

Church Legal and Taxes Update

San Jacinto Baptist Association
October 2020

Updates for 2020

1. Standard mileage rate 57.5 cents per mile, 14 cents charity, 17 cents medical
2. \$19,500 maximum contribution deferral to 403(b) or 401(k) plan (\$20,000 in 2021)
3. \$6,500 (2020 & 2021) catch-up limit for contributions deferral to 403(b) or 401(k) age 50 or older
4. Standard deduction \$24,000 for joint returns \$12,000 for filing single and married filing separately

Important Filing Deadlines

1. W-2's – due to employees February 1, 2021
2. W-2 Copy A & W-3 – due February 1, 2021
3. 1099's - due to vendors February 1, 2021
4. 1099's Copy A & 1096 - due February 1, 2021
5. Request 1 extension of time to file W-2 & W-3 with SSA by filing Form 8879 - if IRS grants have additional 30 days to file

Minister Criteria

Five key questions

1. Is the person ordained, licensed, commissioned?
2. Does the person administer ordinances (Sacerdotal functions) i.e. baptism and the Lord's Supper?
3. Does the person conduct religious worship?
4. Does the person have management responsibilities in the church?
5. Is the person considered to be a religious leader by the church?

Minister Credentials

General Rule – Ministry begins with ordination

Exception for Licensed Minister

- who has been granted authority to perform substantially all the religious functions of an ordained minister
 - Marriages
 - Funerals
 - Baptisms
 - Communion
 - Preaching
 - Teaching

Unique Tax Issues for Ministers

Ministers have a dual tax status

1. Employee for IRS purposes (W-2)
2. Self-Employed for Social Security (SECA)
 - file form SE on 1040
 - never ever withhold social security
 - IRC Sec 3121 states that ministers' wages are not wages for FICA

Minister for Tax Purposes means

1. Eligible for a minister's housing allowance – IRC Sec 107
2. Is self-employed for Social Security purposes – IRC Sec 1402(c)
3. Is exempt from federal income tax withholding – IRC Sec 1401(a)(9)
4. Use quarterly estimated tax procedures to pay in their taxes unless they elect to voluntarily withhold on W-4 furnished to church – Reg.31.3402(p)-1
5. “Double dipping” benefit for deducting mortgage interest and real estate taxes as itemized deductions (Schedule A) and inclusion in housing allowance computation
6. These rules only apply with respect to services performed in exercise of ministry

Minister Housing

Available only to those meet the IRS criteria for Minister

Must be the lesser of:

- Fair rental value of similar furnished house
- Amount designated
- Actual housing expense incurred

Exempt from Federal Income taxes

Must add as income for (SECA) Self-employment income unless exempt

Minister Housing

Must be designated by the employer/payer (the church) and

Must be designated in advance of being paid and

Must be designated in writing

Can be amended during the year => amendment is only effective on a prospective bases

Responsibility falls on the minister to notify the church of any inaccurate estimates for changes

Qualified Housing Expense

- ▶ Down Payment on home
- ▶ Mortgage payment (principal & interest)
- ▶ Rental payment
- ▶ Real estate taxes
- ▶ Homeowners insurance
- ▶ Utilities (gas. Electricity, water, sewerage/trash, telephone, cable/satellite)
- ▶ Furnishings and appliances
- ▶ Repairs and remodeling
- ▶ Yard care/Landscape
- ▶ Maintenance items (cleaners, light bulbs, pest control, etc)
- ▶ HOA dues
- ▶ Not Maid services
- ▶ Not food

Housing Form

Housing Allowance Designation				
I hereby designate the following expenses for housing allowance shall apply to calendar year 2020 and all future years unless otherwise changed.				
	Item		Amount	
	1 Down payment on a home		\$	
	2 Mortgage payments on a loan to purchase or improve your home (include principal and interest)		\$	
	3 Monthly Rental			
	4 Real Estate taxes		\$	
	5 Home Owners Insurance		\$	
	6 Utilities (electricity, gas, water, trash pickup, local telephone charges)		\$	
	7 Furnishings and appliances (purchase and repair)		\$	
	8 Structural repairs and remodeling		\$	
	9 Yard maintenance and improvements		\$	
	10 Maintenance items (pest control, etc.)		\$	
	11 HOA dues		\$	
	12 Miscellaneous		\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
			\$	
	Total Expenses:		\$	
Signature:				
Date:				
Church Officer signature:				
Date:				

Compensation

- ▶ Base salary/wages
- ▶ Bonuses
- ▶ Reimbursement for portion of SE tax
- ▶ Special occasion gifts
- ▶ Incentive compensation
- ▶ Severance pay
- ▶ Below market loans
- ▶ Gift Cards
- ▶ Noncash Gifts
- ▶ Personal use of employer provided auto
- ▶ Payment of auto expenses
- ▶ Auto allowances

- ▶ Personal portion of cell phones
- ▶ Life insurance outside of group plan
- ▶ Travel advances without subsequent documentation
- ▶ Reimbursements through a non-accountable reimbursement plan
- ▶ Travel for spouses & family
- ▶ Forgiveness of minister's debt to the church.

TIP → Any payment to employees based on past or present performance is considered compensation unless specifically exempted

Compensation package

- Must meet the following criteria:
 - ❖ Must be decided by independent persons
 - ❖ Be based on outside comparable data
 - ❖ Be documented in writing with the basis for the amount of compensation determined
- Tip: Determine every benefit provided and document these in writing prior to the start of the next year.
- Be approved by governing board & reflects in minutes
 - ❖ Includes cash and noncash compensation and fringe benefits

Fringe Benefits

Nontaxable - Normally

- Housing Allowance
- Contributions to Qualified Retirement Plans
- Health Insurance Premiums (group plan provided)
- Employer provided room and board (for the convenience of the employer)
- Reimbursements under an accountable plan
- Benefits provided through a cafeteria plan

Taxable

- Group term life insurance (\$50,000 and greater taxable)
- Payment of out of pocket medical expenses (Sec 125, MSA's)
- Employer provided auto personal use always taxable

Payroll - Reporting

Churches are subject to many of the same payroll tax rules as for other for-profit organizations

Form 941- Quarterly Reporting

- Taxable items are included on the quarterly reports
- Minister's housing allowance is never included since it is not taxable
- Should always reconcile with ledgers

Payroll Reporting Form 941

Form **941 for 2020: Employer's QUARTERLY Federal Tax Return**
 (Rev. July 2020) Department of the Treasury — Internal Revenue Service

950120
 OMB No. 1545-0029

Employer identification number (EIN) -

Name (not your trade name)

Trade name (if any)

Address

Number Street Suite or room number

City State ZIP code

Foreign country name Foreign province/country Foreign postal code

Report for this Quarter of 2020
 (Check one.)

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Go to www.irs.gov/Form941 for instructions and the latest information.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter.

1 Number of employees who received wages, tips, or other compensation for the pay period including: Sept. 12 (Quarter 3) or Dec. 12 (Quarter 4) 1

2 Wages, tips, and other compensation 2 . 00

3 Federal income tax withheld from wages, tips, and other compensation 3 . 00

4 If no wages, tips, and other compensation are subject to social security or Medicare tax Check and go to line 6.

	Column 1		Column 2
5a Taxable social security wages	<input type="text" value="40000"/> . 00	× 0.124 =	<input type="text" value="4960"/> . 00
5a (i) Qualified sick leave wages	<input type="text" value=""/>	× 0.062 =	<input type="text" value=""/>
5a (ii) Qualified family leave wages	<input type="text" value=""/>	× 0.062 =	<input type="text" value=""/>
5b Taxable social security tips	<input type="text" value=""/>	× 0.124 =	<input type="text" value=""/>
5c Taxable Medicare wages & tips	<input type="text" value="40000"/> . 00	× 0.029 =	<input type="text" value="1160"/> . 00
5d Taxable wages & tips subject to Additional Medicare Tax withholding <input type="text" value=""/> × 0.009 = <input type="text" value=""/>			
5e Total social security and Medicare taxes. Add Column 2 from lines 5a, 5a(i), 5a(ii), 5b, 5c, and 5d			<input type="text" value="6120"/> . 00
5f Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)			<input type="text" value=""/>
6 Total taxes before adjustments. Add lines 3, 5e, and 5f			<input type="text" value="7422"/> . 00
7 Current quarter's adjustment for fractions of cents			<input type="text" value=""/>
8 Current quarter's adjustment for sick pay			<input type="text" value=""/>
9 Current quarter's adjustments for tips and group-term life insurance			<input type="text" value=""/>
10 Total taxes after adjustments. Combine lines 6 through 9			<input type="text" value="7422"/> . 00
11a Qualified small business payroll tax credit for increasing research activities. Attach Form 8974			<input type="text" value=""/>
11b Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1			<input type="text" value=""/>
11c Nonrefundable portion of employee retention credit from Worksheet 1			<input type="text" value=""/>

► You MUST complete all three pages of Form 941 and SIGN it.

Next ►

Name (not your trade name) NATIONAL BAPTIST CHURCH	Employer identification number (EIN) 01-7585210
---	--

Part 1: Answer these questions for this quarter. (continued)

11d Total nonrefundable credits. Add lines 11a, 11b, and 11c 11d

12 Total taxes after adjustments and nonrefundable credits. Subtract line 11d from line 10 12

13a Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter 13a

13b Deferred amount of social security tax 13b

13c Refundable portion of credit for qualified sick and family leave wages from Worksheet 1 13c

13d Refundable portion of employee retention credit from Worksheet 1 13d

13e Total deposits, deferrals, and refundable credits. Add lines 13a, 13b, 13c, and 13d 13e

13f Total advances received from filing Form(s) 7200 for the quarter 13f

13g Total deposits, deferrals, and refundable credits less advances. Subtract line 13f from line 13e 13g

14 Balance due. If line 12 is more than line 13g, enter the difference and see instructions 14

15 Overpayment. If line 13g is more than line 12, enter the difference Check one: Apply to next return. Send a refund.

Part 2: Tell us about your deposit schedule and tax liability for this quarter.

If you're unsure about whether you're a monthly schedule depositor or a semiweekly schedule depositor, see section 11 of Pub. 15.

16 Check one: Line 12 on this return is less than \$2,500 or line 12 on the return for the prior quarter was less than \$2,500, and you didn't incur a \$100,000 next-day deposit obligation during the current quarter. If line 12 for the prior quarter was less than \$2,500 but line 12 on this return is \$100,000 or more, you must provide a record of your federal tax liability. If you're a monthly schedule depositor, complete the deposit schedule below; if you're a semiweekly schedule depositor, attach Schedule B (Form 941). Go to Part 3.

You were a monthly schedule depositor for the entire quarter. Enter your tax liability for each month and total liability for the quarter, then go to Part 3.

Tax liability: Month 1

Month 2

Month 3

Total liability for quarter Total must equal line 12.

You were a semiweekly schedule depositor for any part of this quarter. Complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and attach it to Form 941. Go to Part 3.

Payroll - Reporting

W-2 – Annual Reporting

- Taxable items included along with appropriate taxes that have been withheld
- Special reporting required for certain benefits and forms of compensation in Box 12


C - Group term life > \$50,000

E - Elective deferrals into retirement plans

DD - Value of employer provided health insurance benefits required to be disclosed

- Housing allowance can be reported in Box 14, but not mandatory. Should never ever be included anywhere else on W-2

Payroll - Reporting W-2

		a Employee's social security number 333-22-4444		OMB No. 1545-0008		Safe, accurate, FAST! Use				Visit the IRS website at www.irs.gov/efile	
b Employer identification number (EIN) 01-7585210				1 Wages, tips, other compensation 40,000.00		2 Federal income tax withheld 1302.00					
c Employer's name, address, and ZIP code National Baptist Church 445 Anystreet Anytown, TX 77888				3 Social security wages 40,000.00		4 Social security tax withheld 2480.00					
				5 Medicare wages and tips 40,000.00		6 Medicare tax withheld 580.00					
				7 Social security tips		8 Allocated tips					
d Control number				9		10 Dependent care benefits					
e Employee's first name and initial		Last name		Suff.		11 Nonqualified plans		12a See instructions for box 12			
Non-minister Smith 551 N. Main St. Anytown, TX 77888						13 Statutory employee Retirement plan Third-party sick pay <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		12b			
						14 Other		12c			
								12d			
f Employee's address and ZIP code											
15 State	Employer's state ID number	16 State wages, tips, etc.	17 State income tax	18 Local wages, tips, etc.	19 Local income tax	20 Locality name					


Form **W-2** Wage and Tax Statement

2020

Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

Payroll - Minister W-2

a Employee's social security number 333-22-444		OMB No. 1545-0008		Safe, accurate, FAST! Use				Visit the IRS website at www.irs.gov/efile		
b Employer identification number (EIN) 01-7585210				1 Wages, tips, other compensation 45,000.00		2 Federal income tax withheld				
c Employer's name, address, and ZIP code National Baptist Church 445 Anystreet Anytown, TX 77888				3 Social security wages		4 Social security tax withheld				
				5 Medicare wages and tips		6 Medicare tax withheld				
				7 Social security tips		8 Allocated tips				
d Control number				9		10 Dependent care benefits				
e Employee's first name and initial Rev. Mark Smith 551 N. Main St. Anytown, TX 77888		Last name 		Suff.		11 Nonqualified plans		12a See instructions for box 12		
f Employee's address and ZIP code						13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b		
						14 Other Housing Allowance: \$15,800.00		12c		
								12d		
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.		19 Local income tax		20 Locality name

Form **W-2** Wage and Tax Statement

2020

Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

Other Reporting

Form 1099-Misc

- Report payments of \$600 or more in:
 - Rents
 - Prizes and awards
 - Other income payments
 - Medical & health care payments
 - Payments to an attorney
 - Others

Form 1099-NEC (new for 2020)

- Report payments of \$600 or more for nonemployee compensation
- Exceptions
 - Corporations
 - Payments to vendors for merchandise
- Penalties apply if church doesn't send 1099's
- Due to the payee by February 1, 2021
- Due to the Social Security Adm by February 1, 2021

CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. National Baptist Church 445 Anystreet Anytown, TX 77888		OMB No. 1545-0116 2020 Form 1099-NEC		Nonemployee Compensation Copy B For Recipient This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.
PAYER'S TIN 333-22-4444		RECIPIENT'S TIN 555-22-7788	1 Nonemployee compensation \$ 2000.00	
RECIPIENT'S name John Doe		2		
Street address (including apt. no.) 221 Northwest Dr.		3		
City or town, state or province, country, and ZIP or foreign postal code Anytown, TX 77888		4 Federal income tax withheld \$		
Account number (see instructions)		5 State tax withheld \$ \$	6 State/Payer's state no. ----- \$	
FATCA filing requirement <input type="checkbox"/>		7 State income \$		

Form **1099-NEC**

(keep for your records)

www.irs.gov/Form1099NEC

Department of the Treasury - Internal Revenue Service

CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Rents		OMB No. 1545-0115 2020	Miscellaneous Income
		\$			
		2 Royalties		\$	
3 Other income		\$		4 Federal income tax withheld	
PAYER'S TIN		RECIPIENT'S TIN		5 Fishing boat proceeds	
RECIPIENT'S name		7 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>		6 Medical and health care payments	
Street address (including apt. no.)		9 Crop insurance proceeds		8 Substitute payments in lieu of dividends or interest	
City or town, state or province, country, and ZIP or foreign postal code		11		10 Gross proceeds paid to an attorney	
Account number (see instructions)		FATCA filing requirement <input type="checkbox"/>		12 Section 409A deferrals	
		13 Excess golden parachute payments		14 Nonqualified deferred compensation	
		15 State tax withheld		16 State/Payer's state no.	
		\$		\$	
		\$		\$	
				17 State income	
				\$	

This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

Employee or Independent Contractor

Tax Court's 8 Factor Test

1. Degree of control exercised by employer over details of work
2. Which party invest in facilities used in work
3. Opportunity of individual to profit or loss
4. Whether employer has right to discharge the worker
5. Whether the work is part of employer's regular business
6. Permanency of relationship
7. Relationship the parties believe they are creating
8. Provision of benefits typical to those provided to employees

Texas State Taxes

- Texas Tax Code provides tax exemptions for religious organizations for sales tax, hotel occupancy tax and franchise.
- Requirements
 - Organized group of people,
 - Regularly meeting at a particular location with an established congregation,
 - conducting and sponsoring religious worship services according to rites of their sect.
- File Texas Application for Exemption – Religious Organizations Form AP-209-2.
- This is not an exemption from collecting sales tax.

Texas Sales & Use Tax

- Churches that have received a letter of sales tax exemption do not pay sales tax on items bought, leased or rented if the items are necessary to the exempt function.
- To claim exemption use Texas Sales and Use Tax Exemption Certificate provide to retailer.
- Retailers not required by law to honor the exemption.
 - Seller to provide a completed Assignment of Right to Refund, then request a refund directly from Comptroller.
- Items purchased tax free cannot be used by employee or individual for personal benefit.
- Does not include purchase or use of motor vehicle.
- Remember => exemption from tax is for purchases not for sales.
- Exempt organizations must get a sales tax permit and collect and remit sales tax for all taxable items it sales.

Tax-Free Sales

- Meals and Food Products (including candy & soft drinks) if sold by churches or at church functions conducted under the authority of a church
- Annual banquets and suppers provided
 - It is not professionally catered;
 - Not held at a restaurant, hotel or similar place;
 - Not in competition with a retailer required to collect tax;
 - Food is prepared, served and sold by members of the church.
- Auctions, Rummage sales & other Fundraisers
 - Exempt orgs can hold two one-day tax-free sales
- Periodicals and writings are tax exempt if published and distributed by a religious organization.

Two One-day Tax-Free Sales

- Exempt orgs not required to collect tax.
- Does not apply to items sold for more than \$5,000.
- Counted as 24 consecutive hours
- Designated day is either the day the vendor delivers the items or the day the organization delivers the items to customers.
 - Church selling cookbooks may accept pre-orders without collecting tax if the day the cookbooks will be delivered is designated tax-free day.
 - Surplus cookbooks sold during the same day qualify as tax-free.
 - Surplus cookbooks sold on other days will be subject to tax.

Charitable Contribution – What is it

As defined by IRC Sec 170

- A gift of cash or property
- Given before the end of the year
- Unconditional
- Without personal benefit to the donor
- Made ***to or for the use of*** the qualified charity
- Properly substantiated

Never Deductible

- Donated Services
 - Value of personal services is not deductible member who donates labor may not deduct value of the labor
- Contributions of less than donor's entire interest in the property
 - a. contribution of irrevocable remainder interest in personal residence or farm
 - b. contribution of undivided interest in property
 - c. contribution of irrevocable remainder interest in property to a charitable remainder trust

Noncash Contributions

- Transportation Equipment – Cars, Boats, things that go
 - a. must provide a Form 1098-C
 - b. must be attached to donor's tax return
 - c. must be issued to donor within 30 days of the date of the sale or donation to the church
 - d. must be filed with the IRS by February 29th
- Clothing & Household Goods
 - a. must be in good condition
 - b. no contribution for old & worn out items

Quid Pro Quo Contributions Give and Take

- Contributions that include a product or service
 - a. Contributions greater than \$75 must be issued a receipt
 - b. Receipt must include a good faith estimate of the fair value of the item given/received
 - c. Penalties – \$10 per contribution not properly receipted
 - d. If value is less than \$9.60, contribution is fully deductible

Substantiation and Disclosure Requirements

- Gift of \$250 or more
 - Must be in writing
 - Name donor
 - Itemize date and amount of each donation \$250 or more
 - Provide the value of any goods or services received by the donor in return for the contribution
 - **Must include the following language on the statement**
 - “No goods or services were provided in exchange for the contributions, except for intangible religious benefits”*
 - Furnished contemporaneously to the donor

Note: It is the donor’s responsibility, not the church, to obtain the contribution statement

Substantiation and Disclosure Requirements

- Non cash contributions acknowledgement
 - Must be in writing
 - Name donor
 - Date of gift
 - Description of property or gift given
 - Never ever state a value or amount of the gift (this is the donor's responsibility)
 - Provide the value of any goods or services received by the donor in return for the contribution
 - **Must include the following language on the statement**
“No goods or services were provided in exchange for the contributions, except for intangible religious benefits”
 - Furnished contemporaneously to the donor
- Note: It is the donor's responsibility, not the church, to obtain the contribution statement

Six Facts about Written Acknowledgements

- Donors who make single donations of \$250 or more must have one of the following:
 - ✓ A separate acknowledgement from the organization for each donation of \$250 or more
 - ✓ One acknowledgement from the organization listing the amount and date of each contribution of \$250 or more
- The \$250 threshold doesn't mean a donor adds up separate contributions of less than \$250 throughout the year
- Contributions made by payroll deduction are treated as separate contributions for each pay period
- If a donor makes a payment that is partly for goods or services, their deductible contribution is the amount of the payment that is more than the value of those goods and services.
- A donor must get the acknowledgement on or before the earlier of these two dates:
 - ✓ The date they file their return for the year they make the contribution
 - ✓ The due date, including extensions, for filing the return
- If acknowledgement doesn't show the date of contribution, donor must also have a bank record or receipt that shows the date

Contributions Factors to Consider

- ▶ Whether the gift is consistent with the church's tax-exempt purposes
- ▶ Whether the church can exercise sufficient control over the gift
- ▶ Whether the gift has the characteristics of an earmarked transaction
- ▶ Whether it will cost the church money to own the asset
- ▶ Whether it will cost the church money to sell the asset
- ▶ Staff and volunteer time required to manage or sell the asset
- ▶ Whether owning or selling the asset will expose the church to liability
- ▶ The marketability of the asset and the cash flow it can be expected to generate

Contribution Policy

1. In accordance with IRS Guidelines, for a contribution to be included in a given year's record, the contribution must be received by Dec. 31 or if mailed, the envelope must reflect a postmark no later than December 31.
2. Before filing your taxes, please wait to receive a contribution statement. Statements are mailed out by January 31st of each year.
3. Church does not mail contribution statements for total gifts less than \$250 unless requested to do so by the contributor. Any single donation less than \$250 may be substantiated by a cancelled check, per IRS guidelines.
4. Any donation where a good or service was received in exchange for a donation will not be shown on the contribution statement. An example would be money paid to attend a retreat, etc.
5. Gifts designated to the church benevolence & scholarship funds, administered by the church benevolence & scholarship committees, will be reflected on the donor's record of contributions if no "strings" are otherwise attached to the gift. Gifts to the church designated for the use of a specific individual or individuals are to be discouraged. This includes money given for benevolence and for mission trips. Such gifts will not be reflected on the donor's record of contribution and are generally not tax deductible.
6. The church at its discretion, may accept most types of non-cash gifts such as corporate stocks, land, art, etc. A letter from the church will be sent to the donor, acknowledging the date of receipt and providing a brief description of the property or items donated. However, the acknowledgement letter will NOT provide an estimated fair market value of the property donated and neither will the donor's record of contribution reflect receipt of the non-cash gift. Depending on the value of the items, certain IRS forms will be required to be filled out with the donor's tax return. If land is donated, an environmental survey will be required.
7. The value of time or services contributed by an individual to the church will not be posted to the record of contribution and are generally not tax deductible.

Reimbursement Plans

- ▶ Accountable Plans
 - Must be written
 - Reimbursement is not taxable
 - Not reportable on W-2
- ▶ Nonaccountable Plans
 - Reimbursement is taxable
 - Reportable as wages on W-2

Accountable Plans Requirements

1. Reimbursements are made only with adequate substantiation.
2. Written evidence required for all expenses, and receipts are required for expenses of \$75 or more.
3. Receipts must substantiate the amount, date, place and business nature of each expense.
4. Expenses must be substantiated, and excess reimbursements returned to the church within a reasonable period of time.
 - no more than 60 days after expense incurred
 - excess reimbursement no later than 120 days from payment

Reimbursements are not made out of salary reductions

- reimbursement of expenses comes out of employer's fund not by reducing employee's salary

Non-Accountable Expense Plans

1. Any sort of plan that does not require an accounting
2. A plan that is deemed to not be timely carried out
3. Netting arrangement -

Pastor receives \$1,000 each week. Finance committee tells pastor that if he turns in his business expenses each week, then he can split the payment into part business expense and part salary payment. All of \$1,000 is taxable.

Advantages of Accountable Plans

1. Avoids the reimbursement being includable as taxable income
2. Avoids employee losing deduction because of standard deduction
3. Miscellaneous itemized deductions no longer allowed
4. Miscellaneous itemized deductions no longer allowed
5. Miscellaneous itemized deductions no longer allowed
6. Miscellaneous itemized deductions no longer allowed

Disadvantages of Accountable Plans

1. Employee keeps detailed expense records
 - Documentation falls on employee's shoulders
2. Plan cannot be considered part of compensation package
3. Church has full authority to deny reimbursements for unsubstantiated expenses
4. Amount budgeted is not payable unless expense is incurred and substantiated to the church

Proper Documentation of all Expenses

- ▶ Every expenditure of the church must be documented as to the exempt purpose of the expense.
- ▶ For meals, entertainment and travel, the 5 “W’s” must be documented on the actual receipt.
 - Who
 - What
 - When
 - Where
 - Why

Proper Documentation of all Expenses

- The following should be adopted and maintained by the church
 - An accountable plan for all business expenses
 - A credit card acceptance policy that requires employees to submit receipts for all charges
 - Policy should be adopted to require immediate repayment of any expense that is determined to be a personal expense

Federal Parking Lot Tax Facts

- This was repealed on December 2019

Benevolence

- Identifying and meeting needs of individual they cannot meet themselves
- Most common requests: food, utilities, rent, medical expenses and transportation
- Financial need may be met with cash or in-kind help.
- Church should document all benevolent expenditures meet the following requirements
 - Needs
 - Recipient resources

Benevolence Needs

- Need = Necessity
- Usually includes food, shelter, clothing, transportation and health care expenses
- Need is subjective...benevolence for shoes, church should not consider a request for \$200 sneakers to be a need
- Document requests for unmet needs. Example call the landlord & verify last month's rent is still unpaid.
- Need is not a business need => IRS says business can never receive church benevolence

Benevolence Resources

- Recipient must lack resources to meet the need
- Proof could be tax return, paycheck stub, bank statement
- List financial resources on benevolence application
- Have recipient sign a statement that they represent they lack resources to pay for the need requested
- Use caution when benevolence assistance is regular and continuous. There is usually one person who is continually in need
- Needy employee – If receiving benevolence assistance the IRC requires benevolence payment provided to employees to be taxed, included as wages on W-2 subject to payroll withholding.

Benevolence Procedures

- Church should adopt a written policy spelling out limits of the churches benevolence
- Policy should require a written application from the proposed recipient
 - > Application should require copy of identity document i.e. drivers license
 - > Require a copy of the unpaid bill if the source of the need
- A separate committee or at least 2 unrelated individuals should make all decisions regarding the request
- Retain the application, related documents and decision document at least 3 calendar years after decision made
- Policy should require a separate application for each need
- Have policy reviewed by competent legal counsel

Fair Labor Standards Act (FLSA)

1. Most jobs are governed by FLSA
2. Two categories of employees/jobs -
 - Exempt (not entitled to overtime pay)
 - Non-exempt (entitled to overtime pay)
3. Three test to meet to be exempt –
 - Salary Level test
 - Salary Basis test
 - Duties test
4. Applies to churches, ministries, non-profit orgs

Fair Labor Standards Act (FLSA)

Salary Level Test

1. Paid less than \$23,600 per year (\$455 per week) are nonexempt
2. Employees who earn more than \$100,000 per year are almost certainly exempt

Salary Basis Test

1. Generally employee is paid on salary basis if have a guaranteed minimum amount of money they can count on receiving for any work week
2. Applies only to reductions in monetary amounts – employees base pay may not be reduced based on the quality or quantity of work performed
3. Be paid on a salary basis not less than \$455 per week

Duties Test

1. Employee who meets the salary level tests and also the salary basis test is exempt only if they also perform exempt duties test. Usually relatively high-level work
2. Categories of exempt job duties
 - Executive
 - Professional
 - Administrative

Executive Exemption

To qualify all the following tests must be met:

- Must be compensated on a salary basis not less than \$455/\$913 per week;
- Primary duty – managing the organization, department or subdivision of the organization;
- Must customarily & regularly direct the work of at least 2 or more other full-time employees or their equivalent; and
- Have authority to hire or fire other employees, or the suggestion and recommendations as to hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

Administrative Exemption

To qualify all the following tests must be met:

- Must be compensated on a salary basis not less than \$455/\$913 per week;
- Primary duty – performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- Employee’s primary duty includes the exercise of discretion and independent judgement with respect to matters of significance.

Professional Exemption

To qualify for the learned professional employee exemption all the following tests must be met:

- Must be compensated on a salary basis not less than \$455/\$913 per week;
- Primary duty – performance of work requiring advanced knowledge, defined as work which is predominately intellectual in character and which includes work requiring the consistent exercise of discretion and judgement;
- The advanced knowledge must be in a field of science or learning; and
- Advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Professional Exemption continued

To qualify for the creative professional exemption all the following tests must be met:

- Must be compensated on a salary basis not less than \$455/\$913 per week;
- Primary duty – performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

FLSA—Steps to take now

1. Review salaries for all employees. Make sure they are above the salary level test
2. Review all employees' jobs to determine if they qualify as exempt or non-exempt
3. If exempt and salary is below the threshold, they are subject to overtime.
4. Ministers exemption
 - No clear cut answer
 - Historically court and DOL have considered ministers not subject to minimum wage and overtime rules
 - Not listed in statute as exempt or mentioned in the new regulations
 - Safest step for churches – fit its ministers within one of the exemptions
5. **Disclaimer: This memorandum is provided for general information purposes only and is not a substitute for legal advice particular to your situation.**

CARES Act - Coronavirus Aid, Relief, and Economic Security

Created by Congress and signed into law March 27, 2020 – provided to churches/nonprofits

1. Payroll Protection Program (PPP)
2. SBA Economic Injury Disaster Loan
3. SBA Economic Injury Disaster Grant
4. \$1,200 + \$500 each child (earnings \$75,000 or less filing single \$150,000 filing joint)
5. Expanded eligibility for unemployment insurance + additional \$600 per week determined by state.
6. Up to \$300 cash contribution “*above the line*” for those that can’t itemize
7. For those itemize contributions deducted up to 100% of adjusted gross income for 2020 (normally limited to 60%)

Economic Injury Disaster Loans (EIDLs)

1. Administered through the SBA
2. Businesses/Organizations with not more than 500 employees
3. Waives requirement for personal guarantees for loans up to \$200,000
4. Terms
 - 30-year repayment
 - 2.75% interest
 - Deferral for 1 year interest still accrues
 - Proceeds used for working capital & operations
 - No prepayment penalty
 - Not forgivable
5. Request a forgivable advance/grant up to \$10,000 if eligible (SBA Economic Injury Disaster Grant)

Payroll Protection Program

1. Loans administered by SBA through local banks
2. Fully guaranteed by the Federal Government
3. Available to charitable nonprofits with 500 or fewer full or part-time employees
4. Loans up to 2.5 times payroll limited to \$10 million
5. Forgivable
6. Maturity of 10 years
7. Interest rate 1%

Payroll Protection Program Payroll Costs

1. Wages, salary, commissions or similar compensation,
2. Payment for vacation, parental, family, medical or sick leave,
3. Group health care benefits, including premiums
4. Payment for retirement benefits
5. Payment of state or local tax assessed on compensation of employees
6. Payment of Housing allowance

Payroll Protection Program Payroll Costs Doesn't Include

1. Compensation in excess of \$100,000
2. Employer share of payroll taxes (FICA/Medicare),
3. Compensation of an employee whose principal place of residence is outside U.S.,
4. Qualified sick or family medical leave for which a credit is allowed under Coronavirus Families First Act

Payroll Protection Program Forgiveness

1. Cover period (to use the funds) beginning on the PPP loan disbursement date
 - ▶ Eight-week period (56 days) if receiving PPP loan before June 5, 2020 or
 - ▶ After June 5, 24-week period (168 days)
2. Covered period can not go later than December 31, 2020
3. Application is to be processed through the bank where received the loans.
4. Can apply as soon as bank is ready to receive the application.

Payroll Protection Program Forgiveness

Types of loan forgiveness applications:

- Form 3508S – those receiving \$50,000 or less in loans
- Form 3508EZ
 - for self-employed, sole proprietor or independent contractor or
 - no reduction of annual salary or hourly wages of any employee by more than 25% during the covered period compared to period between 1/1/2020 and 3/31/2020 of the and number of employees or average hours paid between Jan 1, 2020 and end of coverage period, or
 - no reduction of annual salary or hourly wages of any employee by more than 25% during the covered period compared to period between 1/1/2020 and 3/31/2020 and borrower was unable to operate during the covered period at the same level of business activity as before 2/15/2020

Payroll Protection Program Forgiveness

Types of loan forgiveness applications cont'd:

- Form 3508 – if unable to attest to the previous three criteria

Submit the applicable application to your lender for forgiveness approval

PPP Application for Forgiveness



**Paycheck Protection Program
PPP Loan Forgiveness Application Form 3508S**

OMB Control No. 3245-0407
Expiration date: 10/31/2020

A BORROWER MAY USE THIS FORM ONLY IF THE BORROWER RECEIVED A PPP LOAN OF \$50,000 OR LESS. A Borrower that, together with its affiliates, received PPP loans totaling \$2 million or greater cannot use this form.

Business Legal Name ("Borrower")		DBA or Tradename, if applicable	
Business Address		Business TIN (EIN, SSN)	Business Phone
		() -	
		Primary Contact	E-mail Address

SBA PPP Loan Number: _____ Lender PPP Loan Number: _____

PPP Loan Amount: _____ PPP Loan Disbursement Date: _____

Employees at Time of Loan Application: _____ Employees at Time of Forgiveness Application: _____

EIDL Advance Amount: _____ EIDL Application Number: _____

Forgiveness Amount: _____

By Signing Below, You Make the Following Representations and Certifications on Behalf of the Borrower:

The Authorized Representative of the Borrower certifies to all of the below by **initialing** next to each one.

_____ The dollar amount for which forgiveness is requested does not exceed the principal amount of the PPP loan and:

- was used to pay costs that are eligible for forgiveness (payroll costs to retain employees; business mortgage interest payments; business rent or lease payments; or business utility payments);
- includes payroll costs equal to at least 60% of the forgiveness amount;
- if a 24-week Covered Period applies, does not exceed 2.5 months' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$20,833 per individual; and
- if the Borrower has elected an 8-week Covered Period, does not exceed 8 weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual.

_____ I understand that if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges.

_____ The Borrower has accurately verified the payments for the eligible payroll and nonpayroll costs for which the Borrower is requesting forgiveness, and has accurately calculated the forgiveness amount requested.

_____ I have submitted to the Lender the required documentation verifying payroll costs, the existence of obligations and service (as applicable) prior to February 15, 2020, and eligible business mortgage interest payments, business rent or lease payments, and business utility payments.

_____ The information provided in this application and the information provided in all supporting documents and forms is true and correct in all material respects. I understand that knowingly making a false statement to obtain forgiveness of an SBA-guaranteed loan is punishable under the law, including 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

_____ The tax documents I have submitted to the Lender are consistent with those the Borrower has submitted/will submit to the IRS and/or state tax or workforce agency. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of ensuring compliance with PPP requirements and all SBA reviews.

_____ I understand, acknowledge, and agree that SBA may request additional information for the purposes of evaluating the Borrower's eligibility for the PPP loan and for loan forgiveness, and that the Borrower's failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower's loan forgiveness application.

The Borrower's eligibility for loan forgiveness will be evaluated in accordance with the PPP regulations and guidance issued by SBA through the date of this application. SBA may direct a lender to disapprove the Borrower's loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan.

Signature of Authorized Representative of Borrower

Date

Print Name

Title

PPP Application for Forgiveness (pg 2)



**Paycheck Protection Program
PPP Loan Forgiveness Application Form 3508S**

PPP Borrower Demographic Information Form (Optional)

Instructions

1. **Purpose.** Veteran/gender/race/ethnicity data is collected for program reporting purposes only.
2. **Description.** This form requests information about each of the Borrower's Principals. Add additional sheets if necessary.
3. **Definition of Principal.** The term "Principal" means:
 - For a self-employed individual, independent contractor, or a sole proprietor, the self-employed individual, independent contractor, or sole proprietor.
 - For a partnership, all general partners and all limited partners owning 20% or more of the equity of the Borrower, or any partner that is involved in the management of the Borrower's business.
 - For a corporation, all owners of 20% or more of the Borrower, and each officer and director.
 - For a limited liability company, all members owning 20% or more of the Borrower, and each officer and director.
 - Any individual hired by the Borrower to manage the day-to-day operations of the Borrower ("key employee").
 - Any trustor (if the Borrower is owned by a trust).
 - For a nonprofit organization, the officers and directors of the Borrower.
4. **Principal Name.** Insert the full name of the Principal.
5. **Position.** Identify the Principal's position; for example, self-employed individual; independent contractor; sole proprietor; general partner; owner; officer; director; member; or key employee.

Principal Name		Position
Veteran	1=Non-Veteran; 2=Veteran; 3=Service-Disabled Veteran; 4=Spouse of Veteran; X=Not Disclosed	
Gender	M=Male; F=Female; X=Not Disclosed	
Race (more than 1 may be selected)	1=American Indian or Alaska Native; 2=Asian; 3=Black or African-American; 4=Native Hawaiian or Pacific Islander; 5=White; X=Not Disclosed	
Ethnicity	H=Hispanic or Latino; N=Not Hispanic or Latino; X=Not Disclosed	

Disclosure is voluntary and will have no bearing on the loan forgiveness decision

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 15 minutes. Comments about this time or the information requested should be sent to Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503. **PLEASE DO NOT SEND FORMS TO THESE ADDRESSES.**

Political Activities

Contributions to political campaign funds	Prohibited
Public statements of position (verbal or written) in favor or opposition to candidates for office – in church publications or functions	Prohibited
Provide forum for all candidates to address the church	Permitted
Public comments made by ministers and employees with campaigns not made at church facilities or publications accompanied with statement comments are strictly personal and not representative of church	Permitted
Invites all candidates for political office to address the church and informs congregation before each candidate's speech that the views expressed are those of the candidates and not the church and church does not endorse any candidate	Permitted
Invite only one candidate in political campaign to address church	Prohibited
Distributes a voter's guide containing questions demonstrating a bias on certain issues	Prohibited

Political Activities

churches must maintain neutrality or risk losing their tax-exempt status

Endorsement of candidates	Prohibited
Campaign activities by employees within the context of their employment	Prohibited
Fundraising on behalf of a candidate	Prohibited
Newspaper ads urging voters to vote for or against a candidate	Prohibited
Church web sites containing information supporting or opposing candidates for public office	Prohibited
Distributes a compilation of voting records of all members or Congress on major legislative issues involving a wide range of subjects; publication contains no opinion and contents do not imply approval or disapproval of any members or their voting records	Permitted

IRS Resources

Telephone Numbers:

General Information	1-800-829-1040
Tax Forms and Publications	1-800-829-3676
Status of Refund	1-800-829-4477

Web Site:

www.irs.gov

Publications:

Pub 15	Circular E, Employer's Tax Guide
Pub 15-A	Employer's Supplemental Tax Guide
Pub 15-B	Employer's Tax Guide to Fringe Benefits
Pub 463	Travel, Gift, & Car Expenses
Pub 517	Social Security and Other Information for Clergy
Pub 526	Charitable Contributions
Pub 1771	Charitable Contributions – Substantiation & Disclosure
Pub 571	Tax-Sheltered Annuity Plans (403(b) plans)
Pub 1828	Tax Guide for Churches and Religious Organizations

Other Resources

Other Publications

GuideStone Financial - Ministers Tax Guide

www.guidestone.org

Church & Clergy Tax Guide - Richard Hammer

Minister's Tax & Financial Guide – Dan Busby

Church Law & Tax Report

Church Finance Today

Web Sites:

Christian Ministry Resources – www.churchlawandtax.com

The Church Network – www.nacba.net

Evangelical Council of Financial Accountability (ECFA)

www.ecfa.org

Thank you!

Randy Reid, CPA

randy_reid_msn.com