

Unlike all other §501(c)(3) organizations, a church is mandatorily presumed (under IRC §508(c)(1)(A)) to qualify for exemption.

IRC § 508. Special rules with respect to section 501(c)(3) organizations (Release date: 2003-05-15)

(a) New organizations must notify Secretary that they are applying for recognition of section 501 (c)(3) status

Except as provided in subsection (c), an organization organized after October 9, 1969, shall not be treated as an organization described in section 501 (c)(3)—

(1) unless it has given notice to the Secretary in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(2) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(b) Presumption that organizations are private foundations
Except as provided in subsection (c), any organization (including an organization in existence on October 9, 1969) which is described in section 501 (c)(3) and which does not notify the Secretary, at such time and in such manner as the Secretary may by regulations prescribe, that it is not a private foundation shall be presumed to be a private foundation.

(c) Exceptions

(1) Mandatory exceptions

Subsections (a) and (b) shall not apply to—

(A) churches, their integrated auxiliaries, and conventions or associations of churches, . . .

Churches are exempt from filing Form 990. See IRC §6033(a)(2)(A) below:

IRC § 6033. Returns by exempt organizations

(a) Organizations required to file

(1) In general - Except as provided in paragraph (2), every organization exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe; except that, in the discretion of the Secretary, any organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization.

(2) Exceptions from filing

(A) Mandatory exceptions - Paragraph (1) shall not apply to -

(i) churches, . . .

Churches are not exempt from either the unrelated business income tax (IRC §511) or the reporting requirements relating to UBIT (Form 990-T)

Church audits are subject to special rules of "reasonable belief" on the part of the IRS and advance notice requirements. See IRC §7611

Citations from a few relevant Cases:

Judge Brattin, Eastern District of California, in *Universal Life Church, Inc. vs. United States*, 372 F. Supp. 770, 776 (E.D. Cal 1974), stated: "...neither this court nor any branch of this government will consider the merits or fallacies of a religion. Nor will the court compare the beliefs, dogmas, and practices of a newly organized religion with those of an older, more established religion. Nor will the court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. Were the court to do so, it would impinge upon the guarantee of the First Amendment."

In determining whether the Church in question is a religion protected by the free exercise clause of the first amendment, the district court properly considered whether the Church occupies a place in the lives of its members "parallel to that filled by the orthodox belief in God" in religions more widely accepted in the United States. *United States v. Seeger*, 380 U.S. 163, 166, 13 L. Ed. 2d 733, 85 S. Ct. 850 (1964).

Religious observances need not be uniform to merit the protection of the first amendment. The Supreme Court has recognized that differing beliefs and practices are not uncommon among followers of a particular creed. *Thomas v. Review Board*, 450 U.S. at 715. "It is not within the judicial function and judicial competence to inquire whether the petitioner or [another practitioner] more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation." 450 U.S. at 716. See also *Barrett v. Virginia*, 689 F.2d 498, 501 n.5 (4th Cir. 1982).

"The Corporation Sole is the venerable creation of the common law in England and is well established under common law in California, which has legitimized the tradition and regulates the formalities attendant on the creation and continued existence of the Corporation Sole." *County of San Luis Obispo v. Ashurst* (1983, 2d Dist) 146 CA 3d 380, 194 Cal Rptr 5.

Roman Catholic Archbishop v. Shipman (1899)1079 C288, 21 p. 830. "A Corporation Sole has no need of a corporate seal, nor of a secretary, treasurer or by-laws. His own will and judgment alone regulate his acts, like any other individual acting in his own right. His possession of land, when the title is in him as an individual, can in no way be distinguished by his holding thereof as a Corporation Sole, when the title is in the corporation."

In the Massachusetts case of *The Overseers of the Poor of the City of Boston v. David Sears* 39 Mass (2Pick) 122 at 128 (1839) the Massachusetts Supreme Court described some of the distinguishing aspects between a corporation sole and corporation aggregate:
". . .In all these aspects, the distinction between an aggregate and sole corporation, growing out of the different modes of constitution and forms of action, is striking and obvious. A bishop or parsons acting in a corporate capacity and holding property to him and his successor in right of office, has no need of a corporate name, he requires no particular, he performs all legal acts under his own seal, In his own name and name of office; his own will alone regulates his acts and he has no occasion for a secretary, for he need not keep a record of his acts, need no treasurer, for he has no personal property except the rents and proceeds of the corporate estate, and these he takes to his own use when received. By-laws are unnecessary, for he regulates his own action, by his own will and judgment, like any other individual acting in his own right. But it is not necessary to pursue the comparison into all its details; the points suggested are sufficient to show the legal distinctions between the two classes of corporations."

The Overseers case was decided in 1839. In a more recent decision in 1983, the California Second Appellate District decided *County of San Luis Obispo v. Delmar Ashurst* 146 Cal.App.3d 380, 194 Cal.Rptr. 5 (1983) wherein it insightfully stated: ". . .The issue as defined by the trial court, "is whether the assets of its corporation sole are the personal assets of its titular head, and thus subject to execution for his or her debts." The answer on the basis of legal authorities defining the corporation sole and its attributes must be, as the trial court concluded, an unequivocal "no".

IRS Definition of a Church:

"The IRS makes no attempt to evaluate the content of whatever doctrine a particular organization claims is religious, provided the particular beliefs of the organization are truly and sincerely held by those professing them and the practices and rites associated with the organization's belief or creed are not illegal or contrary to clearly defined public policy." (IRS PUB 1828).