

we think you should  
have a copy for your  
file - this is it,  
Christy

UNITED STATES TAX COURT

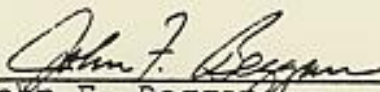
URANTIA FOUNDATION,  
Petitioner,  
v.  
COMMISSIONER OF INTERNAL  
REVENUE,  
Respondent.

**CONFIDENTIAL**

Docket No. 2480-81

REQUEST FOR PLACE OF SUBMISSION

Petitioner, in accordance with Rule 212 of this Court's Rules of Practice and Procedure, requests that this matter be submitted to the Court in Chicago, Illinois. Petitioner expects the action would be ready for submission to the Court as soon as the answer of the respondent is filed and Petitioner estimates the time required for submission of the matter to the Court would be two hours.

  
\_\_\_\_\_  
John F. Beggs  
Counsel for Petitioner  
Gardner, Carton & Douglas  
One First National Plaza  
Suite 3300  
Chicago, Illinois 60603  
Telephone: (312) 726-2452

UNITED STATES TAX COURT

URANTIA FOUNDATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. <u>2480-81</u>
	)	
COMMISSIONER OF INTERNAL	)	
REVENUE,	)	
	)	
Respondent.	)	

PETITION FOR DECLARATORY JUDGMENT  
(EXEMPT ORGANIZATION)

Urantia Foundation hereby petitions for a declaratory judgment regarding its qualification as an exempt organization and alleges as follows:

(1) The petitioner is a common law trust with its principal office at 533 Diversey Parkway, Chicago, Illinois 60614.

(2) On May 8, 1980, petitioner filed a request for a determination with the Commissioner of Internal Revenue, Washington, D.C. 20224 regarding its qualification as a non-private foundation under Section 509(a)(2)(ii) of the Internal Revenue Code, and this request was supplemented by a letter dated September 16, 1980.

(3) The petitioner is an exempt organization under Section 501(c)(3) of the Code since December, 1959, and it has been a non-private foundation under Section 509(a)(2) of the Code since November, 1970. It is the continuing qualification as a non-private foundation under Section 509(a)(2) which is at issue.



(4) The petitioner has exhausted its administrative remedies within the Internal Revenue Service.

(5) By letter dated November 13, 1980, the respondent issued a determination which adversely affects the continued qualification of the petitioner as a non-private foundation under Section 509(a)(2), and a copy of that determination is attached as Exhibit A.

(6) The respondent's determination is erroneous in that it is based upon the following errors:

(a) The respondent erroneously determined that the chain bookstores which purchase the petitioner's books for resale and not the individual ultimate purchasers are the persons described in Section 509(a)(2) of the Code and that sales to the chain bookstores must be taken into account when applying the public support test of Section 509(a)(2).

(b) The respondent erroneously determined that a policy adopted by the petitioner permitting unconditional returns of books purchased by chain bookstores was not the functional equivalent of a consignment or agency agreement permitting the ultimate individual purchasers to be considered the purchasers of the petitioner's books.

(7) The facts upon which the petitioner relies are as follows:

(a) The principal charitable purpose of petitioner is the publication and dissemination of a book entitled The Urantia Book ("Book"), a religious and philosophical volume of high character. Additional purposes of the petitioner are the maintenance of the integrity of the Book, through vigilance over its copyright; and the maintenance of the trademarks and servicemarks, consisting of the words "Urantia" and "Urantian," and the Concentric-Circles Symbol, which marks are used in conjunction with the petitioner's activities.

(b) For many years no bookstore or individual made more than \$5,000 worth of Book purchases in one year from the petitioner, because the bookstore business was highly decentralized and the sales price of the Book was low.

(c) In recent years, the large chain bookstores have been capturing an increasingly larger share of the bookstore market. For example, in 1978 the petitioner sold approximately 935 volumes of the Book to Walden Book Company for distribution to approximately 350 outlets around the United States, which, prior



to the chain store era, would have been separate legal entities.

(d) In addition, the cost of publishing the Book has been steadily increasing, having risen almost 300% in 24 years, thereby making it increasingly easier for one purchaser to exceed the \$5,000 annual level in a year. For example, in 1955 the petitioner sold 1,300 volumes of the Book for \$7,800, and in 1979 it sold 10,613 volumes for \$187,140.

(e) In order to fulfill its purpose, Urantia must continue to sell the Book to chain bookstores, and, if it is forced to limit such sales to \$5,000 or 1% of its support for a taxable year, its ability to reach the public and receive broad public support then would be severely circumscribed.

(f) Although the petitioner technically sells the Book to chain bookstores, the actual purchaser and ultimate consumer of the Book is the customer of the chain store who is, in substance, the person purchasing the Book.

(g) Even before the adoption of an unconditional returns policy, twenty-four years of experience shows that the chain bookstores have never had much risk of loss in connection with handling the Book, and they are completely

independent of and have no interest in supporting the petitioner's purposes.

(h) The petitioner attempted to determine whether it would be possible to create an agency relationship or consignment relationship with the chain bookstores, whereby the petitioner would retain legal title to the Books until sold to the ultimate purchaser, but it discovered that such arrangements could not be made.

(i) Therefore, the petitioner proposed adopting an unconditional returns policy, under which the Books may be returned to the petitioner by the chain bookstores at any time, with no minimum or maximum holding period, for any reason with no preconditions, and receive a full cash refund for the amount originally paid to the petitioner for the Books.

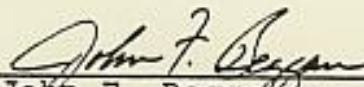
(j) Under this policy, which is the functional equivalent of an agency or consignment relationship, the petitioner is made responsive to the public in accordance with the intention of Congress in classifying exempt organizations as non-private in that, if the petitioner's message or its actions do not meet with public approval and accep-



tance, the public will not purchase the Book, and the chain bookstores will return unsold volumes of the Book with the petitioner bearing the full risk of loss.

(k) The respondent therefore erred in determining that the chain bookstores would, nevertheless, be deemed the purchasers of the Books for purposes of applying the public support test of Section 509(a)(2) of the Code thereby automatically affecting the continuing qualification of the petitioner as a non-private foundation with resulting adverse consequences to the petitioner.

WHEREFORE, the petitioner prays that this Court may hear this proceeding and determine that the ultimate purchasers of the Book, and not the chain bookstores, are the persons described in Section 509(a)(2) of the Code and that sales to them are to be taken into consideration in applying the public support test of Section 509(a)(2) of the Code.

  
\_\_\_\_\_  
John F. Beggs  
Counsel for Petitioner  
Gardner, Carton & Douglas  
One First National Plaza  
Suite 3300  
Chicago, Illinois 60603  
Telephone: (312) 726-2452



## Internal Revenue Service

## Department of the Treasury

Washington, DC 20224

Urantia Foundation  
533 Diversey Parkway  
Chicago, IL 60614

Person to Contact:

Telephone Number:

Refer Reply to:

E:EO:T:R:1-2  
Date:

NOV 13 1980

EIN: 36-2345086  
XD: 36

Dear Sir or Madam:

This is in response to your letter dated May 8, 1980, requesting a ruling.

The information submitted indicates that you have been recognized as exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1954. You have been determined to be other than a private foundation under the provisions of section 509(a)(2) of the Code.

You are requesting a ruling that the customers of the multistate chain bookstores to whom you sell your book, and not the chain stores themselves, are the "persons" described in Code section 509(a)(2)(A)(i) whom you must take into account in determining whether you have received more than \$5,000 or one percent of your organization's support in a taxable year from "any person."

You have indicated that the nature of the bookstore business is rapidly changing with large chain stores capturing an increasingly larger share of the bookstore market. You state that in the past, you would sell your book to many individual stores, but with the advent of these large chainstores purchasing for their outlets, it has consolidated the purchases into a lump sum from one source which could, if considered the "person" under Code section 509(a)(2), affect your status as a publicly-supported organization.

Your organization will institute an unconditional returns policy which allows the bookstores to return copies of your book at any time for any reason. There is no minimum or maximum holding period before which the books may be returned. There are no preconditions before return. The chainstores will receive a full cash refund for the amount they originally paid for the book.

You have attempted to determine if the chainstores will enter into a consignment agreement with you. The chainstores refused to enter into such an agreement and you have determined that there is no such agreement in existence in the book publishing industry.



Urantia Foundation

You have analogized your situation to that of the blood bank in Rev. Rul. 75-387, 1975-2, C.B. 216, where the blood bank was held to be operating in an agency relationship with several hospitals thereby enabling the payments, for blood, from the hospitals to be considered as paid by the individual patients.

Section 509(a)(2) of the Code, in pertinent part, describes an organization which (A) normally receives more than one-third of its support in each taxable year from any combination of gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, not including such receipts from any person in any taxable year to the extent such receipts exceed the greater of \$5,000 or one percent of the organization's support in such taxable year, and (B) normally receives not more than one-third of its support in each taxable year from gross investment income.

Restatement (Second) of Agency section 14 J (1958) states, "one who receives goods from another for resale to a third person is not thereby the other's agent in the transaction: whether he is an agent for this purpose or is himself a buyer depends upon whether the parties agree that his duty is to act primarily for the benefit of the one delivering the goods to him or is to act primarily for his own benefit."

The question to be resolved is whether an agency type relationship exists between your organization and the chainstores that would allow purchases of your book to be considered as made directly by the individual purchasers.

You have stated that you and the chainstores did not intend to engage in an agency relationship. However, you are willing to institute an unconditional returns policy, because the chainstores will not enter into a consignment agreement.

Legal title to the books will pass to the chain bookstores upon the initial transfer of the books, but will revert to you if the books are returned.

It appears that no agency relationship exists as the sales of books are through ordinary commercial channels with the bookstores acting primarily for their own benefit, as shown by the fact that they will not enter into a consignment agreement. The mere presence of a returns policy does not take your relationship with the chain bookstores out of the ambit of being considered as an ordinary commercial, buyer-seller activity.



Urantia Foundation

We, therefore, rule that the chain bookstores and not the individual purchasers, are the persons described in section 509(a)(2) of the Code and that sales to them must be taken into consideration when applying the public support test of section 509(a)(2) of the Code.

Sincerely yours,  
((Signed)) J. E. Griffith

J. E. Griffith  
Chief, Rulings Section 1  
Exempt Organizations  
Technical Branch