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Special Provisions for Religion in the Tax Code

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Summary

Scattered throughout the Internal Revenue Code are special provisions designed to accommodate either religious organizations or the beliefs and practices of the members of those organizations. This short report lists a number of code sections which contain exemptions or special treatment for religion.

This report lists a number of tax provisions which accommodate religious groups in a special way. There is no attempt to analyze these provisions, other than to briefly note the special treatment. Most of these provisions do not depend on the particular beliefs of the church or religious organization, but they provide special treatment for churches, ministers, or religious organizations. The provisions are organized according to whether they benefit clergy, churches, or other religious groups. Of course, some provisions benefit more than one of these groups, and some benefit non-religious groups.

Churches

There is no statutory definition of a church in the Internal Revenue Code, although for purposes of the code section relating to audits of churches, 26 U.S.C. § 7611, a church is defined as “any organization claiming to be a church.” The Internal Revenue Service has some internal criteria that it uses to determine whether or not an organization is actually a church for purposes of determining tax-exempt status.¹

¹ Although the Internal Revenue Service applies a neutral approach to religious organizations, the terms “church” and “minister” are often used in the statute and the regulations. The terms “church” and “minister” are interpreted broadly and encompass non-Christian religions and religious leaders.

In an attempt to define “church,” the Internal Revenue Service has announced fourteen criteria which it uses as requirements for an organization to constitute a church for federal tax purposes.

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The two principal income tax benefits for churches are their tax-exempt status and their eligibility to receive deductible contributions. Churches or a convention or association of churches are eligible to receive tax-deductible charitable contributions (26 U.S.C. §§ 170(c), 2055, 2522) and organizations organized and operated exclusively for religious purposes are eligible for exemption from income taxes (26 U.S.C. § 501(c)(3)). Churches generally must withhold income and FICA taxes on their non-clergy employees, but churches which are opposed to FICA taxes for religious reasons may elect out of FICA coverage (26 U.S.C. § 3121(w)). Churches, certain church-related organizations, and certain religious elementary and secondary schools are exempt from federal unemployment taxes (26 U.S.C. §§ 3306(c)(8) and 3309(b)).

Unlike most tax-exempt organizations, churches, their integrated auxiliaries, and conventions or associations of churches and the exclusively religious activities of any

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- (1) a distinct legal existence;
- (2) a recognized creed and form of worship;
- (3) a definite and distinct ecclesiastical government;
- (4) a formal code of doctrine and discipline;
- (5) a distinct religious history;
- (6) a membership not associated with any other church or denomination;
- (7) an organization of ordained ministers;
- (8) ordained ministers selected after completing prescribed studies;
- (9) a literature of its own;
- (10) established places of worship;
- (11) regular congregations;
- (12) regular religious services;
- (13) Sunday schools for religious instruction of the young; and
- (14) schools for the preparation of its ministers.

According to General Counsel Memorandum [GCM] 38699, dated April 23, 1981, the Internal Revenue Service first used these 14 criteria in connection with a ruling to determine whether the Salvation Army was a church for purposes of the charitable contribution deduction. Rev. Rul. 59-129, 1959-1 C.B. 58, was published in digest form, and the ruling did not set out the criteria. As of the date of GCM 38699, according to the GCM, the General Counsel's office had resisted publishing the criteria either as a revenue ruling or in the Internal Revenue Manual "out of concern for the potential prejudice to various mail order church cases under consideration by the Tax Division of the Department of Justice. It was feared that the Service would be the subject of criticism for attempting to define the term 'church,' and that the criteria could be interpreted as providing a safe harbor for mail order churches." The GCM recommended that the criteria be published in the Internal Revenue Manual because they would be helpful to agents who are required to make determinations about church status.

The specific guidelines were published in the Internal Revenue Manual, IRM 7(10) 69 HB 321.3 in a transmittal dated April 5, 1982.

religious order are not required to file annual tax returns (26 U.S.C. § 6033(a)) or returns regarding liquidation or dissolution (26 U.S.C. § 6043(b)).

The Internal Revenue Service must observe certain special procedures before beginning, and during, any inquiry or examination of a church's exempt status or obligation to pay taxes under 26 U.S.C. § 7611.

There are numerous provisions scattered throughout the Internal Revenue Code, including 26 U.S.C. §§ 401-457, 4975, 4980B, 4980D, 6057, and 9802(c), which exempt church plans from provisions of the Internal Revenue Code governing qualified retirement and employee benefit plans. There are also counterpart provisions of many of these provisions in title 29 of the U.S. Code.

There are also numerous provisions exempting churches from various provisions of the unrelated business income tax on exempt organizations and the tax on debt-financed acquisitions in 26 U.S.C. §§ 511-514.

Special Religious Groups

Certain religious organizations have rules which prevent their individual members from being holders of private property. Some of these organizations own property and conduct business in the corporate form for the common benefit of their members. Section 501(d) permits these organizations to be exempt from tax providing the members of the organization include a pro rata share of the organization's income in their individual gross incomes. This essentially treats the organization as if it were a partnership. The organizations cannot qualify for the 501(c)(3) exemption because they are not considered to be operated exclusively for religious purposes (26 U.S.C. § 501(d)).

Similarly, members of recognized religious sects who are adherents of established tenets of the sect who are conscientiously opposed to accepting the benefits of any public or private insurance for old age, death, disability, retirement, or medical care may be exempted from paying self-employment taxes (26 U.S.C. § 1402(g)).

A related provision, enacted in 1988, provides that employers who qualify for exemption under section 1402(g) who have employees who are also members of the same sect who have filed applications for exemption from the application of FICA taxes to themselves on the same grounds may be exempt from the employer share of FICA taxes on those employees, and it also exempts the employees from the employees' share of FICA taxes (26 U.S.C. § 3127).

Clergy

Members of the clergy are subject to income and self-employment taxes, and there are special tax provisions for them in both statutes. By statute, services performed by "a duly ordained, commissioned, or licensed minister of a church or a member of a religious order" are covered under the Self Employment Contributions Act [SECA]. Internal Revenue Code [IRC] § 1402(a)(8). Ministers, members of religious orders, and Christian Science practitioners who are conscientiously opposed to accepting the benefits of any public insurance which pays benefits for old-age, death, disability, medical care, or

retirement, may be exempted from payment of self-employment taxes (26 U.S.C. § 1402(e)). They must follow certain procedures for making an irrevocable election out of the SECA system. Clergy are **not** subject to FICA (Social Security) unless they are employees of an organization other than a church. SECA taxes are roughly twice as high as FICA taxes because the worker pays the full amount of the tax, rather than sharing the cost with the employer.

For purposes of the income tax, clergy may exclude the value of living quarters or a rental allowance furnished as part of their compensation from their gross income (26 U.S.C. § 107). The regulations require that the parsonage allowance be furnished in exchange for services such as the performance of sacerdotal functions, the conduct of religious worship, the administration and maintenance of religious organizations, and the performance of teaching and administrative duties at theological seminaries. There are revenue rulings, e.g., Rev. Rul. 58-221, 1958-1 CB 53, and Rev. Rul. 78-301, 1978-2 CB 103, which state that persons of the Jewish faith, including rabbis and cantors, who perform the types of duties listed above are included within the statutory term "ministers of the gospel."

Income tax withholding is not required on salaries for services performed by duly ordained, commissioned, or licensed ministers of a church in the exercise of their ministry or on members of religious orders in the exercise of duties required by the order (26 U.S.C. § 3401(a)(9)). Clergy are not covered by unemployment compensation (26 U.S.C. § 3309(b)).

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