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IRS Can't Tax Churches, But Fake Ones Can Trigger Tax Evasion Charges

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Churches don't pay taxes, and donations to churches are tax deductible. But what qualifies as a church can be debated. The stakes are high, as a Virginia couple is learning. A grand jury has [indicted a Concord, Virginia couple for filing false federal tax returns and conspiring to structure currency transactions](#). The husband, Barry Edwards, was also charged with tax evasion and corruptly endeavoring to impede the internal revenue laws. The [indictment](#) alleges that Barry Edwards, age 53, and his wife, Joanne Edwards, 49, created two purported religious missions in 2006. Prosecutors claim that they used the entities as nominees to receive income that Barry Edwards earned selling nutritional supplements.

The indictment claims that Barry and Joanne Edwards deposited this income into bank accounts they held in the nominee names. According to prosecutors, the couple withdrew more than \$400,000 in cash from the nominee accounts. What's more, the feds say they took the withdrawals in increments of less than \$10,000, to evade bank-reporting requirements. They allegedly then deposited the funds into their personal bank accounts to pay personal expenses, including car payments and their children's tuition. Barry Edwards also allegedly used the funds to purchase a five-acre farm in Concord, Virginia. According to the indictment, they did not report this income on their 2013 or 2014 tax returns.

The indictment claims that Barry Edwards corruptly endeavored to impede the internal revenue laws by establishing nominee entities, directing that his income be paid to them and filing false tax returns for 2013 through 2015 that omitted this income. This is just an indictment, of course, and the defendants are presumed to be innocent until proven guilty beyond a reasonable doubt. Still, these are serious charges.

If convicted, Barry and Joanne Edwards each face a maximum statutory sentence of five years in prison for the conspiracy charge, and a maximum statutory sentence of three years in prison for *each* count of filing a false tax return. Barry Edwards also faces a maximum statutory sentence of five years in prison for each tax evasion count and a maximum statutory sentence of three years in prison for corruptly endeavoring to

impede the internal revenue laws. They also face a term of supervised release, restitution and monetary penalties.

The interaction of taxes and religion is strange. Take the so-called parsonage allowance, a tax break allowed by [Section 107](#) of the tax code, dating to the 1920s. That was the era of [Elmer Gantry](#), a shallow, philandering hypocrite portrayed by [Burt Lancaster](#) in the movie. The parsonage allowance says an ordained member of the clergy can live tax-free in a home owned by his or her religious organization.

The Church of Compassionate Service is discussed in [U.S. v. Hartshorn](#). There, the IRS got an injunction to silence Head Minister Kevin Hartshorn. Mr. Hartshorn had 50 ministers under his wing, telling them not to pay the IRS. When the IRS had enough it went to court to enjoin the Head Minister from preaching his no-tax mantra. Mr. Hartshorn lost, appealed, and lost again when the appeals court ruled for the IRS. Thus, Mr. Harshorn failed to [shake the injunction](#). Mr. Hartshorn's claims about free speech didn't help him either. Even if the church was legit, the court said, Hartshorn's plan wasn't. What's more, Hartshorn's knew his "you-don't-have-to-pay-taxes" mantra was false. Even if he didn't, he should have known.

There are many tax advantages of church status. Churches reap a vast array of tax advantages. They even include [special rules limiting IRS authority to audit a church](#). A "church" is not specifically defined in the tax code, but the IRS lays out buzzwords in its [tax guide for churches and religious organizations](#), including these characteristics:

1. Distinct legal existence;
2. Recognized creed and form of worship;
3. Definite and distinct ecclesiastical government;
4. Formal code of doctrine and discipline;
5. Distinct religious history;
6. Membership not associated with any other church or denomination;
7. Organization of ordained ministers;
8. Ordained ministers selected after completing prescribed study;
9. Literature of its own;
10. Established places of worship;
11. Regular congregations;
12. Regular religious services;
13. Sunday schools for religious instruction of the young; and
14. Schools for preparing its members.

The IRS considers all facts and circumstances in assessing whether an organization qualifies. But unlike other exempt organizations, a church need not actually [apply for tax exemption](#).

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.