

AACS LEGAL REPORT

"WHAT FORMS DO WE FILE?" - INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS

I. INTRODUCTION

We have received a number of calls over the past few months concerning the types of forms that churches and schools should be filing with the Internal Revenue Service ("IRS") on an annual or quarterly basis. In this Legal Report, we will highlight the IRS forms that most ministries are required to file, as well as a variety of other forms that ministries may be required to file depending on the circumstances involved.

Although this Report will address a number of different forms, it will not address those forms that your ministry may be required to file with various State agencies. In addition, this Report will not attempt to cover the forms that individuals should be filing with the IRS. Instead, this Report focuses on the forms that ministries are required to file.

You should realize at the outset that a particular school's filing requirements may depend on whether the school is treated as a ministry function of the church, and therefore, comes under the umbrella of the church ministry as a whole, or whether the school is its own separate tax-exempt organization. In addition, the filing requirements for a school may be different from those of the ministry as a whole, even if the school comes under the umbrella of the church ministry. These differences, as well as other filing requirements, are addressed below.

II. DISCUSSION

A. GETTING STARTED: OBTAINING AN EMPLOYER IDENTIFICATION NUMBER.

Every tax-exempt organization, including a church, is required to have an Employer Identification Number ("EIN"). This is true even if the organization has no employees. The EIN is not a "tax-exempt number," but is simply the organization's identifier in the records of the IRS.

If your ministry does not have an EIN, it should obtain one by filing **Form SS-4**, *Application for Employer Identification Number*. This form needs to be filed only once. Please note that your ministry will be required to list its EIN on many of the forms that are filed with the IRS, and failing to list an EIN on W-2 and 1099 Forms may subject the ministry to a monetary penalty. In addition, some States will require an EIN if your ministry applies for an exemption from various sales, use, or property taxes.

B. NECESSARY FILINGS: THE FOLLOWING FORMS SHOULD BE FILED WITH THE IRS ON AN ANNUAL OR QUARTERLY BASIS.

1. Form 941 - Employer's Quarterly Federal Tax Return

Churches and Christian schools that withhold income, **social security**, and medicare taxes on their employees should file **Form 941** on a quarterly basis. This form records the employer's total tax liability for its employees during a three month period.

If, however, your ministry has filed **Form 8274**, *Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption From Employer Social Security and Medicare Taxes*, then it is not required to pay or withhold social security and medicare taxes on its employees. Instead, the employees in these ministries are responsible to pay their own self-employment tax.

If your ministry has filed **Form 8274**, then it should file **Form 941** and check the box on line 8 stating that the ministry is not subject to social security and medicare taxes. In addition, you may need to attach a copy of the signed **Form 8274** to **Form 941** to support your reason for checking the box on line 8.¹

¹ Nonprofit organizations that are liable for federal unemployment taxes are also required to file Form 940, *Employer's Annual Federal Unemployment Tax Return*. **Please note, however, that churches and other religious organizations are not liable for federal unemployment taxes, and therefore, are not required to file Form 940.** Even though your ministry is not responsible for federal unemployment taxes, it may be responsible

2. W-2 Forms - Individual Wage and Tax Statements

W-2 Forms are provided to an employee to show the annual wages, tips, and compensation paid to the employee, as well as the taxes that have been withheld by the ministry. **W-2 Forms** must be given to employees by January 31 of each year and filed with the IRS by February 28. Your ministry should submit a **W-3** transmittal form to the IRS along with the **W-2 Forms**.²

3. Form 5578 - Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax

Every organization that operates, supervises, or controls a private school must file a certification of racial nondiscrimination annually. **Form 5578** should be used for this purpose, and it should be filed by the 15th day of the 5th month following the end of the school's calendar or fiscal year. This filing requirement applies to all private schools, including Christian schools, and schools must file **Form 5578** annually even though their sponsoring churches are not required to do so.

Please note, however, that if your ministry files a 990 Form each year (discussed below), then it is not required to file **Form 5578**. The reason for this is that the certification of racial nondiscrimination is addressed in the 990 Form.

C. FORMS TO CONSIDER: THE FOLLOWING FORMS SHOULD BE FILED WITH THE IRS IF THEY APPLY TO YOUR MINISTRY'S INDIVIDUAL CIRCUMSTANCES.

1. 990 Form - Annual Return of Organization Exempt from Income Tax

for State unemployment taxes.

² In addition to providing W-2 Forms to your employees, you should make sure that each one of your employees completes a **W-4 Form** every year. Information provided on the **W-4** will govern the amount of taxes to be withheld on a particular employee.

The **990 Form** is an information return for nonprofit organizations, and it is a standard Form filed by such organizations on an annual basis. Please note, however, that churches and church-sponsored schools are NOT required to file this Form. **For that reason, if your school is a ministry of the church, or even affiliated with a particular church, then your school is NOT required to file a 990 Form.**

The only schools that may be required to file the **990 Form** are those that are not affiliated with a particular church and are considered to be separate tax-exempt organizations. Nevertheless, even these schools are exempt from the **990** filing requirement if their gross annual receipts are under \$25,000.00. For that reason, the only AACCS schools that may be required to file a **990 Form** are those schools that (i) are not affiliated with a particular church, and (ii) have gross annual receipts exceeding \$25,000.00.³

Although a church-sponsored school is not required to file a **990 Form**, your school may elect to do so on a voluntary basis. One advantage of filing this Form is that many States accept a copy of the federal **990 Form** as a substitute for all or part of the State's own financial reporting requirements.

For those ministries that are required to file a **990 Form** or choose to do so on a voluntary basis, here are some things to remember:

- If your school's gross annual receipts are between \$25,000.00 and \$100,000.00 and the total assets are less than \$250,000.00, then your school may file the shorter and simpler **990-EZ Form**;
- The **990 Form** should be filed each year by the 15th day of the 5th month after your school's accounting period ends; for example, if your school's accounting period ends on June 30, then the school should file the **990 Form** by November 15 of that year;

³ Some schools that otherwise would be required to file a **990 Form** may be exempt from this filing requirement. Check your IRS Determination Letter to see if your school is required to file a **990 Form** on an annual basis.

- Use **Form 2758** to request an extension of time to file a **990 Form**; generally, the IRS will not grant an extension of time of more than 90 days unless sufficient need for an extended period is clearly shown.

2. **Form 990-T - *Exempt Organizations Business Income Tax Return***

DO NOT SKIP THIS SECTION JUST BECAUSE YOUR MINISTRY IS NOT REQUIRED TO FILE A 990 FORM. Even if your ministry is not required to file a **990**, your ministry is required to file **Form 990-T** if it receives \$1,000.00 or more in "unrelated business income" during any calendar year. All tax-exempt organizations, even churches, are required to file **Form 990-T** for each year they have received \$1,000.00 or more in income from an unrelated business activity.

Form 990-T exists because, although tax-exempt organizations may receive "unrelated business income," such organizations must pay a tax on income which is derived from activities that are unrelated to their exempt purpose. Although the first \$1,000.00 of "unrelated business income" is not taxed, the remaining portion is taxed at the federal rate.

How do you determine whether your ministry is receiving "unrelated business income"? According to the IRS, income from an activity will be subject to the unrelated business income tax if the following three conditions are met:

- (i) the activity constitutes a trade or business;
- (ii) the trade or business is regularly carried on; and
- (iii) the trade or business is not "substantially related" to the organization's exempt purpose.

The key is whether the **activity** itself is "substantially related" to the purposes for which the organization was founded. It is not enough that the proceeds of the activity are later used to further the charitable or religious purposes of the organization.

As an example, the IRS has determined that in most cases, proceeds derived from the rental of real property or certain personal property will not be considered as "unrelated business income" to a tax-exempt organization. On the other hand, revenue generated from operating the church parking lot as a commercial parking lot for mall shoppers each Saturday may result in "unrelated business income" to the church. As in most areas of the tax law, the treatment of the income will depend on "all the facts and circumstances" of the particular situation being considered.⁴

3. 1099 Forms - *Reporting various types of payments made to certain non-employees*

Your ministry may need to file a **1099 Form** if it paid \$600.00 or more during 1995 to an unincorporated individual or entity who is not an employee of the ministry. In most cases, these payments are ones that are made to independent contractors who are doing work for the church or school.

The most common type of **1099 Form** is the **1099-MISC**. The **1099-MISC** is used to report disbursements made to non-employees in the form of rent, commissions and fees, prizes and awards, or other types of payments or reimbursements that exceed \$600.00.

Other types of **1099 Forms** include the following:

- **1099-INT** Used to report interest of \$600.00 or more that the ministry pays to an individual during any calendar year
- **1099-S** Used to report proceeds from the sale or exchange of certain real estate that the ministry pays to an individual during any calendar year

For those ministries that are required to file any of the **1099 Forms**, here are some things to remember:

⁴ Even if an activity generates "unrelated business income" to your ministry, certain exceptions may allow your ministry to avoid paying tax on the income. For example, income is not subject to the unrelated business income tax if (i) substantially all the work in the activity was performed by volunteers, or (ii) the activity involves the selling of merchandise that was donated to the church or school.

- All **1099 Forms** should be filed along with **Form 1096**, *Annual Summary and Transmittal of U.S. Information Returns*; **Form 1096** simply lets the IRS know what you are sending them;
- **1099 Forms** should be filed no later than February 28 of the year following the calendar year in which the payments were made; the payee's copy of the return should be furnished to him or her no later than January 31;
- Use **Form 8809** to request an extension of time to file **1099 Forms**;
- Payments to volunteers that represent a reimbursement for expenses directly connected with volunteer services do not require the filing of a **1099 Form**.

4. Forms 8282 and 8283 - *Receipt and sale of property donated to the ministry*

If your ministry receives a gift of property valued at \$500.00 or more, then it should send a signed **Form 8283** to the donor. The donor is required to include this Form with his or her annual tax return. If the gift of property is valued at more than \$5,000.00, then a formal appraisal must be completed. There is no formal appraisal requirement for gifts valued between \$500.00 and \$5,000.00.

If your ministry sells, exchanges, or otherwise disposes of donated property within two years from the date of its contribution, then it should file **Form 8282** with the IRS. Please note, however, that this only applies to property that had an appraised value of \$5,000.00 or more at the time of the donation.

If your ministry is required to file **Form 8282** with the IRS, then the filing should take place within 125 days of the date of the disposition of the property. In addition, your ministry should furnish a copy of the Form to the original donor.

III. CONCLUSION

This Report has been designed to alert you to certain IRS forms that your ministry may need to file on an annual or quarterly basis. The forms that your ministry files will depend in part on

whether the ministry has a school that is sponsored by or affiliated with a particular church, or whether the school is its own separate tax-exempt organization.

Of course, all of the IRS forms that must be filed under certain circumstances cannot be addressed here. Nevertheless, the most commonly-used forms have been discussed. If you need copies of certain IRS forms, you can pick them up at your local IRS office, or you can order them by calling **1-800-TAX-FORM**.

If you have any questions concerning IRS filing requirements, please feel free to contact Steve Cummings.