



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **201130011**
Release Date: 7/29/2011

Date: May 5, 2011

UIL: 501.00-00

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,

Lois G. Lerner
Director, Exempt Organizations

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

March 11, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = Name of Founder/President
C = Board Member
D = Board Member
G = Address
N = Date of Incorporation
M = Name of County Clerk
x = \$Amount

UIL Numbers:

501.00-00
501.03-00
501.03-05
501.32-00
501.33-00
503.00-00

Dear _____ :

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

Primary Issues

- 1) Does the transfer of an officer's personal liability to you constitute prohibited inurement of income under section 501(c)(3) of the Code, therefore precluding you from exemption? Yes, for the reasons described below.
- 2) Do the numerous payments made for the personal liabilities of your President and his wife, as well as their use of your debit card for their everyday purchases, constitute prohibited private inurement of income under section 501(c)(3) of the Code therefore precluding you from exemption? Yes, for the reasons described below.
- 3) Do the available facts show you have failed the operational test, therefore disqualifying you from exemption under Section 501(c)(3) of the IRC? Yes, for the reasons described below.

Alternative Issues

- 1) If, upon appeal, exemption is granted would you qualify as a church under section 501(c)(3) of the Code as a 509(a)(1) and 170(b)(1)(A)(i)? No, for the reasons described below.
- 2) If, upon appeal, you submit sufficient corrections to justify future exemption under Section 501(c)(3) of the Code, should those future corrections justify retroactive exemption? No, for the reasons described below.

Facts

You were formed by Articles of Incorporation filed with M's office on N by individuals B, C, and D. These Articles stated that your services will be held at address G. The purposes of your corporation, in part, were listed as follows:

- a. To promote the principles of the Jewish religion and Judaism.
- b. To establish and maintain a synagogue and place of Jewish worship, as well as a place of study of the laws and books of the Jewish faith.
- c. To raise funds in order to distribute charity to the poor and needy.
- d. To strengthen the religious, moral and intellectual welfare of its members and their families.
- e. To buy, sell, hold, own, rent, lease, mortgage, convey, exchange, alter, improve and develop real property and other property necessary to carry out the purposes and object of this Corporation, as permitted by the Religious Corporations Law.

Your Bylaws were very brief. They stated your name and that your purpose is to provide a place of worship and a study hall for Torah studies. The entire remainder of the document states:

According to the orthodox Jewish religion, one is forbidden to ride in a motor vehicle on the Sabbath. Therefore, it is customary to have small synagogues in the orthodox neighborhoods for those who cannot walk the distance to the large community synagogues. Our synagogue is a small congregation established for the benefit of the immediate neighborhood.

Our congregation has one class of membership which consists of attending services on a regular basis. Members are allowed to vote for officers at the annual meeting. Meetings are held the last day of August of each year. At this meeting officers are elected by the vote of members of the congregation.

The duties of the officers are administrative. They solicit the contributions and disburse them according to the needs of the congregation. The Rabbi of the synagogue exercises

his rabbinical authority to insure that all administrative decisions adhere to the orthodox Jewish law and Tradition.

If necessary, officers will amend the certificate of incorporation.

These bylaws were signed by individuals B and C.

You have requested classification as a church under Section 509(a)(1) and 170(b)(1)(A)(i). Accordingly, you submitted a Form 1023 with the Schedule A, which is required for churches. As a part of this schedule, you indicated you have an average of 20 attendees at your services and 20 members. We asked if your congregation had grown since inception and you responded, "no." You also responded "no" to the following inquiries on Schedule A:

- a. Do you have a formal code of doctrine and discipline?
- b. Do you have literature of your own?
- c. Do you have a process by which an individual becomes a member?
- d. May your members be associated with another denomination or church?
- e. Are all of your members a part of the same family?
- f. Do you conduct baptisms, weddings, funerals, etc.?
- g. Do you have a school for the religious instruction of the young?
- h. Do you have schools for the preparation of your ordained ministers or religious leaders?
- i. Is your minister or religious leader also one of your officers, directors, or trustees?
- j. Do you ordain, commission, or license ministers or religious leaders?
- k. Are you part of a group of churches with similar beliefs and structures?
- l. Do you issue church charters?
- m. Do you pay a fee for a church charter?
- n. Do you have other information you believe should be considered regarding your status as a church?

The narrative description of your activities, as included with your original Form 1023, in its entirety, states that your purpose is "to provide a House of Worship and prayer services to residents of the community. In addition, aid will be given to the needy and poor to help them with the cost of carrying out their religious needs." We asked what efforts you make to attract new members and you said "word of mouth."

Your application includes the following governing body members:

Individual B – President
 Individual C – Secretary
 Individual D – Treasurer

We asked for you to provide the name of your Rabbi. You said individual B is your Rabbi. You said B isn't otherwise gainfully employed. We asked for resumes. You said they do not have official resumes, but "they are all graduates of Rabbinical Seminaries and are well respected members of the community."

You submitted a list of your weekly services. Your services are held on Friday afternoon, Friday night, Saturday morning, Saturday afternoon and Saturday evening.

You stated you obtained a piece of residential property from B. You use this property to conduct your services. We asked for both interior and exterior photographs of this facility. The exterior photographs showed a two-story home located in a residential neighborhood. In response to our question if any liabilities transferred with this specific property and you said, "no liabilities transferred with the acquisition of the property." You submitted a Deed between B and his wife, party of the First Part and you, party of the Second Part. The Deed stated that property G was transferred to you and was subject to an existing mortgage of over \$x. With regard to the discrepancy between your prior statement regarding no liabilities being transferred and the Deed you said "the amount of the mortgage that was on the property we transferred, is a subtraction to the equity in the property that was transferred. However, it was part of the transfer. When we indicated that no liabilities were transferred, we meant that no liabilities that are not related to this property."

When asked how you differentiate between synagogue expenses and personal expenses of the officers, directors, trustees, and members. You responded by saying "besides the living expenses of the Rabbi, no other personal expenses of the officers, directors, trustees, and members are paid by the synagogue. The amount of living expenses is determined by the amounts on the bills and invoices." Later you said you pay for the mortgage payments, real estate taxes, utilities, and repairs that are related to B and his family.

In response to our question whether "B and/or his family reside in any portion of facility G". You responded, "No." We then asked for B's address and for you to explain how he pays for his other living expenses if you do not provide a salary and he is not otherwise gainfully employed. We also pointed out that the house you use to conduct your activities, property G, is a two story residential home and we asked the purpose of the second story. You then said, "in our previous correspondence, we meant to indicate that no one not related to the congregation resides at this property. However, B does reside at property G. The current use of the upstairs of our facility is for the residence of B. B has people helping him pay for his other living expenses."

You stated that B was in charge of your day-to-day financial transactions and that B and his wife had signatory authority on your bank accounts and are the only two with this authority.

In response to our request for copies of your bank statements for all of your accounts since inception, you submitted some statements from your checking account for the current year and omitted the first year and a half of statements. You also omitted the statement for one other month. The statements included numerous purchases through your debit card each month at gas stations, home improvement stores, big box stores, grocery stores, etc. There were also two payments to the State DMV.

Your bank statements also included many payments to credit card companies. We asked who holds these credit cards and for you to explain the purposes of these regular payments. You responded "we do not have copies of our credit card statements." We then asked again for you to provide a copy of all credit card statements for which you made payments. At that time you submitted copies of credit card statements for several months for six different cards. Three of the cards were in the name of B's wife. The other three were held jointly in the name of B and his wife. In one particular year, between July and September, you made over \$ in payments to these personally held credit cards. You provided no explanation as to the nature of these payments. You only provided the first page for each statement, so it is not clear what the payments you made were intended to cover. The credit cards had extensive late fees and the combined total owed was over \$. It is not clear whether you intend to continue paying on these personal credit cards, but the bank statements you submitted show a consistent pattern of credit card payments each month. You also did not provide the credit card statement for one credit card that you have made multiple payments towards.

Also, there were payments made from your checking account to a debt management company. We asked for you to explain these payments. You said "these payments were to settle our credit card debts which were for purchases that were needed for our synagogue." You provided no further documentation or substantiation that these payments were for the purposes of operating the synagogue.

Your bank statements further showed transfers between bank accounts. For example, a wire transfer from an individual of over \$ appeared in your bank account and it was transferred out to another account the same day. We asked for you to explain these transactions. You responded by saying "the money was transferred into a special building fund account." This was the first mention of a building account and you did not provide a copy of any of these bank statements. We asked why you had omitted these statements as we requested copies of all of your bank statements from all of your accounts. You responded by saying you "did not include these statements because they are not our daily operating account." In response to our question as to why you have a building fund account, since you already own a facility, you said you "plan to construct a much large and suitable facility." You provided no further details or documentation regarding a new facility.

You later submitted board meeting minutes for only one board meeting to document the decisions made since your inception. The only issue discussed at that meeting was regarding the possibility of building a facility. These meeting minutes indicate that B's wife is the secretary of the organization. This is the first and only mention of her being an officer. The addition of her being an officer causes 50% of the board to be related.

Your bank statements also included purchases made with your debit card at out-of-state gas stations, international locations, as well as airline and car repair charges. You said "these expenses were not personal expenses. These expenses are to enable B to give supervision on

kosher products. Members of our Congregation rely on his opinion on what kosher products to use." We asked for more detail regarding this activity and B's travels on your behalf. You simply said, "as we stated in previous correspondence, our Rabbi has traveling expenses in order to provide kosher supervision. He is not a student, or being instructed on kosher supervision." No further detail was provided.

In response to our request for a complete listing of donors to your organizations since inception, you indicated you have only had two donations and that they were received from other exempt organizations. These two donations totaled a little over \$. As you have expended much more than this amount, this can not be your complete list of donors. We asked for you to verify you only had received these two donations, and you continued to assert these were the only donations you had received.

Per our request, you submitted a few months of cancelled checks. These checks showed a \$ payment each month for school tuition for an individual who appeared to be a minor child of B. At the top of each of these checks, above your name and address, is the hand-written surname of B. When we asked about these payments, you said the school payments are a "nontaxable fringe benefit to pay the tuition costs of his (B's) children." This was the first mention of this benefit. In fact, you had previously provided a list of organizations to which you made contributions and these payments to the same schools are listed as "donations to other organizations" for "educational" purposes.

Law

Section 501(a) exempts organizations described in Section 501(c) of the Code from federal income taxation.

Section 1.501(a)-1(c) of the regulations provides that the terms "private shareholder or individual" in Section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the 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 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 in not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an 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 as defined in Section 1.501(a)-1(c).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an exempt organization must serve a public rather than a private interest. The organization must establish that it is not organized or operated to benefit 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."

In Rev. Rul. 78-232, 1978-1 C.B. 69 (1978), the taxpayer, claiming to be a duly ordained minister, formed a "church." The original members of the church consisted of the taxpayer, the taxpayer's spouse and two minor children, and a few family friends. The taxpayer was employed full-time by a state government, and continued in this employment after the church was formed. The taxpayer's salary checks were received by the taxpayer and deposited into the church's bank account. The funds from the church bank account, however, were primarily used to furnish the taxpayer with lodging, food, clothing, and other living expenses in a manner comparable to that which the taxpayer previously enjoyed.

Rev. Rul. 81-94, 1981-1 C.B. 330 (1981) determined that a church that was formed by a professional nurse (who is also the "church's" minister, director, and principal officer) and that is used primarily as a vehicle for handling the nurse's personal financial transactions is not exempt from tax under section 501 (c) (3) of the Code. Pursuant to a vow of poverty, the nurse transferred all of the nurse's assets, including the nurse's house and automobile, to the corporation. All salary payments received from the third-party employer are deposited in a bank account maintained in the name of the corporation. In return, all of the nurse's existing liabilities, such as a home mortgage and all outstanding credit card balances, were assumed by the corporation. The nurse is also provided with a full living allowance sufficient to maintain or improve the nurse's previous standard of living. The corporation permits the nurse to use the house and automobile for personal 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.

The Court of Appeals in Parker v. Commissioner, 365 F.2d 792, 799 (8th Cir. 1963) held, inter alia, that findings of Tax Court that foundation was pursuing a substantially nonexempt purpose in the publication and commercial exploitation of the writings of the director and prime functionary of foundation and that foundation was not entitled to a tax exemption as a religious organization were clearly supported by evidence.

In Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), the Tax Court held that although separate requirements, the "private inurement" test and the "operated exclusively for exempt purposes" test often overlap substantially.

In Unitary Mission Church v. Commissioner, 74 T.C. 507 (1980), it was held that the prohibition against inurement or private benefit is absolute, the amount or extent not being determinative.

Petitioner's financial decisions are controlled by X, one of petitioner's ministers, and his wife. X received widely fluctuating "parsonage allowances" over a 3-year period as compensation for leading services and for being available for pastoral counseling. There is no evidence in the administrative record of any differing duties that he performed over these years. There is also insufficient evidence in the record regarding some of the travel expenses paid to X and his wife and regarding two loans made to X's secular employer. Parsonage allowances of fluctuating amounts were also paid in some years to petitioner's other two ministers; yet, there is no evidence in the record about any services they performed for petitioner. The Tax Court concluded that petitioner is not entitled to exemption because a part of its net earnings inures to the benefit of private shareholders or individuals.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the Sixth Circuit court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse and thus the need to be open and candid, which the applicant failed to do.

In American Guidance Foundation v. U.S., 490 F. Supp. 304 (D.D.C. 1980), the court said that, at a minimum, a church must include a body of believers that assemble regularly in order to worship. It must also be reasonably available to the public in the conduct of worship, in its educational instruction, and in its promulgation of doctrine. An organization of a few family members who attend worship services at a relative's apartment was held not to be a church under sections 509(a)(1) and 170(b)(1)(A)(i) because it did not meet these requirements. In addition, it was held that when the assets of an organization are used to pay for the living expenses of an individual(s) denial of exemption is appropriate. Generally, there are fourteen criteria used in determining whether or not an organization qualifies as a church. These criteria are as follows:

- a. A distinct legal existence
- b. A recognized creed and form of worship
- c. A definite and distinct ecclesiastical government
- d. A formal code of doctrine and discipline
- e. A distinct religious history
- f. A membership not associated with any other church or denomination
- g. Ordained ministers ministering to its congregation
- h. Ordained ministers selected after completing prescribed studies
- i. Literature of its own
- j. Established place of worship
- k. Regular congregation
- l. Regular religious services
- m. Sunday schools for religious instruction of the young
- n. Schools for the preparation of ministers

In KJ's Fund Raisers v. Commissioner, T.C. Memo 1997-424 (1997), aff'd, 166 F.3d 1200 (2d Cir. 1998), the Tax Court held, and the Second Circuit affirmed, that an organization formed to raise funds for distribution to charitable causes did not qualify for exemption under section 501(c)(3) because its activities resulted in a substantial private benefit to its founders.

Application of Law

You are not described in Sections 501(c)(3) of the Code and 1.501(c)(3)-1(a)(1) of the regulations because you fail the operational test. Specifically the facts show you are operated not exclusively for 501(c)(3) purposes but for the substantial purpose of private benefit to B.

You are not as described in section 1.501(c)(3)-1(c)(1) of the Regulations because you were set up to pay the mortgage and related expenses associated with B's home and to pay the expenses of B such as credit card and travel expenses.

You are not as described in section 1.501(c)(3)-1(c)(2) of the Regulations because your earnings inure to B and his family. The facts show numerous payments of B's personal debt as well as for his wife. Each of these payments constitutes inurement.

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) because you are operated for the benefit of designated individuals, specifically B and his family.

You are similar to the organizations described in Rev. Rul. 81-94 and 78-232. Much like the organizations described in these rulings, B transferred his home and associated debt to you, while you paid for his lodging, school tuition for his children, and other expenses in a manner comparable to that which he enjoyed previously. B also has sole financial control. He continues to live as he did prior to the transfer of his property, but his mortgage is now paid by you. You also are paying expenses of B and his family, including credit card expenses and tuition expense.

As stated in Better Business Bureau of Washington, D.C., Inc. v. United States, supra, 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. 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). 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. An organization is not 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. B "donated" his home to you; however, he also transferred the substantial liability associated with the home. B continues to reside in the home he donated. The only thing that has changed for B and his family is that his mortgage and all living expenses associated with the home are paid by you, creating private inurement, which destroys your claim for exemption.

A number of courts have held that unaccounted for diversions of a charitable organization's resources by one who has complete and unfettered control can constitute inurement. See Parker v. Commissioner, supra. The provision of inurement can be direct or indirect. An organization will be denied exemption if any of its net earnings inure to the benefit of private individuals. Even a small amount of inurement will prevent exemption to be granted. B is one of your incorporators, as well as President. B and his wife are the sole signatories on your checking account. They have control over your operations and have a personal interest in your activities. Thus, B is a private individual who has complete and unfettered control over you. Based upon the facts presented, you have not demonstrated that this form of compensation

paid to B is reasonable; therefore, you have not established that no part of the net earnings of your organization inures to the benefit of private individuals. As a result, you do not meet the requirements for tax exemption.

You are paying large amounts of credit card debt each month that belong to B and his wife. Private interests of B and his wife are being served. As in Western Catholic Church v. Commissioner, supra, although separate requirements, the "private inurement" test and the "operated exclusively for exempt purposes" test often overlap substantially. In your case, the donation of B's home with associated debt, as well as monthly unsubstantiated payments of personal credit cards and many debit card purchases each month constitutes private inurement and indicates a lack of an exempt purpose therefore precluding you from exemption

Similar to the organization in Unitary Mission Church v. Commissioner, supra B's donation of his home appears to be a vehicle by which he eliminated his own personal debt, but continued to reside with his family in his home. Regardless of your religious activities, the transfer of the liabilities to you from B, who is also your President, causes him to receive a private inurement, which is fatal to your exemption. B continues to live in his home with his family, which you now own, and your funds are being used to pay for the mortgage and all related expenses. That being said, you are not entitled to exemption because your net earnings inure to the benefit of B, your President.

B and his wife hold exclusive signatory authority of your checking account. Based on what you've told us, 50% of your board is related (B and his wife). There appears to be no oversight regarding the checks written. B has continually used your funds to pay for his personal credit cards. Every bank statement you provided included numerous payments for purchases made at grocery stores, discount stores, gas stations, and for airline expenses, etc. These payments were made with no supporting documentation to allow us to conclude that these payments were in furtherance of 501(c)(3) purposes. Much like Basic Bible Church v. Commissioner, supra, even if you do serve some level of religious purposes, you have existed to serve the private benefit of your founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by B and his wife have created an opportunity for abuse.

While it may be reasonable for a church to pay for the parsonage and related expenses of their leader, the extent of B's duties in relation to you is not clear. You also do not conduct weddings, funerals, etc. You do not have a formal code of doctrine and discipline or literature of your own. You do not have a process by which an individual becomes a member. You do not have a school for the religious instruction of the young or schools for the preparation of your ordained ministers or religious leaders. You do not ordain, commission, or license ministers or religious leaders and you say you are not a part of a group of churches with similar beliefs and structures. Much like the organization described in American Guidance Foundation v. U.S., supra, you are an organization of a few individuals who attend worship services at a residential home. In this case the court held the organization not to be a church under sections 509(a)(1) and 170(b)(1)(A)(i) because it did not meet these requirements. In addition, it was held that when the assets of an organization are used to pay for the living expenses of an individual(s) denial of exemption is appropriate. Your overriding purpose is to pay the living expenses of B, therefore you are similar to the organization in American Guidance Foundation v. U.S.

Like the organization in KJ's Fund Raisers v. Commissioner you operate for the substantial private benefit of your founder B and his family. In addition you have not established that any of your contributions were for charitable purposes.

Applicant's Position

You said the assumption of the mortgage by the congregation would constitute a benefit to a private individual if the amount of the mortgage on the property had exceeded the fair market value that was transferred and that:

"this is not the case. The fair market value of the transferred property was far greater than [sic] the amount of mortgage that was assumed by the congregation. Accordingly, this transfer would constitute a donation to the congregation and not a benefit to a private individual."

You also stated that the payments made to the credit card companies do not constitute prohibited private inurement because "although the credit cards belong to the Rabbi of our organization, they were used for the purposes of our congregation. Therefore, they were not a prohibited private inurement."

Service's Response to Applicant's Position

Although you say the transfer of the house, along with the outstanding liability does not constitute inurement, it does. The donor gets to continue to live in his "donated" home, have the mortgage paid by you, including all utilities, repairs and expenses. The financial data provided by you on your application indicated no property assets. Upon questioning you provided a revised balance sheet showing a value of \$ for the property G. However you provided no appraisal from an independent certified appraiser for the property. An Insurance policy on G stated the Limit on Liability coverage at \$500,000.00, and the outstanding mortgage liability on the property was stated as . You have not established the fair market value of the property nor the fact that the value was far greater than the mortgage on the property. Moreover the transaction itself was not an arms length transaction since it was between B and his wife and B as your Founder/President. The transaction was effected so as to have you own the property and pay the mortgage, utilities and all the expenses of B, while B and his wife continued to live on the property. We asked for you to cite relevant legal precedent to support your claim for exemption and you did not provide a single citation of law. Rather, you continued to assert that the credit card payments are in furtherance of the synagogue's purposes. You provided no documentation or substantiation to support your claim that the credit card payments were for religious or charitable purposes. The use of the organization's debit card by the Rabbi and his wife provide evidence of the organization being used as their personal bank account, much like the organization described in Rev. Rul. 78-232. Even if you are operating to serve a religious or charitable purpose, the existence of prohibited private inurement precludes you from exemption.

Conclusion Primary Issues

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(3) of the Code. More specifically:

- 1) The transfer of B's personal liability to you, constitutes prohibited inurement of income under section 501(c)(3) of the Code and causes you to be disqualified for exemption there under.
- 2) The numerous, continuous payments made for the personal liabilities of B and his wife, as well as the continued use of your debit card for daily living expenses of B and his wife, constitutes prohibited private inurement of income under section 501(c)(3) of the Code therefore precluding you from exemption.
- 3) .The transfer of a personal liability, as well as sole financial control by one of your officers for the benefit of that officer, constitutes prohibited inurement of income under section 501(c)(3) of the Code and causes you to be disqualified for exemption there under. As you are operating for the private interests of your founders, you have failed the operational test, therefore disqualifying you from exemption under Section 501(c)(3) of the IRC.

Conclusion Alternative Issues

- 1) If, upon appeal, you were found to qualify for exemption, you do not meet the minimum requirements to be classified as a church under Sections 509(a)(1) and 170(b)(1)(A)(i) because your overriding purpose is to server your Founder B and pay the expenses of B and his family. Any religious purposes are merely incidental to the accomplishment of private benefit to B. Because you do not meet the requirements for church classification of any other exception to private foundation status, we conclude that if upon appeal exemption is granted that you are a private foundation.
- 2) The facts show you do not meet the requirements for exemption currently or retroactively. Information provided shows a pattern of payment of personal expenses of B and B's wife and no evidence that any of these payments were in furtherance of any exempt purpose. Accordingly, if you were to submit corrections which overcome each and every deficiency and reason for disqualification we conclude that you do not qualify for retroactive exemption because the facts show inurement occurred.

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*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

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 7810
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:
Internal Revenue Service
EO Determinations, Group 7810
550 Main Street, Room 7-008
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,

Enclosure: Publication 892

Robert Choi
Director, Exempt Organizations
Rulings & Agreements