and copyrights to Book 1, Book 2, and CD. These items are your largest expenses, are marketed on your website, and are promoted by you. But you do not actually receive the revenue from these items. Rather, Founder donates the sums he receives from these items to you. This benefits Founder since you are doing all of the work to sell these items and promote these items, but the revenues belong to Founder. Additionally, you do not have a right to any of the funds from Founder's speaking engagements. There are no contracts ensuring that you have the right to receive any funds from the activities conducted by Founder. Like the books, these sums are donated to you by Founder. Finally, Founder receives a non-financial personal benefit because the sale of his materials and the promotion of his speaking engagements may enhance Founder's recognition and reputation. See Founding Church of Scientology v. United States, 188 Ct. Cl. 490 (Ct. Cl. 1969).

In a similar case, a religious organization that sold books written by its founder was not entitled to exemption. Christian Manner International Inc. v. Commissioner, 71 T.C. 661 (1979). There, the court found while the sale of the books could have been in furtherance of religious or educational purposes, that the organization would not qualify for exemption under section 501(c)(3) because "a substantial part of the activity it engaged in was in furtherance of a purpose to benefit [the organization's founder] personally rather than to benefit the public at large . . . ." Similarly, a substantial part of your activities benefits Founder, rather than the public at large. The sale and distribution of these books and CD are listed as your primary source of income. Founder's books and CD are the only items sold by you, and Founder is legally entitled to receive all monies derived from the sale of Book 1, Book 2, and CD. Because Founder voluntarily transfers the sums to you, they are merely donations. Therefore, Founder is receiving all of the benefit of your work while you have no rights. This indicates that you are operated for the benefit of Founder.

You requested public charity status under sections 509(a)(2) of the Code. However, it should be noted that even if you otherwise met the requirements for exemption, your documented source of funding (*i.e.*, donations from Founder totaling approximately 70% of your revenue), would not allow you to qualify for public charity status under 509(a)(2). See I.R.C. § 509(a)(2); Treas. Reg. 509(a)-3.

While your activities in and of themselves may qualify you as exempt under section 501(c)(3) of the Code, the presence of these substantial non-exempt purposes preclude you from being recognized as exempt. See Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945) ("the presence of a single . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes"). Therefore, you do not qualify for tax exempt status under section 501(c)(3) of the Code.

#### CONCLUSION:

Based on the information provided in your Form 1023 and supporting documentation, we conclude that you are not operated exclusively for purposes described in section 501(c)(3) of the Internal Revenue Code. Additionally, even if we were to conclude that you qualify for exemption under section 501(c)(3) of the Code, you would not qualify for public charity status and instead would be classified as a private foundation.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Internal Revenue Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Internal Revenue Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

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

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,

Director, Exempt Organizations  
Rulings & Agreements