

A. DEFINING "CHURCH" - THE CONCEPT OF A CONGREGATION

by

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"The term "church" is intended to be synonymous with the terms "denomination" or "sect" rather than to be used in the universal sense."

"... [T]he word "church" implies that an otherwise qualified organization *bring people together as the principle (sic) means* of accomplishing its exempt purpose. The objects of such gatherings need not be conversion to a particular faith or segment of a faith nor the propagation of the views of a particular denomination or sect." (Emphasis supplied.)

"To be a "church" a religious organization must engage in the administration of sacerdotal functions and the conduct of religious worship in accordance with the tenets and practices of a particular religious body."

1. Introduction

The interesting thing about these three definitions is not that they differ, but that they are from the same court case. In Chapman v. Commissioner, 48 T.C. 358 (1967), three Tax Court judges agreed that an organization was not a church within the meaning of IRC 170(b)(1)(A)(i), but could not agree why. The majority opinion, which contained the first quote, and two separate concurring opinions, each emphasized a different characteristic of the word "church."

The judges in Chapman were not unique, for the meaning and scope of the term "church" have puzzled the Service, courts, and scholars since Congress excepted churches from the newly imposed unrelated business income tax in the Revenue Act of 1950. The task was not made easier as subsequent acts added provisions that distinguish churches from other religious organizations, but do not define "church." See various articles in the Exempt Organizations CPE texts from the 1978 EO ATRI at 1, to the 1992 CPE at 1. In addition, for an in-depth discussion of the history of the term "church" in the Code, see Whalen, "Church" in the Internal Revenue Code: The Definitional Problems, 45 Fordham L. Rev. 885 (1977).

This article will discuss the method used to define "church," focusing on one aspect: the concept of a congregation. Because of the nature of the term, however, it is impossible to discuss a component factor in a vacuum.

2. The Fourteen (or Fifteen) Points

In making the required distinctions between churches and religious organizations that are not churches, the Service has followed the basic principles set out in De La Salle Institute v. United States, 195 F. Supp. 891 (N.D. Cal. 1961). In that case the court, in deciding that a religious order operating schools and a novitiate was not exempt from unrelated business income tax on its winery, stated, at 903, that in the absence of a statutory definition of "church," we should apply "the common meaning and usage of the word."

To apply the "common meaning and usage" of the word "church," the Service attempted to identify historically or judicially recognized objective characteristics of churches. The result was the so-called "fourteen points test," which was later expanded to include a fifteenth criterion - any other facts and circumstances. The word "test" is misleading, as there is no minimum number of criteria an organization must meet to be classified as a church. Rather, the criteria serve as a guide to assist case-by-case analysis.

In applying the analysis to determine whether a religious organization may properly be characterized as a church, the Service considers whether the organization has the following characteristics: (a) a distinct legal existence, (b) a recognized creed and form of worship, (c) a definite and distinct ecclesiastical government, (d) a formal code of doctrine and discipline, (e) a distinct religious history, (f) a membership not associated with any other church or denomination, (g) an organization of ordained ministers, (h) ordained ministers selected after completing prescribed studies, (i) a literature of its own, (j) established places of worship, (k) regular congregations, (l) regular religious services, (m) Sunday schools for religious instruction of the young, (n) schools for the preparation of its ministers, and (o) any other facts and circumstances that may bear upon the organization's claim for church status. See IRM 7(10)69, Exempt Organizations Examination Guidelines Handbook, text 321.3(3).

The fifteen criteria are not an attempt to quantify the factual circumstances required for recognition as a church. Determinations are not made solely on the number of characteristics an organization possesses. Given the variety of religious

practice, the determination of what constitutes a church is inherently unquantifiable. Attempts to use a dogmatic numerical approach might unconstitutionally favor established churches at the expense of newer, less traditional institutions.

3. The Concept of a Congregation as an Important Criterion

Although no court has specifically adopted the fourteen points test, many have used the criteria in rulings. One criterion that consistently appears is the presence (or absence) of a regular congregation. The most frequently cited case is American Guidance Foundation, Inc. v. United States, 490 F.Supp. 304 (1980). In that case, the court, after acknowledging the fourteen points test as a useful guide, stated that "[a]t a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship." Id. at 306.

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991), the court concluded that the organization was admittedly engaged in religious activity and possessed some of the fourteen criteria discussed in American Guidance Foundation v. United States, supra. The court noted that of central importance is, inter alia, the existence of an established congregation served by an organized ministry. The facts failed to show that the participants in the organization's activities considered it their church. Thus, the participants did not form a congregation.

In Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 924 (1986), the Tax Court defined a church, for IRC 170(b)(1)(A)(i) purposes, as "a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs." In other words, according to the Tax Court, a church's principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith.

Although the exact origin of this "associational" or "societal" component is unknown, courts have given it great weight in determining if an organization should be classified as a church. Judge Tannenwald, in a concurring opinion in Chapman v. Commissioner, supra, viewed it as an essential criterion. He stated that religious purposes

"... may be accomplished individually and privately in the sense that oral manifestation is not necessary, but it may not be accomplished in physical solitude. A man may, of course, pray alone,

but, in such case, though his house may be a castle, it is not a church. Similarly, an organization engaged in an evangelical activity exclusively through the mails would not be a church." Chapman v. Commissioner, supra at 367.

4. What is a Congregation?

A. Historical View

Given the importance of a congregation, the next issue is what constitutes a congregation. The concept of "congregation" implies that there are persons that associate for some kind of religious services. This requires consideration of both the number of persons involved and the form in which they associate.

Case law is lacking on the issue of the number of people needed to constitute a congregation, but available precedent suggests size is less important than activity. In cases involving organizations with few members, courts have avoided the issue of congregation size by basing their decision on private benefit or inurement. For example, in Unitary Mission Church of Long Island v. Commissioner, 74 T.C. 507 (1980), aff'd, 670 F.2d 104 (9th Cir. 1981), the Tax Court, confronted with a "family" church that had been denied exemption, held that the denial was proper because of the private benefit and inurement to the organization's controlling members. In note 5 of the opinion, the court stated that because the case was decided on other grounds, the court did not have to address whether the organization was entitled to recognition as a church.

Likewise, the courts in The Basic Unit Ministry of Alma Karl Schurig v. Commissioner, 511 F.Supp. 166 (D.D.C. 1981), aff'd per curiam, 670 F.2d 1210 (CA DC 1982) and Bubbling Well Church of Universal Love, Inc. v. Commissioner, 670 F.2d 104 (D.D.C. 1981), both based their decisions on the private benefit/inurement issue and, therefore, avoided having to determine whether the organizations were churches. In Church By Mail v. United States, 88-2 USTC 9625 (D.D.C. 1988), the district court stated that the organization had no congregation in the sense of a regular gathering of worshipers, but avoided the church classification issue by ruling that the organization's net earnings inured to private shareholders and was, therefore, not exempt.

In The Church of Eternal Life and Liberty, Inc. v. Commissioner, supra, the Tax Court found that a two-person congregation did not satisfy the "threshold test" for church status, the associational role. The determining factor was not that its

congregation had only two members, but that it had not increased in size since its inception and, in fact, made no attempts to attract new members. The court stated

"[w]hile incipient churches may have only two or three gathered together, a church membership will grow well beyond those small numbers given the vitality of its associational role. Petitioner, by contrast, seems to have intentionally pursued a policy that discouraged membership for reasons, we believe, that served the private purposes of its founder." *Id.* at 924-25.

Thus, the fact a church may be small does not preclude it from receiving church recognition. The inquiry must continue to determine whether the organization is attempting to attract new members or, in some cases, whether the organization prevents new memberships. If the organization limits its size, a determination whether private purposes are being served must be made. If no private purposes are being served, the organization may qualify as a church based on the facts and circumstances.

Determining whether a congregation exists also requires considering the form in which members associate. The concept of a congregation does not require that members meet regularly for prescribed religious services. For example, churches in some religions do not hold group services, but serve as quiet refuges where members come for individual reflection and prayer. Their membership can constitute a congregation for purposes of the Internal Revenue Code just as surely as a membership that assembles at least weekly for group services led by a minister. However, the concept implies that the membership, whatever the size, have some religious bond and some element of continuity. Usually in addition to individual practices, members participate in mutual ceremonies, observances, and celebrations important to their religion. In Spiritual Outreach Society v. Commissioner, supra, this element was found lacking where there was no evidence that participants considered themselves part of a congregation.

The issue of whether an organization has a congregation has been raised with respect to evangelistic organizations, and most recently by evangelistic organizations that carry on radio or television ministries. The Service traditionally classified evangelistic organizations as publicly supported organizations under IRC 170(b)(1)(A)(vi) rather than churches under IRC 170(b)(1)(A)(i) because the organizations engaged in short-term revivals or crusades intended to supplement and reinforce, not replace, the activities of local churches. An evangelistic organization usually did not maintain a regular and continuing program in the

localities it visited.

Recent years have seen a change in the classification of many evangelistic organizations. This change has been caused not by a change in Service position, but by evolving changes in the structure and activities of evangelistic organizations. Once purely "itinerant" organizations have built permanent churches from which they now broadcast their services. Many of these organizations are devoting more time to local church activities and, in many cases, have developed an established congregation that attends regular religious services.

Merely carrying on incidental "church activities" should not justify classifying a religious organization that is otherwise engaged in "non-church" activities as a "church" under IRC 170(b)(1)(A)(i). This was considered in De La Salle Institute v. United States, supra, in which the court proffered one of the most often quoted phrases in this area. When confronted with an organization that conducted church activities as an incidental part of its overall activities, the court, in holding that the organization was not a church, stated that "the tail cannot be permitted to wag the dog." Whether an activity is a "tail," a "dog," or something in between is a question of fact.

B. Media Ministries

One kind of religious organization that is difficult to analyze under the facts and circumstances test is the television (or radio) ministry. Where media evangelism was once merely an extension of a church or of a non-church religious organization, and did not serve to change the character of the organization, recent years have seen the growth of organizations whose primary purpose is broadcasting religious programming. These raise the issue whether a congregation must be physically present.

When confronted with this factual scenario, keep the basic principles in mind. Not only must an organization seeking church status have religious purposes, but the Tax Court has held that the principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith. Church of Eternal Life and Liberty, Inc. v. Commissioner, supra, at 924. In order to receive recognition as a church, the facts and circumstances must show that the primary focus of or purpose towards which the organization's activities are directed is the promulgation of its religious beliefs and doctrines through a congregation. See G.C.M. 38982 (May 3, 1983). The fact that a small part of an organization's activities may constitute a church will not

allow the organization as a whole to be recognized as a church if its principle means of accomplishing its religious purposes is the dissemination of its message on the airwaves or through the publication of literature.

In Foundation of Human Understanding v. Commissioner, 88 T.C. 1341 (1987), the Tax Court was faced with an organization that was once purely evangelistic, but, over time, had built a church building and now served a regular congregation of between 50-350 persons. The broadcasting activities of the organization continued to reach approximately 2 million persons, of which 30,000 were regular listeners. In addition to the broadcasting activities, the organization produced a publication with 5,200 subscribers and an estimated readership of 15,000. Broadcasting activities represented approximately 50 percent of the organization's total expenses. The amount of income attributable to the broadcasting activities was not available because the organization combined the contributions from the radio listeners with that of the congregation. The court was troubled with the amount of broadcasting activities conducted by the organization, but ruled that a congregation of between 50-350 persons could not be considered incidental. Therefore, despite the substantial broadcasting activities, the court held that the organization was a church. [In a dissenting opinion, one judge, citing Church of Eternal Life and Liberty, Inc., *supra*, at 4, wrote that because the principal means of spreading the organization's beliefs was through broadcasting activities, it was not entitled to church status.] Although the Service agreed with the court's understanding of the law in Foundation of Human Understanding, *supra*, it disagreed with the application of the facts and, therefore, acquiesced "in result only" with respect to the church issue in A.O.D., Foundation of Human Understanding, 1987-2 C.B. 1.

Realizing the importance of having a congregation, organizations tend to include every person who has a potential tie to the organization as being a member of the congregation. For example, organizations that broadcast their religious services often include their employees in calculating the number of members in the congregation. Radio ministers and televangelists often include their radio and television audiences in the calculation of how many members are in their congregation. The inclusion of such persons in an organization's estimation of the size of its congregations should not be interpreted as an attempt at deceiving the agent or determination specialist. Many radio ministers and televangelists truly consider these persons as part of their congregation. However, for purposes of determining whether an organization is a church for federal income tax purposes, these people are not to be considered as part of the congregation. For although they may be listening to the message via electronic media or present in the room

because of their employment, they do not represent a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs. Church of Eternal Life and Liberty, Inc. v. Commissioner, supra. It is this community of people that embodies the concept of a congregation.

5. Summary

The presence or absence of a congregation is a key factor in analyzing whether an organization should be classified as a church. In looking for a congregation, the central focus is whether the organization's membership is a coherent group of individuals or families that join together to accomplish religious purposes or shared beliefs. The size of the congregation is less important than its dynamic. An organization with few current members that is actively seeking to convert new members should not be denied church classification solely on the grounds that its membership does not constitute a congregation. However, a very small membership that is not seeking to grow may not only be cause to question whether the organization should be classified as a church, it may also indicate the presence of inurement that would disqualify the organization from exemption.. Another consideration is the manner in which the claimed congregation participates. Although it is not essential that a regular congregation come together for services, purely passive participation, for example through television or mail, is not the manner of participation commonly characteristic of a congregation.