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## **Faith Based Philanthropy: Churches and Other Religious Organizations**

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**About Faith Based Philanthropy: Churches and Other Religious Organizations**

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# Faith Based Philanthropy: Churches and Other Religious Organizations

## Contents

<b>RELIGIOUS ORGANIZATIONS IN THE INTERNAL REVENUE CODE .....</b>	<b>1</b>
Church .....	1
Convention or Association of Churches .....	2
Activities of Churches .....	2
Disregarded Entity of a Church .....	3
Integrated Auxiliary .....	4
Public Charity Requirement .....	4
Affiliation Test .....	4
Internal Support Test.....	5
Significance of Status.....	6
Mission Society.....	7
Integral Agency of a Church .....	7
Religious Order.....	7
<b>HOUSING ALLOWANCE DEVELOPMENTS – <i>Gaylor v. Mnuchin</i>.....</b>	<b>8</b>
<b>CHURCH AUDIT PROCEDURES .....</b>	<b>8</b>
Examinations under IRC Section 7611 .....	8
<b>GROUP EXEMPTIONS .....</b>	<b>10</b>
Group Ruling Requirements.....	10
Obtaining a Group Exemption Letter .....	11
Operating a Group Exemption .....	12
Publication 4573: Verification of 501(c)(3) Subordinates .....	14
<b>FAITH BASED ADVOCACY .....</b>	<b>15</b>
Political Campaign Intervention .....	15
Political Activity Not Addressed by IRS .....	18
Lobbying .....	18
501(h) Election and Relationship to Religious Organizations .....	19
Collaborative Advocacy .....	20
<b>APPENDICES</b>	
Appendix A - Documentation Required for Two-Step Group Ruling Subordinate Verification	
Appendix B - Sample Policy on the Dissemination of Political Information	

## RELIGIOUS ORGANIZATIONS IN THE INTERNAL REVENUE CODE

### Church

Although there is no codified definition of a church, the courts and the IRS have created informal definitions of a church to distinguish them from other religious and nonreligious exempt organizations. Churches are granted specific exclusions in various parts of the tax law. Many of these will be discussed in the following material. However, the best definition of a church was articulated by IRS Commissioner Jerome Kurtz in his remarks at the PLA Seventh Biennial Conference on Tax Planning January 9, 1978. Mr. Kurtz's definition is the backbone of the IRS position on the definition of a church. It considers a 14 factor test that is now regularly used by the courts and the IRS to determine church status:

1. A distinct legal existence;
2. A recognized creed and form of worship;
3. A definite and distinct ecclesiastical government;
4. A formal code of doctrine and discipline;
5. A distinct religious history;
6. A membership not associated with any other church or denomination;
7. An organization of ordained ministers;
8. Ordained ministers selected after completing prescribed studies;
9. A literature of its own;
10. Established place of worship;
11. Regular congregation;
12. Regular religious services;
13. Sunday school for religious instruction of the young; and
14. Schools for the preparation of ministers.

See [www.irs.gov/charities-non-profits/churches-religious-organizations/churches-defined](http://www.irs.gov/charities-non-profits/churches-religious-organizations/churches-defined). As with any listing of criteria, some of these are given more consideration than others. In *American Guidance Foundation Inc.*, 490 F. Supp. 304 (D.D.C. 1980), the court focused on the criteria highlighted above. Heavy weight is traditionally given to factors 11 and 12 in determining whether an organization is a church.

*Foundation of Human Understanding v. Commissioner*, 614 F.3d 1383 (Fed. Cir. 2010), revisits these criteria for an organization that was granted church status in 1987 utilizing the 14 criteria. [(88 TC 134 (1987))]. The Federal Circuit determined that the organization was no longer conducting regular religious worship services that involved a regular congregation. In the 1987 case, the organization had a physical congregation that met on a regular basis. By the 2010 case, the organization's congregation consisted of those who listened to the internet and radio broadcast. The church status was revoked and the revocation upheld.

PLR 201044019 reiterates the need for there to be a specific time and location for people to come together at a physical location in order for an organization to qualify as a church.

Not everyone who claims to be a church is a church. In *United States v. Hovind*, 305 Fed.Appx. 615 (11<sup>th</sup> Cir. 2008), the taxpayers failed to avoid indictments on failing to adhere to payroll taxes by claiming the organization was a church and its employees were missionaries.

### **Convention or Association of Churches**

A convention or association of churches generally refers to a cooperative undertaking by churches of the same denomination, although it can also refer to a multi-denominational cooperative undertaking.<sup>1</sup> Congress and the IRS generally use the term interchangeably with “church,” the purpose of which is to create parity between hierarchical and congregational churches.<sup>2</sup>

### **Activities of Churches**

Churches are frequently much more than houses of worship. Churches engage in many mission-related activities, such as operating schools, cemeteries, thrift shops, etc. Generally, if the school, cemetery, or thrift shop does not have a separate legal identity from a church, those activities, and the employees engaged in them, should be deemed activities and employees of a church. For example, in the context of claiming the section 7611 church audit procedures protection as a “church,” the IRS has stated that if “a school is operated as an unincorporated part of a church, it is covered by the claim of that church.”<sup>3</sup> When the IRS has required that an activity of a church be treated as a distinct activity with its own reporting requirement, it has specifically so stated.<sup>4</sup>

On the other hand, the IRS has stated that an organization qualifies as a church only if its primary function is that of a church. In other words, a hospital with a chapel is not necessarily a church. In Rev. Rul. 56-262, the IRS stated:

...an organization, whose activities include the conducting of religious services and/or the ministrations to the sick or mentally retarded, may have characteristics of a church and a hospital, and an educational

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<sup>1</sup> See Rev. Rul. 74-224, 1974-1 C.B. 61.

<sup>2</sup> See *Lutheran Social Service of Minnesota v. U.S.*, 758 F.2d 1283 (8th Cir. 1985).

<sup>3</sup> See Gonzales, Edward, Thomas Miller, and David W. Jones, Update on Churches Examinations Under IRC 7611, FY 1992 IRS Exempt Organizations Technical Instruction Program.

<sup>4</sup> See Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.

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