

Bond Case Briefs

Municipal Finance Law Since 1971

LTR: IRS Denies Exempt Status to Jewish Orthodox Synagogue.

The IRS denied tax-exempt status under section 501(c)(3) to a Jewish Orthodox synagogue because it failed to establish that it was organized and operated exclusively for exempt purposes and not for the private benefit of its creators, and because it lacked control and discretion of its funds.

Citations: LTR 201325017

Contact Person: * * *

Identification Number: * * *

Contact Number: * * *

UIL Code: 501.00-00, 501.03-00, 501.03-20, 503.00-00

Release Date: 6/21/2013

Date: March 28, 2013

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.

Since 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.

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, you should 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,

Holly O. Paz

Director, Exempt Organizations

Rulings and Agreements

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter

* * * * *

Contact Person: * * *

Identification Number: * * *

Contact Number: * * *

FAX Number: * * *

UIL Numbers: 501.00-00, 501.03-00, 501.03-20, 503.00-00

Date: January 25, 2013

Employer Identification Number: * * *

LEGEND:

B = individual

C = individual

D = individual

E = couple

F = individual

G = organization

H = business

J = individual

k = dollar amount

L = individual

W = state

X = date

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. This letter supersedes our letter dated July 9, 2012.

ISSUES

1. Do the available facts show 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.
2. Does the fact that you allow a non-board member to have signatory authority on your checking account demonstrate a lack of control and discretion of your funds, causing you to fail the operational test, therefore disqualifying you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
3. Have your transactions resulted in private benefit, therefore precluding you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
4. Do the capital improvements you made constitute a substantial non-exempt purpose, therefore disqualifying you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.

FACTS

You were formed by Articles of Incorporation on X by Trustees B, C and D. Article seven of your Articles states you were formed, in part:

To establish, maintain and conduct services for divine worship and religious observances in accordance with the customs and traditions of the Orthodox Jewish Religion; to establish, maintain and conduct synagogue for religious worship and prayer in accordance with the customs and traditions of the Orthodox Jewish Religion; to establish, maintain and conduct classes in Talmud and religious education; to purchase and lease such property as may be necessary for or incidental to the conduct and welfare of the corporation and the fulfillment of its religious objectives and purposes; and to solicit contributions from the general public in order to sustain said religious corporation.

Your Bylaws state you were formed to maintain a synagogue to conduct religious worship and services in accordance with the tenants of Jewish Orthodox faith. Article eight of your Bylaws states the following:

The Treasurer shall have the care and custodies of the monies belonging to the Organization and shall be responsible for such monies and securities of the Organization. He shall cause to be deposited in a regular business bank or trust company all sums of the Organization. He or one of the other offices [sic] must be one of the persons who shall sign checks or drafts of the organization. No special fund may be set aside that shall make it unnecessary for the Treasurer to sign the checks issued upon it.

You state in your attachments to Form 1023 that “our organization (you) is controlled by the board of directors. They make all decisions about the organizations (your) activities, and decide how funds are to be spent.”

You submitted a Conflict of Interest Policy, which has a purpose of protecting your interest when contemplating entering into a transaction, or arrangement that might benefit the private interest of an officer or director of the organization or might result in a possible excess benefit transaction. However, no one had signed the Conflict of Interest Policy.

You describe your activities as that of a congregation, with services held each weekday morning in accordance with Jewish tradition, as “described in prayer books available at any bookstore.” Per your application, you have *** members. However, you submitted a list of your members of which there were only **. Only one of your Trustees was included in your membership listing. You attract new members through “word of mouth, we have no website.”

When we asked how you came into existence you said “adherents and former students of B decided to form a congregation to foster community feeling [sic] among former students and appreciative community members.”

Your rabbi is B. You said, “We have no written contract with the rabbi. The rabbi does not receive a salary from the congregation. He is otherwise employed.” G, a school located within your facility, employs B. B works at least 25 hours per week for them. He works at least 10 hours per week for you, and does not conduct services for any other organization. D and C are the father and father-in-law of B, respectively. You said volunteers conduct all activities. You later revised your board, adding L with B resigning.

You said your schedule is as follows:

Sunday thru Thursday,

9:00AM - 1:00PM — tractate Brachot (blessings)

3:00PM - 6:00PM — tractate Shabbos, and

8:00PM - 9:15PM — code of Jewish law

Friday, 9:30AM - 11:30PM — Brachot (Blessings)

The following is the schedule for G’s shared use of your facility:

Sunday thru Thursday, 8:00AM - 9:30PM

Friday, 8:00AM - 1:00PM

Despite your statement that services are held “every day,” it is noted, per your schedule, you do not offer services on the Sabbath (Saturday).

Regarding your membership, you stated you were a membership organization, “a Sabbath-observing Jew who pays dues may become a member of congregation.” Members have the right to vote at annual membership meetings and to elect directors. You further asserted “a member may belong to another Orthodox Jewish congregation.”

We asked for a list of the governing body members of G and you responded by saying “unavailable we do not maintain the records of the” school. However, B is an employee of G. We asked again for this information and you said “most business entities limit the information allowed to employees to the extent necessary to carry out their functions. Accordingly teaching employees are not usually privy to broader organization information since it does not impact on their pedagogical function.”

You are distinguishable from G as “they are a religious school for the religious instruction of young teens. We are a congregation for young and old alike.” The students of the school are not your congregants. You share physical space with the school. Specifically, you share the synagogue space. Although B is a teacher at the school, when we asked approximately how many students attend G, which operates in your physical space, you said “we are not the party to properly address the . . .” school’s enrollment. You conduct religious classes. The instructors for these classes are four men, one of which is B. The other three instructors are Rabbis for other congregations.

You provided a list of your donors. When asked for the Employer Identification Number (EIN) for those donors that were not individuals, you responded, “It is very difficult in our identity theft conscious society to collect specific personal identifying information. This is information not readily shared and just inquiries arouse suspicion and may jeopardize collection efforts especially for a not-for-profit.”

You submitted budgets which showed revenue in the form of gifts, grants and contributions of approximately \$* * * annually, with membership fees accounting for approximately \$* * * annually, for a three year period. Your expenses consisted of occupancy, professional fees, and other — with other being the majority.

We asked if you had a bank account. You responded you did not yet have a bank account. However, several days after we received correspondence indicating you did not yet have a bank account, you mailed us copies of your bank statements. Regarding this discrepancy you said:

It was erroneously understood to refer to an operating account which we do not have. The Congregation had at one point an active account solely set aside for the purpose of making renovations to the site for use as a congregation. Once the congregation realized their error of their own volition they set the records straight by submitting the statements.

The bank account showed that you had already had tens of thousands of dollars flow through your account before you even submitted your application for exemption, in contradiction to the proposed budgets you provided. B, C, D and F all have signatory authority on your checking account. As evidenced by canceled checks you submitted, F had, in fact, signed checks on your behalf. We asked why F, who is not one of your board members, has signatory authority on your account. You said “in the event board members are not available, and to offer an element of oversight.” However, we asked if F was related to any of the board members and you responded that she is the daughter of C, daughter-in-law of D and wife of B. You later stated, when asked about payment of expenses from your accounts, that various members pay for out of pocket expenses keeping you afloat.

You occupy a two story, 40 by 100 sq. ft. building. You indicated, “The first floor is a synagogue, furnished with tables, chairs, bookcases, a stand for reading the Torah scroll, an ark for storage of the Torah scroll and prayer books.” On the second floor, “there are classrooms, a dining room and

offices for the congregation." You "occupy the space free of rent" and you "have no lease." Per our request, as you did not have a lease agreement, you submitted a statement signed by the individuals who own the facility where you conduct your activities. The statement is as follows:

I acknowledge the use of the building at address H by the congregation. I allow it to be used indefinitely (although not contractual) provided the congregation maintains the cleanliness of the building and agrees not to exceed fire department allowable maximum occupancy.

We asked if you had made any improvements to the facility and you responded simply "yes." We further inquired and you said the "improvements were basically to retrofit the building from a business commercial use to a congregation house of worship use. This involved plastering and installing sheetrock for the walls and installing a drop ceiling, as well as tiles covering a cement floor. It also involved setting up walls to define rooms." We asked for you to provide the total cost of the project, which you omitted. We again asked and you said the total cost was k dollars. We asked how you are ensured continued use of the facility you have improved, as you have no lease agreement. You responded as follows:

We are assured in a number of ways. Firstly, we have a very good relationship with the owner who is excited about our future growth. Secondly, if our stay is terminated abruptly we would be made whole by the landlord being that at that point he would be the beneficial recipient of the improvements. The cost would be collectable both in a legal proceeding as we'll [sic] as in a rabbinical tribunal.

G did not pay for any of the renovations. The name of the contractor for the renovation projects is H. We asked for a copy of the contract with the contractor, how the terms were negotiated, the name of the owner of the company, and a description of the renovations planned. To these inquires you responded:

The work was done on a step-by-step project-by-project basis. Each project was priced with various contractors and craftsmen. Work was awarded by project to the one we felt best suited to fill our needs. As we gained confidence in H we felt we are best off using him exclusively. We cannot vouch for ownership, but our contact at H is J. No more renovations planned."

Regarding our request for copies of the written contracts, you said there is "no overall contract, as construction [sic] done per project basis as opposed to master construction project." We asked for copies of all of the bids you received for your projects. Rather than provide same, you simply provided a sheet that contained the total of all of the bids received.

You later provided a list of the actual construction costs totaling k dollars and including skeleton and sheet rocking, security, plumbing, air conditioning, electric, carding, furniture and fixtures, floors, ceiling, professional and misc.

You submitted internal and external photographs of your facility. The internal photographs showed two large rooms with numerous desks. One of the rooms had windows at the top of the walls near the ceiling. The other interior photographs include rooms with very large windows. The windows in both rooms were different in location and size than the windows shown in the exterior photographs of the facility. You said "the room (you use) is not in the basement but on the first floor and the windows are at the top of the walls. It seems that in the older commercial buildings that's how the architecture was that windows were placed on top of the room. The other pictures are from the interior of the second floor. The exterior pictures are the entrances of the front side of the building and these rooms face the back of the building." You provided no other photographs to confirm your assertions.

We sent you an internet article which stated F is the director of a religious camp, which has a very similar name to you and to the school with whom you share a facility. We asked if the camp was one of your proposed activities and you said "no."

We sent you a print from the internet which shows an organization with your exact same name operating a high school out of a different street address, but the same city, as you. You said they are an "unrelated entity which just coincidentally has the same name."

You submitted minutes from your board meetings for each of the three annual meetings you held, and two additional meetings after those. Each indicates a meeting of the trustees was held. The minutes each state that one of your Trustees acted as chairman of the meeting and each year he ". . . nominated three Trustees . . ." and each year he nominated himself and the other two governing body members as Trustees, who are all related (B, C and D). Each year the meeting minutes also document the appointment of B, C and D as Officers. In comparison, the most recent two meetings for which you provided documentation indicate a meeting of the membership was held, not of the trustees, although the same people were present.

LAW

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(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Rev. Proc. 2012-9, superseding Rev. Proc. 90-27, 1990-1 C.B. 514, Section 4.01, provides 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 4.02 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. It further states:

- (1) The applicant is responsible for the accuracy of any factual representations contained in the application.
- (2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.
- (3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Section 4.03 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 *United States v. Wells Fargo Bank*, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990), the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

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

to the benefit of the family or that petitioner was not operated for the private benefit.

In *Western Catholic Church v. Commissioner*, 73 T.C. 196 (1980), the petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court Held that petitioner had not shown it was operated exclusively for exempt purposes or the no part of its earnings inured to the benefit of its officer.

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

applicant”.

APPLICATION OF LAW

Section 501(a) of the Internal Revenue Code provides for exemption for organizations operated exclusively for religious, charitable, and educational purposes. Section 1.501(c)(3)-1(a)(1) of the regulations states that if an organization fails to meet either the organizational test or the operational test, it is not exempt. We cannot determine and you are unable to substantiate that your programs are furthering exclusively 501(c)(3) purposes; therefore you are not described in section 501(c)(3) of the Code. Because you are not described in section 501(c)(3) you fail the operational test and are not exempt.

To be exempt an organization must serve public rather than private interests, as described in 1.501(c)(3)-1(d)(1)(ii) of the regulations. Despite having one board member resign, two of the three are still related. Further, the trustee that resigned is still employed in a position of power as your rabbi. You also allow a non-board member, who is related to the other board members, to write checks. You have executed capital improvements on a facility that is privately owned. You have been unable to fully substantiate these improvements, as there was no contract for the work, no documentation on a bid process nor any documentation on your selection process for the contractor. You have only provided that no one on your governing body is related to the contractor. You have been unable to substantiate that the owner of the facility will not benefit from your improvements, as there is no documentation on what would occur in the event you had to vacate the facility, nor is there any documented agreement on the terms of your use of the facility. You have expended most of your revenue for capital improvements for a facility you do not own, and for which do not have a lease agreement. Further, you have provided little details regarding the school, G, that is also sharing this facility. It is unclear if this is a privately owned school, who might own it, or who from that school is benefitting from the improvements you have made to the facility. As you have been unable to document the public benefit of the improvements done to this facility, you have not proven your assets will not inure to insiders or be used to privately benefit certain individuals.

As required by Rev. Proc. 2011-9 you have not established that you are organized and operated exclusively for exempt purposes and not for the private benefit of your creators. Section 4.02(3) of this Rev. Proc. states that the failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling. You indicate control by your board of directors, and that they make all decisions about your activities and how funds are spent. Yet you have stated in correspondence that members are paying expenses out of pocket to keep you afloat, while also stating that members are appraised of issues regarding your finances. It is unclear who has financial control of your operations. We initially asked about bank accounts, to which you replied you had none, only to submit months worth of bank statements indicating much larger actual income than you had submitted as projected budgets. You have a non board member with signatory authority on your account, which was not disclosed, and was discovered only on submission of cancelled checks. Given the information provided regarding your financial data, it is unclear what your sources of income and expenses will be, or how you intend on maintaining control over your accounts. As a result, we cannot consider the administrative record complete and subsequently your failure to disclose material facts does not demonstrate that your operations further exempt purposes.

As in the above-cited cases of Basic Unit Ministry of Alma Karl Schurig and Peoples Prize, you have the burden of showing you come squarely within the terms of the law conferring the benefit sought, and whether you have satisfied the operational test is a question of fact. You did not respond openly or candidly to our questions as evidenced by the repeat requests for documentation of your facility.

In fact, we asked the same questions multiple times and continually received little or no details regarding your operations, or responses contradicted information previously given. You did not provide details regarding your donors or the school with which you share a facility. You were also unable to produce copies of bids for the renovations you performed. An applicant seeking exempt status must provide sufficient information for the Service to make an informed decision, as indicated in National Association of American Churches. You must respond completely and candidly. You have given answers to our inquires that were vague and occasionally contradictory. You have not proven unambiguously that you qualify for a tax exemption, as in *United States v. Wells Fargo Bank*.

As in the case of *Western Catholic Church v. Commissioner*, your lack of sufficient records and lack of control over an funds fails to establish an exempt purpose consistent with Section 1.501(c)(3) of the regulations. You permit a non board member, F, to write checks on your behalf, which is in direct contrast with Article Eight of your Bylaws. You delegated your authority, responsibility, and operations to individuals outside of your internal operating control. You allow an unauthorized individual access to your bank account. This, together with your statement that members are paying expenses out of pocket, demonstrates a lack of financial control. Given the contradictory responses provided regarding your financial data it is unclear who may or may not benefit from transactions, what your sources of income and expenses will be, or how you intend on maintaining control over your accounts. Because we cannot determine how you will use or control income or what you may expense we cannot conclude who benefits from these transactions. As it is unclear who will benefit you have not proven your assets will not inure to insiders or be used to privately benefit certain individuals.

As in *Bubbling Well Church of Universal Love*, you are in a position to perpetuate control of the organization's operations indefinitely, prepare its budget, have complete control of the organization's finances and make all decisions on how the funds were spent. The close control held by a few individuals, without a system for public oversight, creates an environment for potential abuse and insider benefit as there are no defined roles or responsibilities for your board or policies setting forth their duties and the handling of your finances. Despite your statements that you are a membership entity, your board meeting minutes confirm the tightly held control of the organization. Therefore, the undue control of the organization by a related board causes the organization to serve private interests and thus fail the operational test.

American Guidance Foundation provides, at a minimum, a church must include a body of believers that assemble regularly in order to worship in an established location, must be reasonably available to the public in the conduct of worship, in its educational instruction, and in its promulgation of doctrine:

It is unclear from your responses if you are conducting regular religious services. While you provided a daily schedule of activities, despite your statement that you act in accordance with traditions, you hold no Sabbath services. G operates from the same facility and you do not conduct service on the Sabbath, although you require your members to observe the Sabbath.

We are unable to conclude you have an established facility for religious services. You are sharing both space and at least one employee with G. You were unable or unwilling to provide any information regarding G. As a result, there is a lack of clarity regarding where you are operating inside of the facility. While you have stated you use the first floor of the building, the pictures you have submitted lend one to think otherwise. The descriptions given in combination with the pictures provided call into question your presence and use of the facility, your establishment in the facility, and your regular use of the facility. It is also unclear how many students G has, making it impossible for us to determine how much space they would occupy in your facility, or to what extent they are using your facility. We are unable to determine who has access to your facility, or when. You have no

materials or literature advertising your services to the public, relying instead on word of mouth. It is unclear from your responses that you have an established, regular location for religious services reasonably available to the general public.

We are unable to conclude you have an established congregation that regularly assembles for worship services. You initially stated you have 50 members, but later said you only have 25 members. Only one of your trustees is a congregant. You have provided varied numbers of attendees and have had no increase in attendance in over three years, which calls into question whether you have an established body of believers. Further, it would seem that if you require your congregants to be Sabbath-observing, they must attend services at a different location on the Sabbath as you do not offer services that day. Based on these facts it is unclear that you have an established and regular body of worshipers.

While you meet some of the 14 points as listed in American Guidance, your lack of, or inconsistency of, information has not conclusively demonstrated the existence of the basic tenets required for obtaining status as a church — regular worship services conducted at a regular location with a regular congregation.

An organization that is unable to demonstrate they have now or will have in the future sufficient records to show operations exclusively further exempt purposes will not be found to meet the operational test under Section 501(c)(3) of the Code. You were unable to provide a copy of the contract, or bids, for the construction work on your facility. You have been unable to provide financial data, citing members handling your expenses, despite a grant that was proposed by B. As in the above-cited case of *New Dynamics Foundation v. United States*, you have not demonstrated that your operations exclusively further exempt purposes and it is your burden to revolve gaps in the administrative record.

APPLICANT'S POSITION

You said it is standard business practice in your state to engage in leasehold improvements, and most properties have to be retro fitted to the specifics of the entity using the property. Leasehold improvements are treated as an asset and depreciate over the life of the asset. It is not considered a benefit to the landlord since the asset is owned and depreciated by the lease holder. You further asserted that the "sum of the total renovations was less than \$* * * which is considered a modest sum" by State W standards for construction cost. "Although the written bids were not located the entity maintained the bid tally sheet" which in State W the government agencies consider it sufficient documentation of bids.

Regarding your allowance of a non-board member to write checks, you stated the IRS doesn't mandate any specific management policy. You further stated:

The fact that a small organization which affords the board with tight oversight of fiscal transactions suffices to exercise control of funds. A board is generally not intended to be involved in detail micro managing of daily operations. Accordingly check signing which is typical of daily management is delegated to persons more readily available outside of the board. This is standard practice in State W to the extent that banks in State W have sample board resolutions designating persons outside the board as signatories."

You also cited some laws from State W as well as a trade manual for non-profits discussing internal controls. These indicate delegating is an effective means of management and supervision is a control activity.

You indicated you are willing to adopt policies we suggest in order to satisfy the operational test. In fact, you submitted board meeting minutes from a recent meeting whereby you nominated an additional, unrelated member of the board. You said the new board member's credential of business acumen and being an unrelated party establishes a well-rounded, totally unrelated board. You said this should aid the approval process. You further asserted the unrelated board mitigates and minimizes the possibility of conflict of interest at the governance level. You said this has public benefit as well as a compliance enhancement and logically should expedite the tax-exempt application process.

Most recently you have requested expedite status of your application for exemption. Your expedite request indicates that an individual with the same surname of B and D (you did not provide the first name) has ". . . committed to our congregation a grant . . ." of a specific amount for the purpose of purchasing a Torah scroll to memorialize his ancestry." This is conditional on our being approved as a 501(c)(3) organization by . . ." a certain date, in time for a specific Jewish holiday. You further stated, "Loss of the grant would severely impact our operations as a Torah Scroll is a necessity."

SERVICE'S RESPONSE TO APPLICANT'S POSITION

You indicated you spent over \$* * * for renovations. Based on your documented income, this was * * % of your revenue to provide renovations to a building not owed by you and for which you do not have a lease. In fact, you said you had a bank account "solely set aside for the purpose of making renovations to the site for use as a congregation." You said the building is an asset owned and depreciated by the leaseholder; however, you do not have a lease. You are operated for the substantial non-exempt purpose of providing renovations to a building, thus providing substantial private benefit to the owner.

Although you state you qualify for exemption under Section 501(c)(3) of the Code as a church under Sections 509(a)(1) and 170(b)(1)(A)(i), you are operating in a manner which contradicts your Bylaws. We are unable to conclude which operational procedures you adhere to and which ones you disregard. You suggest you are willing to adopt policies and procedures in order to satisfy the operational test; however, your written policies and procedures (Bylaws) already in place do not appear to have been followed. Therefore, the adoption of policies to which you may not adhere is insufficient to establish exemption

Your addition of a fourth, unrelated board member does not eliminate the control of the board by the majority-related board. Likewise, the commitment of a grant from a related party does not sufficiently establish qualification of exempt status.

PROTEST

You submitted additional photographs of your facility. You also submitted a lease agreement prepared by the landlord's attorney. Rent was calculated by evenly dividing the amount of capital improvements done to the facility, k dollars, by the lease term, 60 months. You said this satisfies the private benefit issue. The lease you submitted is back-dated four years and permits your occupancy rent free for one more year. After that time you will have to pay rent.

SERVICE'S RESPONSE TO APPLICANT'S PROTEST

Although you now have a retroactive lease agreement, you did not substantiate how the rent amount was determined and whether it is reasonable. You simply divided the amount of money spent on the

renovations over a five year period with you receiving a credit against the amount due. You have not indicated what happens after the five year period expires. The lease also does not alleviate the benefit derived to the other tenants of the building. Although your new lease agreement may reduce some concern over the private benefit to the owners of the facility regarding the renovations you performed, you still have not substantiated the actual improvements made, the process by which they were done and their public benefit.

CONCLUSION

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(3) of the IRC. More specifically you fail the operational test and lack control and discretion of your funds. Each of these non-exempt purposes causes you to be disqualified from exemption under Section 501(c)(3) of the 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. 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,

Holly O. Paz

Director, Exempt Organizations

Rulings and Agreements

Enclosure:

Publication 892

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