

## CHURCH'S LOSS OF TAX EXEMPT STATUS LETTER TURNS OUT TO BE A VICTORY FOR CHURCHES

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On May 12, 2000, the Federal Court of Appeals for the District of Columbia sided with the IRS' decision to revoke a tax-exempt letter ruling from the Church at Pierce Creek located in Binghamton, NY. However, the Court ruling shows that the IRS has very little authority over churches. (1) The ruling underscores the fact that churches do not need to fear the loss of their tax-exempt status.

The case began on October 30, 1992, four days before the presidential election, when the Church at Pierce Creek placed full-page advertisements in USA Today and the Washington Times. Each ad bore the headline "Christians Beware" and pointed out that then-Governor Bill Clinton had extreme views regarding abortion and homosexuality. The advertisement clearly noted that it was sponsored by the Church and its pastor and furthermore solicited "tax deductible donations" for the advertisement. The ads then gave the Church's address. As a result, the Church received hundreds of contributions.

On November 20, 1992, the IRS notified the Church that it intended to conduct an inquiry as to whether the Church was operating as a tax-exempt organization. After negotiations failed, the IRS revoked the Church's tax-exempt letter ruling and the Church filed suit.

The Court pointed out that under the Internal Revenue Code, churches are the only institutions that are not required to apply for tax-exempt status. Churches, by their very nature, are considered tax-exempt. (2) While churches may ask the IRS for an advance letter ruling, churches are not required to do so. If a church does not seek a letter ruling, a donor's contributions are still tax deductible. In the event of an audit, the donor must prove that the church is operating like a tax-exempt organization and following the requirements of IRS Code 501(c)(3), which includes a prohibition on endorsing or opposing a candidate for political office. If a letter ruling is in place, the donor simply points to the letter ruling on file with the IRS.

The Church at Pierce Creek had applied for and received a letter ruling. The IRS simply revoked the letter ruling and the Church sued to get it back. The Court noted that "because of the unique treatment churches receive under the Internal Revenue Code, the impact of the revocation is likely to be more symbolic than substantial."

Indeed, the tax-exempt letter revocation is only symbolic and not substantive. During the oral argument, counsel for the IRS confirmed that if the Church chose not to intervene in future political campaigns, it may hold itself out as a 501(c)(3) organization and receive all of the benefits of that status. The Court wrote: "All that will have been lost is the advance assurance of deductibility in the event a donor should be audited." (3)

The Court also pointed out that revocation of the letter ruling does not make the Church liable for the payment of taxes. (4) As the IRS conceded during oral argument, "the revocation of the exemption does not convert bona fide donations into income taxable to the Church." (5)

The Court also noted that it knew of no authority "to prevent the Church from reapplying for a prospective determination of its tax-exempt status and regaining the advance assurance of deductibility - provided, of course, that it renounces future involvement in political campaigns." (6)

So what is the impact of this ruling? It's certainly not as Barry Lynn, of the Americans United for Separation of Church and State, declared by saying the ruling was a "staggering defeat for Pat Robertson, Jerry Falwell and others who want to convert America's churches into a partisan political machine." Indeed, this ruling actually helps Pat Robertson and Dr. Jerry Falwell.

Understand that the only thing the Church lost in this case is its advance tax-exempt letter ruling. Contributions given prior to the revocation of the IRS letter are still deductible and are not taxable to the Church. After the letter ruling was revoked, the Church could continue as a church, continue receiving donations, and donors could continue to claim deductions on their income tax return, provided that the Church did not continue to endorse or oppose candidates. If the Church wants an advance letter ruling at some point in the future, it is free to ask for another one. Obviously in the case of the presidential election, the Church could easily cease endorsing or opposing a candidate since the election had transpired.

Either the Church was naive, or it sought to pick a fight with the IRS. The case included several hundred pages of newspaper articles where other churches had invited candidates to speak in services where the IRS did nothing. The Church at Pierce Creek sought to make headlines when it took out full-page ads in USA Today and the Washington Times. The Church then clearly identified itself and requested contributions. This is the first case in history where a church has ever lost its tax-exempt letter ruling. It is the most outrageous set of facts, because the full-page ads essentially put a target in the church's front yard. Absent these outrageous facts, no church has ever lost its tax-exempt status.

Moreover, even with these facts begging for a fight with the IRS, the case shows the IRS has almost no teeth. A church can give up the tax-exempt letter ruling, and continue on after that date so long as it doesn't actively endorse or oppose a candidate. A church can then apply for another letter ruling at some point in the future if it chooses to do so. In this way, the church can continue on with its activity with virtually no interruption.

The IRS regulations are clear that, while churches may not endorse or oppose a candidate for political office, churches may educate about the candidates' viewpoints. Education can take the form of sermons, forums, debates, or voter guides. The church may educate about its doctrinal positions that are relevant to the political races. Education is perfectly permissible for a 501(c)(3) organization. Moreover, churches can engage in lobbying for or against legislation so long as churches do not devote more than a substantial part of their overall activity toward lobbying efforts. Indeed, no church has ever lost its tax-exempt status for engaging in too much lobbying.

Despite the huffing and puffing of groups like Americans United for Separation of Church and State or People for the American Way, they are no more powerful than the wolf blowing against the little pig's brick house. I am sure that these organizations will try to terrorize

pastors into silence, but everyone should know that, instead of a muzzle, this case is actually a megaphone for churches.

1. See *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000).
2. *Id.* at 139.
3. *Id.* at 142-143.
4. *Id.* at 142.
5. *Id.*
6. *Id.* at 143.

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