



# Church Legal and Taxes Update



San Jacinto Baptist Association  
January 2025

# Updates for 2025

1. Standard mileage rate 70 cents per mile, 14 cents charity, 21 cents medical
2. \$23,500 maximum contribution deferral to 403(b) or 401(k) plan
3. \$7,500 catch-up limit for contributions deferral to 403(b) or 401(k) age 50 or older
4. Standard deduction \$29,200 - 2024 and \$30,000 - 2025 for joint returns  
\$14,600 – 2024 and \$15,000 - 2025 for filing single and married filing separately

# IMPORTANT FILING DEADLINES

1. W-2's – due to employees January 31, 2025
2. W-2 Copy A & W-3 – due January 31, 2025
3. 1099's NEC and MISC- due to vendors January 31, 2025
4. 1099's Copy A & 1096 - January 31, 2025
5. Request 1 extension of time to file W-2 & W-3 with SSA by filing Form 8809  
- if IRS grants have additional 30 days to file
6. Penalty varies from \$60 to \$330 per 1099 form if not filed by deadline

# Informational returns filing

- ▶ Effective with 2024 information returns filed by January 31, 2025
- ▶ Applies to the following information returns
  - Forms W-2
  - Form 1099 series
  - Other informational returns i.e. 1095 series, 1098 series and others
- ▶ If the total number of returns is at least 10, must file all electronically
- ▶ If you have 5 W-2's and 5 or more 1099's must file electronically
- ▶ For W-2's you can file online with Social Security Administration

# Online Filing options

## ► For W-2's

- Use your payroll software/processor to e-file
- Social Security has online options for smaller orgs
  - <https://www.ssa.gov/employer/what.htm>

## ► For 1099 Series

- IRS – Information Returns Intake System (IRIS)
  - <https://www.irs.gov/filing/e-file-forms-1099-with-iris>
  - have to apply for a Transmitter Control Code (TCC) to e-file
  - does not require specialized software

- IRS – Filing Information Returns Electronically (FIRE)

- have to file application apply for TCC
- allow 45 days for processing
- must have software, a service provider, or in-house programmer that can create the file in proper format.

- Refer to Topic No. 802 Applying to file information returns

- <https://www.irs.gov/taxtopics/tc802>

# Minister Criteria

## Two Steps

1. Must be commissioned, licensed, or ordained
2. If step 1 above is met, then you must be performing ministerial duties:
  - Baptism, Lord's Supper, weddings (sacerdotal functions)
  - Conducting religious worship services
  - Control, conduct or maintenance of religious organizations
  - Teaching (theological seminaries)
  - Considered a religious leader by the church

**Employees who meet the above two steps must be treated as ministers! This isn't optional!!!**

# 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) – on income earned inside your church
2. Self-Employed for Social Security (SECA) – on income earned outside regular work for your church, i.e. honorariums for speaking, funerals, weddings, etc
  - 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 basis

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 Housekeeping services
- ▶ Not food



# 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
- ▶ Benevolence pay to employees

- ▶ 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!

TIP→ Everything that benefits you is taxable until find the specific IRC that says it is not taxable.

# 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

Lifeway / Guidestone Compensation Study link: [Compensation Data - Lifeway Research](#)

# 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 2024: Employer's QUARTERLY Federal Tax Return**  
 (Rev. March 2024) Department of the Treasury — Internal Revenue Service

950124  
 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/county Foreign postal code

**Report for this Quarter of 2024**  
 (Check one.)

1: January, February, March

2: April, May, June

3: July, August, September

4: October, November, December

Go to [www.irs.gov/Form941](http://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. Employers in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico can skip lines 2 and 3, unless you have employees who are subject to U.S. income tax withholding.

1	Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4)	1	<input type="text"/>																				
2	Wages, tips, and other compensation	2	<input type="text" value="85,000"/> . 00																				
3	Federal income tax withheld from wages, tips, and other compensation	3	<input type="text" value="1,302"/> . 00																				
4	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/>	Check here and go to line 6.																				
<table border="0" style="width: 100%;"> <tr> <td></td> <td style="text-align: center;">Column 1</td> <td></td> <td style="text-align: center;">Column 2</td> </tr> <tr> <td>5a</td> <td>Taxable social security wages</td> <td><input type="text" value="40,000"/> . 00</td> <td><math>\times 0.124 =</math> <input type="text" value="4,960"/> . 00</td> </tr> <tr> <td>5b</td> <td>Taxable social security tips</td> <td><input type="text"/></td> <td><math>\times 0.124 =</math> <input type="text"/></td> </tr> <tr> <td>5c</td> <td>Taxable Medicare wages &amp; tips</td> <td><input type="text" value="40,000"/> . 00</td> <td><math>\times 0.029 =</math> <input type="text" value="1,160"/> . 00</td> </tr> <tr> <td>5d</td> <td>Taxable wages &amp; tips subject to Additional Medicare Tax withholding</td> <td><input type="text"/></td> <td><math>\times 0.009 =</math> <input type="text"/></td> </tr> </table>					Column 1		Column 2	5a	Taxable social security wages	<input type="text" value="40,000"/> . 00	$\times 0.124 =$ <input type="text" value="4,960"/> . 00	5b	Taxable social security tips	<input type="text"/>	$\times 0.124 =$ <input type="text"/>	5c	Taxable Medicare wages & tips	<input type="text" value="40,000"/> . 00	$\times 0.029 =$ <input type="text" value="1,160"/> . 00	5d	Taxable wages & tips subject to Additional Medicare Tax withholding	<input type="text"/>	$\times 0.009 =$ <input type="text"/>
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5d	Taxable wages & tips subject to Additional Medicare Tax withholding	<input type="text"/>	$\times 0.009 =$ <input type="text"/>																				
5e	Total social security and Medicare taxes. Add Column 2 from lines 5a, 5b, 5c, and 5d	5e	<input type="text" value="6,120"/> . 00																				
5f	Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)	5f	<input type="text"/>																				
6	Total taxes before adjustments. Add lines 3, 5e, and 5f	6	<input type="text" value="7,422"/> . 00																				
7	Current quarter's adjustment for fractions of cents	7	<input type="text"/>																				
8	Current quarter's adjustment for sick pay	8	<input type="text"/>																				
9	Current quarter's adjustments for tips and group-term life insurance	9	<input type="text"/>																				
10	Total taxes after adjustments. Combine lines 6 through 9	10	<input type="text" value="7,422"/> . 00																				
11	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	11	<input type="text"/>																				
12	Total taxes after adjustments and nonrefundable credits. Subtract line 11 from line 10	12	<input type="text" value="7,422"/> . 00																				
13	Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), or 944-X filed in the current quarter	13	<input type="text" value="7,422"/> . 00																				
14	Balance due. If line 12 is more than line 13, enter the difference and see instructions	14	<input type="text" value="0"/> . 00																				
15	Overpayment. If line 13 is more than line 12, enter the difference	<input type="text"/>	Check one: <input type="checkbox"/> Apply to next return. <input type="checkbox"/> Send a refund.																				

Name (not your trade name)

NATIONAL BAPTIST CHURCH

Employer identification number (EIN)

01 - 7585210

**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.

**Part 3: Tell us about your business. If a question does NOT apply to your business, leave it blank.**

**17** If your business has closed or you stopped paying wages . . . . .  Check here and

enter the final date you paid wages  /  / ; also attach a statement to your return. See instructions.

**18** If you're a seasonal employer and you don't have to file a return for every quarter of the year . . . .  Check here.

**Part 4: May we speak with your third-party designee?**

Do you want to allow an employee, a paid tax preparer, or another person to discuss this return with the IRS? See the instructions for details.

Yes. Designee's name and phone number

Select a 5-digit personal identification number (PIN) to use when talking to the IRS.

No.

**Part 5: Sign here. You MUST complete both pages of Form 941 and SIGN it.**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign your name here

Print your name here

Print your title here

Date  /  /

Best daytime phone

**Paid Preparer Use Only**

Check if you're self-employed . . . .

Preparer's name

PTIN

Preparer's signature

Date  /  /

Firm's name (or yours if self-employed)

EIN

Address

Phone

City  State

ZIP code

# 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

22222		a Employee's social security number 333-22-4444		OMB No. 1545-0008	
b Employer identification number (EIN) 01-7585210			1 Wages, tips, other compensation 40,000.00	2 Federal income tax withheld 1,302.00	
c Employer's name, address, and ZIP code NATIONAL BAPTIST CHURCH 445 ANYSTREET ANYTOWN, TX 77999			3 Social security wages 40,000.00	4 Social security tax withheld 2,480.00	
			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 NON-MINISTER	Last name SMITH	Suff.	11 Nonqualified plans	12a C o d e	
551 N MAIN ST. ANYTOWN, TX 77999			13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>	12b C o d e	
			14 Other	12c C o d e	
				12d C o d e	
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

# Payroll - Minister W-2

		<b>a</b> Employee's social security number 333-22-444		Safe, accurate, <b>FAST! Use</b>				Visit the IRS website at <a href="http://www.irs.gov/efile">www.irs.gov/efile</a>	
<b>b</b> Employer identification number (EIN) 01-7585210				<b>1</b> Wages, tips, other compensation 45,000.00		<b>2</b> Federal income tax withheld			
<b>c</b> Employer's name, address, and ZIP code National Baptist Church 445 Anystreet Anytown, TX 77888				<b>3</b> Social security wages		<b>4</b> Social security tax withheld			
				<b>5</b> Medicare wages and tips		<b>6</b> Medicare tax withheld			
				<b>7</b> Social security tips		<b>8</b> Allocated tips			
<b>d</b> Control number				<b>9</b>		<b>10</b> Dependent care benefits			
<b>e</b> Employee's first name and initial Rev. Mark Smith		Last name 551 N. Main St.		Suff. Anytown, TX 77888		<b>11</b> Nonqualified plans		<b>12a</b> See instructions for box 12	
						<b>13</b> Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		<b>12b</b>	
						<b>14</b> Other Housing Allowance: \$15,800.00		<b>12c</b>	
								<b>12d</b>	
<b>f</b> Employee's address and ZIP code									
<b>15</b> State	Employer's state ID number	<b>16</b> State wages, tips, etc.	<b>17</b> State income tax	<b>18</b> Local wages, tips, etc.	<b>19</b> Local income tax	<b>20</b> Locality name			

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

**2024**

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.

# 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

# OTHER REPORTING

## Form 1099-NEC

- 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 January 31, 2025
- Due to the Social Security Adm by January 31, 2025

## 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

VOID  CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. <b>NATIONAL BAPTIST CHURCH</b> <b>445 ANYSTREET</b> <b>ANYTOWN, TX 79999</b>		OMB No. 1545-0116 Form <b>1099-NEC</b> (Rev. January 2022) For calendar year 20 <b>24</b>		<b>Nonemployee Compensation</b>
PAYER'S TIN <b>79-9999999</b>	RECIPIENT'S TIN <b>555-99-5555</b>	<b>1</b> Nonemployee compensation \$ <b>20000.00</b>		
RECIPIENT'S name <b>JOHN DOE</b> Street address (including apt. no.) <b>221 NORTHWEST DR.</b> City or town, state or province, country, and ZIP or foreign postal code <b>ANYTOWN, TX 79999</b>		<b>2</b> Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale <input type="checkbox"/> <b>3</b>		<b>Copy 1</b> <b>For State Tax Department</b>
Account number (see instructions)		<b>4</b> Federal income tax withheld \$		
		<b>5</b> State tax withheld \$	<b>6</b> State/Payer's state no.	<b>7</b> State income \$
		\$	\$	\$



# 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 28th
  
- Clothing & Household Goods
  - a. must be in good condition
  - b. no contribution for old & worn-out items

# Quid Pro Quo Contributions

## This for That

- 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

## Noncash 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

# 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

# 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 its 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.

# 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 \$35,568 per year (\$684 per week) are nonexempt
2. Employees who earn more than \$107,432 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 \$684 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 \$684 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 \$684 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 \$684 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 \$684 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.**

# Other Items

1. Check church/organization status with Texas Secretary of State
  - ▶ Be sure corporate status is in good standing
2. Be sure you have filed for sales tax, franchise tax and hotel tax exemption
  - ▶ Use form AP-209 Texas Application for Exemption – Religious Organizations

# 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](http://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](http://www.guidestone.org)

Church & Clergy Tax Guide - Richard Hammer

Minister's Tax & Financial Guide – Dan Busby

Church Law & Tax Report

Church Compensation – Elaine L. Sommerville, CPA

## Web Sites:

Christian Ministry Resources – [www.churchlawandtax.com](http://www.churchlawandtax.com)

The Church Network – [www.nacba.net](http://www.nacba.net)

Evangelical Council of Financial Accountability (ECFA)

[www.ecfa.org](http://www.ecfa.org)

# Thank you!



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