

Choosing whether to file as an IRS 501(c)(3) versus a IRS Section 508(c)(1)

Controlling Law:

Jack Lane Taylor v. Commissioner holds that Section 508(c)(1) simply relieves churches from applying for a favorable determination letter regarding their exempt status as required by section 508(a). **Nothing in section 508(c)(1) relieves a church from having to meet the requirements of section 501(c)(3).**

Implication:

Section 508 does not define a church, nor does it grant a church special government-free tax-exempt status. There is, in fact, no such thing as a 508 church. However, there is a difference for a church that claims its exempt status under 508(c)(1). The Internal Revenue Code does not define what happens when a church doesn't receive official recognition (i.e., the church did not file for tax exempt status under 501(c)(3). *Jack Lane Taylor* holds that **if the church relies on section 508(c) and the church does not file for recognition under Section 501(c)(3) through the IRS issuance of a tax determination letter, the church is actually handing that burden to each and every one of your donors** in order for that donor to claim/write off their donation. If one of the church's donors is audited, that donor must establish or prove that the church meets all the requirements and qualifications of a section 501(c)(3) organization, which would already be determined were it to file as a 501(c)(3) tax exempt organization. See *Branch Ministries vs. Rossotti*, which states "because the church has not previously been determined by the IRS to have met the Section 501(c)(3) criteria, there is no presumption that the church is tax-exempt under Section 501(c)(3)." So, the burden of proving tax exemption and deductibility of the contribution is shifted to the donor.

Conclusion:

The better practice is to file as a IRS Section 501(c)(3) organization and receive a tax determination letter than do a quicker, simpler filing under Section 508(c) due to the "donor issue." **Apart from donors who are individuals, most any organization, trust, foundation or otherwise that larger church donors use to donate WILL NOT undertake this burden of proof and will almost certainly not fund the donation absent the church producing a tax determination letter than can only be obtained by applying for as a 50(c)(3) organization.**