



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201219025**
Release Date: 5/11/2012
Date: 2/13/2012
UIL Code: 501.00-00
501.03-00
501.03-05

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: December 19, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A = Individual
B = Individual
C = Individual
D = Individual
E = Individual
F = Individual
G = Individual
H = Individual
M = Name
N = State

x = date

y dollars = Amount

UIL Numbers:

501.00-00
501.03-00
501.03-05
503.00-00

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 the available facts show that you have failed to pass the operational test, therefore disqualifying you from exemption under Section 501(c)(3) of the IRC? Yes, for the reasons described below.

Alternative Issue

In the event that upon appeal you are found to qualify for exemption under Section 501(c)(3) of the Code, should you be classified as a private foundation under Section 509(a) of the Code?
Yes, for the reasons described below.

Facts

You were formed by Articles of Incorporation on the date x by individuals A, B and C in the state of N. A and B are brothers. The Fifth Article of your Incorporation document states you were formed, in part, to conduct and maintain a house of worship and to promote religious education and to help and assist students to learn through all means possible. The Ninth Article provides for an election to be held on the first day of February each year.

Your Bylaws state that you were formed to provide a place of worship and a study hall for Torah studies. Your Bylaws also state that 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 orthodox neighborhoods for those who cannot walk the distance to the large community synagogues. You said your synagogue is a small congregation established for the benefit of the immediate neighborhood. Your Bylaws further assert that you will hold an annual meeting each year on the first day of January to elect officers.

Per your application for exemption, you are seeking classification as a synagogue under Section 501(c)(3) of the IRC as described in sections 501(a)(1) and 170(b)(1)(A)(i).

Your board members all live, according to you, about 45 miles from the location of the synagogue. We asked why you elected Trustees that live such a distance from your facility. You responded that you needed Trustees who understood your culture and have the desire to manage and direct a small congregation. We asked for a list of their qualifications, average hours worked for you and the duties performed for you. You responded as follows:

Individual A, Qualification: administrative experience, Hours: variable, Duties performed: administrative

Individual B, Qualification: administrative experience, Hours: variable, Duties performed: administrative

Individual C, Qualification: administrative experience, Hours: variable, Duties performed: administrative

We then asked for you to provide resumes of your board members. You indicated they are well known members of the community. We asked again for resumes of your board members. You said, "They were not appointed based on printed resumes. It was based on them being well known and respected members of the community." A third time we asked for resumes of your board members. You responded, "They do not have an official resume, however they are very respectable and well known community organizers." We asked again for resumes of the board members. You ignored the question the fourth time we asked it.

We asked for copies of all your board meeting minutes. You indicated "Since inception our trustees have not conducted any meetings. Accordingly, there are no minutes."

You lease a facility from congregation M free of charge. The lease became effective in 2009 and provisions for you to use the facility free of charge. You use the first floor (basement) of the facility and congregation M uses the rest of the building. You indicated there are three members of congregation M's governing body: individuals D, E, and F. Individuals E and F appear to be related. We asked you to explain in detail how your activities are separate and distinctive from congregation M's activities. You indicated prayers are held on different levels of the building so they don't interfere with each other. Per our request you provided photographs of the facility. The facility is a large synagogue with outdoor signage that clearly indicates congregation M operates at that location. We asked how you make the public aware of your operations within that building. You responded this occurs through "word of mouth." We asked for copies of all flyers, announcements or advertisements for your services. You responded "N/A."

You stated you have approximately 25 congregants and your facility can accommodate up to 30 individuals. We asked if there was any signage to alert the public that you are holding services in the facility owned by congregation M. You responded, "No." We asked if you plan on obtaining your own facility and you responded that you don't have any plans to acquire a new facility.

We asked for you to describe the monetary and non-monetary contributions the members, directors, trustees and officers make to you. You responded, "N/A." We also later asked if congregants had made donations to you and you said that "no members have given donations." We asked for a list of all donations made to your organization since inception. You said you have only received one donation, for y dollars, from a private foundation since inception.

We asked for copies of your bank statements from inception. You omitted 10 months of the requested statements. The statements you did provide reflect very little activity, with no financial activity occurring for several months at a time. There were no large deposits in your account at any time. Although you indicated you received a grant of y dollars from a private foundation, there is no evidence of this grant ever passing through your bank account. We asked if you had any other bank or investment accounts and you responded "No."

Because two of your three original board members were related (brothers), we later suggested you add another unrelated party to your board. You added individual H and removed individual B in April 2009. However, your bank statements were still being mailed to individual B's address as of October 2009.

You indicated you would provide grants to individuals for religious needs such as religious education. The availability of these grants is advertised through word of mouth and there are not preprinted applications. The criteria for eligibility will be based on the urgency of the case, and on a first come first serve basis. The selection of grant recipients will be made by the board of trustees who are well known members of the community, who have a sensitivity and understanding for the needs of the needy. You further stated you "will not have any special procedure for applicants who are related by blood or marriage to a specific trustee. Since we have a board of trustees, which consists of 3 members, we don't feel there will be any preferential treatment if an applicant is related to one of the trustees." At the time when you

made this statement, two of your three board members were related. Recipients will be required to provide documentation and receipts to substantiate that the funds received were spent on the items claimed to be necessities. You said you do not anticipate misuse of funds.

We later asked for more information regarding your grant program for individuals. We asked you to describe the criteria you will use to determine if an individual is eligible for a grant and how you determine the amount of the grant. To these questions you responded, "The criteria will be determined based on the poverty level of the individual." No other details were provided.

You also indicated you will provide grants to organizations that have received recognition as 501(c)(3) organizations. These grants will be advertised through word of mouth. You said you did not intend to publish any literature regarding these grants and there will not be preprinted applications. The criteria for eligibility will be based on the urgency of the case, and on a first come, first serve basis. The amounts of your grants will be based upon the availability of funds. We later asked for to you explain the criteria you use to determine eligibility and the amount of the grant. You responded, "The organization that could demonstrate that they are assisting people with the most dire needs." The grant amounts will be "based on the amount of funds that are available to us."

We asked for you to provide the name of your Rabbi. You indicated your Rabbi is individual F, hereafter Rabbi F. You had previously indicated Rabbi F was a governing body member of congregation M. You stated Rabbi F does not serve as the Rabbi for any other organization and is not otherwise gainfully employed. You stated you do not compensate Rabbi F or provide him with housing.

Your mail is received at an address that doesn't match any of your governing body members or your facility. We asked for you to identify the party that receives mail at that address and you said your office is located at that address. We then asked again for you to identify the party that receives mail at that address. You responded, "The clerks who work at our office are the party who receives our organization's mail." We then asked for you to provide the legal name of the individual that receives the mail at your mailing address. You indicated individual G receives your mail. It is not clear what individual G's involvement is with your organization, as you provided no further details.

The mailing address of your organization, per public records, is also that of an organization with a name similar to yours. Further, individual G is listed as the C/O name for the mail for the other organization. We asked what your relationship is to this other organization. You responded there is no relationship between you and the other organization. We then asked for you to provide a listing of other organizations that your governing body members also serve. You indicated your governing body member A is in fact a governing body member for this other, similarly named organization.

We asked for a congregational directory and you did not initially provide one. We then asked again for a congregational directory. You provided a partial list with over 80 names. The surnames on the list only began with four different letters of the alphabet. As this appeared to be a partial list, we asked for the complete list of your members. You then submitted a listing of 25 individuals, which was completely different than the original list you provided. We asked about this discrepancy. You responded the list you had previously provided was "an error."

We have written letters asking for additional information on six separate occasions. Five of those times resulted in the administrative closure of your case as a Failure to Establish (FTE). In total the processing of your application has been ongoing for 2 ½ years, largely due to your very slow and vague nature of responding to our requests for information.

Law

Section 501(a) of the 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 507(d)(2) of the Code defines the term "substantial contributor" as any person who contributed an aggregate amount of more than \$5,000 to the foundation, if such amount is more than 2 percent of the total contributions received by the foundation before the close of the taxable year in which the contribution is received.

Section 509(a)(2)(A) of the Code requires at least one-third of support from gifts, grants, contributions, membership fees and "gross receipts."

Section 509(a)(2)(B) of the Code requires that not more than one-third of support be derived from investment income and unrelated business taxable income and are to be computed on the basis of the organization's normal sources of support.

Section 1.170A-9(e)(2) of the regulations provides that an organization will be treated as a 'publicly supported' organization if it normally receives 33 1/3 percent of its total support from a governmental unit or from direct or indirect contributions from the general public.

Section 1.170A-9(e)(3) of the regulations provides that if an organization fails to meet the 33-1/3 percent-of-support test, it will be treated as a publicly supported organization if it normally receives at least 10 percent of its support from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources. An organization must also maintain a continuous and bona fide program for solicitation of funds from the general public and have a governing body representative of the broad interest of the public.

Section 1.170A-9(e)(4)(i) of the regulations provides that an organization will be considered 'normally' meeting the 33 1/3 percent-of-support test for its current taxable year and the taxable year immediately succeeding its current year, if, for the four taxable years immediately preceding the current taxable year, the organization meets the 33 1/3 percent-of-support test on the aggregate basis.

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(d)(1)(ii) of the regulations states that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests.

Revenue Procedure 2011-9, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.03 provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

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.

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 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. Based on 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.

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

The court stated that courts in cases where church status have been litigated have more heavily weighted certain criteria. It considered the following factors to be especially important:

- A membership not associated with any other church or Denomination
- Established places of worship
- Regular religious services.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the 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 Basic Unit Ministry of Alma Karl Schurig v. Commissioner, 511 F. Supp. 166 (D.D.C. 1981), aff'd, 670 F.2d 1210 (D.C. Cir. 1982), the court upheld IRS's denial of exempt status as a religious organization in a declaratory judgment action. The court held that in factual situations where there is evident potential for abuse of the exemption provision, a petitioner must openly disclose all facts bearing on the operation and finances of its organization. Here Plaintiff did not proffer sufficiently detailed evidence of its charitable disbursements, or the extent of its support of its members. Rather, plaintiff continually responded that it had already provided the data, or could not furnish anything further. Therefore, the court found that the applicant did not meet its burden to positively demonstrate that it qualifies for the exemption. The Court of Appeals for the District of Columbia Circuit, in affirming that the organization had not met its burden of establishing that no part of its net earnings inured to any private individual, observed:

“taxpayer confuses a criminal prosecution, in which the government carries the burden of establishing the defendant's guilt, with a suit seeking a declaratory judgment that plaintiff is

entitled to tax-exempt status, in which the taxpayer, whether a church or an enterprise of another character, bears the burden of establishing that it qualifies for exemption.”

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 Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), the court upheld the Service's determination that an organization failed to establish exemption when the organization failed to provide requested information. The court stated “[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities Such generalizations do not satisfy us that [applicant] qualifies for the exemption.”

In New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), 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 non exempt schemes. The organization 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 ruled against the applicant, stating that it had failed to bear its burden of proof to establish that it qualified for exemption. The court said, “It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant”.

Application of Law

Issue I

You are not as described in section 501(c)(3) of the Code because you have not established that you meet the operational test as per Section 1.501(c)(3)-1(a)(1) of the regulations. You have not shown as required by Section 1.501(c)(3)-1(c)(1) that you are primarily engaged in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. You have also not shown that you are serving public interests as opposed to private interests as required by Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. For example:

- Two of your three original board members are related. You claim to have removed one of the related board members and replaced him with an unrelated party. However, your bank statements are still being sent (months after his purported removal) to the board member's house that was removed.
- You have no special procedures addressing a conflict of interest if an individual who is related to a board member applies for a grant.
- You have not provided specific criteria on how you select grant recipients.
- Even though your Articles of Incorporation and your Bylaws have a provision for an annual meeting whereby you elect officers, you have not held any meetings.

You have not met the requirements of Section 4.01 of Revenue Procedure 2011-9, which provides an organization seeking exemption must fully describe all activities including standards, criteria, and procedures. For example:

- Your bylaws state it is customary to have small synagogues in orthodox neighborhoods because it is forbidden to use motor vehicles on the Sabbath; however, your board members live about 45 miles away from where your services are held.
- Your Rabbi is also a member of the governing body of Congregation M in the same building.
- You indicated that you received a y dollar grant but there was no evidence this was deposited in your account.
- You indicated you removed one of your related board members but your bank statements were still being sent to his address several months after his purported removal.
- We asked you for a congregation directory. At first, you did not provide one. You eventually provided one with over 80 names in it and the last names of the members only began with four different letters of the alphabet. You then submitted a directory with 25 individual names and said the previous one was submitted in error.
- The mailing address of your organization, per public records, is also that of an organization with a name similar to yours. Further, individual G is listed as the C/O name for the mail for the other organization. We asked what your relationship is to this other organization. You responded there is no relationship between you and the other organization. We then asked you to provide a listing of other organizations that your governing body members also serve. You indicated your governing body member A is in fact a governing body member for this other, similarly named organization.
- Your only contribution has been from a private foundation, rather than from members of your congregation.

Moreover, you do meet Sections 4.03 and 4.03(2) of Revenue Procedure 2011-9 because you did not provide information we asked for after repeated requests. For example:

- You failed to provide resumes and specific qualifications of board members.
- You did not provide an explanation on how your congregation is distinct and separate from Congregation M since you use its facility and its board member is your rabbi.
- You were unable to provide any literature concerning your services such as flyers, announcements or advertisements.
- You omitted several months of bank statements we asked you to provide.

Finally, we wrote you on six different occasions. Five of those times resulted in failure to establish.

You may have some charitable purposes like the organization in Better Business Bureau; however, the presence of non-exempt purposes of operating for private interests will preclude exemption regardless of the number or importance of exempt purposes. You have not shown that you are not operating for the benefit of your board members.

Like the organization in Bubbling Well Church of Universal Love, you have given vague and uninformative answers to our inquiries. Moreover, you have not provided a candid disclosure of all facts about your operations and finances to assure us there is no abuse of the revenue laws. Because you have not been forthcoming in your responses, the logical inference as stated in this revenue ruling would show that you fail to meet the requirements of Section 501(c)(3).

You are similar to the organization in Basic Bible Church, because although you may be serving some religious and charitable purposes, you have failed to be open and candid in providing operational and financial information.

You are like the organization in Basic Unit Ministry of Alma Karl Schurig v. Commissioner, because you have not openly disclosed all facts on your operations and finances to demonstrate that you qualify for exemption. You did not proffer sufficiently detailed evidence of your operations and you continually responded in a vague and uninformative manner. Finally, you failed to provide 10 months of bank statements.

You are similar to the organization in National Association of American Churches, because you have not provided sufficient information for the Service to make an informed decision. You have not responded to questions completely and consistently. Moreover, we asked the same questions multiple times and continually received little or inconsistent details regarding your operations.

You are similar to the organization in New Dynamics Foundation v. United States, because you have not met the burden of establishing that you meet the statutory requirement under Section 501(c)(3) of the IRC. You continually failed to respond to several of our questions. You provided a list of your congregants, which included 80 individuals, that you later called an "error." Moreover, your proposed grant-making program to individuals and organizations lacked the necessary details for us to determine whether the activity is in furtherance of exclusively 501(c)(3) purposes. For example, you plan to make grants to individuals and will only advertise via word of mouth. You will not have printed applications and the grants will be on a first come, first served basis. The criterion for your selection of recipients was not clear and related individuals are eligible to receive grants. The criteria will be determined based on poverty level and didn't indicate whether the individual had to be at poverty level, below poverty level, how you determine poverty level, whether you verify income of recipients, etc. In addition, you will only advertise your grant-making program to other organizations via word of mouth and there is no application process. Your only criterion is that the organization can demonstrate they are assisting people in dire need.

You are similar to the organization in Peoples Prize v. Commissioner, because you have only provided generalizations and inconsistencies to our repeated requests. Therefore, like this organization you have failed to establish exemption.

Alternate Issue

If upon appeal you are granted exemption under Section 501(c)(3), you should be classified as a private foundation because you have failed the public support test.

As in American Guidance Foundation, supra, you do not meet several of the 14 points of a church to qualify under sections 509(a)(1) and 170(b)(1)(A)(i). While it is certainly not necessary to meet all 14 points, some of the points weigh more heavily. These points include:

- A membership not associated with any other church or Denomination
- Established places of worship
- Regular religious services.

Based on the various membership listings you have provided, it is not clear if your members are associated with your synagogue at all. The first list you provided included about 80 individuals that you later claim was an "error." The second membership listing was completely different from the first one and included only about 25 individuals. As far as your established place of worship, it is not clear how a member of the public would become aware of your activities. You do not have signage on the building indicating that you are conducting services. You have no flyers or brochures. It is not clear that your activities are separate and distinct from congregation M. In fact, your Rabbi is on congregation M's board.

You do not meet IRC 170(b)(1)(A)(vi) because you have only received a \$10,000 contribution from a private foundation since your inception. Your public support percentage is 2%. Therefore, you do not meet the 33-1/3 percent-of-support test as described above.

Therefore, you are also not an organization described in section 509(a)(1) of the Code because you are not an organization described in sections 170(b)(1)(A)(i) through 170(b)(1)(A)(v) of the Code. Further, you are not an organization described in section 509(a)(2) of the Code because you do not meet the support tests provided in sections 509(a)(2)(A) and 509(a)(2)(B) of the Code. Your public support percentage under Section 509(a)(2) is 0%.

Applicant's Position

You are formed under the Religious Corporation Law as a synagogue. You are providing a house of worship to those in the community who hear of your services via word of mouth. You have not received any contributions from your congregants. Rather, all of your funding came from a single donation from a private foundation. Your landlord, congregation M, has paid all of your operational expenses to date. You said you have no signs on the exterior or interior of the facility to indicate that you are operating. In fact, you provided a photograph that shows an exterior sign indicating that congregation M is located in your building. You claim to be operating in congregation M's basement. Your Rabbi is a board member of congregation M. You continue to assert that you are a church within the meaning of 509(a)(1) and 170(b)(1)(A)(i).

Service's Response to Applicant's Position

You have consistently failed to provide the specific information that we have requested. When you do provide information, it is often contradictory with other information you previously provided. Although you claim to have been operating for over four years, you are unable to provide basic information regarding the details of your operations. Your only contribution has been from a private foundation, which is highly unusual for an operational congregation. Your responses to our requests for more information and clarifications were so vague and widely

inconsistent that we are unable to determine that you are operating exclusively for 501(c)(3) purposes. Similar to the organization in Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), you have the burden of proving that you satisfy the requirements for tax exemption. You have failed to provide enough information to prove to us that you are not operating for private interests.

Conclusion

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(3) of the Code. Your responses to our inquiries were vague and uninformative. Therefore, you have failed to meet your burden of positively demonstrating that you qualify for exemption under Section 501(c)(3) of the Code. Based on the widely inconsistent information you have submitted over the course of the development of your application, we are unable to conclude that you are operating exclusively for 501(c)(3) purposes. Therefore, you fail the operational test, and are disqualified from exemption under Section 501(c)(3) of the Code.

Conclusion Regarding Alternative Issue

The information you have provided about your operation of a house of worship is vague and, at times, contradictory. 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 also 170(b)(1)(A)(i). Rather, you would be classified as a private foundation, as you have failed the public support tests.

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

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
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,

Lois Lerner
Director, Exempt Organizations