

# Statement of Administrative and Constitutional Rights

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." The first clause is referred to as the Establishment Clause; the second is the Free Exercise Clause. The Establishment Clause prohibits government sponsorship of religion. Central to this prohibition are the concepts of government neutrality and the separation between church and state. The Supreme Court has held that the Free Exercise Clause of the First Amendment is an absolute prohibition against the regulation of religious beliefs. The First Amendment provides substantial protection for lawful conduct grounded on religious beliefs. However, the government may limit religiously motivated conduct when the limitation is essential to accomplish an overriding governmental interest. Section 7611 of the Internal Revenue Code (IRC) provides the following protections to organizations claiming to be churches or conventions or associations of churches:

1. The IRS may begin a church tax inquiry only if an appropriate high-level Treasury official reasonably believes, on the basis of facts and circumstances recorded in writing, that an organization claiming to be a church or convention or association of churches may not qualify for exemption, may be carrying on an unrelated trade or business (within the meaning of IRC § 513), may otherwise be engaged in taxable activities or may have entered into an IRC § 4958 excess benefit transaction with a disqualified person.

2. If the IRS begins a tax inquiry, it is required to provide the church written notice at the beginning of the inquiry. The Notice of Church Tax Inquiry must contain an explanation of the concerns that gave rise to the inquiry and the general subject matter of the inquiry. It must also contain an explanation of the provisions of the IRC that authorize the inquiry and a general explanation of applicable administrative and constitutional provisions with respect to the inquiry.

3. If the IRS wishes to examine a church's records or religious activities, the Secretary of the Treasury, or his or her delegate, must personally approve the examination and must provide an additional written notice (Notice of Church Examination) to the church at least 15 calendar days prior to the examination. At the same time the IRS gives notice to the church, the IRS must notify IRS Counsel of the proposed examination. IRS Counsel is then

allowed 15 days to file a non-binding advisory opinion about the examination.

The Notice of Church Examination is required to include the following: a copy of the Notice of Church Tax Inquiry previously provided; a description of the church records and activities which the IRS wishes to examine; a copy of all documents collected or prepared by the IRS for use in the examination that are required to be disclosed under the Freedom of Information Act (5 U.S.C. 552) as supplemented by IRC § 6103; and an offer of a conference with the IRS to discuss the concerns which gave rise to the inquiry and the general subject matter of the inquiry prior to the examination. The IRS may send the Notice of Church Examination to the church no less than 15 days after the Notice of Church Tax Inquiry. However, the IRS must generally mail the Notice of Church Examination, within 90 days after the Notice of Church Tax Inquiry or the IRS is required to end the inquiry without change to the church's tax status.

4. Failure of the IRS to substantially comply with the above requirements may result in a stay of summons enforcement proceedings to gain access to church records until the requirements are satisfied.

5. The IRS is generally required to complete any church tax inquiry or examination no later than two years after the date on which the Notice of Church Examination was mailed to the church. The two-year period may be extended by mutual agreement between the church and the IRS. It is also suspended during certain judicial proceedings and during any period in excess of 20 days but not in excess of six months, during which a church or its agents fail to comply with any reasonable IRS request for church records or other information. However, in the case of a church tax inquiry in which there is no Notice of Church Examination, the IRS is generally required to complete the inquiry within 90 days after the date on which the Notice of Church Tax Inquiry was mailed to the church.

6. The IRS is limited initially to an examination of church records relevant to the church's tax-exempt status for the three most recently completed tax years preceding the date of the Notice of Church Examination. If the church is not exempt for any of those three years, the IRS may examine relevant records for the six completed tax years immediately preceding the Notice of Church Examination. The IRS may examine church records of a year earlier than the third or sixth completed taxable

years if material to a determination of tax-exempt status during the three or six-year period. For examinations relating to unrelated business taxable income, when no return is filed, the IRS may assess tax for the six most recently completed taxable years preceding the date of the Notice of Church Examination. The IRS may examine church records of a year earlier than the sixth year if material to a determination of unrelated business income tax liability during the six-year period. For examinations involving issues other than determination of exempt status or unrelated business income tax liability, there is no limit on the taxable periods that may be examined if no return has been filed. If a church has filed a tax return, the normal rules for determining tax liability or assessing tax apply.

7. IRS Counsel must approve, in writing, an adverse determination concerning the tax-exempt status of an organization claiming to be a church, an adverse determination concerning the right of an organization claiming to be a church to receive tax deductible contributions, or the issuance of a notice of tax deficiency to a church or disqualified person subject to IRC § 4958 tax following a church tax examination.

8. An organization claiming to be a church is entitled to bring a declaratory judgment action under IRC § 7428 once the IRS issues a revenue agent's final report revoking or denying the church's tax exempt status.

9. An inquiry or examination begun within five years of the date of the Notice of Church Examination (or if no Notice of Church Examination is sent, a Notice of Church Tax Inquiry), must be approved by the Secretary of the Treasury, or his or her delegate. This approval is not required if the second examination does not involve the same or similar issues as the preceding inquiry or examination or if the first inquiry or examination resulted in a change to the organization's exempt status, an assessment of unrelated business income tax or other tax, or a recommendation for a substantive change in the church's operations, including accounting practices.