

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:EBEO:2-PLR-122543-98

Date:

June 23, 1999

Legend:

X =

Y =

Dear Mr :

This is in response to your request for a letter ruling dated October 22, 1998, concerning whether X is a religious order for purposes of the Internal Revenue Code and whether goods, services, and cash allowances received by members of X in connection with services performed by them in the exercise of duties required by X are subject to Federal Insurance Contributions Act (FICA) tax and federal income tax withholding.

X is a nonprofit corporation organized and operated for the purpose of providing Christian education of the young, and care of the sick and elderly, in accordance with the historic beliefs of Y Church. Specifically, X provides Christian education in the form of small self-supporting schools or missionary training centers. The underlying religious philosophy of that educational approach is that Christians should learn to live independently of the world's support and work cooperatively to support each other.

Education at X is part academic and part vocational. Students, faculty, and staff learn and maintain their independence by building and maintaining their campus, growing their own food, and taking care of the sick and elderly in the surrounding community. The educational program also includes intensive religious instruction, worship, and service.

Members of X agree to donate their services without compensation and acknowledge that any compensation paid for services they perform as directed by X belongs to X. X represents that members of X are under a vow of poverty.

Revenue Procedure 91-20, 1991-1 C.B. 524, states that the Service will use the

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following characteristics in determining whether an organization is a religious order:

1. The organization is described in section 501(c)(3) of the Code.
2. The members of the organization vow to live under a strict set of rules requiring moral and spiritual self-sacrifice and dedication to the goals of the organization at the expense of their material well-being.
3. The members of the organization, after successful completion of the organization's training program and probationary period, make a long-term commitment to the organization (normally more than two years).
4. The organization is, directly or indirectly, under the control and supervision of a church or convention or association of churches, or is significantly funded by a church or convention or association of churches.
5. The members of the organization normally live together as part of a community and are held to a significantly stricter level of moral and spiritual discipline than that required of lay church members.
6. The members of the organization work or serve full-time on behalf of the religious, educational, or charitable goals of the organization.
7. The members of the organization participate regularly in activities such as public or private prayer, religious study, teaching, care of the aging, missionary work, or church reform or renewal.

The following is an analysis of the above characteristics, used to determine whether an organization is a religious order, as they apply to X.

1. 501(c)(3) status. X is exempt from federal income tax under section 501(c)(3) of the Code pursuant to a determination letter from the Service dated February 19, 1960.
2. Vows. X proposes to adopt a membership agreement to be signed by present and prospective members which requires members to affirm their adherence to the standards and beliefs of Church Y. The membership agreement (1) requires both men and women to adhere to standards of dress that are stricter than those required of members in the Church Y generally; (2) prohibits the consumption of meat, tobacco, or caffeine or alcoholic drinks; (3) limits all reading and music material to that of an "uplifting nature," and (4) limits television viewing to special occasions with the approval of X. Members also agree to donate their services without compensation to X, to live a simple sacrificial lifestyle, to remain morally pure, and to obey the authority of X leaders.

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Members will engage in daily prayer and scripture study.

3. Commitment. After a probationary period of two years, members make a solemn commitment to remain part of X for at least five years.

4. Church controlled. Under the membership agreement each member of X must be a member of the Church Y and subscribe to its teachings. While not an official agency of the Church Y, X has registered as a supporting cooperative organization within it and includes representatives of agencies of it as ex-officio members and members of its Board of Directors. X maintains a church congregation on its premises which its members must attend. In addition, all members agree to have any dispute between a member of X and X resolved by binding arbitration by a person or persons designated by Church Y.

5. Community. X is in a remote location. X enhances the communal spirit among its members by providing them with on-campus housing. This includes rooms in the student dormitories for the dormitory supervisors and their families and modest homes at various places around the campus. The location of the members makes them available for emergency calls, enables them to better host students for social events and work projects, and keeps them in close proximity of the students for observation and religious conversation. The members' standards of dress and other rules required for members demonstrate a significantly stricter level of moral and spiritual discipline than is required of other members of Church Y.

6. Full-time service. Members of X agree to donate all their time to performing without reservation whatever educational and charitable work X assigns and will not carry on any enterprises without the permission of X.

7. Type of Activities. Members of X engage in (1) public and private prayer, and private religious study, (2) the teaching of young people in academic and vocational subjects, (3) the care of the sick and aging, and (4) witnessing to their faith in the community, including their students.

Based upon the information submitted, X possesses the characteristics in Rev. Proc. 91-20 to a substantial degree. Accordingly, based on our consideration of all of the facts and circumstances, we conclude that X is a religious order for purposes of the Internal Revenue Code.

Taxes under the FICA apply to remuneration for employment as defined in Code section 3121(b). Section 3121(b)(8)(A) excepts from employment for FICA purposes service performed by a member of a religious order in the exercise of duties required by such order. Section 31.3121(b)(8)-1(d), Employment Tax Regulations, provides:

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Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by ecclesiastical superiors.

Code section 3402(a) provides that every employer making payment of wages shall deduct and withhold federal income tax. Section 3401(a) provides that wages means all remuneration for services performed by an employee for his employer, with specific exceptions.

Section 3401(a)(9) of the Code excepts from wages for income tax withholding purposes remuneration for services performed by a member of a religious order in the exercise of duties required by such order.

Section 31.3401(a)(9)-1(d) of the Income Tax Regulations provides that service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service that the member is directed or required to perform by ecclesiastical superiors.

Various precedents have addressed the issue of whether remuneration received by a member of a religious order is remuneration for service performed in the exercise of duties required by the order within the meaning of sections 3121(b)(8)(A) and 3401(a)(9). See, Samson v. United States, 743 F.2d 884 (Fed. Cir. 1984), aff'g, 4 Cl. Ct. 325 (1984); Rev. Rul. 81-267, 1981-2 C.B. 196; Rev. Rul. 83-127, 1983-2 C.B. 25; Rev. Rul. 79-132, 1979-1 C.B. 62; Rev. Rul. 77-290, 1977-2 C.B. 26; Rev. Rul. 76-323, 1976-2 C.B. 18; Rev. Rul. 68-123, 1968-1 C.B. 35. Whether remuneration for services comes within the exceptions of sections 3121(b)(8) and 3401(a)(9) depends on the facts of the particular case.

Based on the information submitted, we rule as follows:

- (1) X qualifies as a religious order for purposes of the Internal Revenue Code and Regulations thereunder.
- (2) X and its members are not subject to FICA tax on remuneration, including goods, services, and cash allowances, received by a member for services performed by the member in the exercise of duties required by X.
- (3) X is not liable for FICA tax withholding on remuneration, including goods, services, and cash allowances, it provides to its members for services performed by the members in the exercise of duties required by X.
- (4) X is not liable for federal income tax withholding on remuneration, including

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goods, services, and cash allowances, it provides to its members for services performed by the members in the exercise of duties required by X.

Except as specifically ruled on above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other Code provision. In particular, in accordance with our telephone conversations with X's attorney, no opinion is expressed regarding whether members of X are subject to federal income tax or Self-Employment Contributions Act (SECA) tax.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to the provisions of a power of attorney and declaration of representative currently on file with the Internal Revenue Service, a copy of this letter has been sent to your representative.

Sincerely,

JERRY E. HOLMES
Chief, Branch 2
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes

cc:

District Director,