



Statement of Administrative and Constitutional Rights

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The First Amendment of the Constitution provides that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” The first clause is referred to as the Establishment Clause; the second is the Free Exercise Clause. The Establishment Clause prohibits government sponsorship of religion. Central to this prohibition are the concepts of government neutrality and the separation between church and state. The Supreme Court has held that the Free Exercise Clause of the First Amendment is an absolute prohibition against the regulation of religious beliefs. The First Amendment provides substantial protection for lawful conduct grounded on religious beliefs. However, the government may limit religiously motivated conduct when the limitation is essential to accomplish an overriding governmental interest. Section 7611 of the Internal Revenue Code (IRC) provides the following protections to organizations claiming to be churches or conventions or associations of churches:

1. The IRS may begin a church tax inquiry only if an appropriate high-level Treasury official reasonably believes, based on written facts and circumstances, that an organization claiming to be a church or convention or association of churches:
 - May not qualify for exemption,
 - May be carrying on an unrelated trade or business (within the meaning of IRC Section 513),
 - May otherwise be engaged in taxable activities, or
 - May have entered into an IRC Section 4958 excess benefit transaction with a disqualified person.
2. If the IRS begins a tax inquiry, it is required to provide the church written notice at the beginning of the inquiry. The Notice of Church Tax Inquiry must contain all of the following:
 - An explanation of the concerns that gave rise to the inquiry
 - The general subject matter of the inquiry
 - An explanation of the IRC provisions that authorize the inquiry
 - A general explanation of applicable administrative and constitutional provisions with respect to the inquiry
3. If the IRS wants to examine a church’s records or religious activities, the Secretary of the Treasury, or his or her delegate, must personally approve the examination and must provide an additional written notice (Notice of Church Examination) to the church at least 15 calendar days before the examination. At the same time the IRS gives notice to the church, the IRS must notify IRS Counsel of the proposed examination. IRS Counsel is then allowed 15 days to file a non-binding advisory opinion about the examination.

The Notice of Church Examination must include all of the following:

- A copy of the Notice of Church Tax Inquiry previously provided
- A description of the church records and activities which the IRS wants to examine
- A copy of all documents collected or prepared by the IRS for use in the examination that are required to be disclosed under the Freedom of Information Act (5 U.S.C. 552) as supplemented by IRC Section 6103
- An offer of a conference with the IRS, prior to the examination, to discuss the concerns which gave rise to the inquiry and the general subject matter of the inquiry

The IRS may send the Notice of Church Examination to the church no less than 15 days after the Notice of Church Tax Inquiry. However, the IRS must generally mail the Notice of Church Examination, within 90 days after the Notice of Church Tax Inquiry or the IRS is required to end the inquiry without change to the church's tax status.

4. If the IRS fails to substantially comply with the above requirements, it may result in a stay of summons enforcement proceedings to gain access to church records until the IRS satisfies the requirements.
5. The IRS generally must complete any church tax inquiry or examination no later than two years after the date on which it mailed the Notice of Church Examination to the church. The two-year period may be extended by mutual agreement between the church and the IRS.

The church tax inquiry or examination will also be suspended during certain judicial proceedings and during any period more than 20 days but not more than six months, during which a church or its agents fail to comply with any reasonable IRS request for church records or other information. However, in the case of a church tax inquiry in which there is no Notice of Church Examination, the IRS must generally complete the inquiry within 90 days from the date it mailed the Notice of Church Tax Inquiry to the church.

6. The IRS is limited initially to an examination of church records relevant to the church's tax-exempt status for the three most recently completed tax years preceding the date of the Notice of Church Examination.

If the church is not exempt for any of those three years, the IRS may examine relevant records for the six completed tax years immediately preceding the Notice of Church Examination. The IRS may examine church records for a year earlier than the third or sixth completed taxable years if material to a determination of tax-exempt status during the three or six-year period.

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For examinations relating to unrelated business taxable income, when no return is filed, the IRS may assess tax for the six most recently completed taxable years preceding the date of the Notice of Church Examination. The IRS may examine church records for a year earlier than the sixth year if material to a determination of unrelated business income tax liability during the six-year period.

For examinations involving issues other than determination of exempt status or unrelated business income tax liability, there is no limit on the taxable periods the IRS may examine if the church has not filed a tax return. If a church has filed a tax return, the normal rules for determining tax liability or assessing tax apply.

7. IRS Counsel must approve, in writing, any of the following:
 - An adverse determination concerning the tax-exempt status of an organization claiming to be a church
 - An adverse determination concerning the right of an organization claiming to be a church to receive tax deductible contributions
 - The issuance of a notice of tax deficiency to a church or disqualified person subject to IRC Section 4958 tax following a church tax examination
8. An organization claiming to be a church is entitled to bring a declaratory judgment action under IRC Section 7428 once the IRS issues a revenue agent's final report revoking or denying the church's tax-exempt status.
9. The Secretary of the Treasury, or his or her delegate, must approve an inquiry or examination begun within five years from the date of the Notice of Church Examination (or if no Notice of Church Examination is sent, a Notice of Church Tax Inquiry). This approval is not required if either of the following apply:
 - The second examination does not involve the same or similar issues as the preceding inquiry or examination
 - The first inquiry or examination resulted in a change to the organization's exempt status, an assessment of unrelated business income tax or other tax, or a recommendation for a substantive change in the church's operations, including accounting practices