

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI**

Will McRaney,

Plaintiff,

v.

The North American Mission Board of the
Southern Baptist Convention, Inc.,

Defendant.

Case No. 1:17-cv-00080-GHD-DAS

Declaration of Charles R Lindsay, CPA

1. I am Charles R Lindsay, CPA. I am a CPA licensed in the State of Mississippi. My professional memberships include the American Institute of Certified Public Accountants and the Mississippi Society of Certified Public Accountants. I have over 39 years experience practicing public accounting. A significant amount of my practice is devoted to serving nonprofit clients audit, accounting and taxation needs. I helped establish the Mississippi Society of Certified Public Accountants Committee on Nonprofit Accounting. Since its inception, I have either served on or chaired this committee. I have also served as a member of the American Institute of Certified Public Accountant's National Nonprofit Accounting Conference committee. I am currently Vice President and a shareholder in Matthews, Cutrer & Lindsay, PA.
2. I have been engaged to provide testimony about supporting organizations in the above referenced matter.
3. I understand that the Plaintiff, Will McRaney, was employed by the Baptist Convention of Maryland/Delaware ("BCMD"), and that Dr. McRaney and BCMD entered into an agreement, entitled Separation Agreement and Release, dated July 16, 2015. I have reviewed this entire agreement.
4. I understand that the Defendant, the North American Mission Board of the Southern Baptist Convention, Inc. ("NAMB") has asked the Court to enter partial summary judgment in its favor, claiming that it was released under

the terms of the McRaney-BCMD Agreement because, according to NAMB, NAMB was a supporting organization of the Baptist Convention of Maryland/Delaware. I have reviewed this entire filing with the Court.

5. In my practice as a CPA, I have worked extensively with non-profit organizations and I have acquired substantial knowledge of supporting organizations.
6. A supporting organization, in the United States, is a public charity that operates under the U.S. Internal Revenue Code in 26 USCA 509(a)(3).¹ It is a charity that carries out its exempt purposes by supporting other exempt organizations, usually other public charities. See also *Philanthropy Dictionary* | *Philanthropy Terms* | *NPTrust*
7. The Law of Tax Exempt Organizations states the following definition of a Supporting Organization: "A category of organization that is a public charity is the supporting organization. A supporting organization must be sufficiently related to one or more qualified supported organizations, which usually are institutions and/or publicly supported organizations. A supporting organization must be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more qualified supported organizations. This type of organization must be operated, supervised, or controlled by one or more qualified supported organizations, supervised or controlled in connection with one or more such organizations, or operated in connection with one or more such organizations."²
8. Tax Planning and Compliance for Tax-Exempt Organizations outlines three unique organizational and operational tests which must be met for organizations seeking to be classified by the Internal Revenue Service as supporting organizations. They are as follows:
 - a. It must be organized, and at all times, thereafter, operated exclusively for the benefit of, to perform the functions of, or carry out the purposes of one or more specified public charities;
 - b. It must be operated, supervised, or controlled by or in connection with one or more public charities; and
 - c. It cannot be controlled, directly or indirectly by one or more disqualified persons.

Included in Appendix A to this report is a chart summarizing these tests and the relationship test that must be met to qualify as a supporting organization.³

¹ See Supporting organization (charity) - Wikipedia

² The Law of Tax-Exempt Organizations, Bruce R. Hopkins

³ Tax Planning and Compliance for Tax-Exempt Organizations, Jody Blazek

9. A supporting organization, recognized by the IRS, may request IRC 509(a)(3) status either 1) when it initially files a Form 1023 application for IRC 501(c)(3) exemption, or 2) subsequently, by requesting a determination letter that changes its existing foundation status. Form 1023 is generally filed within 27 months of an organization being formed along with the applicable non-refundable user fee required by the IRS. As a charitable organization, to qualify for tax-exempt status, the organization should meet the following requirements:
 - i. The organization must be organized and operated exclusively for religious, education scientific or other charitable purposes;
 - ii. Net earnings may not inure to the benefit of any private individual or shareholder;
 - iii. No substantial part of its activity may be attempting to influence legislation;
 - iv. The organization may not intervene in political campaigns; and
 - v. The organization's purposes and activities may not be illegal or violate fundamental public policy.

10. The IRS annual filing requirements state that a section 509(a)(3) supporting organization must file Form 990 or 990-EZ on an annual basis. A special requirement for supporting organizations states that they must file annually even if they might otherwise meet exemptions from filing, when 1) its gross receipts are normally \$50,000 or less, 2) it is a church or church-affiliated organization described in Revenue Procedure 96-10, or 3) it is an affiliate of a governmental unit.

Annual Filing Requirements for Support Organizations | Internal Revenue Service (irs.gov) state that the following supporting organizations are not required to file an annual return:

- i. An integrated auxiliary of a church described in Treasury Regulations Section 1.6033-2(h),
 - ii. The exclusively religious activities of a religious order, or
 - iii. An organization, the gross receipts of which are normally not more than \$5,000, that supports a section 501(c)(3) religious organization.
-
11. Given there are special tax rules that apply to churches, it is important to distinguish between churches and religious organizations. The use of the term church, also includes conventions and associations of churches as well as integrated auxiliaries of a church. These references differ from religious organizations. The special tax rules are not afforded to religious organizations such as nondenominational ministries, interdenominational and ecumenical organizations, and other entities whose principal purpose is the study or advancement of religion.⁴ In determining if NAMB is a bona fide supporting organization, it is imperative to determine if NAMB qualifies

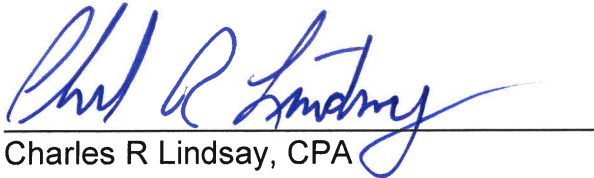
⁴ Internal Revenue Service Publication 1828 - Tax Guide for Churches & Religious Organizations

under the special tax rules that apply to churches or as a religious organization. The documentation NAMB has filed with the court (documents 79 & 80) does not establish, or even support, that NAMB meets the criteria as a church and therefore would not be afforded the special tax treatment as a supporting organization.

12. NAMB relies on an affidavit from Carlos Ferrer, dated October 18, 2018, in support of its motion. However, even if true, the Affidavit does not establish, or even support, that NAMB was a supporting organization of BCMD at any point, or around July 2015, when the Separation Agreement was signed.
13. In addition, NAMB relies on an affidavit from Tom Stolle, dated October 3, 2018, in support of its motion. However, even if true, the Affidavit does not establish, or even support, that NAMB was a supporting organization of BCMD at any point, let alone in or around July 2015, when the Separation Agreement was signed.
14. In order to determine if NAMB was a supporting organization of BCMD, and when, more information is required that has not been submitted to the Court. At a minimum, relevant information needed to make a definite determination includes the following, for the relevant periods:
 - NAMB's organizing documents;
 - NAMB's approved by-laws;
 - Amendments to NAMB's by-laws along with effective dates;
 - IRS Form 1023 – Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, filed by NAMB, along with any attachments;
 - Description of the authority and power exercised over NAMB by BCMD;
 - Description of the authority of BCMD to appoint or remove officers and directors of NAMB's Board of Directors;
 - List of individuals serving on NAMB's Board of Directors along with dates of service for each individual. The listing should identify board members who had a relationship, at the time of service, with BCMD and provide a description of that relationship;
 - Copies of NAMB's annual tax filings including IRS Form 990 and/or IRS Form 990-EZ;
 - Copies of all communications between NAMB and the Internal Revenue Service;
 - Copies of the annual financial reports NAMB provided to BCMD;

- Description of activities and programs operated by NAMB that were not in support of or connected with BCMD; and
- Details showing sources of annual support NAMB received in enough detail to determine if a majority of NAMB's support was from internal sources rather than from government and other outside sources.

I declare under penalty of perjury that the foregoing is true and correct.



Charles R Lindsay, CPA

Date: September 20, 2021

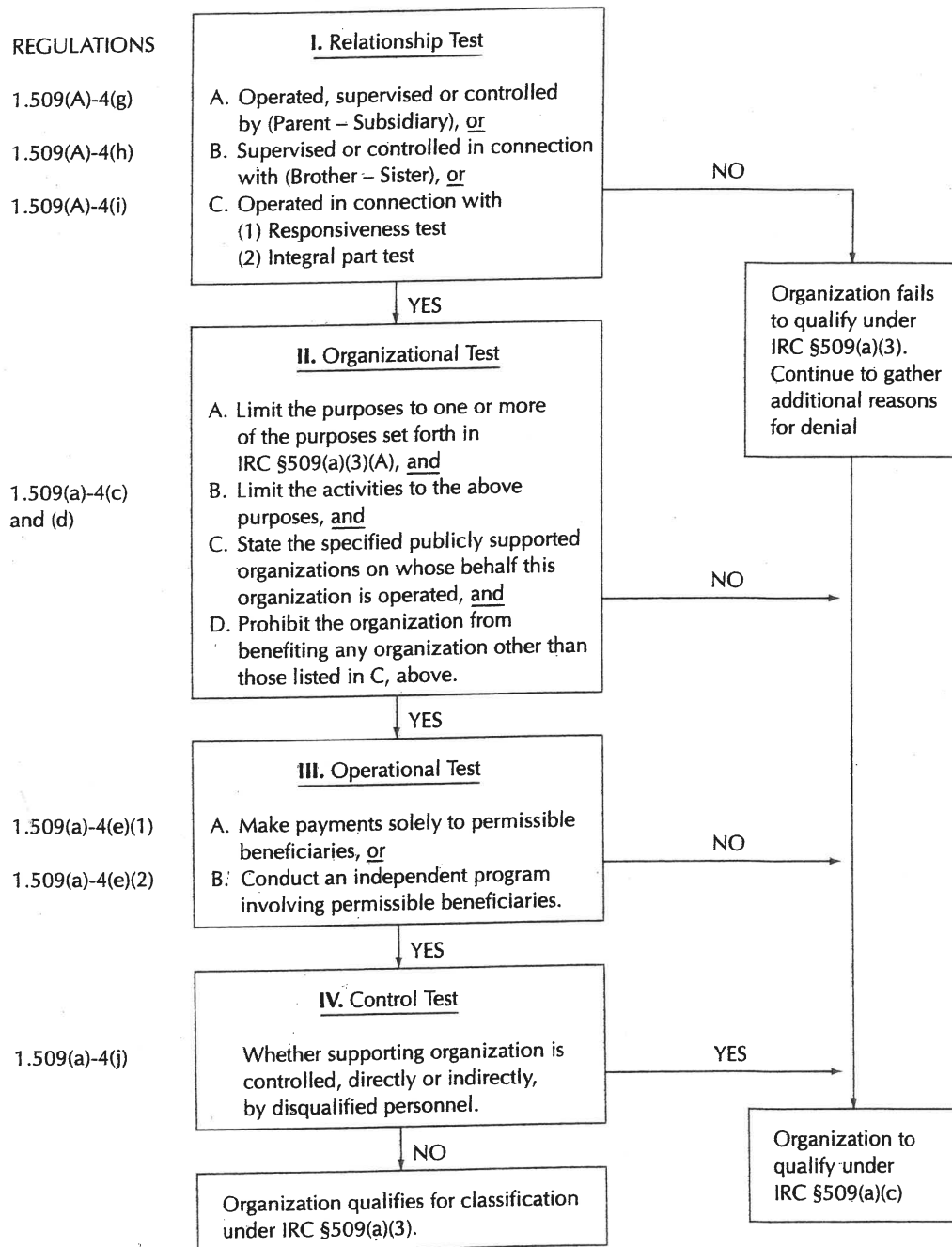
Appendix A

11.6 SUPPORTING ORGANIZATIONS: §509(a)(3)

Exhibit 11-4

BASIC STEPS IN MAKING AN IRC §509(a)(3) DETERMINATION

Of the tests set forth in the statute, the relationship test of IRC §509(a)(3)(B) is the most important. Therefore, whether there is a proper relationship between the organizations should be determined first. The order to proceed in making a determination under IRC §509(a)(e) is as follows:



Source: Chart prepared by Jeanne S. Gessay, Chief of Exempt Organization Rulings Branch II, IRS National Office, Washington, DC.