ID: CCA_2015042206404711 [Third Party Communication:

UILC: 6331.00-00 Date of Communication: Month DD, YYYY]

Number: **201520009**
Release Date: 5/15/2015

From: [redacted]
Sent: Wednesday, April 22, 2015 6:40:47 AM
To: [redacted]
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Subject: FW: Follow-Up to Call to Branch 6

You asked about the applicability of the Religious Freedom Restoration Act (RFRA), 42 USC § 2000bb, et seq, to seizure of property owned by a church. IRM 5.10.2.7 requires Area Counsel approval of proposed seizures of assets of a religious organization. The IRM requires consideration of the sensitive nature of such seizures, consideration of alternative methods of resolution, and consideration of the implications of the RFRA.

The RFRA provides that the government shall not "substantially burden" a person's exercise of religion unless it demonstrates that application of the burden is in furtherance of a compelling government interest and it is the least restrictive means of furthering that compelling government interest. Thus, the initial test born by the challenger is whether there is a "substantial burden" being placed by the government action upon his or her free exercise of religion. See 1997 GLB LEXIS 12, and cases cited therein.

We do not believe that seizure of property or assets owned by a church but not directly used in the practice of the religion, such as property owned by the church that is rented for individual residences, would create a "substantial burden" upon the free exercise of religion. At most, it may only have an incidental effect. *See United States v. Philadelphia Yearly Meeting of the Religious Society of Friends*, 322 F.Supp.2d 603, 608 (E.D. Penn. 2004) ("RFRA does not explain what constitutes a 'substantial burden' on the exercise of religion. However, a useful definition derived from the Supreme Court's pre-*Smith* decisions is that it arises when the Government 'puts substantial pressure on an adherent to modify [her] behavior and to violate [her] beliefs' or 'forces an individual to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion.' *Branch Ministries v. Rossotti*, 40 F. Supp. 2d 15, 25 (D.D.C. 1999), *quoting Sherbert v. Verner*, 374 U.S. 398, 404, 10 L. Ed. 2d 965, 83 S. Ct. 1790 (1963), and *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 718, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981)."). Seizure of property owned by a church, but not used in the practice of religion, does not fall within that definition.

Even if the “substantial burden” threshold is established, however, the next prong of the RFRA allows the government to establish an exception for a “compelling government interest” which is the “lease restrictive means” of furthering that interest. See 2012 IRS CCA LEXIS 180 (IRS CCA 201248020), and cases cited therein. Again, there are numerous cases which have recognized the compelling interest of the government in assessing and collecting unpaid tax liabilities. We are not aware of any cases finding a violation of the RFRA for actions taken to assess or collect a tax. Determining the “least restrictive means” of collection must be analyzed on a case-to-case basis. Generally, as instructed in the IRM, the IRS will attempt alternative methods of resolution before resorting to administrative seizure.

Thus, the RFRA does not bar the application of the tax laws or tax collection remedies, such as administrative seizure and sale of church-owned property. As noted, the Service should always take into account the sensitive nature of such seizures. Note also there may be additional requirements for seizures of certain types of property. For example, IRM 5.10.2.2(1) requires Area Director approval prior to seizure of property used as a personal residence by any person, including property owned by a taxpayer and rented to others for residential use.

Please let us know if we can be of further assistance.