



Office of the General Counsel

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3300 • FAX 202-541-3337

July 22, 2010

TO: Subordinate Organizations under USCCB Group Ruling
[GEN: 0928]

SUBJECT: 2010 Group Ruling

FROM: Anthony Picarello, General Counsel *AMP*
(Staff: Deirdre Dessingue, Associate General Counsel)

This memorandum relates to the Group Ruling reaffirmation letter issued to the United States Conference of Catholic Bishops ("USCCB") on July 12, 2010 by the Internal Revenue Service ("IRS"), with respect to the federal tax status of subordinate organizations listed in the 2010 edition of the Official Catholic Directory ("OCD")¹. As explained in greater detail below, this ruling is important for establishing:

- (1) exemption of subordinate organizations under the USCCB Group Ruling from federal income tax; and
- (2) deductibility, for federal income, gift and estate tax purposes, of contributions to such organizations.

The 2010 Group Ruling letter is the latest in a series that began with the original determination letter of March 25, 1946. In the original 1946 letter, the Treasury Department affirmed the exemption from federal income tax of all Catholic institutions listed in the OCD for that year. Each year since 1946, in a separate letter, the 1946 ruling has been reaffirmed with respect to subordinate organizations listed in the current edition of the OCD². The annual group ruling letter clarifies important tax consequences for Catholic institutions listed in the OCD, and should be retained for ready reference. Group Ruling letters from prior years establish tax consequences with respect to transactions occurring during those years.

¹ A copy of the Group Ruling and this memo may be found on the USCCB website at www.usccb.org/ogc.

² Catholic organizations with independent IRS exemption determination letters are listed in the 2010 OCD with an asterisk (*), which indicates that such organizations are **not** covered by the Group Ruling.

Responsibilities under Group Ruling. Diocesan officials who compile OCD information for submission to the OCD publisher are responsible for the accuracy of such information. They must ensure that only qualified organizations are listed, that organizations are listed under their correct legal names, that organizations that cease to qualify are deleted promptly, and that newly-qualified organizations are listed as soon as possible.

EXPLANATION

1. **Exemption from Federal Income Tax.** The latest Group Ruling letter reaffirms that the agencies and instrumentalities and educational, charitable, and religious institutions operated, supervised or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions that appear in the 2010 OCD and are subordinate organizations under the Group Ruling are recognized as exempt from federal income tax under section 501(c)(3) of the Code. *(The Group Ruling does not cover organizations listed with asterisks or any foreign organizations listed in the 2010 OCD.)*

Verification of Exemption under Group Ruling. The latest Group Ruling letter indicates that most subordinate organizations under a group tax exemption are not separately listed in IRS Publication 78 or the IRS Exempt Organization Business Master File (“EOBMF”). As a result, most subordinate organizations under the USCCB Group Ruling will not be included in various online databases that are derived from either of these IRS sources. This does not mean that subordinate organizations included in the Group Ruling are not tax-exempt, that contributions to them are not deductible, or that they are not eligible for grant funding from corporations or private foundations that may rely on online databases for verification of tax-exempt status. It does mean that a Group Ruling subordinate may have to make an extra effort to document its eligibility to receive contributions. The Group Ruling letter states that donors may verify that a subordinate organization is included in the Group Ruling by consulting the Official Catholic Directory or by contacting USCCB directly. It also states that IRS does not verify inclusion of subordinate organizations under the Group Ruling. *Accordingly, neither subordinate organizations nor donors should contact IRS seeking verification of inclusion under the Group Ruling.*

Subordinate organizations should refer donors, including corporations and private foundations, to the specific language in the Group Ruling letter noted above, and to IRS Publication 4573, *Group Exemptions*, available on the IRS website at www.irs.gov. Publication 4573 explains that: (1) IRS does not determine which organizations are included in a group exemption; (2) subordinate organizations exempt under a group exemption do not receive an IRS determination letter; (3) exemption under a group ruling is verified by reference to the official subordinate listing (*e.g.*, the Official Catholic Directory);

and (4) it is not necessary for an organization included in a group exemption to be listed in Publication 78 or the EOBFM.

2. **Public Charity Status.** The latest Group Ruling letter recognizes that subordinate organizations included in the 2010 OCD are not private foundations under section 509(a) of the Code, and that all subordinate organizations do not share the same sub-classification under section 509(a). In addition, although USCCB is classified as a public charity under sections 509(a)(1) and 170(b)(1)(A)(i), that classification does *not* extend to subordinate organizations covered under the Group Ruling.

Verification of Public Charity Status. The latest Group Ruling letter recognizes subordinate organizations covered under its provisions as public charities under section 509(a), but does not specify the subsection of section 509(a) under which they are classified because all covered organizations do not share a common classification. Each subordinate organization must establish its own public charity classification under section 509(a)(1), 509(a)(2) or 509(a)(3) as a condition of inclusion in the Group Ruling.

As a result of requirements imposed by the Pension Protection Act of 2006 with respect to private foundation grants to section 509(a)(3) supporting organizations, private foundations may require more specific documentation of public charity status under section 509(a)(1), 509(a)(2), 509(a)(3)-Type I or 509(a)(3)-Type II.

Certain types of subordinate organizations included in the Group Ruling qualify as public charities by definition under the Code. These are:

- churches and conventions and associations of churches under sections 509(a)(1) and 170(b)(1)(A)(i) [generally limited to dioceses, parishes, religious orders, and state Catholic conferences];
- elementary and secondary schools, colleges and universities under sections 509(a)(1) and 170(b)(1)(A)(ii); and
- hospitals under sections 509(a)(1) and 170(b)(1)(A)(iii).

Other subordinate organizations covered under the Group Ruling may qualify under the public support tests of either sections 509(a)(1) and 170(b)(1)(A)(vi) or section 509(a)(2). Verification of public charity classification under either of the support tests generally can be established by providing a written declaration of the applicable classification signed by an officer of the organization, along with a reasoned written opinion of counsel and a copy of the support test portion of Form 990, if applicable. A section 509(a)(3) organization included in the Group Ruling should be able to rely upon a written declaration of the applicable supporting organization classification signed by an officer of the organization, along with a reasoned written opinion

of counsel and Form 990, if applicable, to satisfy foundation grantors of its Type I or Type II supporting organization status.

3. **Deductibility of Contributions.** The latest Group Ruling letter assures donors (including individuals, corporations, and private foundations) that contributions to subordinate organizations listed in the 2010 OCD are deductible for federal income, gift, and estate tax purposes.

4. **Unemployment Tax.** As section 501(c)(3) organizations, subordinate organizations covered by the Group Ruling are exempt from *federal* unemployment tax. However, individual states may impose unemployment tax on subordinate organizations even though they are exempt from federal unemployment tax. Please refer to your local tax advisor any questions you may have about state unemployment tax.

5. **Social Security Tax.** All section 501(c)(3) organizations, including churches, are required to withhold and pay taxes under the Federal Insurance Contributions Act (FICA) for each employee.³ However, services performed by diocesan priests in the exercise of their ministry are not considered "employment" for FICA (Social Security) purposes.⁴ FICA should not be withheld from their salaries. *For Social Security purposes*, diocesan priests are subject to self-employment tax ("SECA") on their salaries as well as on the value of meals and housing or housing allowances provided to them.⁵ Neither FICA nor income tax withholding is required on remuneration paid directly to religious institutes for members who are subject to vows of poverty and obedience and are employed by organizations included in the Official Catholic Directory.⁶

6. **Federal Excise Tax.** Inclusion in the Group Ruling has no effect on a subordinate organization's liability for federal excise taxes. Exemption from these taxes is very limited. Please refer to your local tax advisor any questions you may have about excise taxes.

³ Section 3121(w) of the Code permits certain church-related organizations to make an irrevocable election to avoid payment of FICA taxes, but only if such organizations are opposed for religious reasons to payment of social security taxes.

⁴ I.R.C. § 3121(b)(8)(A).

⁵ I.R.C. § 1402(a)(8). See also, Compensation of Priests, at <http://www.usccb.org/bishops/dfi/dualtax.htm>.

⁶ Rev. Rul. 77-290, 1977-2 C.B. 26. See also, OGC/LRCR Memorandum on *Compensation of Religions*, <http://www.usccb.org/ogc/RelComp2006.pdf> (September 11, 2006).

7. **State/Local Taxes.** Inclusion in the Group Ruling does not automatically establish a subordinate organization's exemption from state or local income, sales or property taxes. Typically, separate exemptions must be obtained from the appropriate state or local tax authorities in order to qualify for any applicable exemptions. Please refer to your local tax advisor any questions you may have about state or local tax exemptions.

8. **Form 990.** All subordinate organizations covered under the Group Ruling must file Form 990, Return of Organization Exempt from Income Tax, *unless* they are eligible for a mandatory or discretionary exception to this filing requirement. ***There is no automatic exemption from the Form 990 filing requirement simply because an organization is included in the Group Ruling or listed in the OCD.*** Subordinate organizations required to file Form 990 must do so by the 15th day of the fifth month after the close of their fiscal year.⁷ Among the organizations not required to file Form 990 under section 6033 of the Code are: (i) churches; (ii) integrated auxiliaries of churches⁸; (iii) the exclusively religious activities of religious orders; (iv) schools below college level affiliated with a church or operated by a religious order; (v) organizations with gross receipts normally not in excess of \$25,000;⁹ and (vi) certain church-affiliated organizations that finance, fund or manage church assets, or maintain church retirement insurance programs, and organizations controlled by religious orders that finance, fund or manage assets used for exclusively religious activities.¹⁰

⁷ The penalty for failure to file the Form 990 is \$20 for each day the failure continues, up to a maximum of \$10,000 or 5 percent of the organization's gross receipts, whichever is less. However, organizations with annual gross receipts in excess of \$1 million are subject to penalties of \$100 per day, up to a maximum of \$50,000. I.R.C. § 6652(c)(1)(A).

⁸ I.R.C. § 6033(a)(3)(A)(i); Treas. Reg. § 1.6033-2(h). To qualify as an integrated auxiliary of a church, an organization must be described in section 501(c)(3), qualify as other than a private foundation, be affiliated with a church, and qualify as internally supported. An organization will be considered internally supported unless it both:

- (1) Offers admissions, goods, services, or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or substantially below cost), and
- (2) normally receives more than 50 percent of its support from a combination of governmental sources; public solicitation of contributions (such as through a community fund drive); and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

⁹ Rev. Proc. 83-23, 1983-1 C.B. 687.

¹⁰ Rev. Proc. 96-10, 1996-1 C.B. 577.

Special Rules for Section 509(a)(3) Supporting Organizations. The Pension Protection Act of 2006 eliminated discretionary exceptions to the Form 990 filing requirement as applied to section 509(a)(3) supporting organizations. The discretionary exceptions likely to be affected by this provision are exceptions (v) and (vi) above. This means that if a subordinate organization under the Group Ruling is classified as a section 509(a)(3) supporting organization, it may no longer rely on exceptions (v) or (vi) above as the basis for not filing Form 990. However, a section 509(a)(3) supporting organization that qualifies as an integrated auxiliary of a church under section 6033 may continue to rely on that exception as a basis for not filing Form 990. Because it is a statutory exception, the integrated auxiliary of the church exception was not affected by the Pension Protection Act.

Form 990-N Filing Requirements. Under the Pension Protection Act of 2006, a subordinate organization under the Group Ruling that claims exception (v) above (gross receipts normally not in excess of \$25,000) as its sole basis for not filing Form 990 must file annual electronic Form 990-N (“e-postcard”) as required by IRS, setting forth the following information: (1) the legal name of the organization; (2) any name under which the organization operates or does business; (3) the organization’s mailing address and Internet website address; (4) the organization’s EIN; (5) the name and address of a principal officer; (6) evidence of the organization’s continued qualification for exemption from the Form 990 filing requirement; and (7) notification of termination, if applicable. Form 990-N must be submitted electronically through the IRS website on or before the 15th day of the fifth calendar month following the close of the fiscal year for which it is filed.¹¹

Public Disclosure and Inspection. Any subordinate organization that is required to file either Form 990 or Form 990-N must upon request make a copy of the form and its schedules and attachments (other than Form 990 contributor lists) available for public inspection during regular business hours at the organization's principal office and at any regional or district offices having three or more employees. Form 990 or Form 990-N for a particular year must be made available for a three year period beginning with the due date of the return.¹² In addition, any organization that files Form 990 or Form 990-N must comply with written or in-person requests for copies of the form. The organization may impose no fees other than a reasonable fee to cover copying and mailing costs. If requested, copies of the forms for the past three

¹¹ *Final Regulations: Notification Requirement for Tax-Exempt Entities Not Currently Required to File, 74 Fed.Reg. 36395 (July 23, 2009).*

¹² *The penalty for failure to permit public inspection of the Form 990 is \$20 for each day during which such failure continues, up to a maximum of \$10,000. I.R.C. § 6652(c)(1)(C).*

years must be provided. In-person requests must be satisfied on the same day. Written requests must be satisfied within 30 days.¹³

Public Disclosure of Form 990-T. Under the Pension Protection Act of 2006, Form 990-T, Exempt Organization Unrelated Business Income Tax Return, is subject to the same public inspection and copying rules that apply to Forms 990 and 990-N.

Revocation for Failure to File. Under the Pension Protection Act of 2006, the tax-exempt status of an organization, including a subordinate organization under the Group Ruling, that is required to file either Form 990 or Form 990-N but that fails to do so for three consecutive years will be considered revoked. Reapplication to IRS (not through the Group Ruling process) will be required in order to reinstate exemption.

9. **Revenue Procedure 75-50.** Rev. Proc. 75-50¹⁴ sets forth notice, publication, and recordkeeping requirements regarding racially nondiscriminatory policies with which private schools, including church-related schools, must comply as a condition of establishing and maintaining exempt status under section 501(c)(3) of the Code. Under Rev. Proc. 75-50 private schools are required to file an annual certification of racial nondiscrimination with the IRS. For private schools not required to file Form 990, the annual certification must be filed on Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax. This form is available at www.irs.gov. Form 5578 must be filed by the 15th day of the fifth month following the close of the fiscal year. Form 5578 may be filed by an individual school or by the diocese on behalf of all schools operated under diocesan auspices. The requirements of Rev. Proc. 75-50 remain in effect and must be complied with by all schools listed in the OCD. **Diocesan or school officials should ensure that the requirements of Rev. Proc. 75-50 are met since failure to do so could jeopardize the tax-exempt status of the school and, in the case of a school not legally separate from the church, the tax-exempt status of the church itself.**

¹³ *I.R.C. § 6104(d). Generally, a copy of an organization's exemption application and supporting documents must also be provided on the same basis. However, since Catholic organizations covered under the Group Ruling did not file exemption applications with IRS, nor did USCCB, organizations covered under the Group Ruling should respond to requests for public inspection and written or in-person requests for copies by providing a copy of the page of the current OCD on which they are listed. If a covered organization does not have a copy of the current OCD, it has two weeks within which to make it available for inspection and to comply with in-person requests for copies. Written requests must be satisfied within the general time limits.*

¹⁴ 1975-2 C.B. 587.

10. **Lobbying Activities.** Subordinate organizations under the Group Ruling may lobby for changes in the law, provided such lobbying is not more than an insubstantial part of their total activities. Attempts to influence legislation both directly and through grassroots lobbying are subject to this restriction. The term “lobbying” includes activities in support of or in opposition to referenda, constitutional amendments, and similar ballot initiatives. There is no distinction between lobbying activity that is related to a subordinate organization's exempt purposes and lobbying that is not. There is no fixed percentage that constitutes a safe harbor for "insubstantial" lobbying. Please refer to your local tax advisor any questions you may have about permissible lobbying activities.

11. **Political Activities.** *Subordinate organizations under the Group Ruling may not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office. Violation of the prohibition against political campaign intervention can jeopardize the organization's tax-exempt status.* In addition to revoking tax-exempt status, IRS may also impose excise taxes on an exempt organization and its managers on account of political expenditures. Where there has been a flagrant violation, IRS has authority to seek an injunction against the exempt organization and immediate assessment of taxes due. The Office of General Counsel memorandum, *Political Campaign Activity Guidance for Catholic Organizations*, available at www.usccb.org/ogc, contains detailed information regarding the prohibition against political campaign intervention. If you have any questions in this regard, please refer them to your local tax advisor.

12. **Group Exemption Number (“GEN”).** The group exemption number assigned to the USCCB Group Ruling is 0928. ***This number must be included on each Form 990, Form 990-T, and Form 5578 required to be filed by a subordinate organization under the Group Ruling.***¹⁵ We advise *against* using the group exemption number on Form SS-4, Request for Employer Identification Number, because in the past this has resulted in IRS improperly including USCCB as part of the subordinate organization's name in IRS records.

13. **Employer Identification Numbers (“EINs”).** Each subordinate organization under the Group Ruling should have its own EIN. A subordinate organization must use its own EIN, *not USCCB’s EIN*, in all filings with IRS (*e.g.*, Forms 941, W-2, 1099, or 990).

¹⁵ *IRS has expressed concern about organizations covered under the Group Ruling that fail to include the group exemption number (0928) on their Form 990 filings, particularly the initial filing.*