

A. UPDATE ON CHURCHES EXAMINATIONS UNDER IRC 7611

by

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1. Introduction

Congress, when it enacted IRC 7611, tried to minimize the potential for church-state confrontations in Service examinations of churches by adopting detailed procedures to be followed whenever the Service was involved in what the statute characterized as a "church tax inquiry." These procedures emphasized the need for a speedy determination of a church's tax liabilities without unnecessary examination of church records.

The 1985 CPE text contained an article discussing IRC 7611 as it was enacted. Regulations and IRM instructions issued since the 1985 article was written have fleshed out many of the statute's mandated provisions. There have been some case law developments -- particularly in the area of summons enforcement. The purpose of this article is to provide a step-by-step review of the church inquiry and examination process, including developments since 1985.

2. Definition of a Church

One of the more vexing issues for the Service is how to decide whether an organization that claims to be a church really is a church for tax purposes. This issue was brought to the fore by the mail order ministry cases and, in response, the Service developed the "14-point" definition of a church that has been recognized by a number of courts. (The most recent case is Spiritual Outreach Society v. Commissioner, 927 F. 2d 335 (8th Cir. 1991).)

IRC 7611 bypasses this issue by providing that, for purposes of IRC 7611, a "church" includes any organization claiming to be a church or convention or association of churches.

Excepted is any separately incorporated entity, such as a church school, unless the school claims church status in its own right. If, however, a school is operated as an unincorporated part of a church, it is covered by the claim of that church.

IRM 7(10)71.21(4) provides that in the rare instance that an examining office possesses information establishing that a claim is frivolous, it may disregard an organization's claim to church status. However, an examining office may do this only where it has a written opinion from District Counsel agreeing that the claim is frivolous.

The Service may also choose, as an administrative matter, not to challenge the claim of certain classes of organizations even though these claims might, as a general rule, be frivolous.

3. Coverage

A. Scope of IRC 7611.

Subject to exceptions discussed below, a church tax inquiry is defined as any inquiry to a church designed to serve as a basis for determining whether the organization qualifies for tax exemption as a church, carries on an unrelated trade or business, or is otherwise engaged in any activity subject to tax.

B. Actions Not Within Scope of IRC 7611

(1) Routine Requests

The term "church tax inquiry" does not include routine requests for information or inquiries on matters that do not primarily concern the organization's tax status or liability. Routine requests, which are considered to be outside the scope of the statute, do not require application of IRC 7611 procedures. IRM 7(10)71.24 lists a number of routine requests, including requests for information about:

- a. Filing, or failing to file, any tax return or information return;
- b. Compliance with income or FICA (social security) tax withholding responsibilities;
- c. Supplemental information needed for mechanical processing of an incomplete or incorrect return;
- d. Information necessary to process an application for exempt status or ruling request;

- e. Information necessary to process and update registration for tax-free transactions (excise tax), elections for exemption from windfall profits tax, or employment tax exemption requests;
- f. Information identifying a church to update the Cumulative List, and other computer files;
- g. Confirmation that a specific business is, or is not, owned and operated by the church.

(2) Third Party Records

Under Q. & A. #5 of Reg. 301.7611-1 the Service may request a church to provide information necessary to locate third party records without application of IRC 7611. This information may include the church's chartered name, the state and year of its incorporation, and the location of its checking and savings accounts. Records in the hands of a third party recordkeeper (such as canceled checks held by a bank) are not protected by IRC 7611. Such records are subject to summons under procedures in IRC 7609. Other rules require the Service to inform the church of the request that has been made to the third party. See, e.g., Church of World Peace, Inc. v. United States, Civil Action No. 85-M-1860, Slip Opinion, (U.S. District Court for the District of Colorado, March 31, 1986) (IRC 7611 not applicable, but IRC 7609 is applicable, to summons issued to banks for financial information on church).

However, use of third party records is restricted. A determination that a church is not entitled to exemption and the resulting assessment of tax, or an assessment of tax for unrelated business income, may not be made solely on the basis of third party records, without first complying with IRC 7611 requirements regarding two notices to the church and the offering of conference. (The specific requirements are described below.) The assessment of other taxes (such as social security or other employment taxes) based on third-party evidence is not similarly restricted.

(3) Statutory Exceptions

The statute provides exceptions from the requirements of IRC 7611 for: 1) criminal investigations, 2) any termination assessment under IRC 6851 or jeopardy

assessment under IRC 6861, 3) any case involving a knowing failure by a church to file a return or willful attempt to defeat or evade tax (including failure to withhold or pay social security or other employment or income tax required to be withheld from wages), and 4) any inquiry or examination relating to the tax status (including social security or self-employment or income tax withholding) or liability of persons or organizations other than the church (including contributors). Although criminal investigations are not subject to IRC 7611, IRM 7(10)71.26 makes it clear that the possibility that an examination may result in a referral for a criminal investigation does not, standing alone, take the examination out of IRC 7611.

The most frequently occurring exception is that provided by IRC 7611(i)(2) for an inquiry or examination relating to the tax liability of a person other than the church. Q. & A. #6 of Reg. 301.7611-1 provides examples of situations in which this exception applies, including:

- a. Inurement of church funds to a person or organization which may result in denial of deduction for that person or organization's charitable contribution;
- b. An assignment of income or services or contributions to the church;
- c. A vow of poverty by an individual followed by a transfer of property or assignment of income or services to the church.

A number of court cases have been litigated involving the exception for an inquiry or examination involving individuals or organizations other than the church itself. Most have upheld the Service and applied the exception broadly. See, e.g., Kerr v. United States, 801 F. 2d 1162 (9th Cir. 1986) (IRC 7611 did not apply where investigation was of taxpayer who was founder and trustee of church); St. German of Alaska Eastern Orthodox Catholic Church v. United States, 653 F. Supp. 1342 (S.D.N.Y. 1987) (criminal investigation of church official not subject to IRC 7611); and Holy Temple Church of God in Christ, Inc. v. United States, CV 88-05417 SVW (U.S. District Court for the Central District of California, Nov. 30, 1988) (IRC 7611 not applicable to government inquiry of church's separate corporation). Examining offices should be mindful that IRM 7(10)71.25(3) provides that the personal approval of the Chief, EP/EO Division should be obtained before initiating any inquiry or examination of a church to obtain information relating to the tax liability of another person.

Examinations under all the statutory exceptions to IRC 7611 are subject to the general rules regarding examinations of taxpayer books and records.

C. Limitations on Scope of Exceptions

An inquiry or examination not covered by IRC 7611 is limited to a determination of the facts and circumstances specifically relating to the tax liabilities of the individual or organizations involved. For example, information may be requested from a church without the application of IRC 7611 regarding the amount of money, property, or services transferred to an individual under investigation. However, no examination of church contributor or membership lists can be made, except under IRC 7611 procedures, for the purpose of determining the overall financial structure of the church merely because such structure is relevant to the church's qualification as tax exempt and hence indirectly relevant to the validity of the contributor's deduction.

4. IRC 7611 Procedures

A. Introduction

IRC 7611 describes a set of procedures by which the Service will conduct an investigation of a church regarding its tax matters. The procedure consists of two phases: 1) inquiry and 2) examination. Each phase involves particular requirements.

B. Church Tax Inquiry

(1) Reasonable Belief Requirement

The Service may begin a church tax inquiry only when the appropriate Regional Commissioner reasonably believes, on the basis of facts and circumstances recorded in writing, that the organization 1) may not qualify for tax exemption as a church, 2) may be carrying on an unrelated trade or business, or 3) may be otherwise engaged in an activity subject to tax. Information received by the Service at its request from the church may not be used to form the basis of a reasonable belief, unless the request is made under the procedures of IRC 7611, or is a request to which the procedures of IRC 7611 do not apply. Under Q. and A. #7, Reg. 301.7611-1, repeated (two or more) failures by a church or its agents to reply to routine requests, will be considered to satisfy the "reasonable belief"

requirement. Similarly, failure of a church to respond to repeated requests for information regarding individuals or other organizations' tax liabilities can be a basis for a church tax inquiry. However, failure to provide information necessary to locate third-party records will be only a factor, and not a conclusive factor, in establishing a "reasonable belief."

A failure to respond is defined in the regulations as no response, or a response that does not make a "reasonable attempt to submit the information called for by the specific language of the request."

IRM 7(10)71.32(3) notes that the facts and circumstances forming the basis for a reasonable belief must be derived from information lawfully obtained by the Service. Information obtained from informants must not be known to be unreliable.

In United States v. Church of Scientology Flag Service Org., Inc., 90-1 U.S.T.C. Para. 50,019 (M.D. Fla. Dec. 15, 1989), the court summarily rejected a church's challenge to the reasonableness of the IRS's belief, citing IRC 7611(e)(1), which lists the sole requirements that may be litigated. (See discussion in section 7, Remedy for IRS Violations of IRC 7611, below.)

(2) Inquiry Notice - Requirements

Under Q. & A. #2, Reg. 301.7611-1, a church inquiry is considered to commence when the IRS requests from a church information or materials of a type contained in church records. The basic purpose of the inquiry notice is to begin a dialogue between a church and the Service which would permit a speedy resolution of the issues. Upon commencing a church tax inquiry, the appropriate Regional Commissioner is required to provide written notice to the church. The inquiry notice (first notice) includes: 1) an explanation of the concerns which gave rise to the inquiry and the general subject matter of the inquiry in sufficient detail to allow the church to understand which specific activity is at issue; 2) a general explanation of the IRC provisions which authorize the inquiry and which may otherwise be involved, 3) a general explanation of applicable administrative and constitutional provisions involved, including the right to a conference before examination. The inquiry notice will request information that will alleviate the concern.

The Service is not precluded from expanding its inquiry beyond the initial concerns expressed in the first notice as a result of facts and circumstances

subsequently developed (including an expansion of a UBIT inquiry to include questions of tax-exempt status, or vice versa).

(3) Inquiry Notice - Processing

Although not required by IRC 7611, IRM 7(10)71.34:(2) suggests that the inquiry notice should also contain a list of questions relevant to the inquiry. The questions should be the ones that are needed to resolve the inquiry and should be based on the information in hand. The notice should not request the church to submit materials or records that may only be obtained after issuance of the examination notice. Questions may not be appropriate in every church tax inquiry letter, especially if they are many in number or may require detailed answers. In some cases that are not likely to be resolved by correspondence, it may be less burdensome on the organization if the church tax inquiry letter concentrates on describing the Service's concerns rather than asking a long list of questions. Examining offices should use their best judgment in deciding whether a list of questions is likely to resolve or narrow the issues without unduly burdening the organization.

As a general matter, IRM 7(10)71.34:(6) points out that an examining office may seek District Counsel's opinion before referring an inquiry for the Regional Commissioner's approval. An examining office should coordinate with both District Counsel and the Disclosure Officer if it believes that certain information should be withheld from the church but is concerned that withholding might affect the legal sufficiency of the inquiry notice.

The Service is not precluded from granting a conference after the issuance of the inquiry notice, though such a conference would not replace the conference required to be offered in the examination notice. IRM 7(10)71.4:(6) provides that these conferences are discretionary with the Service and should normally be granted only where there is a likelihood that the conference will lead to a resolution of the issues. In deciding whether to hold a conference after the church tax inquiry letter, or whether to grant an extension of time to respond to questions, examining offices should keep in mind that there is a 90 day period time limit for completing the inquiry if the examination notice, described below, is not sent. If a church needs additional time to respond to an inquiry, the examining office should consider whether a consent to suspend running of the 90-day period, as authorized by IRC 7611(c)(2)(c) and discussed in IRM 7(10)71.82, should be secured.

C. Church Tax Examination

(1) Introduction

Assuming a case cannot be resolved after the issuance of an inquiry notice and there is a need to examine church records, IRC 7611 provides a second procedural step. Before commencing an examination of church records and religious activity, the Service is required to provide a second written notice, signed by the Regional Commissioner, to the church no less than 15 days before the proposed examination. In addition, the second notice cannot be provided to the church less than 15 days after the first notice. Thus, an examination cannot begin less than 30 days from the day the church is first notified.

(2) Examination Notice

The notice of examination (second notice) includes: 1) a copy of the first notice (the church tax inquiry notice), 2) a description of the church records and activities sought to be examined, 3) a copy of all documents collected and prepared by the Service for use in the examination and subject to disclosure under the Freedom of Information Act (as supplemented by IRC 6103 relating to disclosure and confidentiality of tax return information).

IRM 7(10)71.51 interprets this to mean that the Service is not required to furnish all the documents it may have on the organization, only those that were used to determine that an inquiry and an examination were necessary.

Under Q. & A. #9 and #10 of Reg. 301.7611-1, the description of materials sought to be examined in the notices will not restrict the Service's ability to examine other church records or religious activities not specifically mentioned if they subsequently come to the Service's attention and are properly within the scope of an IRC 7611 examination.

(3) Advisory to Regional Counsel

IRC 7611(b)(2)(A) requires that at the same time the second notice is sent to the church, a copy also is sent to Regional Counsel who is allowed 15 days to file an advisory objection to the examination.

IRM 7(10)71.52 discusses a procedure that permits the Regional Commissioner to obtain an opinion of Regional Counsel before the examination

notice is signed and mailed, but this procedure does not eliminate the need to follow the formal requirements of the statute.

(4) Offer of Conference

After the second notice is provided, the church is permitted 15 days to request a conference to discuss the concerns and the general subject matter of the inquiry. During this time, the Service is prohibited from commencing the examination. IRM 7(10)71.6(5) provides that if the church does not request a conference within the 15 day period and if the Regional Counsel does not object to the examination, the church may be contacted to begin the examination.

Under the IRM, if the examining office has not been advised as to whether Regional Counsel objects, it must wait 30 days before contacting the church.

If the church requests a conference when it is contacted to arrange an examination or anytime before an examination is started, the conference must be held before the examination is begun. One conference is sufficient to meet the requirement of IRC 7611.

(5) Conference

The purpose of the conference is to remind the church, in general terms, of the stages of the church tax inquiry and examination procedures and discuss the relevant issues in an effort to resolve issues of tax exemption or liability without the necessity of an examination.

If the matters of concern which gave rise to the issuance of the examination notice are not resolved at the conference, or if the organization does not request a conference, the Service may begin the examination.

(6) Scope of the Examination

If IRC 7611 is applicable, an examination may be conducted only if the notice requirements have been met, unless the church files a written waiver.

Church records may be examined only to the extent necessary to determine liability for, and the amount of, any federal tax. Most commonly this includes: 1) to determine initial or continuing qualification under IRC 501(c)(3); 2) to determine whether the organization qualifies to receive tax deductible

contributions under IRC 170(c); or 3) to determine the amount of tax (including UBIT), if any, which is to be imposed.

Church records include all regularly kept church corporate and financial records, including corporate minute books, contributor or membership lists, any materials which qualified as church books of account under IRC 7605(c) as in effect December 31, 1984, and private correspondence between the church and its members in the possession of the church.

Religious activity may be examined only to the extent necessary to determine if the organization is a church exempt from tax.

(7) Examinations - Regional Counsel Approval of Reports

Under IRC 7611(d), Regional Counsel is required to approve, in writing, examination reports involving the following adverse actions: 1) a determination that an organization is not entitled to tax exempt status, 2) a determination that an organization is not entitled to receive tax deductible contributions, or 3) the issuance of a notice of tax deficiency, or where deficiency procedures are inapplicable, the assessment of any underpayment arising from an inquiry or examination. In addition, Regional Counsel must state in writing that there has been substantial compliance with IRC 7611 procedures.

Under IRC 7611(g), the final report approved by the Regional Counsel serves as the final adverse determination under paragraph (1) of IRC 7428(a). This allows the organization to proceed directly to the Tax Court, the United States Claims Court, or the United States District Court for the District of Columbia, with a petition for declaratory judgment to protest the adverse determination. As IRM 7(10)71.74(3) notes, this also precludes administrative appeal in these cases.

5. Limitations on Period of Inquiry and Examination

A. Inquiry and Examination Deadlines

IRC 7611 limits the amount of time the Service can take to conduct the inquiry or examination. An inquiry must take a minimum of 15 days, and must be concluded and a final determination made within 90 days of the date of mailing of the inquiry notice (first notice) if no examination notice is sent. If an examination is also conducted, it must be completed, and a final determination made, not more than two years from the date of mailing of the examination notice (second notice).

B. Suspension of Time Limits

The running of the two-year period is suspended during any period in which:

- (1) a judicial proceeding brought by the church or its agents against the Service is pending or being appealed;
- (2) a judicial proceeding brought by the Service against the church to compel compliance with any reasonable request for examination of church records or religious activity is pending or being appealed;
- (3) the Service is unable to proceed with the inquiry or examination by reason of an order issued in a suit under IRC 7609 relating to access to records held by a third party;
- (4) the church or its agents fail to comply with any reasonable request for records or information and the delay is more than 20 days but not less than six months; or
- (5) the church and the Service extend the two-year period by mutual agreement.

6. Limitations on Additional Inquiries and Examinations

Under IRC 7611, there also are special rules against multiple examinations of a church. Written approval from the Assistant Commissioner (Employee Plans and Exempt Organizations) is required for any second inquiry or examination of a church undertaken within five years of an earlier inquiry or examination that did not result in 1) revocation, 2) a notice of deficiency, or 3) a request for any significant change in church operation (including the adequacy or sufficiency of income records), and the second effort by the Service involves the same or similar issues. In determining "same or similar issues," substantive factual issues, rather than legal classifications, control. Hence, where the earlier examination and the current examination involve UBI from different sources, the current examination would not involve the "same or similar issues."

The five-year period begins from the date of mailing of the examination notice, or the inquiry notice (if no examination notice was sent). The five-year

period is suspended for periods during which the two-year period is suspended, unless the earlier examination was actually concluded within two years.

7. Remedy for IRS Violations of IRC 7611

Failure to comply substantially with the requirements that 1) two notices be sent to the church, 2) the Regional Commissioner approve the commencement of the inquiry, or 3) an offer of a conference be made (and a conference held if timely requested) will result in a stay of a proceeding to enforce a summons (but not dismissal of the proceeding), until the requirements are satisfied.

IRC 7611(e) states that the above is the exclusive remedy, and that no suit may be maintained and no defense may be raised, other than the stay for summons enforcement, by reason of any Service noncompliance with its requirements.

Q. & A. #17 of Reg. 301.7611-1 states that the failure by the Service to comply with any of these requirements may not be raised as a defense or affirmative ground for relief in any judicial proceeding, including a summons enforcement proceeding, a declaratory judgment proceeding involving a determination of tax exempt status under IRC 7428, a proceeding to collect unpaid tax, or a deficiency or refund proceeding. See, e.g., Church of Gospel Ministry, Inc. v. United States, 640 F. Supp. 96 (D.D.C. 1986) (improper IRC 7611 procedures cannot be advanced as grounds for relief in a declaratory judgment proceeding).

Q. & A. #17 of Reg. 301.7611-1 also states that the three requirements listed above (two notices, Regional Commissioner approval of the inquiry, and an offer of a conference) are the only litigable issues in a summons proceeding. For example, the Q. & A. provides that the reasonableness of the Regional Commissioner's belief that the organization may not qualify for exempt status as a church would not be litigable. This was followed in United States v. Church of Scientology Flag Service Org., Inc., 90-1 U.S.T.C. para. 50,019 (M.D. Fla. Dec. 15, 1989), in which the district court explicitly rejected the defendant's request to reexamine the reasonableness of the Service's belief that the organization may not be exempt.

Another district court, however, imposed an additional requirement in a case in which the church under examination had been recognized exempt. In United States v. Church of Scientology of Boston, Inc., 739 F.Supp. 46 (D. Mass. 1990), the court refused to enforce a summons because, inter alia, the Service did not

establish reasons for retroactive revocation under IRC 7805. The court stated that without a specific showing that the organization omitted or misstated a material fact in its application, or that the organization had been operated in a manner materially different from that originally represented, the examination lacked a legitimate purpose. On appeal, the First Circuit Court of Appeals, though affirming the district court's refusal to enforce the summons on the grounds that it did not establish that the information sought was necessary, specifically stated that the district court's holding on the examination's purpose was not necessary to a decision and does not have any binding effect.

The two-year limitation on the duration of a church audit will not be suspended during stays of summons proceedings resulting from Service violations of IRC 7611. However, the Service may correct violations without regard to the otherwise applicable time limits prescribed under IRC 7611.

8. Limitations on Period of Assessment

IRC 7611(d)(2) imposes special limits on periods of assessment for church examinations. These limits are in addition to any limitation period provided by subchapter A of Chapter 66: if there is a conflict, the shorter limitation period applies. For example, assume a calendar year church voluntarily files a substantially complete Form 990 for year 1 before the due date of May 15, year 2. The statute of limitations for year 1 under IRC 6501(a) will expire on May 15, year 5. If the Service begins a church tax examination for years 1, 2, and 3 by issuing an examination notice in December of year 4, it would need to make any assessments for year 1 before the IRC 6501(a) limit expired on May 15, year 5, (unless an extension was secured), even though the assessment period under IRC 7611(d)(2) would still be open.

If the church did not file a return, the sole limitations on assessment are those imposed by IRC 7611(d)(2). In the case of an examination with respect to revocation, any tax imposed under Chapter 1 (other than UBIT) may be assessed, or a proceeding for collection without assessment begun, only for the three most recent taxable years preceding the examination notice mailing date.

If the organization is not a church exempt under 501(a) for any of three preceding years, the period of assessment will extend three more immediately preceding years, for a total of six years. A church is considered not to be exempt when the Regional Commissioner, upon review of the agent's report, agrees in

writing that the organization is not exempt. IRM 7(10)71.9(3) makes it clear that this is an interim process and not the final adverse determination.

Church records earlier than the applicable third or sixth taxable year may be examined if "material" to the taxable years with the applicable three-year or six-year period, under the regulations.

For examinations concerning UBI, if no return has been filed, tax may be assessed or collected for the six most recent taxable years. For examinations concerning issues other than revocation or UBI, if no return has been filed, no limitation period is applicable.

9. IRC 7611 and Enforcement of Summons

A major issue in current litigation involving IRC 7611 is whether the statute affects the standards for enforcement of a tax summons by the Service against a church. Courts have held that IRC 7611(b)(1)(A), which provides that the Service may examine church records only to the extent necessary to determine the liability for, and amount of tax, imposes a standard higher than the standard applicable to a non-church summons.

The standard for non-church cases was set out in United States v. Powell, 379 U.S. 48 (1964), in which the Supreme Court stated a four-part test for the enforcement of a tax summons. In Powell, the taxpayer refused to comply with an IRS summons to produce records citing IRC 7605(b)'s restriction against "unnecessary examination" of a taxpayer. The taxpayer argued that IRC 7605(b) required the government to make a showing of probable cause.

The Powell Court stated that the government need not meet any standard of probable cause to obtain enforcement of a judicial summons, but need only show that 1) the investigation will be conducted pursuant to a legitimate purpose, 2) the inquiry may be relevant to that purpose, 3) the information sought is not already in the possession of the Service, and 4) the administrative steps required by the Internal Revenue Code have been followed.

Litigation involving IRC 7605(c), the predecessor of IRC 7611 which restricts the examination of churches, produced a split in decisions in the circuit courts over whether the restrictions increased the Powell standards for enforcement of a summons. As stated in one frequently cited case, United States v. Holmes, 614 F.2d 985 (5th Cir. 1980):

The second prong of the Powell test was pruned back by Congress in 1969, in regard to examination of churches, when it added subsection (c) to 26 U.S.C. Section 7605. That provision limits the inquiry into the religious activities and books of account of churches "to the extent necessary" to ensure that the organization is a church and to determine the amount of tax owing. The "extent necessary" syntax is certainly more restrictive than the "may be relevant" language in the second tier of Powell.

Joining Holmes in that interpretation of IRC 7605(c) have been United States v. Life Science Church, 636 F.2d 221 (8th Cir. 1980) and United States v. Church of World Peace, 775 F.2d (10th Cir. 1985). Cases taking the contrary position have included United States v. Dykema, 666 F.2d 1096 (7th Cir. 1981) and United States v. Coates, 692 F.2d 629 (9th Cir. 1982).

Several courts have held that IRC 7611, like 7605(c), similarly restricts enforcement of a church summons. The First Circuit Court of Appeals, affirming a refusal to enforce a summons by the District Court of Massachusetts in United States v. Church of Scientology of Boston, 739 F. Supp. 46 (D.Mass. 1990), held in a May 29, 1991, decision that IRC 7611(b)(1)'s limitation on church examinations only "to the extent necessary" requires the government to show that the church records requested by its summons are "necessary," and not merely "relevant," to its investigation. The court held in the case that the Service had failed to make that showing and refused its request for judicial enforcement of the church tax summons. A similar standard was applied in United States v. Church of Scientology Flag Service Org., Inc., 90-1 U.S.T.C. 50,019 (M.D.Fla. Dec. 15, 1989), in which the district court referred the case to a magistrate for preliminary decision on which requested items were necessary; and United States v. Church of Scientology International, et. al., CV90-3690-HLH (Central D.Cal. Feb. 11, 1991), and United States v. Church of Scientology Western United States, CV90-3390 (Central D.Cal. Feb. 11, 1991), in which the court ordered the organizations to produce the documents that the court found to be necessary to the Service's determinations.