

I. Section 508(c)(1)(a) Benefits for Faith Based Organizations (FBO's)

Churches, integrated auxiliaries, and association of churches do not have to apply as a 501(c)(3) in order to be tax exempt and offer tax deductibility for contributions. All organizations seeking tax exempt status must apply to the IRS except FBO's. FBO's can be formed under Section 508(c)(1)(a) and enjoy "mandatory exceptions" from these requirements. Section 508(c)(1)(a) was codified in the Internal Revenue Code (IRC) in order to formally establish the right to "free" exercise of religion which had been a tacit standard upon which America was founded and governed since it gained its independence.⁵¹ A 508(c)(1)(a) is, by the very nature of its creation, a religious, non-profit, tax-exempt organization.⁵²

Section 508 was part of the legislation passed in the Tax Reform Act of 1969 (H.R. 13270), codified as Public Law 91-172⁵³ The intent of our U.S. Congress in passing Section 508(c)(1)(a) was to make sure that important First Amendment religious and speech rights were protected when they overhauled and authorized sweeping new changes to the Tax Code in 1969. The Act included substantial changes in the treatment of private foundations and 501(c)(3) organizations. The changes included requirements that organizations seeking tax exempt status had to first apply, file a tax return annually, comply with rules and regulations that the IRS may from time to time prescribe, keep records of income and expenses, and render under oath statements about the organization.⁵⁴ Churches were specifically excepted from these requirements.⁵⁵

According to the U.S. House and U.S. Senate Staff of the Joint Committee on Internal Revenue Taxation, the reason for the new laws was because "Congress believed that the Internal Revenue Service was handicapped in evaluating and administering the tax laws by the lack of information with respect to many organizations".⁵⁶ The Joint Committee published the *General Explanation* to the other members of Congress as source material to explain the Tax Reform Act of 1969 as finally enacted. "Under prior law, an organization was exempt if it met the requirements of the code, whether or not it sought an "exemption certificate" from the Internal Revenue Service."⁵⁷ In other words, churches were not required to apply to the IRS for approval before the Act. Following passing, the Act required new exempt organizations to notify the Internal Revenue Service that they are applying for recognition of their section 501(c)(3) exempt status. Congress had to enact a particular rule to specifically exempt churches from these new requirements or the new legislation would be in conflict with the Constitution.⁵⁸ Section 508(c)(1)(a) was necessary to formally ensure that government did not unnecessarily entangle itself with the organization and operation of churches.

FBO's can be organized and operate under Section 508(c)(1)(a) of the Tax Code the same as they can be organized and operate under any other section of the Tax Code.

A 508(c)(1)(a) FBO has a constitutional and legal right to form; therefore, there is no required application to seek approval of tax exempt status.

⁵¹ See The principles of "Free Exercise" are specifically guaranteed in the First Amendment of U.S. Constitution and further codified in 42 U.S.C. § 2000bb, Religious Freedom Restoration Act.

⁵² See reg. section 508-(c)(i)(a)

⁵³ See Public Law 91-172 approved December 22, 1969 by the U.S. House vote 381 to 2, and U.S. Senate 71 to 6, signed by the President December 30, 1969.

⁵⁴ See reg. section 6033.

⁵⁵ See reg. section 6033(a)(3).

⁵⁶ See General Explanation of the Tax Reform Act of 1969 H.R. 13270, 91st Congress, Public Law 91-172 Prepared by the Staff of the Joint Committee on Internal Revenue Taxation page 55, December 3, 1970

⁵⁷ *Id* at 54

⁵⁸ *Id* at 55, “These notice requirements do not apply to churches and their integrated auxiliaries....to conventions or associations of churches”

A 508(c)(1)(a) FBO tax exemption stems from the First Amendment and is not a government subsidy. Some arguments have been presented supporting speech restrictions on politics and legislation for churches as necessary so government does not subsidize religion. This viewpoint does not comport by definition and is a well settled matter of case law.

The legal definition of “exemption” is “freedom from a duty, liability, or other requirement; an exception”.⁵⁹ The legal definition of a “subsidy” is “a grant, usually made by the government, to any enterprise whose promotion is considered to be in the public interest. Although governments sometimes make direct payments (such as cash grants), subsidies are usually indirect...”⁶⁰ It is clear that 508(c)(1)(a) FBO’s do not receive a government subsidy. A subsidy occurs when money changes hands between the government and the organization. A subsidy is determined by the government whereas an exemption is not. A subsidy is allocated and monitored by the government whereas an exemption is not. Therefore, tax exemption of churches does not amount to subsidizing speech.

It is well settled by our U.S. Supreme Court that granting churches tax exemption is not government subsidizing religion. In *Waltz v Tax Commission New York* our U.S. Supreme Court made clear granting a tax exemption to churches is not a government subsidy. The court stated, “In analyzing either alternative the questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement”....”The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state”...and, “There is no genuine nexus between tax exemption and establishment of religion.”⁶¹

Revisiting the U.S. Supreme Court’s well settled jurisprudence case on content-based tax exemptions is *Arkansas Writers’ Project, Inc. v. Ragland*.⁶² In this case government agencies and officials who pick and choose some organizations to receive tax exemption and others not based on the content of their speech was ruled unconstitutional. In this case the court held that discrimination “on the basis of the content of the message cannot be tolerated under the First Amendment.”⁶³

All donations to a 508(c)(1)(a) FBO’s are tax deductible to donors to the fullest extent of law. Section 170(b) of the IRC states donations are automatically tax deductible to “churches or a convention or association of churches.”

A 508(c)(1)(a) FBO has free speech rights. All 501(c)(3) organizations have speech restrictions. Nowhere in the U.S. Constitution are FBO’s speech and legislative rights restricted. These restrictions come solely from the Tax Code as amended in 1954. These restrictions apply only to organizations that apply and are approved under the Tax Code. If an organization is not organized as a 501(c)(3), these restrictions do not apply. In fact, there are many different types of non-profits and they do not all have the same restrictions

⁵⁹ See Blacks Law Dictionary 9th Edition for legal definition of “Exemption”

⁶⁰ See Blacks Law Dictionary 9th Edition for legal definition of “Subsidy”

⁶¹ See *Waltz v. Tax Comm’n*, 397 U.S. at 397 U.S. 674 (1970)

⁶² See *Arkansas Writers Project, Inc. v. Ragland* 481 U.S. 221 (1987)

⁶³ *Id* at 221, 230

or benefits. Our government already allows some non-profits tax-exemption when they influence legislation and speak directly on politics. For example, Congress has established and approved Political Action Committees (PAC's)⁶⁴ to be exempt from income tax and allows Veteran's Organizations⁶⁵ to be tax exempt and enjoy unlimited lobbying.

508(c)(1)(a) FBO's have no annual income tax filing requirement, such as, Form 990. A 508(c)(1)(a) organization is also not required to keep records, render statements under oath, nor comply with rules and regulations for reporting that the IRS may from time to time prescribe.⁶⁶ All non 501(c)(3) FBO organizations are required to file a tax return each year. If they do not file returns timely the organizations tax exemption is automatically revoked after three years.⁶⁷

Section 508(c)(1)(a) organizations, since they are not of record with the IRS, are not exposed to public scrutiny. In the case of Section 501(c)(3) entities, all applications and subsequent correspondence are available to any who request it, including those who are opposed or hostile toward religion.⁶⁸

The Religious Freedom Restoration Act (RFRA) applies to 508(c)(1)(a) organizations as equally as a person. RFRA prohibits Government "from substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§2000bb-1(a), (b) (emphasis added). FBO's are unique because furthering their religious "autonomy ... often furthers individual religious freedom as well." (quoting *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U. S. 327, 342 (1987) (Brennan, J., concurring in judgment)). Not only does RFRA apply to nonprofit corporations, the U.S. Supreme Court held it applies to for-profit corporations. "RFRA was designed to provide very broad protection for religious liberty. By enacting RFRA, Congress went far beyond what this Court has held is constitutionally required."⁶⁹ The court held that "Congress provided protection for people like the Hahns and Greens by employing a familiar legal fiction: It included corporations within RFRA's definition of "persons."⁷⁰

II. Conclusion

There remains a heavy price for FBO's organizing and operating with 501(c)(3) speech restrictions. Churches and church ministries do not have to live in fear of losing their tax exempt status for speech on leadership, legislation, and politics. Pastors can speak the truth without compromise. People do have a choice in how they form their FBO. What will churches and church ministries do to meet the challenges and increased need to speak the truth without fear or compromise and train Godly leaders consistent with their beliefs? Make sure your FBO has a strong and lasting foundation to make a positive and lasting difference. Make sure your FBO is a 508(c)(1)(a).

⁶⁴ See reg. section 501(c)(4) ⁶⁵ See reg.

section 501(c)(19) ⁶⁶ See reg. section 6033(a)(3).

⁶⁷ See Pension Protection Act of 2006, Public Law 109-280

⁶⁸ See reg. section 6104.

⁶⁹ See *Burwell v. Hobby Lobby*, 573 U.S. ___ (2014). As discussed, n. 3, *supra*, in *City of Boerne* we stated that RFRA, by imposing a least-restrictive-means test, went beyond what was required by our pre-*Smith* decisions.

⁷⁰ *Id*