Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200514011**

Release Date: 4/8/2005
CC:PA:APJP:3
POSTN-160621-03

UILC: 501.26-00, 6033.00-00, 6231.01-00, 6031.00-00, 761.01-02, 6233.01-00

date: January 21, 2004

to: Associate Area Counsel

from: William A. Heard, Acting Senior Technician Reviewer
Branch 3, APJP CC:PA:APJP:3

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subject: **Applicability of TEFRA Partnership Provisions to I.R.C. 501(d) Religious and Apostolic Organizations**

This Chief Counsel Advice responds to your memorandum dated October 27, 2003. In accordance with I.R.C. 6110(k)(3), this advice may not be used or cited as precedent.

LEGEND

Community 1 =

Community 2 =

Parent Corporation =

Year A =

Date 1 =

State 1 =

State 2 =

ISSUE

On the facts described, do the unified partnership audit and litigation procedures of sections 6221 through 6234 of the Internal Revenue Code ("TEFRA") apply to the present section 501(d) apostolic organization?

CONCLUSION

No.

FACTS

The Service has recognized Communities 1 and 2 and their parent holding company (collectively "the Organization" or "the 501(d) Organization") as tax-exempt apostolic organizations under section 501(d) of the Internal Revenue Code. Community 1 and Community 2 are incorporated communal groups. Parent Corporation is a corporate holding company for the two Communities.

For tax Year A, Parent Corporation filed Form 1065, with Communities 1 and 2 listed on Schedule K. On the return, it stamped the following: "[Parent Corporation] is tax exempt under I.R.C. § 501(d) as per letter dated [Date 1] from Tax Rulings Division. Ruling requires filing on Form 1065, although the entity is NOT A PARTNERSHIP."

LAW AND ANALYSIS

Section 501(a) exempts religious and apostolic associations or corporations from taxation if they meet certain requirements described in section 501(d). Under section 501(d), the associations and corporations must have a common treasury or community treasury, even if they engage in business for the common benefit of their members. The members must include in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for the year. Any amount included in the gross income of a member is to be treated as a dividend received. Treas. Reg. § 1.501(d)-1(a).

Under Treas. Reg. § 1.6033–2(e) and the filing instructions for Form 1065, 501(d) organizations must file returns on Form 1065, "U.S. Return of Partnership Income".

Section 6231(a)(1)(A) defines a partnership for purposes of the unified audit and litigation procedures of sections 6221 – 6234 ("TEFRA") as any partnership required to file a return under section 6031(a). Under section 6031(a), every partnership, as defined under section 761(a), must file a partnership return. Section 761(a) defines the term "partnership" as a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation, trust, or estate. Under Treas. Reg. § 301.7701-2(b)(1), the term corporation means a business entity organized under a federal or state statute.

Generally, section 6233 applies the TEFRA partnership provisions to any taxable year for which an entity files a partnership return, even if it is ultimately determined that the

entity is not a partnership for such year. Treas. Reg. § 301.6233-1; see Andantech L.L.C v Commissioner, 331 F.3d 972, 981 (D.C. Cir. 2003); Frazell v. Commissioner, 88 T.C. 1405, 1414 (1987); Harrell v. Commissioner, 91 T.C. 242, 248 (1988).

In the present case, the 501(d) Organization does not meet the definition of a partnership subject to the TEFRA partnership provisions. Community 1 and Community 2 are corporations under the laws of State 1 and State 2, respectively. Parent is a corporate holding company. Consequently, Parent Corporation and its subsidiary Communities 1 and 2 are not partnerships. In the absence of section 501(d), the income of a religious corporation would be subject to corporate income tax under subchapter C of the Code. See Twin Oaks Community, Inc. v. Commissioner, 87 T.C. 1233, 1249 (1986). Section 501(d) treats the amount includable in the gross income of the members of a 501(d) organization as a dividend received rather than as a partnership distribution under subchapter K. Additionally, the 501(d) Organization's mere filing of Form 1065 does not turn it into a partnership. See Kleinsasser v. United States, 707 F. 2d 1024, 1026 (9th Cir. 1983); Blume v. Gardner, 262 F. Supp. 405, 413 – 414 (W.D. Mich. 1966), aff'd, 397 F. 2d 809 (6th Cir. 1968). Nor may it elect or default into a partnership. Treas. Reg. § 301.7701-3. Finally, the requirement that the Organization file Form 1065 derives from section 6033 regarding returns by exempt organizations, not section 6031 regarding partnership returns. See Treas. Reg. §§ 1.501(d)-1(b) and 1.6033–2(e). Since the Organization is a corporation, cannot elect partnership status, and is not required to file a partnership return under section 6031, it does not qualify as a partnership within the meaning of section 6231(a)(1)(A).

Nor did the Organization file "a partnership return" making the TEFRA provisions applicable under section 6233. The Organization stamped the following on its Form 1065: "[Parent Corporation] is tax exempt under I.R.C. § 501(d) as per letter dated [Date 1] from Tax Rulings Division. Ruling requires filing on Form 1065, although the entity is NOT A PARTNERSHIP." The Organization has clearly identified itself on Form 1065 as a 501(d) entity and not a partnership. Since the 501(d) Organization did not purport to file the Form 1065 as a partnership, section 6233 does not make the TEFRA provisions apply.[1] The foregoing conclusion is limited to 501(d) organizations. No comment is offered regarding non-501(d) entities.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[redacted]

[1] However, a different set of facts could lead to the opposite result under section 6233, if, for example, a 501(d) apostolic organization filed a Form 1065 that failed to identify its 501(d) tax-exempt, non-partnership status. In other words, the TEFRA partnership provisions could apply to the taxable year of a section 501(d) organization that filed a Form 1065 that did not adequately identify itself as a 501(d) organization.

[redacted]

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Please call if you have any further questions.