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Internal Revenue Service Developments

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INTERNAL REVENUE SERVICE DEVELOPMENTS

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I. REVENUE RULING 79-99

In the first segment of this presentation, I would like to bring you up to date on what has been occurring with respect to Revenue Ruling 79-99.¹ As you recall, Revenue Ruling 79-99 required that parents who contributed money to a religious organization operating a no-tuition school in which their children were enrolled could not deduct contributions that did not exceed the fair market value of the child's education.² It adopted an "offset test": if any benefit is received for the contribution, no matter what the intention in conferring it, the contribution must be offset by the value of the benefit. This was the test adopted in the *Oppewal* case.³

As things stood last year, we had almost reached agreement with the Treasury on a new revenue ruling, although the IRS was not totally in accord. In addition, there was an amendment to the Treasury Appropriations Bill providing that, for fiscal 1980, the IRS was prohibited from using appropriated funds to enforce Revenue Ruling 79-99.⁴

Since then, we have reached agreement with the Treasury on a new revenue ruling. This time the IRS reluctantly went along. This new ruling is only proposed; it has not been published. It contains six examples, one of which is essentially the same as Revenue Ruling 79-99, but with four additional facts. This proposed revenue ruling would supersede Revenue Ruling 79-99. This, however, is not the same as revocation. The IRS did not want to abandon the offset test formulated in the *Oppewal* case. "Supersedes" means that the ruling restates the substance and situation of a previously published ruling. I do not know how the IRS expects us to believe that the six situations in the new revenue ruling do nothing more

¹ Rev. Rul. 79-99, 1979-1 C.B. 108.

² *Id.* at 109.

³ *Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972).

⁴ Appropriations Act for the Treasury Dep't, Postal Service, Executive Office of the President, and Certain Government Agencies for 1980, Pub. L. No. 96-74, § 614, 93 Stat. 559 (1979).

than restate the one situation in Revenue Ruling 79-99. We agreed with the new revenue ruling since it protected our schools. By adding facts to the Revenue Ruling 79-99 situation the IRS did not have to rely on the offset theory; however, we felt that it was the best we could do.

We ran into difficulties because the Treasury took the position that it could not publish the new revenue ruling unless the rider was removed from the appropriations bill. Certain schools were not satisfied with the proposed revenue ruling and pushed to have the rider extended. Senator Eagleton supported removal of the rider and the new revenue ruling. He indicated that the accommodation of the Treasury and the IRS with the groups representing the numerous religiously affiliated schools nationwide was a rational accommodation to the situation.⁵ We did not object to Senator Eagleton confirming that, upon removal of the rider, the IRS would announce the agreed upon revenue ruling to supersede Revenue Ruling 79-99. This letter was written on November 20, 1980 by Gerald G. Portney who is the Assistant Commissioner of the Technical Branch at the IRS.⁶ Unfortunately, the rider was continued, effective until early June of this year. The upshot of all this is that the IRS cannot enforce Revenue Ruling 79-99, at least until June, and according to its position, it will not publish the proposed revenue ruling. The issue is certain to arise again if the schools that oppose the proposed revenue ruling seek to extend the rider. We cannot predict if they will be successful. Also, Dan Halperin, the Deputy Assistant Secretary for Tax Policy, with whom we negotiated, is no longer with the Treasury. We have the November 1980 letter to Eagleton from Mr. Portney to rely upon once the rider expires, but the IRS was never enthusiastic about the proposed revenue ruling. We hope June will provide some answers about the future.

II. REVENUE RULING 78-248

In this portion of my presentation, we will be revisiting an old friend—or enemy—Revenue Ruling 78-248. Revenue Ruling 78-248 was both the subject of remarks delivered at the diocesan attorneys' meeting 2 years ago in 1979⁷ and the subject of an extensive memorandum from George Reed in early 1980.⁸ I was working at the IRS in 1978 when the first voter-education revenue ruling was published. As you recall, that was Revenue Ruling 78-160,⁹ in which the IRS required that an organization

⁵ See 126 CONG. REC. S16,231 (daily ed. Dec. 11, 1980).

⁶ *Id.* at S16,234.

⁷ See Horkan, *Revenue Ruling 78-248*, 25 CATH. LAW. 316 (1980); Scanlan, *Revenue Ruling 78-248: The Congress And The Constitution Be Damned*, 25 CATH. LAW. 304 (1980).

⁸ Memorandum from George E. Reed to Archbishops, Bishops, Diocesan Attorneys and State Conference Directors (Jan. 3, 1980).

⁹ Rev. Rul. 78-160, 1978-1 C.B. 153.

which obtained and disseminated views of candidates for public office on topics of interest to the organization, was engaged in political campaign activity and was not exempt under section 501(c)(3) of the Code.¹⁰ These views were published in a newsletter without editorial comment. Because of the widespread criticism of this revenue ruling, the IRS quickly revoked it and published its new position in Revenue Ruling 78-248.

Anyone who has worked with the IRS will realize the uncharacteristic speed with which that was accomplished. The first revenue ruling was issued on May 1, 1978 and within a month it had been revoked. While I was not directly involved with this work, I was aware of the late-night drafting sessions that culminated in publication of the new ruling.

What I would like to do is provide a slightly different perspective, insofar as I am able, to provide some insight into how the IRS perceived Revenue Ruling 78-248 and how it evinces a changed and broadened position on the part of the IRS. I would also like to discuss two subsequent rulings, one of which is a private letter ruling, which indicate a move on the part of the IRS to a broader interpretation of what constitutes permissible voter-education activity.

Revenue Ruling 78-248 applied specifically to section 501(c)(3) organizations.¹¹ Essentially, it took the position that in order to avoid being classified as intervention in a political campaign, voter-education communications must address a multiplicity of issues in an unbiased manner. It raised a presumption that single-issue voter communications "widely distributed among the electorate during an election campaign" are by their very nature activities that constitute participation or intervention in a political campaign.¹²

As you may recall, Revenue Ruling 78-248 contained four examples. The first two examples were permissible voter-education activity, the last two were not.¹³ In situation three, the organization's communication contained brief statements of each candidate's responses to questions on a wide variety of issues important to the electorate as a whole, but "[s]ome questions evidence[d] a bias on certain issues."¹⁴ The ruling gave no clue about what type of question would evidence bias, but the organization was found to be engaged in prohibited political activity. In situation four, a limited issue organization that published a voting record which was widely distributed among the electorate during an election campaign was held to be participating in prohibited political activity.¹⁵

¹⁰ *Id.* at 154.

¹¹ *See* Rev. Rul. 78-248, 1978-1 C.B. 154.

¹² *Id.* at 155.

¹³ *Id.* at 154-55.

¹⁴ *Id.* at 155.

¹⁵ *Id.*

The IRS believed that Revenue Ruling 78-248 would provide guidance to section 501(c)(3) organizations concerning what does or does not constitute prohibited political activity. In fact, since the ruling contains little rationale, it left many questions unanswered. On September 4, 1980, the National Office of the IRS issued a private letter ruling to an organization known as Independent Sector.¹⁶ Independent Sector is a relatively new organization, made up of both nonprofit and for-profit organizations, whose general purpose is to support the growth and increased importance of the independent sector. The United States Catholic Conference is a member.

Independent Sector was engaged in a variety of activities to support proposed legislation aimed at obtaining an above-the-line deduction for charitable contributions. As part of these ongoing lobbying efforts, Independent Sector decided to report the results of committee votes on this legislation in both houses of Congress. The votes were reported in Independent Sector's regular newsletter, which is distributed to all of its members and to several hundred interested individuals and organizations throughout the United States. The newsletter included a brief description of the background of the particular vote, and a copy of the transcript from the congressional record showing votes and comments. In addition, it contained a brief statement urging members of Independent Sector to write letters thanking members of Congress who voted in support of the legislation and expressing disappointment to those members who opposed the legislation. Independent Sector indicated that it would continue this activity during the 1980 congressional election campaign. It stated that at least some of the sponsors of the legislation would be candidates for re-election, and that it was possible that during the course of their campaigns they might advocate passage of the legislation.

Independent Sector also indicated that it would present testimony on the proposed legislation to the platform committees of both major parties and report the responses. Independent Sector requested rulings from the national office of the IRS that its lobbying activities, undertaken both prior to and during the 1980 election campaign in which some of the sponsors of the legislation were candidates for re-election, did not constitute participation or intervention in a political campaign on behalf of a particular candidate. The IRS ruled favorably on these requests.¹⁷

Why? First, the IRS concluded that Independent Sector's testimony and the reports of testimony before the platform committees were directed toward producing a legislative result,¹⁸ it was a lobbying activity

¹⁶ Letter from J.E. Griffith, Chief, Rulings Section 1, Exempt Organizations Technical Branch to Independent Sector (Sept. 4, 1980).

¹⁷ *Id.* at 4.

¹⁸ *Id.*

rather than a political activity.¹⁹ With respect to the reporting of votes on the proposed legislation in Independent Sector's regularly published newsletter, the IRS concluded that these activities were also directed solely at producing a legislative result and not at influencing the outcome of any election campaign.²⁰ The IRS reached this conclusion based upon the following: the activities were directed toward the support of one piece of legislation,²¹ candidates for re-election were not identified,²² the newsletters were not timed to coincide with the election campaign,²³ and the newsletters were not widely distributed among the electorate.²⁴ The fact that Independent Sector's members and interested parties were primarily organizations rather than individuals was an important factor.²⁵ The fact that the voting records were published regularly and only incidentally extended into an election campaign was also significant.²⁶

The reason for Independent Sector's voting report not falling within situation four of Revenue Ruling 78-248 is that even though the report concentrated on a narrow range of issues, it was not widely distributed among the electorate and was not timed to coincide with the election campaign.

The second new ruling I want to discuss is Revenue Ruling 80-282,²⁷ in which the IRS amplified Revenue Ruling 78-248. There, the IRS concluded that certain publications of congressional incumbents' voting records on selected issues in a nonpartisan newsletter did not constitute participation or intervention in a political campaign within the meaning of section 501(c)(3) of the Code.²⁸

The organization published a monthly newsletter containing expressions of its views on a broad range of significant issues. The monthly newsletter was distributed to interested members and others, totalling only a few thousand nationwide. The newsletter sometimes encouraged readers to contact various governmental officials to express their views on the issues. After the close of each congressional session, the organization's newsletter contained a summary of the voting records of all incumbent members of Congress on selected legislative issues, together with an expression of the organization's position on those issues. Each member's vote was reported in a way that illustrated whether he or she voted in

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Rev. Rul. 80-282, 1980-2 C.B. 178.

²⁸ *Id.* at 179.

accordance with the organization's position. The newsletter was politically nonpartisan; it did not contain any reference to political campaigns, elections, or candidates; it contained no statements expressly or impliedly endorsing or rejecting any incumbent as a candidate for public office. The newsletter did not comment on an individual's qualifications for office, nor did it compare candidates. Incumbents who were candidates for reelection were not identified and the newsletter indicated the limitations of judging qualifications on the basis of a few selected votes. Furthermore, publication usually occurred after congressional adjournment and was not geared to the timing of any federal election. The newsletter was distributed only to the usual subscribers and was not targeted toward particular areas in which elections were occurring.

This revenue ruling distinguishes situations three and four in Revenue Ruling 78-248. The IRS admits that the format and content of this organization's newsletter are not neutral because the organization reports the votes and its own views on selected issues and indicates whether the incumbent supports or opposes the organization's views. Emphasizing that the organization's newsletter is not widely distributed, that no attempt is made to target the publication toward particular areas in which elections are occurring, and that no attempt is made to time the date of publication to coincide with an election campaign, Revenue Ruling 80-282 concludes that the publication of the newsletter will not be considered participation or intervention in a political campaign.²⁹

The IRS considers the voter-education issue to be important. Each year, the IRS conducts a training institute for its exempt organizations' employees nationwide. In 1979, and again in 1981, Revenue Ruling 78-248 was one of the topics addressed. In 1979, the IRS prepared examples of voter-education activities and indicated its probable conclusions with respect to these activities. These examples were prepared by national office personnel. An analysis of two of these 1979 examples in light of the 1980 rulings can provide excellent insight into the evolution of IRS thinking in this area of critical importance.

In the first example, organization A sent a ten-item questionnaire to candidates for public office in an upcoming election. The questionnaire dealt with topics of concern to A and its members, mainly environmental issues. Candidates were requested to check yes or no to each question posed, and could also add brief comments. Organization A printed the candidates' responses in a special issue of its newsletter, without comment. The newsletter was mailed to organizations and individuals on its mailing list and was sent free of charge to anyone requesting a copy. The IRS indicated that because the questions were designed to make the can-

²⁹ *Id.*

didates appear either acceptable or unacceptable to voters who are members of *A*, and hopefully to the general public, the *effect* of the publication and distribution was to influence voters to vote against candidates who did not support *A*'s position, regardless of the fact that *A* expressed no editorial opinion. This activity was similar to both examples 3 and 4 in Revenue Ruling 78-248.³⁰

I am not sure whether the IRS presently would reach the same result. In this example, the poll was not distributed widely to the electorate, nor was it clear that distribution was targeted for areas where elections were being held. This organization possesses some of the favorable criteria enunciated in Independent Sector and Revenue Ruling 80-282. Unfortunately, when the IRS relies on several factors in reaching a favorable decision, we have no guidance concerning the result when certain criteria are absent.

The second 1979 example will sound familiar. Church *B* published and distributed a monthly newsletter to its members and the general public. *B* periodically included in its newsletter a summary of the voting record of each member of Congress on a wide variety of issues. The votes spanned a broad spectrum of church concerns, including defense spending, aid to underdeveloped nations, and the issue of school busing. In compiling the voting records, *B*'s staff made its views known to Congress on each issue included in the record. The voting record indicated whether or not the member supported or opposed the staff's position on the issues. The voting record did not refer to any election, did not identify any candidates for office, and did not contain any express statements in support of or in opposition to any member of Congress. The IRS concluded that even though this voting record covered a wide variety of issues and did not identify candidates, its content and structure, whereby it indicated whether the member of Congress supported or opposed *B*'s position, implied approval or disapproval of the member and his or her voting record. This example was considered similar to situation 3 in Revenue Ruling 78-248 and thus was political activity. However, the IRS hedged by indicating that the final decision would depend upon all the facts and circumstances in the case and indicated that this activity might instead be an attempt to influence legislation.

The result in Revenue Ruling 80-282 is in direct opposition to the result in this 1979 example. Thus, we see evidence that the IRS has reversed its position, taking a more expansive view. This is exactly what did happen. Revenue Ruling 80-282 represents the reversal of the earlier opinion of the IRS' Chief Counsel's Office on the same case.

To summarize, voter-education material may evidence the preparing

³⁰ See Rev. Rul. 78-248, 1978-1 C.B. 154, 155.

organization's bias on a limited issue, if the opinions of all incumbents are given, if candidates are not identified, if the material is not widely distributed to the electorate, if distribution is not targeted for an area in which an election is taking place, and if the distribution is not specifically timed to coincide with an election campaign. This, I believe, we can say with certainty. There continues to be a problem with respect to predicting the results when some of the favorable criteria are absent. It seems that the most important criteria to be considered by an organization taking a position on the issues are distribution to voters and distribution timed to coincide with an election campaign.

I would also like to underscore a troublesome trend—confusing the distinction between legislative and political activity. For example, the proposed regulations under section 4945 provide that targeting a neutral analysis to an audience sharing a common view, and distributing a communication to individuals as voters are two of the three criteria for defining an attempt to influence the public with respect to legislation.³¹ These same themes, namely, targeting and dissemination to the public as voters, also appear in the political activity area. The second 1979 example suggested that given the proper circumstances, political activity might instead be legislative activity. This type of fuzzy thinking on the part of the IRS leads to further uncertainty.

In conclusion, although you may believe that the correct position is that only express endorsements are prohibited under the Code and regulations, there has been some progress, on the part of the IRS, away from the restrictive position taken in Revenue Ruling 78-160 and the 1979 examples. The 1980 rulings indicate that these positions have indeed mellowed within a relatively short period of time. We can only hope that this trend toward more liberal interpretation will continue.

III. THE ANTI-INJUNCTION ACT AND THE DECLARATORY JUDGMENT ACT

In the final segment of my presentation, I would like to review briefly the situation created by the Anti-Injunction Act³² and the Declaratory Judgment Act³³ with respect to tax-exempt organizations, and discuss the exception created under section 7428 of the Internal Revenue Code.³⁴

In force continuously since its enactment in 1867, the Anti-Injunction Act provides in pertinent part that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in

³¹ Proposed Treas. Reg. § 53.4945-2, 45 Fed. Reg. 78,171 (1980).

³² I.R.C. § 7421(a).

³³ 28 U.S.C. § 2201 (Supp. III 1979).

³⁴ I.R.C. § 7428.

any court by any person"³⁵ This provision not only prohibits suits to restrain the assessment or collection of tax but also prevents the district court from providing equitable relief that would have such effect. The clear purpose of this section is to give the United States a free hand in assessing and collecting taxes claimed to be due without intervention on the part of the courts. Prior to 1976, the Declaratory Judgment Act provided that in a case of actual controversy within its jurisdiction, any court of the United States may issue a declaratory judgment, except with respect to federal taxes.³⁶ Although some courts have noted that the federal tax exception to the Declaratory Judgment Act may be even more sweeping than the Anti-Injunction Act, there is no dispute that it is at least coterminous with the Anti-Injunction Act.³⁷

As a result of these provisions, prior to 1976, an exempt organization generally could not obtain a judicial determination as to its status unless, upon assessment and the attempted collection of taxes, the organization challenged the IRS action in Tax Court, or, after payment of the tax and denial of refund, it brought a refund suit in federal district court or in the Court of Claims. In 1974, the Supreme Court decided two cases under the Anti-Injunction Act, *Bob Jones University v. Simon*³⁸ and *Alexander v. "Americans United" Inc.*³⁹ Both organizations had ruling letters from the IRS, stating that they qualified for exemption under section 501(c)(3). In *Bob Jones*, the IRS notified the university that it intended to revoke its exemption because of its racially discriminatory admissions policy.⁴⁰ In *"Americans United,"* the IRS revoked the organization's ruling letter on the grounds that it had violated the lobbying provisions of section 503(c)(3).⁴¹ The organizations brought suit seeking injunctive relief.⁴² The plaintiff in *"Americans United"* also sought a declaratory judgment.⁴³ The Supreme Court held that both suits were barred by the Anti-Injunction Act.⁴⁴ In *"Americans United"* the Court held that the constitutional nature of the claim, as distinct from its probability of success, was of no consequence.⁴⁵ In *Bob Jones*, the Supreme Court threw down the gauntlet to Congress:

³⁵ *Id.* § 7421(a).

³⁶ Act of June 14, 1934, ch. 512, § 274D(1), 48 Stat. 955, as amended by Act of Aug. 30, 1935, ch. 829, § 405(a), 49 Stat. 1027 (current version at 28 U.S.C. § 2201 (Supp. III 1979)).

³⁷ See *Alexander v. "Americans United" Inc.*, 416 U.S. 752, 759 n.10 (1974).

³⁸ 416 U.S. 725 (1974).

³⁹ 416 U.S. 752 (1974).

⁴⁰ *Bob Jones Univ.*, 416 U.S. at 735.

⁴¹ *"Americans United" Inc.*, 416 U.S. at 755.

⁴² See *"Americans United" Inc.*, 416 U.S. at 756; *Bob Jones Univ.*, 416 U.S. at 735.

⁴³ See *"Americans United" Inc.*, 416 U.S. at 756.

⁴⁴ *Bob Jones Univ.*, 416 U.S. at 727.

⁴⁵ *"Americans United" Inc.*, 416 U.S. at 759.

Congress has imposed an especially harsh regime on § 501(c)(3) organizations threatened with loss of tax-exempt status and with withdrawal of advance assurance of deductibility of contributions. . . . The degree of bureaucratic control that, practically speaking, has been placed in the Service over those in a petitioner's position is susceptible of abuse, regardless of how conscientiously the Service may attempt to carry out its responsibilities. Specific treatment of not-for-profit organizations to allow them to seek pre-enforcement review may well merit consideration.⁴⁶

The opinion then suggested that this is an inappropriate matter for Congress to consider.⁴⁷

Taking up that challenge in 1976, Congress enacted section 7428 of the Code. Under section 7428, as amended, jurisdiction is granted to the District Court for the District of Columbia, the Court of Claims, and the Tax Court to issue declaratory judgments in the case of an actual controversy involving a determination by the IRS, or its failure to make the determination, in connection with the initial or continuing qualification as an exempt 501(c)(3) organization, as a qualified charitable contribution donee under section 170(c)(2),⁴⁸ as a private foundation under section 509(a),⁴⁹ or as a private operating foundation under section 4942(j)(3).⁵⁰ A declaratory judgment action will be available only when the organization has exhausted all administrative remedies available to it within the IRS. If the IRS does not make a determination within 270 days of the date on which the organization requested the determination, the organization will be deemed to have exhausted its administrative remedies.⁵¹ Action under section 7428 can be brought only by the organization whose qualification or status is at issue.⁵²

Since the enactment of section 7428, the IRS has taken certain positions with respect to such proceedings and a small body of case law has developed. At this time I would like to briefly summarize the more important of these developments. One of the first important decisions was *Houston Lawyer Referral Service v. Commissioner*,⁵³ in which the Tax Court established the rule that section 7428 actions would be based on the administrative record.⁵⁴ Taxpayers would not be allowed to introduce additional testimony either by stipulation or by means of oral testi-

⁴⁶ *Bob Jones Univ.*, 416 U.S. at 749-50.

⁴⁷ *Id.* at 750.

⁴⁸ See I.R.C. § 7428(c).

⁴⁹ See *id.* § 7428(a).

⁵⁰ *Id.*

⁵¹ *Id.* § 7428(b)(2).

⁵² *Id.* § 7428(b)(1).

⁵³ 69 T.C. 570 (1978).

⁵⁴ *Id.* at 573.

mony.⁵⁵ To permit otherwise would convert the declaratory judgment proceedings from judicial review of an administrative action into a trial de novo. Thus, it became very important for both the taxpayer and the IRS to pad the record with an eye toward possible litigation.

In another case, an organization requested a ruling from the IRS.⁵⁶ It received a ruling that the proposed transaction would jeopardize the organization's tax-exempt status.⁵⁷ The organization nevertheless entered into the transaction.⁵⁸ Later, it filed a petition for a declaratory judgment under section 7428 before the IRS took any action to revoke its exempt status.⁵⁹ The Tax Court granted the IRS' motion to dismiss for lack of jurisdiction because the IRS ruling on the proposed transaction was not a determination within the meaning of section 7428.⁶⁰ The court indicated that the IRS must take some direct action that jeopardizes the organization's exempt status.⁶¹

In another Tax Court case, an unincorporated organization filed an application for exemption under section 501(c)(3), and later changed its name and incorporated.⁶² The court held that the incorporated organization could not seek declaratory relief under section 7428.⁶³ It was a new legal entity with no standing under the provision.⁶⁴ Also, the new entity had not applied for an exemption and thus, had not exhausted its administrative remedies.⁶⁵

Another issue with respect to section 7428 is whether the courts have jurisdiction when an organization requests classification as other than a private foundation under one section and the IRS grants classification under another section. The IRS has taken the position that such cases are not section 7428 cases and determination letters issued by the IRS in such cases do not contain statements of section 7428 rights.

In one such case, where the IRS classified an organization under one section of the Code but the organization sought more favorable treatment under another section, the Tax Court dismissed the organization's petition for lack of jurisdiction.⁶⁶ That decision was affirmed by the Sixth

⁵⁵ *Id.* at 577.

⁵⁶ See *New Community Senior Citizen Hous. Corp. v. Commissioner*, 72 T.C. 372, 373 (1979).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 377.

⁶¹ *Id.* at 376.

⁶² See *American New Covenant Church v. Commissioner*, 74 T.C. 293, 298 (1980).

⁶³ *Id.* at 303.

⁶⁴ *Id.*

⁶⁵ *Id.* at 304-305.

⁶⁶ *Ohio County & Indep. Agricultural Soc'ys, Del. County Fair v. Commissioner*, No. 4811-

Circuit.⁶⁷

Where church classification is involved, however, the Tax Court reached a different result. Late last year, the court held that it had jurisdiction under section 7428 to review an IRS determination that an organization was not a church.⁶⁸ The court rejected the IRS argument that a declaratory judgment was not available because it had issued a favorable advance ruling under section 170(b)(1)(a)(vi).⁶⁹

Finally, I would like to remind you that last year the IRS published Revenue Procedure 80-25,⁷⁰ which modified prior procedures to take into account section 7428. Section 7.02 provides that when an organization withdraws its exemption application, such a withdrawal will not be considered a failure to make a determination or an exhaustion of administrative remedies for the purposes of section 7428.⁷¹ Of particular interest is section 11.03 which provides generally that an organization will not be considered to have exhausted its administrative remedies until the IRS has had a reasonable time to act upon its appeal or request for consideration.⁷² Although this appears to disregard the 270-day rule, there is an equitable argument to be made in its behalf. When an organization files a protest or an appeal toward the end of the 270 days, it should not be allowed to turn around and run into court without giving the IRS the opportunity to respond.

77x (U.S.T.C. July 13, 1977).

⁶⁷ 610 F.2d 448 (6th Cir. 1979), *cert. denied*, 446 U.S. 965 (1980).

⁶⁸ *Friends of the Soc'y of Servants of God v. Commissioner*, 75 T.C. 209, 220 (1980).

⁶⁹ *Id.* at 219.

⁷⁰ Rev. Proc. 80-25, 1980-1 C.B. 667.

⁷¹ *Id.* at 670.

⁷² *Id.* at 671.

