

AN ELECTRONIC MINISTRY IS NOT A CHURCH

Code Section 501(c)(3) organizations are generally exempt from federal income taxes, and contributors may qualify for charitable deductions for their contributions. Such organizations by default are typically treated as "private foundations," but if qualified, they can achieve non-private foundation status. Non-private foundation status is preferable, because it avoids the potential application of various excise taxes to the organization, and may allow for greater income tax charitable contribution deductions for donors.

Beyond this private/non-private dichotomy, "churches" have further advantages. First, a church escapes from private foundation status without having to demonstrate public financial support, unlike most other private charities. Further, churches are exempt from annual information filings and exempt application procedures, and there are restrictions on audits of churches.

Many religious organizations can qualify as Code Section 501(c)(3) organizations due to their religious activities. However, not all religious organizations are "churches" for purposes of the above rules - only a smaller subset of such organizations will qualify as churches.

The Internal Revenue Manual provides 14 criteria that will be examined to determine if an organization is a church for these purposes. These criteria are (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 ministering to their congregations, (8) ordained ministers selected after completing prescribed courses of study, (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 ministers. The courts do not strictly apply this 14 criteria test, although they will often heavily consider these factors. Instead, the courts often apply an "associational test." Focusing on the association of congregants and believers, this test examines whether there is a body of believers or communicants that assembles regularly for communal worship.

In a recent case before the Court of Appeals for the Federal Circuit, a religious organization challenged the IRS' rejection of its status as a church, which rejection had been upheld by the Court of Federal Claims. Among other arguments, the organization argued that its "electronic ministry" qualified it as a church. The organization asserted that its members regularly assembled to worship as a virtual congregation by listening to sermons broadcast over the radio and the Internet at set times.

The Appeals Court noted the overlap between the 14 criteria test and the "associational test," and that to qualify as a church the religious organization must create the opportunity for members to develop a fellowship by worshiping together. Applying this test, the court noted that listeners simultaneously receiving the organization's message over the radio or the Internet did not mean that those members associated with each other and worshiped communally. Further, a "call-in" show that enabled individuals to call and interact with the organization's clergy over the

telephone, with such calls being simultaneously broadcast, did not provide individual congregants with the opportunity to interact an associate with each other and worship.

Thus, the Appeals Court refused to qualify the organization as a church.

This should not mean that religious organizations that provide electronic broadcast of their services cannot meet the definition of a "church" for these purposes. However, it does suggest that such organizations must conduct a material part of their activities through in person, communal worshipping activities to qualify under the 14 criteria test or the "associational test."

Foundation of Human Understanding v. U.S., 106 AFTR 2d ¶2010-5204 (CA Fed Cir 08/16/2010)

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