

QUESTION 12

12. Please explain why you believe Church of Spiritual Technology qualifies as a "church" described in Code section 170(b)(1)(A)(i)

At our meeting of April 28, 1993, Service representatives expressed concern over whether Church of Spiritual Technology ("CST") qualified as a "church" under relevant Code provisions. The basis for the Service's concern is not entirely clear; the Service appears to be relying on dicta from the Claims Court decision on CST's exempt status.^{1/} As discussed below in detail, under the governing authorities CST clearly qualifies as a church for purposes of the relevant Code provisions.^{2/}

Neither the Code, the regulations, the Service's rulings nor the case law specifically define the term "church." It is clear, however; that Congress intended the term "church" to have a narrower, more restrictive meaning than the term "religious organization."^{3/} For at least 35 years the Service has employed a "facts and circumstances" test in determining an organization's church status, looking at the following criteria:

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;

^{1/} Church of Spiritual Technology v. United States, 26 Cl. Ct. 713, 731 n.36 (1992), aff'd per curiam, 1993 U.S. App. LEXIS 7023, reh'g denied (Fed. Cir. 1993).

^{2/} See, e.g., Code §§ 170(b)(1)(A)(i), 508(c)(1)(A), 3121(w), 6033(a)(2)(A)(i).

^{3/} Spiritual Outreach Society v. Commissioner, 927 F.2d 335, 338 (8th Cir. 1991), aff'g T.C. Memo 1990-41 (quoting Church of the Visible Intelligence That Governs the Universe v. United States, 4 Cl. Ct. 55, 64 (Ct. Fed. Cl. 1983)).

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 places of worship;
11. regular congregations;
12. regular religious services;
13. Sunday schools for religious instruction of the young; and
14. schools for the preparation of its ministers.

Internal Revenue Manual 7(10)69, Exempt Organizations Examination Guidelines Handbook, §321.3(3) (Apr. 5, 1982). In addition, the Service will consider "[a]ny other facts and circumstances which may bear upon the organization's claim for church status." Id., §321.3(3)(o).^{4/} In varying degrees, these criteria have been accepted and applied by the courts as well.^{5/}

^{4/} General counsel memoranda state that the Service first used these criteria in the late 1950s to determine that the Salvation Army qualified as a church. See Rev. Rul. 59-129, 1959-1 C.B. 58. The criteria were publicly revealed in a 1978 speech by IRS Commissioner Kurtz and were formalized in the Internal Revenue Manual in 1982. See G.C.M. 38699 (Apr. 23, 1981).

^{5/} Most courts appear to have accepted the Service's 14 church criteria in toto. See Spiritual Outreach Society, 927 F.2d at 338; United States v. Jeffries, 854 F.2d 254, 258 & n.1 (7th Cir. 1988); Lutheran Social Service of Minnesota v. United States, 758 F.2d 1283, 1286-87 (8th Cir. 1985), aff'g 583 F. Supp. 1298 (D. Minn. 1984); Tennessee Baptist Children's Homes, Inc. v. United States, 604 F. Supp. 210, 212 n.4 (M.D. Tenn. 1984), aff'd on other grounds, 790 F.2d 534 (6th Cir. 1986); Williams Home, Inc. v. United States, 540 F. Supp. 310, 317 (W.D. Va. 1982); American Guidance Foundation, Inc. v. United States, 490 F. Supp. 304, 306 & n.2 (D. D.C. 1980); Church of the Visible Intelligence, 4 Cl. Ct. at 64. The Tax Court, while not accepting the 14 criteria as a determinative test, treats these criteria as "helpful in deciding what is essentially a fact test." Foundation of Human Understanding v. Commissioner, 88 T.C. 1341, 1357-58 (1987).

CST qualifies as a church under the Service's 14 criteria test. As a religious organization espousing and practicing the Scientology faith, CST plainly has a distinct religious creed, form of worship, code of doctrine and discipline, history, literature and membership.^{9/} CST has established places -- training and auditing rooms -- for conduct of religious services. Through four full-time clergy, CST provides regular religious services for its members, who must spend a minimum of twelve and one half hours each week in religious services. CST also ordains ministers who must complete prescribed course of study and who are members of the Sea Organization. CST has its own distinct ecclesiastical government, with its own structure for conduct and supervision of religious services, counselling and discipline.

^{9/} Although there is no policy or Scriptural mandate expressly requiring Scientologists to renounce other religious beliefs or membership in other churches, as a practical matter Scientologists are expected to and do become fully devoted to Scientology to the exclusion of other faiths. As Scientologists, they are required to look only to Scientology Scripture for the answers to the fundamental questions of their existence and to seek enlightenment only from Scientology. Thus, a Scientologist who grew up in the Jewish faith who continues formal membership in his synagogue and attends services with his family violates no Scientology policy or tenet. On the other hand, such a person is not permitted to mix the practices of his former faith into his practice and understanding of Scientology so as to alter orthodox Scientology in any way.

In any event, the failure of an organization to require disassociation from other religious faiths would not be determinative. Foundation of Human Understanding, 88 T.C. at 1359; G.C.M. 36993 (Feb. 3, 1977) (Members "need not abandon their affiliation with other churches"); PLR 8833001 (May 2, 1988).

Being separately incorporated, CST necessarily has a distinct legal existence from other churches of Scientology. CST thus possesses more of the 14 church criteria than other organizations that have been recognized as churches,⁷¹ and, indeed, possesses substantially all of the criteria.

The Claims Court's "conclusion" that CST was not a church was plainly dicta: the IRS had never ruled on CST's church status, CST did not raise its church status in its complaint, and neither CST nor the Department of Justice developed the issue in their briefs. CST's status as a church was never before the court; if it had been, CST would have had the opportunity to establish each of the 14 relevant factors.

Moreover, the court's "conclusion" is contrary to the facts, the law and common sense. The court's view that CST lacked all of the 14 church criteria but separate legal existence is ludicrous: This conclusion implies that CST must possess doctrines, beliefs and practices distinguishable from the rest of the Scientology faith; such an absurd reading of the 14 church criteria would preclude any Catholic parish, any Mormon ward, or any other subordinate entity of a hierarchical religious denomination from ever qualifying as a "church" for tax purposes.⁷²

⁷¹ See, e.g., Foundation for Human Understanding, 88 T.C. at 1359-60 (organization did not possess a formal code of doctrine and discipline or a definite ecclesiastical government, did not maintain facilities for the preparation of ministers, did not require adherents to reject membership in other churches and did not provide for the religious instruction of the young except as part of its general education curriculum); Purnell v. Commissioner, T.C. Memo 1992-289, 63 T.C.M. (CCH) 3037 (organization did not have a distinct legal existence, definite and distinct ecclesiastical government, an organization of ordained ministers, or schools for the preparation of its ministers; in addition, there was no evidence of religious instruction for the young); G.C.M. 36993 (organization lacked an established place of worship, an established congregation, provisions for religious instruction of the young and schools for the preparation of its ministers; in addition, it did not require adherents to abandon other religious affiliations).

⁷² The Claims Court's implicit view that CST cannot draw any of its church attributes from Scientology generally is fundamentally inconsistent with its view that CST's tax status could be evaluated only in connection with the rest of Scientology. This is but one more patent discrepancy in the Claims Court's thoroughly irrational, unprincipled decision.

The Claims Court based its objection to recognizing CST as a church on what recent Tax Court precedent characterizes as the "associational test" for church status.^{9/} Citing Church of Eternal Life, the Claims Court "concluded" that CST "is not 'a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs.'" 26 Cl. Ct. at 731 n.36. The Claims Court's dicta wholly misreads the relevant authorities on the "associational" test and ignores the true nature and scope of religious services ministered by CST clergy to its members.

First, much of the case law involving the "associational" test must be read in context: references in some of the case law to the regular assembly of adherents in order to worship^{10/} cannot be taken literally; otherwise, the "associational" test would become an impermissible denominational preference for congregational worship. Indeed, these cases all involved instances where either groups of individuals did not assemble (in the case of sham "mail order" or "single family" churches) or the coming together was truly incidental to the organization's ministry (in the case of radio broadcasters). The Tax Court clearly characterized the associational test more broadly than the Claims Court quoted in Church of Eternal Life:

A church is a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs. In other words, a church's principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith. As stated by Tannenwald, J., concurring in Chapman [48 T.C. 358 (1967)]:

^{9/} See, e.g., Foundation of Human Understanding, 88 T.C. at 1360-61; Church of Eternal Life and Liberty v. Commissioner, 86 T.C. 916, 924-25 (1986); Spiritual Outreach Society v. Commissioner, 58 T.C.M. (CCH) 1284, 1286-87. In affirming the Tax Court's decision in Spiritual Outreach Society, the Court of Appeals specifically declined to address the Tax Court's "associational" test, 927 F.2d at 338, finding that the organization failed to qualify as a church under the Service's published 14 criteria. 927 F.2d at 338-39.

^{10/} See, e.g., American Guidance Foundation, 490 F. Supp. at 306; Church of the Visible Intelligence, 4 Cl. Ct. at 65.

The word "church" implies that an otherwise qualified organization *bring people together as the principal means of accomplishing its purpose.* The objects of such gatherings need not be conversion to a particular faith or segment of a faith nor the propagation of the views of a particular denomination or sect. The permissible purpose may be accomplished individually and privately * * * but it may not be accomplished in physical solitude. * * * [48 T.C. at 367; emphasis in original.]

To qualify as a church, an organization must serve an associational role in accomplishing its religious purpose.^{11/}

The other authorities likewise take a broader view of the nature of the associational role an organization must fill to qualify as a church.^{12/} While Church of Eternal Joy and Judge Tannenwald's concurring opinion in Chapman suggest that the associational role must be primary, the later court-reviewed opinion in Foundation of Human Understanding makes clear that the associational role need only be more than incidental:

[D]espite the breadth of petitioners' broadcasting and publishing efforts, its associational aspects are much more than incidental. We hold that petitioner has sufficient associational aspects to be considered a church.^{13/}

^{11/} 86 T.C. at 924.

^{12/} See, e.g., Spiritual Outreach Society v. Commissioner, 58 T.C.M. at 1286 ("[A] church is a cohesive group of individuals who join together to accomplish the religious purposes of mutually held beliefs."); *id.* at 1287 ("the cohesiveness factor * * * is an essential ingredient of a 'church.'"); G.C.M. 38982 (May 3, 1983) ("[I]t does not appear that the Foundation has promulgated its doctrines by functioning as a church as that term is commonly understood; for example by ministering directly to people who are part of a body of interrelated believers who participate and interreact [sic] in various ways as members of a congregation, parish, or like group. . . .").

^{13/} 88 T.C. at 1360-61 (citations omitted).

All but five of the participating judges joined the majority opinion holding the petitioner to be a church;^{14/} only two of the participating judges would have concluded that the organization was not a church.^{13/}

Under these authorities, it is clear that CST has "sufficient associational aspects to be considered a church." CST's staff, which constitutes its congregation, has totaled no fewer than 34 members since early in its existence and has in the past been fully staffed at 70 or more. CST's parishioners also regularly assemble -- both in pairs, where they participate in the sacrament of auditing, and in much larger groups where they participate in training. Organizations with smaller memberships have been accorded church status.^{16/}

Nor is CST's ministry of religious services to its staff "incidental to its chief stated function of creating an archives," as the Claims Court erroneously concluded. As members of the Sea Organization, all CST members must devote at least twelve and one half hours weekly to religious activities -- auditing, training and study. These activities are not "accomplished in physical solitude;"^{17/} members audit in pairs and

^{14/} 88 T.C. at 1361.

^{15/} 88 T.C. at 1366-69 (Simpson, J., dissenting in part, joined by Judge Sterrett). (Judge Sterrett is no longer on the court, and Judge Simpson has assumed senior status, which means he is no longer entitled to vote in court-reviewed decisions.) Judge Wells concurred in the substantive result. Id. at 1361. Judges Chabot and Williams dissented on the jurisdictional issue and did not reach the substantive issue of the organization's status as a church. Id.; id. at 1369-84. Judge Gerber did not participate. Id. at 1361.

^{16/} See, e.g., Purnell v. Commissioner, 63 T.C.M. at 3037-3 ("While the congregation of the Kingdom is small, it does consist of persons other than members of the Purnell family."); PLR 8833001 ("The organization has a regular congregation of between eight and twenty people."). In addition, the Zen Meditation Society, Inc. from Baltimore, recently recognized as an exempt church and discussed with the Service in connection with the charitable contribution issues, likewise had no more than 40 members.

^{17/} Chapman, 48 T.C. at 367 (Tannenwald, J., concurring).

generally train in large groups. CST has four full-time staff members whose positions involve only the ministry of religious services to CST staff members, more full-time clergy than other organizations that have been recognized as churches.^{18/} CST members have regular weekly services, in the same manner as other churches of Scientology, and celebrate all major church holidays;^{19/} visiting Scientologists are welcome to participate in these activities. Based on a normal sixty hour work week, 30 percent or more of CST's staff time is devoted solely to religious activities.^{20/} The level and scope of CST's sacerdotal and sacramental activities thus cannot be considered to be incidental in either absolute terms or relative to CST's archival activities.

We have previously noted that the public benefit necessary to warrant special tax benefits for churches must flow not from the subsidy of religion but from the non-religious benefits to society from organized religion -- morality, community and personal responsibility, benevolence, and so forth.^{21/} These public benefits flow from the associational aspects of organized religion, namely "join[ing] together" to implement in society at large the "religious purposes of mutually held beliefs" of "a cohesive group of individuals." CST fills the requisite associational role through its community and public benefit activities, in the same manner as other churches of Scientology. CST as an entity, and CST executives and staff individually and

^{18/} PLR 8833001 (organization appears to have had only one minister, who also was engaged in running his construction business). The Zen Meditation Society, Inc. from Baltimore recently recognized as an exempt church, discussed in connection with the charitable contribution issues, likewise had only one person serving a ministerial role.

^{19/} Major Scientology holidays include Mr. Hubbard's birthday (March 13), Dianetics Day (May 9), Sea Org Day (August 12), Auditors Day (September 12) and the IAS anniversary (October 7).

^{20/} (1) 12.5 hours per week times 30 staff not assigned to clerical duties plus (2) 60 hours per week times 4 staff assigned to clerical functions plus (3) 34 staff times 1 hour per week for weekly services, (4) divided by 34 staff equals (5) 19.1 hours per week per staff member, (6) divided by 60 hours per week equals 31.8 percent.

^{21/} See Memorandum entitled "Section 170, Hernandez, and Quid Pro Quo," dated March 15, 1993 at pages 24-25.

collectively, participate fully in community activities such as local historical and historic preservation societies, volunteer fire departments, anti-drug campaigns and local disaster relief efforts.^{22/} CST's religious activities for its members and other membership and public and its community benefit activities fulfill the requisite associational role at least as fully if not more than the organization held to be a church in Foundation of Human Understanding.^{23/}

Although not so articulated, both the Claims Court and the Service appear to believe that an organization cannot fulfill the requisite associational role if its membership does not extend beyond its staff. There is no authority for such an interpretation, nor does such an interpretation reflect common understanding of the term church.^{24/} The associational test for church status arose in the context of potentially abusive

^{22/} CST's community and public benefit activities differ from those of other Scientology churches only because CST's facilities are in or near relatively remote rural communities rather than large metropolitan areas.

^{23/} In Foundation of Human Understanding, an overwhelming majority of the judges found an organization satisfying many fewer of the "church" criteria than CST to possess "sufficient associational aspects" to qualify as a church. 88 T.C. at 1361. There, while the organization's regular congregation varied from 50 to 350 persons, its religious publications had a readership of over 5,000, and its religious radio broadcasts had a regular listening audience of 30,000 while reaching as many as 2 million potential listeners. Id. at 1360. Upon these facts, an overwhelming majority of the judges found the organization's associational aspects to be "much more than incidental." Id. at 1361.

^{24/} In De La Salle Institute, the court stated (195 F. Supp. at 903) that "Congress must either define 'church' or leave the definition to common meaning and usage of the word." Although this definition has been criticized as unduly narrow "given the plurality of religious beliefs in this country," Foundation of Human Understanding, 88 T.C. at 1356, the term church certainly includes at a minimum those entities so recognized under common meaning and usage.

"single-member" or "single-family" churches^{25/} and "mail order" churches,^{26/} which CST plainly is not. None of the relevant authorities suggests that a membership like CST's cannot constitute "a cohesive group of individuals who join together to accomplish the religious purposes of mutually held beliefs,"^{27/} or "a body of interrelated believers who participate and interreact [sic] in various ways as members of a congregation, parish, or like group."^{28/} The facts clearly indicate this is precisely what CST does, thereby fulfilling the requisite associational role.

The implicit premise that a church cannot limit its membership to staff would mean, contrary to governing law, that no religious order could ever qualify as a church. While the religious order before the court in De La Salle Institute did not perform sufficient sacramental and sacerdotal functions to satisfy the requisite associational role, this does not mean that no religious order or similar organization can ever so qualify. Relevant Treasury regulations provide exactly the contrary:

The term "church" includes a religious order or a religious organization if such order or organization (a) is an integral part of a church and (b) is engaged in carrying out the functions of a church, whether as a civil law corporation or otherwise. * * * A religious

^{25/} American Guidance Foundation, 490 F. Supp. at 307; Church of the Visible Intelligence, 4 Cl. Ct. at 65 ("If membership does not extend beyond [the founder's] immediate family, it would appear that plaintiff is engaged in a private religious enterprise, rather than a church."); Church of Ethereal Joy, 86 T.C. at 924-25 ("Petitioner has had only two members since its formation. . . . Petitioner * * * seems to have intentionally pursued a policy that discouraged membership for reasons, we believe, that served the private purposes of its founder."); Purnell, 63 T.C.M. at 3037-4 to 3037-5 ("[T]he Kingdom is more than a one-family church."); Universal Bible Church v. Commissioner, T.C. Memo 1986-170, 51 T.C.M. (CCH) 936, 939 ("The record * * * does not clearly indicate whether there are any members beyond the trustees," all but one of whom were siblings).

^{26/} Universal Bible Church, 51 T.C.M. at 939 (All three pastors had been ordained by Universal Life Church).

^{27/} Spiritual Outreach Society v. Commissioner, 58 T.C.M. at 1286.

^{28/} G.C.M. 38982 (May 3, 1983) (emphasis added).

order or organization shall be considered to be engaged in carrying out the functions of a church if its duties include the ministration of sacerdotal functions and the conduct of religious worship. * * * What constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of a particular religious body constituting a church.

Treas. Reg. §1.511-2(a)(3)(ii) (emphasis added).^{29/} Where, as here, CST performs significant sacramental and sacerdotal functions, far more than incidental either in an absolute sense or in relation to its other exempt religious functions (archival), it satisfies a sufficient associational role to qualify as a church.

Finally, another thread running through the various church authorities, perhaps building upon the "fifteenth" criterion of other relevant facts and circumstances, is the potential for abuse:

A consideration of the facts and circumstances demands a determination of whether abuse or potential non-religious motivation is present. It should be noted that his [sic] organization is distinguishable from those "religions" which involve inurement or private benefit prohibited by section 501(c)(3). . . .

Therefore, because the majority of the American Guidance Foundation criteria are present, and because the facts and circumstances show that the organization was created and is operated for other than tax-

^{29/} These regulations were issued and apply for taxable years during which churches were not subject to unrelated business income tax. Although the regulations are not formally cited, this same definition appears in relevant Internal Revenue Manual provisions defining the term "church." Internal Revenue Manual 7(10)69, Exempt Organizations Examination Guidelines Handbook, §321.1(2) (Jan. 15, 1981).

avoidance reasons, the organization qualifies as a church within the meaning of section 170(b)(1)(A)(i).³⁰

Thus, abuse potential serves as an informal "tiebreaker" in close cases, with religious organizations lacking potential abuse given the benefit of the doubt and accorded church status.

As discussed above, CST believes that its case for church status is not a close one and, in fact, is far stronger than that of many organizations so recognized by the Service and/or the courts. CST is not in any sense a sham church established solely for tax or other non-religious purposes. Nor is there any potential private inurement or benefit from CST's religious activities. In financial terms, CST's staff is compensated extremely modestly. There has never been the slightest hint of any private inurement of CST's earnings. And now that the Service is prepared to recognize the exempt status of churches in the Scientology ecclesiastical hierarchy, there is no issue of private benefit to them from CST's activities.

In short, CST is a church in all relevant meanings of that term under the federal tax laws and is entitled to be so recognized.

³⁰ PLR 8833001; see also Foundation of Human Understanding, 88 T.C. at 1360 ("petitioner is not a sham organization created solely for tax purposes."); American Guidance Foundation, 490 F. Supp at 307 ("It is not enough that a corporation believes and declares itself to be a church. Nor is it sufficient that the applicant prepares superficially responsive documentation for each of the established IRS criteria. To hold otherwise would encourage sham representations to the IRS and result in adverse tax consequences to the public at large."); Purnell v. Commissioner, 63 T.C.M. at 3037-5 ("[T]he Kingdom is not a sham created solely for tax purposes.").