



# Exempt Organizations Technical Guide

## TG 23: Religious and Apostolic Associations - IRC Section 501(d)

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**Technical Guide Revision Date: 2/1/2024**

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## I. Overview

- (1) This guide discusses federal income tax issues of religious or apostolic organizations described under Section 501(d) of the Internal Revenue Code (IRC) of 1986.

### A. Background / History

- (1) Following the ratification of the Sixteenth Amendment to the U.S. Constitution in 1913 that allowed for the levying of income tax, in the 1920s courts found some religious organizations claiming to be tax exempt did not qualify for federal income tax exemption.<sup>1</sup> More specifically, the organizations did not exclusively further the tax-exempt purposes required by what is now Section 501(c)(3) of the Code. Those organizations, as part of their religious mission, operated substantial communal business activities that furthered non-exempt commercial purposes. In the Revenue Act of 1936, Congress added what is now Section 501(d) to the Code to ameliorate the tax exemption qualification issue for those religious organizations.<sup>2</sup>

### B. Relevant Terms

- (1) **Religious or Apostolic Organization:** These terms are not defined in the Code or in the regulations. See a further discussion below.
- (2) **Common Treasury or Community Treasury:** These terms are not defined in the Code or in the regulations. See a further discussion below.

### C. Law / Authority

- (1) Section 501(d) of the Code
- (2) Treasury Regulation (Treas. Reg.) 1.501(d)-1

## II. Exemption Requirements

- (1) Section 501(d) establishes four requirements for exemption:
  - a. The organization must be a religious or apostolic association or corporation.
  - b. It must maintain a common treasury or community treasury.
  - c. It engages in a business for the common benefit of its members.
  - d. Its members include in their gross income as dividends received their entire pro rata share of the organization's taxable income for the year, whether or not such income is actually distributed to them.

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<sup>1</sup> See *Hutterische Bruder Gemeinde v. Commissioner*, 1 B.T.A. 1208 (1925), and *Hofer v. United States*, 64 Ct. Cl. 672 (1928).

<sup>2</sup> See 80 Cong. Rec. 9074 (1936). See Hearings on H.R. 12395 Before the Committee on Finance, United States Senate, 74th Cong., 2d Sess., Pt. 11, at 46 (1936). Explained in General Counsel Memorandum 38827 (December 7, 1981).

- (2) An organization qualifying for exemption under Section 501(d) must meet all four requirements. An organization not meeting any one of the requirements does not qualify for exemption under Section 501(d).
- (3) Each of these four requirements is discussed below.

#### **A. Requirement 1: Possess a Religious or Apostolic Character**

- (1) The first requirement is that the organization is religious or apostolic.
- (2) The terms religious or apostolic organization are not defined in the Code or in the regulations. The regulations simply track the language of the statute and provide little assistance. Thus, following the general principles of statutory interpretation, the language of the statute and its legislative history are used in construing these terms so as to give effect to the intent of Congress.<sup>3</sup>
- (3) Although the statutory language refers to both religious and apostolic organizations, the legislative history does not provide any distinguishing meaning between the two terms. The limited Congressional record focuses on the term religious and suggests Congress intended the meaning of the term religious in Section 501(d) to be similar to the meaning of the term religious in Section 501(c)(3).<sup>4</sup> Additionally, Treas. Reg. 1.501(c)(3)-1(e) cross-references both Section 501(d) and Treas. Reg. 1.501(d)-1 suggesting the meaning of the term, religious for both Section 501(d) and Section 501(c)(3) are similar.
- (4) For a broader discussion on the term religious related to the Code, refer to technical guide, TG 3-2 Exempt Purpose, Religious IRC 501(c)(3).
- (5) There is limited precedential guidance on how to determine whether an organization is religious for purposes of Section 501(d) qualification. A religious determination is based on all relevant facts and circumstances. The facts from some administrative rulings and court opinions suggest the following factors support a favorable religious determination:
  - a. The organizational documents create a religious organization.<sup>5</sup>
  - b. The members of the organization are members of a church or church group.<sup>6</sup>
  - c. The organization or its members follow religious tenets or canon law.<sup>7</sup>

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<sup>3</sup> See *United States v. American Trucking Ass'ns.*, 310 U.S. 534, 542-545, rehearing denied 311 U.S. 724 (1940).

<sup>4</sup> See 80 Cong. Rec. 9074 (1936). See Hearings on H.R. 12395 Before the Committee on Finance, United States Senate, 74th Cong., 2d Sess., Pt. 11, at 46 (1936). Explained in General Counsel Memorandum 38827 (December 7, 1981).

<sup>5</sup> See GCM 38827 (March 23, 1982). Compare with Rev. Rul. 58-328, 1958-1 C.B. 327, and *Riker v. Commissioner*, 244 F.2d 220 (9th Cir. 1957).

<sup>6</sup> See GCM 38827 (March 23, 1982). Compare with Rev. Rul. 58-328, 1958-1 C.B. 327; *Riker v. Commissioner*, 244 F.2d 220 (9th Cir. 1957); and *Kleinsasser v. United States*, 707 F.2d 1024 (9th Cir. 1983).

<sup>7</sup> See GCM 38827 (March 23, 1982). Compare with Rev. Rul. 57-574, 1957-2 C.B. 161, and *Riker v. Commissioner*, 244 F.2d 220 (9th Cir. 1957).

## **B. Requirement 2: Maintain a Common or Community Treasury**

- (1) Regarding the second requirement, like most of the requirements for Section 501(d) qualification, the terms, common treasury, or community treasury, are not defined in the Code or in the regulations. For these terms, a couple of courts looked into the language of the statute and its legislative history in construing these terms so as to give effect to the intent of Congress.<sup>8</sup>
- (2) In *Twin Oaks Community, Inc. v. Commissioner*, 87 T.C. 1233 (1986), acq. 1987-2 CB 1, the Tax Court establishes criteria for common or community treasury. The criteria include the following items:
  - All income is generated internally by community-operated businesses and from any income generated from property owned by the organization.
  - The income is placed into a common fund that is maintained by such organization.
  - The income is used for the maintenance and support of its members.
  - All members have equal, undivided interests in this common fund.
  - All members have no right to claim title to any part thereof.
- (3) Of note, the Tax Court found whether or not the organization requires its members to take vows of poverty and dispose of all their property holdings outside of the organization is irrelevant to the meaning of the terms 'common treasury' or 'community treasury' as used in Section 501(d). That finding is noteworthy because prior to 1986 the IRS contended those were requirements for Section 501(d) qualification. Regarding that finding, the IRS acquiesced to the court opinion.

## **C. Requirement 3: Engage in Business for Member Common Benefit**

- (1) For the third requirement, organizations qualifying for exemption under Section 501(d) must be supported by internally operated businesses in which all the members have an individual interest.
- (2) An organization supported by members' independently earned wages rather than by an internally operated business does not qualify for exemption under Section 501(d).
- (3) See Rev. Rul. 78-100, 1978-1 C.B. 162. See also *Twin Oaks Community, Inc. v. Commissioner*, 87 T.C. 1233 (1986), (IRS ACQ Dec 31, 1987). 1987-2 CB 1.

## **D. Requirement 4: Report Pro Rata Shares of Income to Members**

- (1) Regarding the fourth requirement, the members of a religious or apostolic organization must include (at the time of filing their individual returns) in their

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<sup>8</sup> See *Riker v. Commissioner*, 244 F.2d 220 (9th Cir. 1957), cert. denied, 355 U.S. 839 (1957) and *Twin Oaks Community, Inc. v. Commissioner*, 87 T.C. 1233 (1986).

gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year.

- (2) Any amount included in the gross income of a member is to be treated as a dividend received.
- (3) See Section 501(d) and Treas. Reg. 1.501(d)-1(a).
- (4) For purposes of determining the pro rata shares of the organization's taxable income under section 501(d) of the Code that are to be included in the gross income of its members, the membership in the organization is to be determined in accordance with the rules of the organization itself and applicable state law. As long as the individuals described as members in the organization's governing instruments consent to their status as members, they are considered to be members of the organization.
- (5) Regarding children, parents may consent to membership on behalf of their minor children to the extent allowed under applicable state law.
- (6) See Rev. Rul. 77-295, 1977-2 C.B. 196.

### **III. Other Considerations**

- (1) Section 501(d) religious or apostolic organizations qualify for tax exemption based on organization form as seen in the requirement to have a common treasury. The Section 501(d) exemption is not based on function. As such, Section 501(d) exemption significantly differs from most Section 501(c) exemptions and resulting in other tax considerations unique to religious and apostolic organizations.

#### **A. Employment Tax Considerations**

- (1) The unique nature of Section 501(d) exemption results in several employment tax considerations. Whether a person is a member, an employee, or both can affect employment and/or income taxes.

##### **A.1. Pro Rata Income Share Not Subject to Self-employment Tax**

- (1) As noted above, members treat their pro rata share of the organization's gross income as a dividend received. Although includible in gross income for federal income tax purposes, no part of a member's pro rata share of the taxable income of the organization (whether distributed or not) is includible in the computation of the member's net earnings from self-employment for purposes of the Self-Employment Contributions Act of 1954. See Rev. Rul. 58-328, 1958-1 C.B. 327.

##### **A.2. Non-member Employees**

- (1) A Section 501(d) organization can compensate non-members as employees. Compensation to non-members may be subject to ordinary employment taxes.

### **A.3. Both Member and Employee**

- (1) Individuals associated with a Section 501(d) organization can simultaneously be both its member and its employee. Often member-employees of Section 501(d) organizations do not receive traditional compensation as an employee and instead receive their pro rata share net income. As mentioned above, their pro rata share of net income is taxed as a dividend received and is not subject to employment taxes.
- (2) Because member-employees are employees, a Section 501(d) organization may be able to deduct some expenses associated with those employees as ordinary and necessary business expenses under Section 162. See *Stahl v. U.S.*, 861 F. Supp. 2d 1226 (E.D. Wash. 2012).

### **A.4. Certain Members Employed Outside the 501(d) Organization**

- (1) There may be situations when a member, having a vow of poverty, receives outside earnings and remits those earnings to the religious or apostolic organization. Whether those earnings are subject to employment taxes depends on whether the member is acting as an agent of a religious order.
- (2) When a member of a religious order, who has taken a vow of poverty and is instructed by the order's superiors to obtain employment with an organization outside the control of the religious order is an agent of the outside organization, not the religious order, and must include the remuneration remitted to the order in gross income, the remuneration is wages subject to the taxes imposed by the Federal Insurance Contributions Act (FICA) and income tax withholding.
- (3) When a member of a religious order who has also taken a vow of poverty and is instructed by the order's superiors to perform services in the business office of the church that supervises the order is an agent of the religious order and is not required to include the remuneration remitted to the order in gross income, the remuneration is not wages subject to the FICA and income tax withholding.
- (4) See Rev. Rul. 80-332, 1980-2 C.B. 34, which amplifies Rev. Rul. 77-290, 1977-2 C.B. 26.

### **B. Non-Deductibility of Contributions**

- (1) Section 501(d) organizations operate communal commercial enterprises, and its proceeds inure to the common benefit of its members. As a result of the benefit to the members, contributions to or for the use of a Section 501(d) organization are not deductible under Section 170 and amounts paid or permanently set aside by a trust or estate to or for the use of such organization are not allowable as a deduction under Section 642(c). Neither may bequests, legacies, devises or transfers, or gifts of property to such an organization be deducted for estate or gift tax purposes under Section 2055 or Section 2522. See Rev. Rul. 57-574, 1957-2 C.B. 161.
- (2) Section 6113 requires certain tax-exempt organizations that are ineligible to receive tax deductible charitable contributions to disclose, in "an express



statement (in a conspicuous and easily recognizable format)," the non-deductibility of contributions during fundraising solicitations. Section 6710 provides penalties for failure to comply with Section 6113 without reasonable cause. Organizations whose annual gross receipts do not normally exceed \$100,000 are excepted from this disclosure requirement. See Notice 88-120, 1988-2 C.B. 454.

### **C. 501(d) Organizations Do Not Have Unrelated Business Income**

- (1) The concept of unrelated trade or business has nothing to do with a Section 501(d) organization because the organization is granted its exemption not because of its function, but because of its form. It is totally unrestricted in function. Section 501(d) specifically allows the organizations it exempts to engage in business. Once it meets the exemption requirements, it is unlimited as to its functioning business or combination of businesses. It is definitionally impossible for a Section 501(d) organization to have unrelated trade or business income. See *Kleinsasser v. United States*, 707 F.2d 1024 (9th Cir. 1983).

## **IV. Application for Recognition of Exemption and Return Requirements**

- (1) Section 501(d) organizations are unique among the organizations exempt under Section 501(a). As such, their exemption application and annual return are also unique.

### **A. Application for Recognition**

- (1) An organization seeking a determination letter from the Service recognizing tax-exempt status under Section 501(d) must electronically submit a completed Form 1024, Application for Recognition of Exemption Under Section 501(a) or Section 521 of the Internal Revenue Code. See Sections 2 and 3 of Rev. Proc. 2024-5, 2024-1 I.R.B. 262.
- (2) Rev. Proc. 2024-5, 2024-1 I.R.B. 262 (as updated annually) modifies and supersedes Rev. Proc. 72-5, 1972-1 CB 709, by updating procedures for issuing determination letters for religious and apostolic organizations seeking exemption under Section 501(d).
- (3) Organizations applying for recognition of exemption under Section 501(d) complete the core Form 1024 and Schedule L. Schedule L asks for the following information:
  - a. Are you organized for the purpose of operating a communal religious community where members live a communal life following your tenets and teachings?
  - b. Do you maintain a common or community treasury?
  - c. Do all of your members live in a communal manner?

- d. Are members permitted to own, in their own names, any real or personal property?
- e. Are members required to furnish their own support (food, clothing, and shelter)?
- f. State your membership requirements, the method of member admission, members' right to property owned at the time they're admitted and terminating members' rights to share in the organization's property, or to a return of any property contributed.

**Note:** The information requested on the core Form 1024 and on Schedule L mirrors the modified and superseded Rev. Proc. 72-5, 1972-1 C.B. 709, which previously set forth the information to be included in exemption applications filed by religious and apostolic organizations claiming exemption from Federal income tax under Section 501(d).

- (4) As noted above, members aren't required to surrender their personal possessions when they join the organization. In *Twin Oaks Community, Inc. v. Commissioner*, 87 T.C. 1233 (1986), the Tax Court stated that whether or not a religious and apostolic organization requires its members to take vows of poverty and dispose of all of their property holdings outside of the organization is irrelevant to the meaning of the terms "common treasury" or "community treasury" as used in IRC Section 501(d).

## B. Annual Return Filing Requirements

- (1) Section 6033(a)(1) requires organizations exempt from taxation under Section 501(a), which includes Section 501(d) religious or apostolic organizations, to file an annual return.
- (2) Section 6033(n) requires mandatory electronic filing of the return. This subsection was added to the Code by the Taxpayer First Act and applies to tax years beginning after July 1, 2019. See Pub. L. 116-25, Title III, Section 3101(a), July 1, 2019, 133 Stat. 1015.
- (3) Treas. Reg. 1.6033-2(e) requires religious or apostolic organizations to file Form 1065, U.S. Return of Partnership Income, for the annual return and to file on or before the date prescribed by Section 6072(b), which establishes the return to be filed on or before the 15th day of the third month following the close of the fiscal year.
- (4) Treas. Reg. 1.6033-2(e) also establishes that the return is filed in accordance with the Form 1065 instructions.
- (5) The instructions for Form 1065 state:  

A religious or apostolic organization exempt from income tax under section 501(d) must file Form 1065 to report its taxable income, which must be allocated to its members as a dividend, whether distributed or not. Such an organization must figure its taxable income on an attached statement to Form 1065 in the same manner as a corporation. The

organization may use Form 1120, U.S. Corporation Income Tax Return, for this purpose. Enter the organization's taxable income, if any, on line 6a of Schedule K and each member's distributive share in box 6a of Schedule K-1. Net operating losses aren't deductible by the members but may be carried back or forward by the organization under the rules of section 172. The religious or apostolic organization must also make its annual information return available for public inspection. For this purpose, "annual information return" includes an exact copy of Form 1065 and all accompanying schedules and attached statements, except Schedules K-1. For more details, see Treas. Reg. 301.6104(d)-1.

- (6) Section 6652(c)(1) establishes penalties for failure to file an annual return.
- (7) Section 501(d) organizations are required to make their annual Form 1065 returns available for public inspection for three years after the return is due. Section 501(d) organizations are also required to make available a copy of their exemption application letters, any supporting documents and their exemption letters. Failure to make these documents available for public inspection may subject the organization to a penalty of \$20 per day for each day there is a failure to comply (up to a maximum of \$10,000 in the case of an annual return). See Section 6104(d) and Section 6652(c)(1)(C). However, the Schedule K-1's need not be disclosed.

## **V. Examination Techniques**

- (1) Delegation Order 7-17 establishes the authority for Exempt Organizations (EO) Examinations to issue revocations of rulings or determination letters or letters determining that an organization does not qualify for exemption for an examined tax year. That authority includes organizations described under Section 501(d). See Internal Revenue Manual (IRM) 1.2.2.
- (2) Part 4 of the Internal Revenue Manual (IRM) sets forth the procedures for the examining process. Chapter 70, in fifteen sections, provides procedures for EO Examinations. Those procedures should be followed for a Section 501(d) organization examination.
- (3) The examination techniques provided here are intended to complement IRM 4.70 by noting examination practices specific to organizations described under Section 501(d).
- (4) At a general level, an examination of a Section 501(d) organization should consist of three main components:
  - a. Confirming the organization qualifies for exemption for the year under examination.
  - b. Ensuring the accuracy of the organization's net income.
  - c. Substantiating the organization reported each member pro rata shares of net income.

- (5) Regarding these three components, remember to consider their interrelatedness. The net income needs to be accurately determined before the pro rata member share can be accurately reported, and the reporting of pro rata member share income, in turn, is a requirement of exemption qualification.
- (6) Also, at a general level, it is important to note the relationship of individuals to the organization. Whether member or non-member, whether employee or non-employee, whether internally employed or externally employed; these considerations and the combination of these considerations may affect both the net income calculation and exemption qualification.
- (7) Remember to properly track the Statute of Limitations (SOL) on Form 1065, U.S. Return of Partnership Income, and each member's individual Form 1040, U.S. Individual Income Tax Return. Keep in mind that the SOL on Form 1065 is distinct from the SOL on Form 1040. An extension on Form 1065 does not extend the SOL on each member's individual Form 1040. Tracking each individual member's Form 1040 SOL can be a difficult task. A recommendation to simplify tracking is to determine which Form 1040 has the earliest possible SOL, and then use that return's SOL date for keeping track of all the members' Form 1040s.

## **A. Pre-Contact Examination Procedures**

- (1) First step prior to initial taxpayer contact and examination.

### **A.1. Request the Form 1065**

- (1) TE/GE has primary examination responsibility for examining Forms 1065 filed by religious and apostolic organizations described in Section 501(d). Request help from Large Business & International (LB&I) if you need it when the organization has assets of at least \$10 million. Contact Small Business/ Self Employed (SB/SE) when the organization has assets less than \$10 million.
- (2) Refer examinations of Form 1040 having material adjustments to SB/SE. Notify SB/SE as early as possible in the examination so they can place the partner's return on the Pass-Through Control System (PCS), described in IRM 4.29 and 4.31.5.8.
- (3) Forms 1065 properly filed by apostolic organizations (in other words, indicated that they were exempt under Section 501(d) on the Form 1065) aren't subject to the Tax Equity and Fiscal Responsibility Act (TEFRA) procedures of IRM 4.31.2 or IRM 4.31.5, however SB/SE uses those guidelines if they're requested to work the Forms 1040.
- (4) Forms 1065 aren't available via Online Statistics of Income EO Image Net (SEIN). Order them from files, by establishing a case on Reporting Compliance Case Management System (RCCMS) or using command code ESTAB on Integrated Data Retrieval System (IDRS).

- (5) Limited transcripts of Form 1065 are available via the Transcript Delivery System (TDS) application and IDRS. If electronically filed, Forms 1065 may be available from the Modernized e-file (MeF) application.
- (6) You can make adjustments to Form 1065 using Report Generating Software (RGS NT). If you're unfamiliar with Forms 1065, ask coworkers experienced with using the program (former SB/SE or LB&I revenue agents), or with your manager's permission, submit a specialist request via Specialist Referral Service (SRS).

## **A.2. Request the Determination File**

- (1) Request a copy of the file by sending a secure email, attaching Form 14264, Request for EP or EO Determinations Administrative File.
- (2) If the file is unavailable, request the determination application and determination letter in the initial document request (IDR).
- (3) When you receive the file, review the application. Look at any notes the determination specialist made on the non-disclosable portion of the file.
- (4) Determine in the review of the application, whether:
  - a. The organization is organized for the purpose of operating a religious or apostolic community with a common or community treasury.
  - b. Upon leaving the organization, members are entitled to any part of the group assets.
  - c. There is a communal business activity, such as farming, manufacturing, or other industry.
- (5) Determine whether the organization is incorporated.
  - a. If incorporated, check the website of the state agency responsible for corporate registrations to determine if the organization has filed any amended documents.
  - b. If unincorporated, request copies of any amendments to the articles of association, charter or other organizing document in the initial IDR.
- (6) Review the bylaws of the organization.
  - a. Take note of the leadership structure, or lack of it.
  - b. Determine how control of the organization transitions from person to person (election, inheritance, challenge, etc.)
  - c. Determine who is permitted to be a member. (The IRS has ruled that parents may consent to membership on behalf of their minor children to the extent allowed under applicable state law. See Rev. Rul. 77-295, 1977-2 C.B. 196.)
  - d. If the organization provides voting rights, note the classes of membership and those who are permitted to vote.

- (7) Review the Form 1065 to identify the source of the income reported.
  - a. The income reported must be from a community operated business.
  - b. A member of a religious organization who has taken a vow of poverty and is instructed by the organization's superiors to obtain outside employment must include the remuneration remitted to the organization in his/her gross income, and it's subject to FICA and income tax withholding. See Rev. Rul. 80-332, 1980-2 C.B. 34. However, if an organization is substantially dependent on wages earned by some of its members from outside employment rather than on internally operated business, it doesn't qualify for exemption under Section 501(d). See Rev. Rul. 78-100, 1978-1C.B. 162.
- (8) Review the expenses and credits deducted on Form 1065.
  - a. The organization is entitled to take deductions regularly permitted to taxable corporations.
  - b. Take note of any deductions for food, medical expenses, or other fringe benefits normally provided to employees.
  - c. Determine whether any amount has been reported for payment of compensation to individuals.
- (9) Use command code Payer Master File On-Line (PMFOL) to determine whether any information returns were filed. If yes, use command code Information Returns Processing Transcript (IRPTRR): IRPTRR provides a hardcopy printout of the requested information returns (Form W-2, Wage and Tax Statement, Form 1099-MISC, Miscellaneous Information, etc.) issued by an organization. For online transcripts of documents received by a taxpayer, IRPTRO is used.
  - a. When transcripts are received from the Service center (approximately two weeks,) determine who received Forms W-2.
  - b. Ask for a list of all members of the organization in the initial IDR.
  - c. Compare the amounts reported on Forms W-2 (if any) to the Form 1065.
- (10) Check to see if the organization has a website:
  - a. Verify the business activity of the organization.
  - b. Determine the current identity of the leaders of the organization, if provided.
  - c. See if the organization's tenets are listed on the website.
  - d. Review the organizing documents, if available online.

## **B. Examination Procedures**

- (1) Section 7602: Examiners have the authority to take testimony as may be relevant to determine any return's correctness, make a return where none has been made, and determine the liability for any internal revenue tax.



## **B.1. Tailor the Interview Questions to the Organization**

- (1) If the tenets/creed/statement of religious beliefs weren't provided either in the determination application or on a website, ask for them.
- (2) Determine whether there is a central body of authority for the organization.
- (3) Identify the internally operated communal business activities that generate the income of the organization.
- (4) Ask about external (individually generated) sources of income and about how the organization treats that income.
- (5) Request an explanation of the expenditures deducted on the Form 1065.
- (6) Ask about the organization's requirements for personal property owned before, during, and after a person's membership.
- (7) Clarify whether the organization employs any non-member labor, and for what activities.

## **B.2. Tour the Facilities and Focus on Whether the Organization Requires Communal Living.**

- (1) Section 7602 gives authority to tour the organization's facilities. IRM 4.10.3.4 outlines procedures for facility tours.
- (2) Request an explanation of how the organization operates as a communal organization.
- (3) View the facilities where the community business activities are conducted. It would be best to tour both the communal facility for members and the business site, as these can be separate. Looking for different things at each site, such as communal facility at the home site, and non-member employees at the business site.

**Note:** The organization is not subject to Unrelated Business Income Tax (UBIT). The organization must report all income generated as a dividend to members on a pro rata basis.

- (4) Identify all the sources of income producing activities.
- (5) If Forms W-2, were filed, meet the persons who are employees, if present, to ask if they are also members of the organization.
- (6) Obtain clarifications as to the type of labor that nonmembers perform.

## **B.3. Review the General Ledger and/or Check Register.**

- (1) Reconcile the ledger (or adjusted trial balance) to the Form 1065.
- (2) Identify the dates, amounts, and source of income.
- (3) Obtain substantiating documentation for questionable expenses (those deducted but appear to be for food, medical, and living expense of members.)

- (4) Verify that the expenses reported are deductible.
- (5) If available, view the retained check images (photocopies, from the organization, or bank) to check for any earmarking or for checks not made out to the organization.

#### **B.4. Concluding the Examination**

- (1) Determine if the organization continues to qualify for exemption under Section 501(d).
- (2) Prepare a report of examination revoking the organization:
  - a. If the organization lacks a religious or apostolic character.  
**Note:** Consult Counsel because the “religious or apostolic character” is not defined in law.
  - b. If the organization substantially relies on the wage’s members generated from activities external to the communal business activities.
  - c. If the organization lacks a communal trust or bank account in which income is deposited and expenses disbursed.
  - d. If the organization had income it failed to allocate to its members.  
**Note:** In light of the PATH Act of 2015, apostolic associations have declaratory judgment rights under section 7428.

#### **B.5. For an Agreed Revocation**

- (1) Discuss the issue with the taxpayer fully to verify that taxpayer will agree.
- (2) Issue the final report using Letter 3618, Form 886-A, Explanation of Items, Form 4621-A, Report of Examination-Exempt Organizations, and Form 6018, Consent to Proposed Action. Allow the taxpayer 30 days to respond.
- (3) Prepare an administrative record in a separate folder. Refer to IRM 4.70.14.2.1.3.1.12, EO – Revocations.
- (4) Prepare Form 2363-A, Request for IDRS Input for BMF/EO Entity Change, for a revocation. The filing requirement of a revoked IRC Section 501(d) organization remains the same. The organization will be subject to TEFRA rules under Section 6233.
- (5) Close the case to Mandatory Review.

#### **B.6. For an Unagreed Revocation**

- (1) If not otherwise excluded from Fast Track Settlement, issue a report of preliminary findings (draft revenue agent report (RAR)), with a drafted cover letter, Forms 886-A, 6018, and Form 14017, Application for Fast Track Settlement, with Publication 4539, Fast Track Settlement Brochure. Allow 30 days for a response.



- (2) For cases not entered into the Fast Track Settlement process, issue the final report using Letter 3618, Forms 886-A, 4621-A, and 6018. Allow the taxpayer 30 days to respond.
- (3) Prepare an administrative record in a separate folder and an index to the administrative record. Refer to IRM 4.70.14.2.1.3.1.12, EO - Revocations.
- (4) Prepare Form 2363-A for a revocation. A revoked Section 501(d) organization has the same filing requirement. The organization will become subject to TEFRA rules under Section 6233.
- (5) Close the case to Mandatory Review, if the revocation is unagreed without protest to Appeals following IRM 4.70.14.6, Mandatory Review.
- (6) Close the case to the EO Closing Unit if the revocation is unagreed with protest to Appeals following IRM 4.70.14.7, Closing Cases to Appeals.

#### **B.7. Identify Any Adjustments to be Made to the Form 1065 and the Schedules K-1.**

- (1) Ask SB/SE for help when making adjustments to members' Forms 1040, and if necessary, Forms 1065 adjustments in RGS.
- (2) Prepare adjustments to the Form 1065 using RGS NT. See Training Publication 22801-104 Report Generation Software (RGS) Form 1065 Workshop (Participant Guide).
- (3) Prepare a report of examination to the organization explaining the adjustments.
- (4) Coordinate with SB/SE to issue the report. SB/SE issues their own reports on the Forms 1040. Give them the RGS electronic file.
- (5) Prepare Form 4605, Examination Changes - Partnerships, Fiduciaries, S Corps., & Interest Charge Domestic International Sales Corporations, Form 886-A, and Form 886-S, Partners' Share of Income, Deduction and Credits, Form 886-X, Shareholders Shares of Income, Deductions, and Credits, Form 886-W, Distribution of Beneficiaries' Shares of Income and Credits, or Form 886-Z, TEFRA Partners' Shares of Income, to show the corrected flow-through amounts for each investor. All are available on RGS.
- (6) Issue the report with Letter 921.
- (7) If you're revoking the organization and adjusting Forms 1065, ask SB/SE or LB&I for help on TEFRA procedures if applicable.
- (8) If you close the case as no change, prepare Letter 6049 and follow the procedures in IRM 4.70.14, Resolving the Examination.