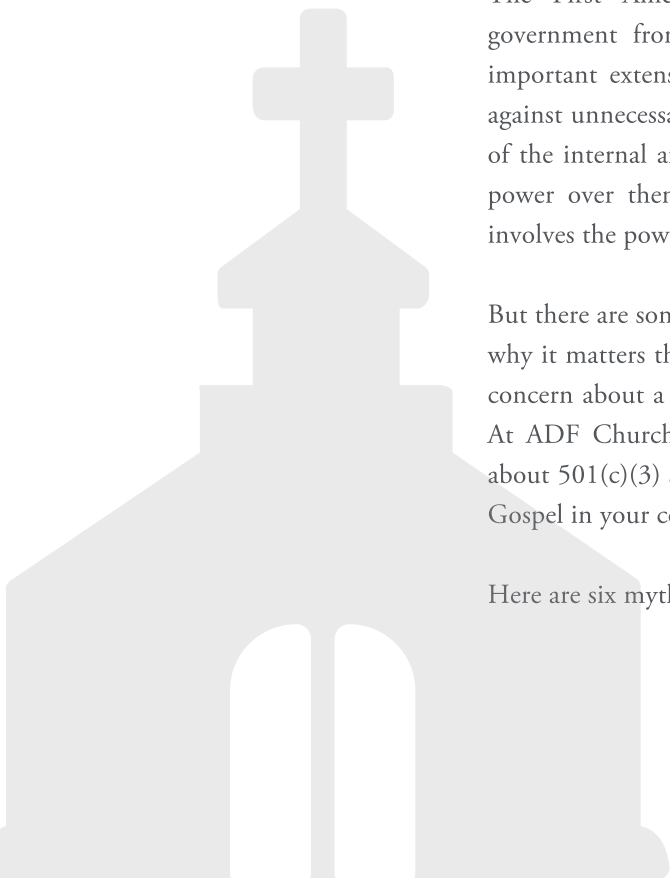


# DEBUNKING

## 6 MYTHS ABOUT CHURCHES' 501(C)(3) STATUS



The First Amendment's Free Exercise and Establishment Clauses prevent the government from intruding into a church's internal affairs. Tax exemption is an important extension of the First Amendment's protection that helps guard churches against unnecessary government interference. Tax exemption keeps the government out of the internal affairs of churches and places an important check on the government's power over them. After all, as Justice John Marshall once said, "the power to tax involves the power to destroy."

But there are some common myths about churches' tax-exempt status, why it exists, and why it matters that should be addressed. These myths cause unnecessary confusion and concern about a tax policy that is actually beneficial for churches and good for society. At ADF Church Alliance, we want to help your church cut through the confusion about 501(c)(3) status so that your church can benefit from it as you seek to spread the Gospel in your community.

Here are six myths that we hear most often—followed by the facts.

1

**MYTH: CHURCHES ARE NOT SUBJECT TO SECTION 501(C)(3) OF THE FEDERAL TAX CODE.**

The truth is all churches are subject to section 501(c)(3) of the federal Tax Code whether they apply for recognition as a 501(c)(3) organization or not. Churches are not required to apply for recognition from the IRS, but that does not remove them from the Tax Code requirements.

2

**MYTH: CHURCHES THAT DO NOT APPLY TO THE IRS FOR 501(C)(3) RECOGNITION ARE FREE FROM GOVERNMENT REGULATION.**

The truth is all churches must abide by the federal Tax Code regardless of whether they have applied for IRS recognition of tax-exempt status. This issue has been litigated, and federal courts have clearly held that churches are subject to section 501(c)(3). This means that all churches are subject to some government regulation but their income is nevertheless not taxable at the federal level.

3

**MYTH: CHURCHES THAT DO NOT INCORPORATE ARE NOT SUBJECT TO REGULATION BY THE IRS.**

Some mistakenly believe that if their church never incorporates, then the IRS (and any other state government or federal agency) cannot regulate or control their church. A similar myth is that if a church un-incorporates, creates a “corporation sole,” or some other unique corporate status, that it will remove itself from government control.

The truth is a church’s corporate status has no effect on its regulation by the IRS under the Tax Code. The IRS regulates both incorporated and unincorporated organizations. Just because a church is not incorporated does not mean it gets a free pass from federal tax laws and regulations, or any other federal, state, and local laws and regulations.

# 4

## **MYTH: CHURCHES THAT INCORPORATE OR APPLY TO THE IRS FOR TAX EXEMPTION GIVE UP THEIR FREEDOM.**

The truth is churches do not give up their constitutional rights by incorporating or applying for a 501(c)(3) letter from the IRS. Churches retain their constitutional rights no matter what corporate form or tax letters they receive from the government.

That is not to say that the federal government never overreaches when it comes to churches. For example, the Johnson Amendment in section 501(c)(3) of the Tax Code restricts what a pastor can preach from the pulpit on the issue of candidates in an election. Every church is subject to the Johnson Amendment regardless of whether it incorporates, seeks recognition as a church, or attempts to take on a unique corporate form to prevent government control.

# 5

## **MYTH: REGISTERING YOUR CHURCH AS A 508(C)(1)(A) INSTEAD OF AS A 501(C)(3) PROVIDES MORE FREEDOM FOR YOUR CHURCH.**

Some incorrectly claim that by becoming a “508(c)(1)(a)” instead of a “501(c)(3)” churches can skirt government interference and control. This is an unfortunate misunderstanding of these two sections of the Tax Code. As the first debunked myth above points out, all churches are subject to section 501(c)(3) of the federal Tax Code whether they apply for recognition as a 501(c)(3) organization or not. All section 508(c)(1)(A) does is exempt churches from having to file Form 1023 to apply for recognition as a 501(c)(3) organization. Remember, churches, by their very nature, are automatically income tax exempt. Section 508(c)(1)(A) merely provides that they do not have to file Form 1023 to obtain 501(c)(3) recognition of tax-exempt status.

# 6

## **MYTH: CHURCHES SHOULD FEAR THE IRS AS A POWERFUL AGENCY THAT CAN WREAK HAVOC ON THEM.**

Many churches fear the IRS because they have heard stories of abuses of power, or perhaps they know someone who went through a particularly painful audit.

The truth is the IRS is subject to legal restrictions that curtail its power over churches. For instance, Congress passed the Church Audit Procedures Act in 1984, which requires the IRS to abide by significant restrictions when deciding to audit a church and how to conduct the audit. The IRS is also constrained by the unique status churches have under the federal Tax Code. Churches are considered automatically exempt from income taxes, and this unique status provides beneficial protections for churches. While government can abuse its powers, churches should not fear the IRS.

## HOW WE CAN HELP YOUR CHURCH

You don't have to navigate these complex religious liberty legal issues alone. We're here to serve you. If you have questions about a legal issue for your church, let us be your first call. We can help identify if you are facing a religious liberty issue or not. And even if your legal issue does not relate to religious liberty, we can likely help point you in the right direction.

## CONTACTING ADF

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We strongly recommend having one of our attorneys review your church's governing documents and policies.

To begin the document review process, visit [My.ADFChurchAlliance.org](http://My.ADFChurchAlliance.org), log in, and click "Document Review" under the "Contact Us" header.



*The information included in this guide is designed to be an educational resource and does not constitute legal advice. For specific questions or legal issues related to religious freedom, we encourage you to contact us directly.*