



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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The Honorable Mark Pryor
United States Senate
500 President Clinton Ave., Suite 401
Little Rock, AR 72201

Person to Contact and ID Number:

Contact Telephone Number:

Attention:

Dear Senator Pryor:

I am responding to your letter dated May 23, 2012, on behalf of your constituent, . He asked several questions about the requirements for churches seeking tax-exempt exempt status.

I cannot give you a ruling on the tax consequences of any specific activities without a formal letter ruling request as outlined in Revenue Procedure 2012-4, 2012-1, Internal Revenue Bulletin 125 (updated annually). However, I can provide the following general information.

Can a church be tax exempt without by-laws?

Exempt organizations are not required to have by-laws under the Internal Revenue Code (the Code). Page 5 of Publication 557, *Tax-Exempt Status for your Organization*, explains that by-laws are not organizing documents for federal tax purposes. States may have different requirements for organizations, exempt or otherwise, that are incorporated or operated in their state. Tax-exempt status as a 501(c)(3) organization does require organizations to have Articles of Incorporation or other organizing document, but by-laws alone are not organizing documents (section 1.501(c)(3)-1(b) of the Regulations).

What happens if the church leadership fails to adopt by-laws?

Rules for corporate or other organizational structures are issues of state law. While there may not be any consequences to not adopting by-laws under the Internal Revenue Code, state laws may have other requirements.

What if the church fails to follow its approved by-laws?

If an organization submits by-laws to us as part of a Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, as an example of its activities, failure to continue such activities may result in changes in tax-exempt status or imposed excise taxes, depending on the nature of the failures to follow the by-laws. An organization's failure to follow its by-laws alone does not have a consequence under the Internal Revenue Code, though some states may have different requirements under their laws, depending on the state of incorporation.

If the church is not tax-exempt, can contributions to the church be tax-exempt?

Publication 526, *Charitable Contributions*, provides that individuals can deduct contributions only if they make them to a qualified organization. To become a qualified organization, most organizations other than churches and governments must apply to the IRS. Churches do not have to apply to be recognized as exempt.

What are the 14 point guidelines for determining whether an organization is a church?

The fourteen-point guidelines were affirmed in a D.C. District Court case, *American Guidance Foundation, Inc. v. United States*, 490 F. Supp. 304 (D.D.C. 1980), *affirmed in an unpublished opinion* (D.C. Cir. 1981). The case states that to be a church for tax purposes, the IRS will consider whether an organization has a:

- Distinct legal existence
- Recognized creed and form of worship
- Definite and distinct ecclesiastical government
- Formal code of doctrine and discipline
- Distinct religious history
- Membership not associated with any other church or denomination
- Organization of ordained ministers
- Ordained ministers who completed prescribed studies
- Literature of its own
- Established places of worship
- Regular congregations
- Regular religious services
- Schools for the religious instruction of the young
- Schools for the preparation of its ministers

A church does not have to have all fourteen of these items to achieve church status for tax purposes, and we weigh certain criteria more heavily than others.

Doesn't one of the fourteen point guidelines refer to a formal code of doctrine and discipline, and is that not the same as by-laws?

One of the fourteen points is that the church has a formal code of doctrine and discipline, but this point does not refer to an organization's by-laws. A formal code of doctrine and discipline generally refers to the doctrine and discipline in the every-day behavior of the congregants of the church, rather than to the formal corporate rules of the church organization.

also asked several questions about what an organization should include in its by-laws. Documents such as by-laws are regulated through state law. Each state may have varying requirements as to what it permits or requires in the by-laws of an organization. The Code does not have any requirements for any item to be in the by-laws of an organization for it to have tax-exempt status.

can find more information on exempt organizations on our website at www.irs.gov/charities. I am enclosing a publication titled, "Tax Guide for Churches and Religious Organizations," that may be of interest to him.

This letter is for informational purposes only and provides general statements of well-defined law. It is not a ruling and taxpayers cannot rely on it as such. (Rev. Proc. 2011-1, 2011-1 I.R.B. 1; Rev. Proc. 2011-4, 2011-1 I.R.B. 123). We will make this letter available for public inspection after deleting names, addresses and other identifying information, as appropriate, under the Freedom of Information Act (Announcement 2000-2, 2000-2 I.R.B. 295). A copy of this letter with the proposed deletions is attached.

I hope this information is helpful. If you have any questions, please contact me at
 or at .

Sincerely,

Lois G. Lerner
 Director, Exempt Organizations

Enclosure