

## SECTION 1. PURPOSE

The purpose of this revenue procedure is to provide guidance in determining whether an organization constitutes a "religious order" under the Internal Revenue Code.

## SEC. 2. BACKGROUND

Sections 1402(c)(4), 3121(b)(8)(A), and 3401(a)(9) of the Code generally except from the self-employment tax, the Federal Insurance Contributions Act (FICA) tax, and federal income tax withholding, respectively, remuneration received for services performed by a member of a religious order in the exercise of duties required by the order. Section 1.1402(c)-5(d)(3) of the Income Tax Regulations and sections 31.3121(b)(8)-1(d) and 31.3401(a)(9)-1(d) of the Employment Tax Regulations provide that the nature or extent of such services is immaterial so long as the member of the religious order is directed or required to perform them by the ecclesiastical superiors of the order.

Prior to 1984, services performed by employees of religious, charitable, educational, and other section 501(c)(3) organizations were exempt from the mandatory imposition of FICA taxes under section 3121(b) of the Code. In 1983, Congress extended mandatory social security coverage (with accompanying FICA taxation) to most of these organizations while religious orders, and electing churches and qualified church-controlled organizations, retained their exemption from paying and withholding FICA taxes on the remuneration they pay for the services of their members or employees. See section 3121(b)(8)(A) and (B). Members of religious orders in the exercise of the required duties of their orders are also exempt from the self-employment tax and federal income tax withholding. See sections 1402(c)(4) and 3401(a)(9).

The term "religious order" is not defined in the Code or regulations. Organizations and individuals may request rulings from the Service on whether they are religious orders, or members of a religious order, for FICA tax, self-employment tax, and federal income tax withholding purposes by following the procedures in Rev. Proc. 91-1, 1991-1 I.R.B. 9. In addition, individuals may apply for exemptions from self-employment tax as members of religious orders by filing Form 4361 with the appropriate Service Center. This revenue procedure provides guidelines that will be applied by the Service in all situations involving a determination of whether an organization qualifies as a religious order or an individual qualifies as a member of a religious order for FICA tax, self-employment tax, and federal income tax withholding purposes.

## SEC. 3. APPLICATION

The Service has identified from the literature and cases on the subject of religious

orders a number of characteristics that are traditionally associated with religious orders. See, for example, *St. Joseph Farms of Indiana Brothers of the Congregation of Holy Cross, Southwest Province, Inc. v. Commissioner*, 85 T.C. 9, 12-14 (1985); *De La Salle Institute v. United States*, 195 F. Supp. 891, 895 (N.D. Cal. 1961); *Eighth Street Baptist Church, Inc. v. United States*, 295 F. Supp. 1400 (D. Kan. 1969); *Kelley v. Commissioner*, 62 T.C. 131 (1974); and *Estate of Margaret Callaghan v. Commissioner*, 33 T.C. 870, 871-873 (1960).

Accordingly, the Service will use these characteristics, as set forth below, in determining whether an organization is a religious order.

1. The organization is described in section 501(c)(3) of the Code.
2. The members of the organization vow to live under a strict set of rules requiring moral and spiritual self-sacrifice and dedication to the goals of the organization at the expense of their material well-being.
3. The members of the organization, after successful completion of the organization's training program and probationary period, make a long-term commitment to the organization (normally more than two years).
4. The organization is, directly or indirectly, under the control and supervision of a church or convention or association of churches, or is significantly funded by a church or convention or association of churches.
5. The members of the organization normally live together as part of a community and are held to a significantly stricter level of moral and religious discipline than that required of lay church members.
6. The members of the organization work or serve full-time on behalf of the religious, educational, or charitable goals of the organization.
7. The members of the organization participate regularly in activities such as public or private prayer, religious study, teaching, care of the aging, missionary work, or church reform or renewal.

In determining whether an organization is a religious order, all the facts and circumstances must be considered. Generally, the presence of all the above characteristics is determinative that the organization is a religious order. On the other hand, the absence of the characteristic that the organization is an organization described in section 501(c)(3) is determinative that the organization is not a religious order. The absence of one or more of the other enumerated characteristics is not necessarily determinative in a particular case. Generally, if application of the above characteristics to the facts of a particular case does not clearly indicate whether or not the organization is a religious order, the Service will contact the appropriate authorities affiliated with the organization for their views concerning the characterization of the

organization and their views will be carefully considered.

#### SEC. 4. EFFECTIVE DATE

This revenue procedure is effective immediately.

#### COMMENTS

The Service invites comments on the factors provided as guidelines in this revenue procedure and also invites comments on other possible factors. Comments should be submitted in writing and addressed to the Internal Revenue Service, Assistant Chief Counsel, (Employee Benefits and Exempt Organizations), Attn: CC:EE:5, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Thomas J. Wolf of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this revenue procedure contact Mr. Wolf on (202) 566-3539 (not a toll-free call).