under section 6033(a)(2)(B). Rev. Proc. 86–23 states that Notice 84–2 is superseded by Rev. Proc. 86–23 because the organizations excused from filing under the notice are excused from filing by the revenue procedure. The commentators have expressed concern that the proposed regulations did not relieve church pension plans described in Notice 84–2 from the filing requirement. The organizations excused from filing under Notice 84–2 do not necessarily meet the definition of an integrated auxiliary of a church under these final regulations. Nevertheless, the proposed regulations were not intended to alter the exemption from filing provided in Notice 84–2 and reaffirmed in Rev. Proc. 86–23. To make this intent clear, the IRS is issuing Revenue Procedure 96–10 at the same time that it issues these final regulations. Rev. Proc. 96–10 carries over the exemption from filing for church pension plan organizations that was set forth in Notice 84–2. Having reaffirmed those parts of Rev. Proc. 86–23 that were not incorporated into these final regulations, Rev. Proc. 96–10 also obsoletes Rev. Proc. 86–23.

The IRS developed the internal support test contained in the proposed regulations based on its conclusion that Congress intended that organizations receiving a majority of their support from public and government sources, as opposed to those receiving a majority of their support from church sources, should file annual information returns in order that the public have a means of inspecting the returns of these organizations. The annual information return also was intended to serve as a means by which the IRS could examine, if necessary, those organizations receiving substantial non-church support.

One commentator has suggested that the definition of an integrated auxiliary of a church should consist of a church-related structural test rather than an internal support test. The IRS and the Treasury Department believe that the use of a structural test could lead to problems similar to those caused by the ''exclusively religious'' test. Additionally, the suggested definition would frustrate Congress' intended objective of allowing ongoing public scrutiny of organizations receiving the majority of their support from public and government sources.

A commentator has also suggested that by using the internal support test as part of the new definition of an integrated auxiliary of a church, the IRS is attempting to ''overrule'' the holdings in the previously mentioned court cases (i.e. *Tennessee Baptist Children's Home* and *Lutheran Social Service of Minnesota*).

The IRS and the Treasury Department believe that the courts' rulings questioned the validity of the ''exclusively religious'' activity requirement contained in the former regulation on the basis that it is not within the Service's discretion to assess the religious nature of a church's activities. Having eliminated the ''exclusively religious'' activity test from the definition of integrated auxiliary of a church, the IRS and the Treasury Department believe that the definition in the final regulation is consistent with the courts' holdings as well as the statute and the legislative history.

Some commentators have suggested that the first sentence of § 1.6033–2(g)(5)(iv) of the regulations in effect prior to this Treasury decision should be included in the final regulations. That sentence identified specific types of organizations as integrated auxiliaries of churches in accordance with legislative history. Although § 1.6033–2(h) of the proposed regulations was intended to provide a general definition that could apply in all instances, the IRS and the Treasury Department agree that, in order to be consistent with the legislative history, parts of § 1.6033–2(g)(5)(iv) of the regulations should be included in these final regulations. Therefore, these final regulations include § 1.6033–2(h)(5) that states that ''a men's or women's organization, a seminary, a mission society, or a youth group'' is an integrated auxiliary of a church regardless of whether it meets the internal support test in to § 1.6033–2(h)(1)(iii). (The tests under § 1.6033–2(h)(1) (i) and (ii) must still be met.)

Comments were received objecting that *Example 4* relating to seminaries did not describe a realistic set of facts and, therefore, could lead to confusion. Accordingly, *Example 4* has been eliminated. Also, the treatment of seminaries has been clarified by § 1.6033–2(h)(5). We also note that, in addition to the exception for seminaries, § 1.6033–2(g)(1)(vii) of the regulations excepts certain schools below college level that are affiliated with a church or operated by a religious order from the filing requirements of section 6033. Except for a paragraph numbering change contained in a cross-reference, § 1.6033–2(g)(1)(vii) is unchanged by these final regulations.

Several commentators have suggested that expanded definitions of certain terms used in the internal support test be included in this Treasury decision. The final regulations do not incorporate this suggestion. The IRS and the Treasury Department intend for these final regulations to reissue the test published in Rev. Proc. 86–23 as the new definition for an integrated auxiliary of a church. If guidance is necessary on the application of the definition to specific cases, that guidance is more appropriately provided in non-regulatory form, such as through private letter rulings or revenue rulings.

The amendment to § 1.6033–2(g)(5) is effective with respect to returns filed for taxable years beginning after December 31, 1969. However, for returns filed for taxable years beginning after December 31, 1969, but before December 20, 1995, the exclusively religious test contained in § 1.6033–2(g)(5) prior to its amendment by these final regulations may, at the entity's option, be used as an alternative to the financial support test in determining whether an entity is an integrated auxiliary of a church. The remainder of the amendments are effective with respect to returns for taxable years beginning after December 31, 1969. Therefore, for returns filed for taxable years beginning after December 20, 1995, the definition of integrated auxiliary of a church contained in § 1.6033–2(h) will be used in determining whether an entity is an integrated auxiliary of a church.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore,a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this Treasury decision is Terri Harris, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.