



**Churches and Religious Organizations:
Do's and Don'ts**



Churches & Tax Law

Some history and context

- Charities are 501(c)(3)s
- Churches are charities



Churches & Tax Law

- The term “charitable” includes advancement of religion”
- The First Amendment
 - Establishment
 - Free exercise
- No definition of “religion” or “religious”
- No definition of “church”



“Church”

Generally, a place of worship

- Not defined in Internal Revenue Code

Includes:

- temples, mosques, synagogues, etc.
- conventions and associations of churches
- integrated auxiliaries of a church



14 Criteria

- A distinct legal existence
- A recognized creed and form of worship
- A definite and distinct ecclesiastical government
- A formal code of doctrine and discipline
- A distinct religious history
- A membership not associated with any other church or denomination



14 Criteria

- Ordained ministers ministering to its congregations
- Ordained ministers selected after completing prescribed studies
- A literature of its own
- Established places of worship
- Regular congregations



14 Criteria

- Regular religious services
- Sunday schools for religious instruction of the young
- Schools for the preparation of its ministers



Tax-Exempt Status

- Exempt under 501(c)(3) if:
 - Organized and operated
 - No “inurement” of benefits
 - No substantial lobbying
 - No political activity
 - Must be legal
- No IRS registration (but many do)
- Group rulings



Religious Organizations

Include:

- nondenominational ministries
- interdenominational and ecumenical organizations
- entities whose principal purpose is the study or advancement of religion



Side-by-Side

CHURCH	RELIGIOUS ORGANIZATION
Must comply with §501(c)(3)	Must comply with §501(c)(3)
Form 1023 not required	Form 1023 required if gross receipts > \$5,000
Not listed in Publication 78, unless Form 1023 filed	Listed in Publication 78
Exempt from filing Form 990, 990-EZ, 990-N	Must file Form 990, 990-EZ, 990-N
Cannot make lobbying election	Can make lobbying election
Audit restrictions	NA
Parsonage exclusion	NA



Employer Identification Number

Needed when:

- Opening a bank account
- Group ruling
- Filing a return with the IRS

Form SS-4: Application for Employer Identification Number



Jeopardizing 501(c)(3) Status

Inurement and private benefit activities

Substantial lobbying activity

Political campaign activity

Unrelated Business activity



Inurement / Private Benefit

Insiders

Excess benefit transaction



Lobbying Activity

Substantial lobbying is prohibited

What does “substantial” mean?

Substantial part test

Expenditure test



Political Activity

Absolutely prohibited

Religious leaders' activity

Issue advocacy v. campaign intervention



Political Activity

Inviting a candidate to speak

Speaking as a candidate

Equal opportunity

Public forum



Unrelated Business Income

“UBIT”

Examples

- Advertising
- Gaming
- Sale of merchandise and publications
- Parking lots



Unrelated Business Income

How to know it when you see it

- Activity is a trade or business
- It is carried on regularly (not one-time)
- Not substantially related to religious or charitable purpose

Form 990-T



Unrelated Business Income

Exceptions:

- Work done by volunteers
- Convenience of members
- Sale of donated merchandise



Employment Tax

- Generally, churches and religious organizations must withhold, file, pay income tax and FICA
- Who is an employee?
 - Publication 15-A, Employer's Supplemental Tax Guide
- Clergy and religious orders



Compensation of Ministers

Special Rules

- Income tax withholding
- Parsonage or housing allowances
- Social Security and Medicare taxes



Employee Business Expenses

Accountable reimbursement plan

- Business-related
- Substantiated
- Money returned

Non-accountable reimbursement plan

- Counts as taxable wages



Recordkeeping

- Maintain books to justify exempt status
- No specific format
- Record retention: how long?
 - At least four years



Charitable Contributions

- Donors keep a record
- Donors must substantiate gifts of \$250 or more
- Disclosure rules
- Exceptions to disclosure rules
 - Pub. 1771 – Charitable Contributions: Substantiation and Disclosure Requirements



IRS Audit of a Church

- Special restrictions
 - May not qualify for exemption
 - May not be paying tax
- Applies only to churches, conventions, associations
- Criminal investigations or tax liability



Contact Information

www.irs.gov/charities

- Forms, publications, general information
- Sign up for *EO Update*
- StayExempt.irs.org

Customer Service (toll-free):

- 1-877-829-5500