

PROCEDURES FOR INCLUSION IN PRESBYTERIAN CHURCH (U.S.A.) FEDERAL GROUP EXEMPTION

The Presbyterian Church (U.S.A.) has been issued a Group Ruling (hereinafter "**Group Ruling**") by the Internal Revenue Service (hereinafter "**IRS**"). Since the initial ruling of January 31, 1964, the IRS has reaffirmed the Group Ruling periodically. The Group Ruling exempts the Presbyterian Church (U.S.A.), and its related organizations from federal income tax under section 501(c)(3) of the Internal Revenue Code (hereinafter "**Code**"). The General Assembly of the Presbyterian Church (U.S.A.) lists all of its related organizations that are entitled to the benefits associated with the Group Ruling in its Minutes (hereinafter "**Minutes**") which are published every year. The Office of Legal & Risk Management Services of the Presbyterian Church (U.S.A.), A Corporation's Administrative Services Group manages the Group Ruling on behalf of the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.).

The following list is a list of those understood to be automatically included in the Group Ruling. These groups need not take any additional action to be included in the Group Ruling:

- The particular churches, congregations, sessions,
- The presbyteries,
- The synods,
- The General Assembly,
- The first or primary corporation of any of the above (e.g., First Presbyterian Church, Inc.), and
- The unincorporated programs or functions of any of the above.

Other related but separately incorporated bodies are not automatically included. Examples are:

- The second, third and fourth corporations created by councils. Typically, these are camp and conference centers, campus ministry corporations, or incorporated daycare centers.

If the group is not automatically included in the Group Ruling, then you need to apply. The responsibility for reviewing applications/requests for inclusion in the Group Ruling rests with the Office of the General Assembly. Because of the tax consequences of the Group Ruling to each covered organization, it is essential to maintain the integrity of the Group Ruling process.

THE INCLUSION OF UNQUALIFIED ORGANIZATIONS COULD JEOPARDIZE THE EXEMPT STATUS OF ALL ORGANIZATIONS INCLUDED IN THE GROUP RULING.

Applicants for inclusion in the Group Ruling must follow the proper procedure and must meet all legal requirements established by the Code and the IRS. Therefore, the Office Legal & Risk Management Services of the Presbyterian Church (U.S.A.), A Corporation's Administrative Services Group ("**Legal Services**") assists the Office of the General Assembly in reviewing all documents. This document has been prepared to assist organizations who wish to apply for inclusion in the Group Ruling. It is not intended to substitute for competent legal advice directed to specific fact situations.

The following organizations should **not** apply for inclusion in the Group Ruling:

1. Organizations created or incorporated in a foreign country;
2. Organizations that have been denied recognition of section 501(c)(3) status by the IRS following the filing of their own separate ruling request;
3. Organizations that the IRS has classified under a section of the Code other than section 501(c)(3);
4. Organizations to which the IRS has issued an independent section 501(c)(3) exemption determination letter;
5. Organizations that engage in joint ventures with individuals or for-profit entities.

In addition to the above exclusions, the organization applying for the inclusion in the Group Ruling must have an affiliated relationship with a council of the Presbyterian Church (U.S.A.) ("**denomination**"). "Affiliated," in this context, means that a council of the denomination has control and supervision of the

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programs of the organization applying for the Group Ruling inclusion and is willing to so certify. This includes control of the organization's board. Finally, the organization applying for inclusion in the Group Ruling must be exempt under the same paragraph of Section 501(c)(3) of the Code.

If it is determined that your organization may qualify for inclusion in the Group Ruling, it must apply as soon as possible after the date of its formation with the Office of Legal Services, Attention to April L. Davenport, Deputy General Counsel, 100 Witherspoon Street, Room #5629, Louisville, Kentucky 40202. Each organization applying should send its request and the following documentation:

1. The request to be included in the group exemption, which should be supported by an appropriately taken action of the group's governing board of directors or trustees and which must be signed by a duly authorized officer of the organization.
2. A description of the organization's principal purpose and the activities of the organization.
3. A copy of a uniform governing instrument (charter, trust indenture, articles of incorporation, articles of association, financial statements, etc.) and a copy of the organization's bylaws. The governing instrument and/or bylaws must reflect that all of the voting members of the organization's board are members, ruling elders or Ministers of Word and Sacrament of the denomination. The uniform governing instrument must also indicate that the organization has an affiliated relationship with a council of the denomination, as described above.
4. An Employer Identification Number (issued by the IRS) needs to be provided.
5. A duly approved action of the appropriate synod, presbytery or session that is named in the uniform governing instrument that acknowledges the relationship of the organization, approves the programmatic purposes of the organization and agrees that the synod, presbytery or session will exercise oversight responsibility for the organization, its programs and its financial integrity.

Once the documents have been reviewed, a determination will be made and a letter will be sent to the organization. If an organization is granted the inclusion a file will be prepared, all documents submitted will be kept indefinitely, and such organization will be listed in the subsequent year's *Minutes*. The Office of the General Assembly must be notified immediately if a change in the organization's structure occurs or if the organization or the council terminates the organization's legal affiliation with the council with which it is affiliated. Inclusion in the Group Ruling will entitle the synod, presbytery or session (or whatever organization has the proper authority) the continuing ability to audit program finances and will entitle the Office of the General Assembly, in conjunction with Legal Services, the right to question legal matters and financial matters of the organization. Further, please note that the Office of the General Assembly reserves the right to exclude or remove any organization from the Group Ruling if, in its sole discretion, the inclusion of the organization endangers the Group Ruling.

The following is a set of questions and answers that are normally asked concerning the Group Ruling:

1. **What are the benefits of being included in the Group Ruling?** Inclusion in the Group Ruling means that the included organization is exempt from federal income tax under section 501(c)(3) of the Code. Further, contributions to such an organization are deductible for federal income, gift, and estate tax purposes. The organization is also exempt from federal unemployment tax. However, individual states may impose an unemployment tax on certain tax-exempt organizations even though they are exempt from the federal tax. Organizations should consult their tax advisors concerning liability for the state unemployment tax.
2. **What About Federal Excise Taxes?** Generally, inclusion in the Group Ruling has no effect on an organization's liability for federal excise taxes. Exemption from these taxes is very limited. Organizations should consult their tax advisors to determine whether they are entitled to such exemptions.
3. **What About State Taxes?** Inclusion in the Group Ruling has no effect on an organization's liability for state or local income, sales or property taxes. Typically, separate exemption applications must be

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filed with the appropriate state or local tax authorities in order to qualify for applicable exemptions. Organizations should consult their tax advisors to determine whether they are entitled to exemptions from state or local taxes and how any available exemptions may be secured.

4. **What About Social Security Taxes?** All organizations included in the Group Ruling must pay taxes under the Federal Insurance Contributions Act (FICA) for each lay employee.
5. **What are the Consequences of an Unfavorable Decision by the Synod, Presbytery or Office of the General Assembly?** An organization that is denied inclusion in the Group Ruling is not recognized as exempt from federal income tax under Section 501(c)(3) by virtue of the Group Ruling. If the organization takes no further action, it will be subject to federal income tax, contributions to it will be subject to federal income tax, and contributions to it will not be deductible. Organizations that are denied inclusion in the Group Ruling for any reason remain free to file Form 1023, Application for Recognition of Exemption under Section 501(c)(3), directly to the IRS, if they wish to establish independent exemption under section 501(c)(3).
6. **How is the IRS Notified that a Newly-Approved Organization is Included in the Group Ruling?** The IRS is notified by Legal Services concerning the organizations that have been added to or removed from the Group Ruling during the prior year.

The Office of the General Assembly and Legal Services will make every effort to promptly review the documents and give an expeditious response. Any questions concerning these procedures should be directed to:

Rebecca Rayner, Legal Services
(888) 728-Ext. 8021
rebecca.rayner@pcusa.org

or

April Davenport, Legal Services
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