



A Financial Services Ministry™

# *Federal Reporting Requirements for Churches★*

Richard R. Hammar, J.D., LL.M., CPA  
Senior Editor, CHURCH LAW & TAX REPORT

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## INTRODUCTION

The most important federal reporting obligation for most churches is the withholding and reporting of employee income taxes and Social Security taxes. These payroll reporting requirements apply, in whole or in part, to almost every church. Yet many churches do not fully comply with them for various reasons, including the following:

- The church treasurer is elected by the congregation and does not remain in office long enough to understand the application of the payroll tax reporting rules to churches.
- Church leaders assume that churches are exempt from the payroll tax reporting requirements. This is a false assumption. The courts have rejected the argument that the application of the payroll tax reporting rules to churches violates the constitutional guaranty of religious freedom.
- There are a number of special payroll tax reporting rules that apply to churches, and these often are not clearly understood by church staff members. These special rules include the following:
  - ✓ While most ministers are employees for federal income tax reporting, they are self-employed for Social Security with respect to compensation they receive for ministerial services. This means that they pay the “self-employment tax” (SECA) rather than the employee’s share of Social Security and Medicare taxes (FICA)—even if they report their federal income taxes as a church employee. It is a common mistake for churches to treat ministers as employees for Social Security and to withhold the employee’s share of Social Security and Medicare taxes from their wages.
  - ✓ Wages paid to a minister as compensation for ministerial services are exempt from mandatory income tax withholding whether the minister reports income taxes as an employee or as self-employed. Ministers use the estimated tax procedure to pay their federal taxes, unless they have entered into a voluntary withholding agreement with their employing church (explained below).
  - ✓ Some churches are exempt from the employer’s share of Social Security and Medicare taxes because they filed a timely exemption application. For most churches,

this exemption had to be filed before October 31, 1984. The exemption does not excuse the church from income tax withholding, filing Form 941, or issuing W-2 forms to church employees. The nonminister employees of a church that filed this exemption application are treated as self-employed for Social Security, and must pay the self-employment tax (SECA) if they are paid \$108.28 or more during the year.

✎ **WARNING.** *Federal law specifies that any corporate officer, director, or employee who is responsible for withholding taxes and paying them over to the government may be liable for a penalty in the amount of 100 percent of such taxes if they are either not withheld or not paid over to the government. This penalty is of special relevance to church leaders, given the significant rate of noncompliance by churches with the payroll reporting procedures.*

## MAXIMIZING TAX BENEFITS FOR YOUR MINISTER

### *Housing allowance (and parsonage allowance)*

✎ **KEY POINT.** The housing allowance was challenged in federal court as an unconstitutional preference for religion. In 2019, a federal appeals court rejected this argument and affirmed the constitutionality of the allowance.

The most important tax benefit available to ministers who own or rent their home is the housing allowance exclusion. Unfortunately, many churches fail to designate a portion of their minister’s compensation as a housing allowance, and thereby deprive the minister of an important tax benefit.

A housing allowance is simply a portion of a minister’s compensation that is so designated in advance by the minister’s employing church. For example, in December of 2020 a church agrees to pay its pastor “total compensation” of \$45,000 for 2021, and designates \$15,000 of this amount as a housing allowance (the remaining \$30,000 is salary). This costs the church nothing. It is simply a matter of designating part of a minister’s salary as a housing allowance.

The tax code specifies that the housing allowance of a minister who owns or rents a home is nontaxable in computing federal income taxes to the extent that it is (1) declared in advance, (2) used for housing

expenses, and (3) does not exceed the fair rental value of the minister's home (furnished, plus utilities).

✪ **KEY POINT.** Under no circumstances can a church designate a housing allowance retroactively.

✪ **KEY POINT.** Although repayments of principal and interest on a home mortgage loan qualify as a housing expense to which a housing allowance can be applied, costs associated with refinancing a principal residence or a home equity loan qualify only if the proceeds are used for housing expenses.

Ministers who live in a church-owned parsonage that is provided "rent-free" as compensation for ministerial services do not include the annual fair rental value of the parsonage as income in computing their federal income taxes. The annual fair rental value is not "deducted" from the minister's income. Rather, it is not reported as additional income on Form 1040 (as it generally would be by non-clergy workers). Ministers who live in a church-provided parsonage do not pay federal income taxes on the amount of their compensation that their employing church designates in advance as a parsonage allowance, to the extent that the allowance represents compensation for ministerial services and is used to pay parsonage-related expenses such as utilities, repairs, and furnishings.

Note that the housing allowance and fair rental value of a parsonage are nontaxable only when computing federal income taxes. Ministers must include their housing allowance and rental value of a parsonage as taxable income when computing their self-employment taxes (except for retired ministers). In addition, any housing provided to a minister that is excludable from taxable income pursuant to IRC §119 (relating to housing provided on an employer's premises "for the convenience of the employer") also must be included in a minister's taxable income when computing self-employment income.

✪ **KEY POINT.** Be sure that the designation of a housing allowance for the following year is on the agenda of the church or church board for its last meeting of the current year. The designation should be an official action, and it should be duly recorded in the minutes of the meeting. The IRS also recognizes designations in employment contracts and budget line items—assuming that the church duly adopted the designation and it is reflected in a written document.

### ***Accountable reimbursements***

The elimination of an itemized deduction for most expenses, including unreimbursed employee business

expenses, will hit some clergy hard. Many tax professionals are encouraging the use of accountable reimbursement plans as a means of easing the negative tax impact. The basis for this idea is the fact that while the Tax Cuts and Jobs Act eliminated "all miscellaneous itemized deductions that are subject to the 2 percent floor" (including unreimbursed employee business expenses and nonaccountable reimbursed expenses) it did not modify or repeal section 62(a)(2)(A) of the tax code which excludes from tax employer reimbursements of employee business expenses under an *accountable plan*.

To be accountable, a church's reimbursement arrangement must comply with all four of the following rules:

- Expenses must have a business connection—that is, the reimbursed expenses must represent expenses incurred by an employee while performing services for the employer.
  - Employees are only reimbursed for expenses for which they provide an adequate accounting within a reasonable period of time (not more than 60 days after an expense is incurred).
  - Employees must return any excess reimbursement or allowance within a reasonable period of time (not more than 120 days after an excess reimbursement is paid).
  - The income tax regulations caution that in order for an employer's reimbursement arrangement to be accountable, it must meet a "reimbursement requirement" in addition to the three requirements summarized above. The reimbursement requirement means that an employer's reimbursements of an employee's business expenses come out of the employer's funds and not by reducing the employee's salary.
- ✪ **KEY POINT.** Reimbursements of business expenses under an accountable arrangement are not reported as taxable income on an employee's Form W-2 or Form 1040, and there are no deductions to claim. In effect, the employee is reporting to the church rather than to the IRS. This often translates into significant tax savings for the employee.

An *accountable* reimbursement arrangement should be established by the church board or congregation in an appropriate resolution. Be sure to condition the reimbursement of any expense on adequate substantiation. This will include written evidence for all expenses and receipts for most expenses of \$75 or more and for all lodging expenses, no matter the amount. For most expenses, the evidence must substantiate the amount, date, place, and business nature of each

expense. The key point is this: A church must require the same degree of substantiation as would be required for a deduction on the minister's income tax return.

Churches occasionally reimburse ministers for *nonbusiness* expenses. Such reimbursements, though they require an accounting, ordinarily must be included in the minister's wages for income tax reporting purposes, and they are not deductible by the minister. Instead, the entire amount of these reimbursements must be reported as taxable income on the minister's Form W-2 and Form 1040. For example, reimbursing the travel costs associated with the minister's spouse to travel with the minister is a nonbusiness expense, even if the church requires the spouse to accompany the minister for accountability purposes. The reimbursement of the travel expenses would be taxable to the minister.

### ***Flexible spending accounts***

A health flexible spending arrangement (FSA) allows employees to be reimbursed for medical expenses. FSAs are usually funded through voluntary salary reduction agreements with one's employer. No payroll taxes are deducted from employee contributions. The employer also may contribute.

FSAs have several benefits, including the following: (1) employer contributions can be nontaxable; (2) no payroll taxes are deducted from employee contributions; (3) withdrawals may be tax-free if used to pay qualified medical expenses; (4) employees can withdraw funds from an FSA to pay qualified medical expenses even if they have not placed the funds in the account.

Generally, distributions from a health FSA must be paid to reimburse the employee for qualified medical expenses. Qualified medical expenses are those incurred by an employee, or the employee's spouse and certain dependents (including a child under age 27 at the end of the year).

Employees must be able to receive the total amount they have elected to contribute for the year at any time during the year, regardless of the amount they have actually contributed.

FSAs are "use-it-or-lose-it" plans. This means that amounts in the account at the end of the plan year cannot be carried over to the next year. However, the plan can provide for a grace period of up to 2 ½ months after the end of the plan year. If there is a grace period, any qualified medical expenses incurred in that period can be paid from any amounts left in the account at the end of the previous year. An employer is not permitted to refund any part of the balance to the employee.

✦ **KEY POINT.** An employer, at its option, may amend its cafeteria plan document to provide for the carryover to the immediately following

plan year of up to \$550 of any amount remaining unused as of the end of the plan year in a health FSA (for 2021). The carryover of up to \$550 may be used to pay or reimburse medical expenses under the health FSA incurred during the entire plan year to which it is carried over. For this purpose, the amount remaining unused as of the end of the plan year is the amount unused after medical expenses have been reimbursed at the end of the plan's run-out period for the plan year. In addition to the unused amounts of up to \$550 that a plan may permit an individual to carry over to the next year, the plan may permit the individual to also elect up to the maximum allowed salary reduction amount (\$2,750 for 2020 and 2021). Thus, the carryover of up to \$550 does not count against or otherwise affect the \$2,750 salary reduction limit applicable to each plan year. Although the maximum unused amount allowed to be carried over in any plan year is \$550, the plan may specify a lower amount as the permissible maximum (and the plan sponsor has the option of not permitting any carryover at all).

The maximum amount available for reimbursement of incurred medical expenses of an employee and the employee's dependents under a health FSA cannot exceed \$2,750 for 2020 and 2021.

Note that the Affordable Care Act prohibits employers from using an FSA to pay for, or reimburse, the cost of individually-owned health insurance policies with pre-tax dollars.

✦ **KEY POINT.** Non-prescription medicines (other than insulin) do not qualify as an expense for FSA purposes.

### ***Section 403(b) plans***

A 403(b) plan, also known as a tax-sheltered annuity or retirement income account, is a retirement plan for certain employees of churches and other tax-exempt organizations. These plans have the following tax benefits: (1) Employees do not pay income tax on allowable contributions until they begin making withdrawals from the plan, usually after they retire. Note, however, that lay employees must pay Social Security and Medicare tax on their contributions to a 403(b) plan made under a salary reduction agreement. (2) Earnings and gains on amounts in an employee's 403(b) account are not taxed until they are withdrawn. (3) Employees may be eligible to claim the retirement savings contributions credit ("saver's credit") for elective deferrals contributed to a 403(b) account.

There are limits on the amount of contributions that can be made to a 403(b) account each year. If

contributions made to a 403(b) account are more than these contribution limits, penalties may apply. Generally, annual contributions to a 403(b) plan cannot exceed either the limit on annual additions or the limit on elective deferrals. See IRS Publication 571 for details.

## **COMPLYING WITH FEDERAL PAYROLL TAX REPORTING OBLIGATIONS**

### ***Step 1. Obtain an employer identification number (EIN) from the federal government if this has not been done.***

This number must be recited on some of the returns listed below and is used to reconcile a church's deposits of withheld taxes with the W-2 forms it issues to employees. The EIN is a nine-digit number that looks like this: 00-0246810. If your church does not have an EIN, you may apply for one online. Go to the IRS website at [irs.gov](https://www.irs.gov) for information. You may also apply for an EIN by calling 1-800-829-4933, or you can fax or mail Form SS-4 to the IRS. You should have only one EIN.

✦ **KEY POINT.** An employer identification number is not a “tax exemption number” and has no relation to your nonprofit corporation status. It merely identifies you as an employer subject to tax withholding and reporting and ensures that your church receives proper credit for payments of withheld taxes. You can obtain an EIN by submitting a Form SS-4 to the IRS.

### ***Step 2. Determine whether each church worker is an employee or self-employed.***

In some cases, it is difficult to determine whether a particular worker is an employee or is self-employed. If in doubt, churches should treat a worker as an employee, since substantial penalties can be assessed against a church for treating a worker as self-employed whom the IRS later reclassifies as an employee. In general, a self-employed worker is one who is not subject to the control of an employer with respect to how a job is to be done. Further, a self-employed person typically is engaged in a specific trade or business and offers his or her services to the general public.

The IRS and the courts have applied various tests to assist in classifying a worker as an employee or self-employed. Factors that tend to indicate employee status include the following:

- The worker is required to follow an employer's instructions regarding when, where, and how to work.

- The worker receives “on-the-job” training from an experienced employee.
- The worker is expected to perform the services personally, and not use a substitute.
- The employer rather than the worker hires and pays any assistants.
- The worker has a continuing working relationship with the employer.
- The employer establishes set hours of work.
- The worker is guaranteed a regular wage amount for an hourly, weekly, or other period of time.
- The worker is expected to work full time.
- The work is done on the employer's premises.
- The worker must submit regular oral or written reports to the employer.
- The worker's business expenses are reimbursed by the employer.
- The employer furnishes the worker's tools, supplies, and equipment.
- The worker does not work for other employers.
- The worker does not advertise his or her services to the general public.

Not all of these factors must be present for a worker to be an employee. But if most of them apply, the worker is an employee. The most important factor is the first one listed indicating an extensive amount of control over the worker. Once again: If in doubt, treat the worker as an employee.

✦ **KEY POINT.** Some fringe benefits are nontaxable only when received by employees.

### ***Step 3. Obtain the Social Security number for each worker.***

After determining whether a worker is an employee or self-employed, you must obtain the worker's Social Security number. A worker who does not have a Social Security number can obtain one by filing Form SS-5. This is a Social Security Administration form, not an IRS form. If a self-employed worker performs services for your church (and earns at least \$600 for the year), but fails to provide you with his or her Social Security number, then the church is required by law to withhold a specified percentage of compensation as backup withholding. The backup withholding rate is 24 percent for 2021.

A self-employed person can stop backup withholding by providing the church with a correct Social Security number.

The church will need the correct number to complete the worker's Form 1099-NEC (discussed later).

Churches can be penalized if the Social Security number they report on a Form 1099-NEC is incorrect, unless they have exercised "due diligence." A church will be deemed to have exercised due diligence if it has self-employed persons provide their Social Security numbers using Form W-9. It is a good idea for churches to present self-employed workers (e.g., guest speakers, contract laborers) with a Form W-9, and to backup withhold unless the worker returns the form. The church should retain each Form W-9 to demonstrate its due diligence.

All taxes withheld through backup withholding must be reported to the IRS on Form 945. The Form 945 for 2020 must be filed with the IRS by February 1, 2021. However, if you made deposits on time in full payment of the taxes for the year, you may file the return by February 10, 2021.

✪ **KEY POINT.** Many times churches will host guest speakers or other workers from other countries. Nonresident aliens are not taxed in the same manner as U.S. citizens. While they are not subject to the above rules, they are subject to other mandatory reporting and withholding rules. Churches should seek professional assistance in determining the applicable reporting and withholding rules for payments made to workers from other countries.

#### ***Step 4. Have each employee complete a Form W-4.***

Employees need to provide their employer with a W-4 form to enable the employer to know how much income tax to withhold from their pay. In the past, withholding was based on the number of "allowances" an employee claimed on Form W-4. The IRS has made major changes to Form W-4 for tax year 2020 and future years. Note the following:

- The new design reduces the form's complexity and increases the transparency and accuracy of the withholding system. While it uses the same underlying information as the old design, it replaces complicated worksheets with more straightforward questions that make accurate withholding easier for employees.
- Withholding allowances are no longer used for the redesigned Form W-4 to increase transparency, simplicity, and accuracy. In the past, the value of a withholding allowance was tied to the amount of the personal exemption. Due to changes in law, currently you cannot claim personal exemptions or dependency exemptions.

- Employees who have submitted Form W-4 in any year before 2019 are not required to submit a new form merely because of the redesign. Employers will continue to compute withholding based on the information from the employee's most recently submitted Form
- The redesigned Form W-4 makes it easier for employees to have their withholding match their tax liability. But some employees may prefer to have more of their money withheld from their paychecks throughout the year and then get that money back as a refund when they file their tax returns. The simplest way to increase withholding is to enter on line 4c of the Form W-4 the additional amount you would like your employer to withhold from each paycheck after your Form W-4 takes effect.
- To provide maximum accuracy, employees are encouraged to use the Tax Withholding Estimator available at [www.irs.gov/W4app](http://www.irs.gov/W4app). Updates and improvements to the estimator are underway that will be compatible with the redesigned Form W-4.
- Beginning in 2020, all new employees must use the redesigned form. Similarly, any employees hired prior to 2020 who wish to adjust their withholding must use the redesigned form.
- Employers may ask employees hired before 2020 to submit new Forms W-4 using the redesigned version of the form, but as part of the request you should explain that:
  - ✓ they are not required to submit new Form W-4 and
  - ✓ if they do not submit a new Form W-4, withholding will continue based on a valid form previously submitted.
- For those employees who furnished forms before 2020 and who do not furnish a new one after 2019, you must continue to withhold based on the forms previously submitted. You are not permitted to treat employees as failing to furnish Forms W-4 if they don't furnish a new Form W-4. Note that special rules apply to Forms W-4 claiming exemption from withholding.
- Ministers generally are exempt from tax withholding with respect to compensation received from the exercise of ministry (unless they have elected voluntary withholding).

#### ***Step 5. Compute each employee's taxable wages.***

The amount of taxes that a church should withhold from an employee's wages depends on the amount of

the employee's wages and the information contained on his or her Form W-4. A church must determine the wages of each employee that are subject to withholding. Wages subject to federal withholding include pay given to an employee for service performed. The pay may be in cash or in other noncash forms. Measure pay that is not in money (such as property) by its fair market value and not the cost to the church. Wages often include a number of items in addition to salary. (There is a comprehensive list of examples in Step 10.)

#### **Step 6. Determine the amount of income tax to withhold from each employee's wages.**

The way employers determine federal income tax withholding is changing to match the changes to the new Form W-4. Beginning in 2020, employers use IRS Publication 15-T to figure the amount of federal income tax to withhold from their employees' wages.

Beginning with the 2020 Form W-4, employees will no longer be able to request adjustments to their withholding using withholding allowances. Instead, using the new Form W-4, employees will provide employers with amounts to increase or reduce taxes and amounts to increase or decrease the amount of wage income subject to income tax withholding. The computations described in Publication 15-T will allow employers to figure withholding regardless of whether the employee provided a Form W-4 in an earlier year or will provide a new Form W-4 in 2021. Publication 15-T also allows employers to figure withholding based on their payroll system (automated or manual) and withholding method of choice.

Publication 15-T describes five methods for determining the amount of income taxes to be withheld from an employee's wages in 2021:

- Percentage method tables for automated payroll systems
- Wage bracket method tables for manual payroll systems with forms W-4 from 2020 or later
- Wage bracket method tables for manual payroll systems with forms W-4 from before 2020
- Percentage method tables for manual payroll systems with Forms W-4 from 2020 or later
- Percentage method tables for manual payroll systems with Forms W-4 from before 2020

❖ **KEY POINT.** The IRS is asserting that the new method for computing withheld taxes is allegedly more simple. But many employers believe the opposite is true. Fortunately, the IRS is launching an online withholding estimator at [www.irs.gov/W4App](http://www.irs.gov/W4App) to provide employers with the most accurate withholding method.

Wages paid to a minister as compensation for ministerial services are exempt from income tax withholding. However, ministers who report their income taxes as employees can enter into a voluntary withholding arrangement with their church. Under such an arrangement, the church withholds federal income taxes from the minister's wages as if the minister's wages are not exempt from withholding. Some ministers find voluntary withholding attractive since it avoids the often difficult task of budgeting for four significant tax payments.

A minister may initiate voluntary withholding by providing the church with a completed IRS Form W-4 (Employee's Withholding Certificate). The filing of this form is deemed to be a request for voluntary withholding. A minister may also request an amount of withholding through any other written instruction.

Voluntary withholding arrangements may be terminated at any time by either the church or minister, or by mutual consent.

The tax code specifies that ministers are self-employed for Social Security with respect to services performed in the exercise of ministry. Therefore, a church whose minister elects voluntary withholding is only obligated, and may only agree, to withhold the minister's federal income taxes. The minister is still required to use the estimated tax procedure to report and prepay self-employment taxes. However, ministers electing voluntary withholding can indicate on line 4c (2020 and 2021 Form W-4) that they want an additional amount of income taxes to be withheld from each pay period that will be sufficient to pay the estimated self-employment tax liability by the end of the year. This additional withholding of income taxes becomes a credit that can be applied against a minister's self-employment taxes on Form 1040. It is reported by the church as additional income taxes withheld on its quarterly Form 941. Many churches incorrectly report these additional withholdings as Social Security and Medicare taxes.

Since any tax paid by voluntary withholding is deemed to be timely paid, a minister who pays self-employment taxes using this procedure will not be liable for any underpayment penalty (assuming that a sufficient amount of taxes are withheld).

#### **Step 7. Withhold Social Security and Medicare taxes from nonminister employees' wages.**

Employees and employers each pay Social Security and Medicare taxes (FICA) equal to 7.65 percent of an employee's wages. The 7.65 percent tax rate is comprised of two components: (1) a Medicare hospital insurance tax of 1.45 percent, and (2) an "old age, survivor and



disability” (Social Security) tax of 6.2 percent. There is no maximum amount of wages subject to the Medicare tax. For 2020, the maximum wages subject to the Social Security tax (the 6.2 percent amount) was \$137,700. It increases to \$142,800 for 2021.

Beginning in 2013, the Affordable Care Act increases the employee portion of the Medicare (HI) tax by an additional tax of 0.9 percent on wages received in excess of \$200,000. (This tax is not matched by the employer.) This additional tax is required to be withheld once wages paid to a nonminister employee reach \$200,000. However, unlike the general 1.45 percent HI tax on wages, this additional tax is on the combined wages of the employee and the employee’s spouse, in the case of a joint return. The threshold amount is \$250,000 in the case of a joint return or surviving spouse, and \$200,000 for single persons. The \$250,000 and \$200,000 amounts are not adjusted for inflation and remain the same for 2021.

❖ **KEY POINT.** Even though the tax does not start until \$250,000 for a couple filing married filing jointly, the withholding mandate starts with any employee’s wages exceeding \$200,000. Therefore, it is possible for an employee to have the additional tax withheld but not owe the additional tax. In these instances, the additional tax withheld is treated as an additional tax payment on the employee’s individual tax return. Since the tax is on combined wages for married couples filing jointly, it is also possible that the combination of wages on a couples’ Form 1040 will initiate the tax but there has not been any associated withholding of the tax.

The Social Security tax rates for 2020 and 2021 are shown in the following table:

Year	Tax on Employee	Tax on Employer	Combined Tax
2020	7.65%	7.65%	15.3%
2021	7.65%	7.65%	15.3%

❖ **KEY POINT.** Federal law allowed churches that had nonminister employees as of July 1984 to exempt themselves from the employer’s share of Social Security and Medicare taxes by filing a Form 8274 with the IRS by October 30, 1984. Many churches did so. The exemption was available only to those churches that were opposed for religious reasons to the payment of Social Security taxes. (Prior to 1984, nonprofit organizations, including churches, did not

participate in the Social Security system.) The effect of such an exemption is to treat all nonminister church employees as self-employed for Social Security purposes. Such employees must pay the self-employment tax (SECA) if they are paid \$108.28 or more for the year. Churches hiring their first nonminister employee after 1984 have until the day before the due date for their first quarterly 941 form to file the exemption application. Churches can revoke their exemption by filing a Form 941 accompanied by full payment of Social Security and Medicare taxes for that quarter. Many churches have done so, often inadvertently.

**Step 8. The church must deposit the taxes it withholds.**

Churches accumulate three kinds of federal payroll taxes:

1. income taxes withheld from employees’ wages,
2. the employees’ share of Social Security and Medicare taxes (withheld from employees’ wages), and
3. the employer’s share of Social Security and Medicare taxes.

Most employers must deposit payroll taxes on a monthly or semiweekly basis. An employer’s deposit status is determined by the total taxes reported in a four-quarter “lookback” period. For 2021, the lookback period will be July 1, 2019 through June 30, 2020.

**Monthly depositor rule.** Churches that reported payroll taxes of \$50,000 or less in the lookback period will deposit their withheld taxes for 2021 on a monthly basis. Payroll taxes withheld during each calendar month, along with the employer’s share of FICA taxes, must be deposited by the 15th day of the following month.

**Semiweekly depositor rule.** Churches that reported payroll taxes of more than \$50,000 in the lookback period must deposit their withheld taxes on a semiweekly basis. This means that for paydays falling on Wednesday, Thursday, or Friday, the payroll taxes must be deposited on or by the following Wednesday. For all other paydays, the payroll taxes must be deposited on the Friday following the payday.

**Next-Day depositor rule.** Regardless of whether a church is a monthly schedule depositor or a semiweekly schedule depositor, if accumulated taxes withheld reach \$100,000 or more on any day during a deposit period, the taxes must deposit the taxes by the next business day. Additionally, any employer subject to this deposit rule becomes a semiweekly depositor for

the remainder of the calendar year and the following calendar year.

**Payment with return rule.** If you accumulate less than a \$2,500 tax liability during the current or previous quarter, you may make a payment with Form 941 instead of depositing monthly. See IRS Publication 15 for more information.

❖ **KEY POINT.** All deposits must be made using the Electronic Federal Tax Payment System (EFTPS). There are penalties for depositing late, or for mailing payments directly to the IRS that are required to be deposited, unless you have reasonable cause for doing so. To enroll in EFTPS, call 800-555-4477, or to enroll online, visit [eftps.gov](http://eftps.gov). If you do not want to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make deposits on your behalf.

❖ **KEY POINT.** New churches in their first year of existence are treated as a monthly depositor unless the \$100,000 Next-Day-Deposit Rule applies. Additionally, new churches, indicating they would be making payroll tax deposits, are pre-enrolled in EFTPS and should have received a letter with their four-digit EFTPS PIN.

**Step 9. All employers subject to income tax withholding, Social Security and Medicare taxes, or both, must file Form 941 quarterly.**

Form 941 reports the number of employees and amount of Social Security and Medicare taxes and withheld income taxes that are payable. Form 941 is due on the last day of the month following the end of each calendar quarter.

Quarter	Ending	Due date of Form 941
1st (Jan.–Mar.)	March 31	April 30
2nd (April–June)	June 30	July 31
3rd (July–Sept.)	September 30	October 31
4th (Oct.–Dec.)	December 31	January 31

If any due date for filing shown above falls on a Saturday, Sunday, or legal holiday, you may file your return on the next business day.

Form 941 may be filed electronically. For more information, visit the IRS website at [irs.gov](http://irs.gov) or call 1-866-255-0654.

❖ **KEY POINT.** Form 944 replaces Form 941 for eligible small employers. The purpose of Form 944 is to reduce the burden on the smallest employers by allowing them to file their employment tax returns annually, and in most cases pay the employment tax due with their return. Generally, you are eligible to file this form only if your payroll taxes for the year are \$1,000 or less. Do not file Form 944 unless the IRS has sent you a notice telling you to file it.

**Step 10. Prepare a Form W-2 for every employee, including ministers employed by the church.**

❖ **KEY POINT.** Congress has enacted legislation requiring that Forms W-2, W-3, 1099-NEC, and 1096, be filed by January 31, and eliminating the extended due date (March 31) for electronically filed Forms W-3 and 1096.

A church reports each employee’s taxable income and withheld income taxes as well as Social Security and Medicare taxes on this form. A church should furnish copies B, C, and 2 of the 2020 Form W-2 to each employee by February 1, 2021. File Copy A with the Social Security Administration by February 1, 2021. Send all Copies A with Form W-3, Transmittal of Wage and Tax Statements. If you file electronically the due date remains February 1, 2021.

❖ **KEY POINT.** Be sure to add cents to all amounts. Make all dollar entries without a dollar sign and comma, but with a decimal point and cents. For example, \$1,000 should read “1000.00.” Government scanning equipment assumes that the last two figures of any amount are cents. If you report \$40,000 of income as “40000,” the scanning equipment would interpret this as 400.00 (\$400)!

You may need some assistance with some of the boxes on the Form W-2. Consider the following:

**Box a.** Report the employee’s Social Security number. Insert “applied for” if an employee does not have a Social Security number but has applied for one. If you do not provide the correct employee name and Social Security number on Form W-2, you may owe a penalty unless you have reasonable cause.

**Box b.** Insert your church’s federal employer identification number (EIN). This is a nine-digit number that is assigned by the IRS. If you do not have one, you can obtain one by submitting a completed

Form SS-4 to the IRS. Some churches have more than one EIN (for example, some churches that operate a private school have a number for both the church and the school). Be sure that the EIN listed on an employee's Form W-2 is the one associated with the employee's actual employer.

**Box c.** Enter your church's name, address, and ZIP Code. This should be the same address reported on your Form 941.

**Box d.** You may use this box to identify individual W-2 forms. You are not required to use this box.

**Box e.** Enter the employee's name.

**Box f.** Enter the employee's address and ZIP Code.

**Box 1.** Report all federal taxable wages paid to workers who are treated as employees for federal income tax reporting purposes. This includes:

- Salary, bonuses, prizes, and awards.
- Taxable fringe benefits (including cost of employer-provided group term life insurance coverage that exceeds \$50,000).
- The value of the personal use of an employer-provided car.
- Most Christmas, birthday, anniversary, retirement and other special occasion gifts paid by the church.
- Business expense reimbursements paid under a nonaccountable plan (one that does not require substantiation of business expenses within a reasonable time, or does not require excess reimbursements to be returned to the church, or reimburses expenses out of salary reductions). Also note that such reimbursements are subject to income tax and Social Security withholding if paid to nonminister employees.
- Generally, payments made under an accountable plan are excluded from the employee's gross income and are not reported on Form W-2. However, if you pay a per diem or mileage allowance and the amount paid for substantiated miles or days traveled exceeds the amount treated as substantiated under IRS rules, you must report as wages on Form W-2 the amount in excess of the amount treated as substantiated. The excess amount is subject to income tax withholding and social security and Medicare taxes (or railroad retirement taxes, if applicable). Report the amount treated as substantiated (that is, the nontaxable portion) in box 12 using code L.
- Nonqualified moving expenses and expense reimbursements (except for reimbursements

of the travel expenses of members of the U.S. armed forces on active duty).

- Any portion of a minister's self-employment taxes paid by the church.
- Amounts includible in income under a nonqualified deferred compensation plan because of section 409A.
- Designated Roth contributions made under a section 403(b) salary reduction agreement.
- Church reimbursements of a spouse's travel expenses incurred while accompanying a minister on a business trip represent income to the minister unless the spouse's presence serves a legitimate and necessary business purpose and the spouse's expenses are reimbursed by the church under an accountable plan.
- Churches that make a "below-market loan" to a minister of at least \$10,000 create taxable income to the minister (some exceptions apply). A below market loan is a loan on which no interest is charged, or on which interest is charged at a rate below the applicable federal rate.
- Churches that forgive a minister's debt to the church create taxable income to the minister.
- Severance pay.
- Payment of a minister's personal expenses by the church.
- Employee contributions to a health savings account (HSA) unless contributed through a Sec. 125 cafeteria plan.
- Employer contributions to an HSA if includable in the income of the employee.
- Employee contributions towards group health insurance premiums unless they are contributed through a Sec. 125 cafeteria plan.
- Most "love gifts" from a church to its pastor.

For ministers who report their income taxes as employees, do not report in box 1 the annual fair rental value of a parsonage or any portion of a minister's compensation that was designated (in advance) as a housing allowance by the church. Also, some contributions made to certain retirement plans out of an employee's wages are not reported. If the nontaxable portion of a housing allowance (the lessor of actual expenses or the FRV plus utilities) is less than the church-designated allowance, it is the minister's responsibility to report the excess housing allowance as additional income on line 1 of his or her Form 1040 (if an employee) or on Schedule C (if self-employed).

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## NEED HELP COMPLETING A W-2, W-3, 1099 OR 1096 FORM?

The IRS operates a centralized call site to answer questions about reporting information on these forms.

If you have any questions about completing these forms, call the IRS at 866-455-7438,

Monday through Friday, 8:30 a.m. to 4:30 p.m. Eastern Standard Time.

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⚠ **CAUTION.** Taxable fringe benefits not reported as income in box 1 may constitute an automatic excess benefit transaction exposing the recipient and members of the church board to intermediate sanctions in the form of substantial excise taxes.

⚠ **KEY POINT.** Churches should not include in box 1 the annual fair rental value of a parsonage or a housing allowance provided to a minister as compensation for ministerial services.

**Box 2.** List all federal income taxes that you withheld from the employee's wages. The amounts reported in this box (for all employees) should correspond to the amount of withheld income taxes reported on your four 941 forms.

**Box 3.** Report an employee's wages subject to the "Social Security" component (the 6.2 percent rate for 2020) of FICA taxes. Box 3 should not list more than the maximum wage base for the "Social Security" component of FICA taxes (\$137,700 for 2020, \$142,800 for 2021). This box usually will be the same as Box 1, but not always. For example, certain retirement contributions are included in Box 3 that are not included in Box 1. To illustrate, contributions to a 403(b) plan by salary reduction agreement may be excludable from income and not reportable in Box 1, but they are subject to FICA taxes and accordingly they represent Social Security and Medicare wages for nonminister employees.

⚠ **KEY POINT.** Remember that ministers (including those who report their income taxes as employees) are self-employed for Social Security with respect to their ministerial services, and so they pay self-employment taxes rather than the employee's share of Social Security and Medicare taxes.

Churches that filed a timely Form 8274 exempting themselves from the employer's share of FICA taxes do not report the wages of nonminister employees in this box since such employees are considered self-employed for Social Security purposes.

**Box 4.** Report the "Social Security" component (6.2 percent) of Social Security and Medicare taxes that you withheld from a nonminister employee's wages. This tax is imposed on all wages up to a maximum of \$137,700 for 2020 and \$142,800 for 2021. Do not report the church's portion (the "employer's share") of Social Security and Medicare taxes. Ministers who report their income taxes as employees are still treated as self-employed for Social Security with respect to compensation from the performance of ministerial services. For ministers, this box should be left blank.

**Box 5.** Report a nonminister employee's current and deferred (if any) wages subject to the Medicare component (1.45 percent) of FICA taxes. This will be an employee's entire wages regardless of amount. There is no ceiling. For persons earning less than the annual maximum earnings subject to the 6.2 percent Social Security tax (\$137,700 for 2020 and \$142,800 for 2021) Box 3 and 5 should show the same amount. If you pay more than \$137,700 (\$142,800 for 2021) to a non-minister employee in 2021, Box 3 should show \$137,700 (\$142,800 for 2021) and Box 5 should show the full amount of wages paid.

**Box 6.** Report the Medicare component of FICA taxes that you withheld from the nonminister employee's wages. This tax is imposed on all wages, current and deferred (if any), regardless of amount. For ministers, this box should be left blank.

**Box 10.** Show the total dependent care benefits under a dependent care assistance program (section 129) paid or incurred by you for your employee. Include the fair market value of employer-provided daycare facilities and amounts paid or incurred for dependent care assistance in a section 125 cafeteria plan. Report all amounts paid or incurred including those in excess of the \$5,000 exclusion. Include any amounts over \$5,000 in Boxes 1, 3, and 5. For more information, see IRS Publication 15-B.

**Box 11.** The purpose of box 11 is for the Social Security Administration (SSA) to determine if any part of the amount reported in box 1 or boxes 3 or 5 was earned in a prior year. The SSA uses this information to verify that they have properly applied the Social

Security earnings test and paid the correct amount of benefits. Report distributions to an employee from a nonqualified plan in box 11. Also report these distributions in box 1. Under nonqualified plans, deferred amounts that are no longer subject to a substantial risk of forfeiture are taxable even if not distributed. Report these amounts in boxes 3 (up to the Social Security wage base) and 5. Do not report in box 11 deferrals included in boxes 3 or 5 and deferrals for current year services (such as those with no risk of forfeiture).

If you made distributions and also are reporting any deferrals in boxes 3 or 5, do not complete box 11. See IRS Publication 957.

Unlike qualified plans, nonqualified plans do not meet the qualification requirements for tax-favored status. Nonqualified plans include those arrangements traditionally viewed as deferring the receipt of current compensation, such as a rabbi trust. Welfare benefit plans and plans providing termination pay, or early retirement pay, are not generally nonqualified plans.

❖ **KEY POINT.** Nonqualified retirement plans are subject to many difficult technical rules and substantial penalties for compliance failures. Additional information is available in IRS Publications 15 and 957, but qualified professional guidance is also recommended.

**Box 12.** Insert the appropriate code and dollar amount in this box. Insert the code letter followed by a space and then insert the dollar amount on the same line within the box. Do not enter more than four codes in this box. If more are needed, use another Form W-2. Use capital letters for the codes, and remember not to use dollar signs or commas. For example, to report a \$3,000 contribution to a section 403(b) tax-sheltered annuity, you would report “E 3000.00” in this box. The codes are as follows:

A—This will not apply to church employees.

B—This will not apply to church employees.

C—You (the church) provided your employee with more than \$50,000 of group term life insurance. Report the cost of coverage in excess of \$50,000. It should also be included in Box 1 (and in Boxes 3 and 5 for nonminister employees). See page 9 for additional information.

D—Generally not applicable to churches.

E—The church made contributions to a 403(b) plan pursuant to a “salary reduction agreement” on behalf of the employee. Report the amount of the contributions. While this amount ordinarily is not reported in Box 1, it is included in Boxes 3 and 5 for nonminister employees since it is subject to

Social Security and Medicare taxes with respect to such workers.

F—Generally not applicable to churches.

G—Generally not applicable to churches.

H—Generally not applicable to churches.

J—You (the church) are reporting sick pay. Show the amount of any sick pay that is not includable in the employee’s income because he or she contributed to the sick pay plan.

K—Generally not applicable to churches.

L—You (the church) reimbursed the employee for employee business expenses using the standard mileage rate or the per diem rates, and the amount you reimbursed exceeds the amounts allowed under these methods. Enter code “L” in Box 12, followed by the amount of the reimbursements that equal the allowable standard mileage or per diem rates. Any excess should be included in Box 1. For nonminister employees, report the excess in Boxes 3 (up to the Social Security wage base) and 5 as well. Do not include any per diem or mileage allowance reimbursements for employee business expenses in Box 12 if the total reimbursements are less than or equal to the amount deemed substantiated under the IRS-approved standard mileage rate or per diem rates.

M, N—Generally not applicable to churches.

P – Not applicable to churches.

Q—Generally not applicable to churches.

R—Report employer contributions to a medical savings account on behalf of the employee. Any portion that is not excluded from the employee’s income also should be included in Box 1.

S—Report employee salary reduction contributions to a SIMPLE retirement account. However, if the Simple account is part of a 401(k) plan, use code D.

T—Report amounts paid (or expenses incurred) by an employer for qualified adoption expenses furnished to an employee under an adoption assistance program.

V—Generally not applicable to churches.

W—Report employer contributions to a health savings account (HSA). Include amounts the employee elected to contribute using a cafeteria plan.

Y—It is no longer necessary to report deferrals under a section 409A nonqualified deferred compensation plan in Box 12 using code Y.

Z—Report all amounts deferred (including earnings on deferrals) under a nonqualified deferred compensation (NQDC) plan that are included in income under section 409A of the tax code because the NQDC fails to satisfy the requirements of section 409A. Do not include amounts properly reported on Forms 1099-MISC or W-2 for a prior year. Also, do not include amounts considered to be subject to a substantial risk of forfeiture for purposes of section 409A. The amount reported in box 12 using code Z is also reported in box 1.

AA—Generally not applicable to churches.

BB—Report designated Roth contributions under a section 403(b) salary reduction agreement. Do not use this code to report elective deferrals under code E.

DD—The Affordable Care Act requires employers to report the cost of coverage under an employer-sponsored group health plan. IRS Notice 2011-28 provided relief for smaller employers filing fewer than 250 W-2 forms by making the reporting requirement optional for them until further guidance is issued by the IRS. The reporting under this provision is for information only; the amounts reported are not included in taxable wages and are not subject to new taxes.

EE—Generally not applicable to churches.

FF-- Use this code to report the total amount of permitted benefits under a QSEHRA. The maximum reimbursement for an eligible employee under a QSEHRA for 2020 is \$5,250 (\$10,600 if it also provides reimbursements for family members). Report the amount of payments and reimbursements the employee is entitled to receive under the QSEHRA for the calendar year, not the amount the employee actually receives. For example, a QSEHRA provides a permitted benefit of \$3,000. If the employee receives reimbursements of \$2,000, report a permitted benefit of \$3,000 in box 12 with code FF.

**Box 13.** Check the appropriate box.

**Statutory employee.** Churches rarely if ever have statutory employees. These include certain drivers, insurance agents, and salespersons.

**Retirement plan.** Mark this checkbox if the employee was an active participant (for any part of the year) in any of the following: (1) a qualified pension, profit-sharing, or stock bonus plan described in section 401(a) (including a 401(k) plan); (2) an annuity contract or custodial account described in section 403(b); (3) a simplified employee pension (SEP) plan; or (4) a SIMPLE retirement account.

**Third party sick pay.** Churches generally will not check this box.

**Box 14.** This box is optional. Use it to provide information to an employee. Some churches report a church-designated housing allowance in this box. The IRS uses Box 14 for this purpose in a comprehensive minister tax example in the current edition of its Publication 517, but this is not a requirement.

⌚ **TAX TIP.** *The IRS has provided the following suggestions to reduce the discrepancies between amounts reported on Forms W-2, W-3, and Form 941: First, be sure the amounts on Form W-3 are the total amounts from Forms W-2. Second, reconcile Form W-3 with your four quarterly Forms 941 by comparing amounts reported for: (1) Income tax withholding (Box 2). (2) Social Security and Medicare wages (Boxes 3, 5, and 7). (3) Social Security and Medicare taxes (Boxes 4 and 6). Amounts reported on Forms W-2, W-3, and 941 may not match for valid reasons. If they do not match, you should determine that the reasons are valid. The Social Security Administration will issue an inquiry notice when these amounts do not match.*

### **Step 11. Prepare a Form 1099-NEC for every self-employed person receiving non-employee compensation of \$600 or more.**

By February 1, 2021, churches must furnish Copy B of Form 1099-NEC (“statement for recipient of miscellaneous income”) to any self-employed person to whom the church paid nonemployee compensation of \$600 or more in 2020. This form (rather than a W-2) should be provided to clergy who report their federal income taxes as self-employed, since the Tax Court and the IRS have both ruled that a worker who receives a W-2 rather than a 1099-NEC is presumed to be an employee rather than self-employed. Other persons to whom churches may be required to issue a 1099-NEC include evangelists, guest speakers, and contractors.

Churches must send Copy A of Forms 1099-NEC, along with Form 1096, to the IRS by February 1, 2021, if nonemployee compensation is reported in box 1. If you file electronically, the due date for filing Copy A with the IRS is also February 1, 2021, if you are reporting nonemployee compensation box 1.

To illustrate, if a guest speaker visited a church in 2020 and received compensation from the church in an amount of \$600 or more (net of any housing allowance or travel expenses reimbursed under an accountable plan) then the church must issue the person Copy B of Form 1099-NEC by February 1, 2021.

Exceptions apply. For example, a church need not issue a 1099-NEC to a corporation (other than to attorneys that are incorporated), or to a person who

will be receiving a Form W-2 for services rendered to the church (all income should be reported on the Form W-2). Also, travel expense reimbursements paid to a self-employed person under an accountable reimbursement plan do not count toward the \$600 figure. Additionally, if supplies are purchased from a self-employed person, the amount does not count toward the \$600 filing limit, if the amount for the supplies has been separately stated on the invoice from the contractor.

To complete Form 1099-NEC the church will need to obtain the recipient’s name, address, and Social Security number. Churches should obtain this information at the time of the person’s visit, since it often can be difficult to obtain the necessary information at a later date. IRS Form W-9 can be used to obtain this information. If a self-employed person who is paid \$600 or more during the course of a year by a church refuses to provide a Social Security number, then the church is required to withhold a percentage of the person’s total compensation as “backup withholding.” See “Step 3,” above. The backup withholding rate is 24 percent for 2021.

*2019 was the last year the Form 1099-Misc was used to report nonemployee compensation. Beginning with payments made in 2020, nonemployee compensation is reported on Form 1099-NEC.*

## OTHER IMPORTANT REQUIREMENTS FOR CHURCHES

### Reporting group term life insurance

You must include in the income of employees an imputed cost of employer-provided group term life insurance coverage (including death benefits under the Benefits Plan) that exceeds \$50,000. You must also include the imputed cost of all employer-provided group term life insurance on the life of a spouse or dependent if the coverage provided exceeds \$2,000. The imputed cost can be determined according to the following table.

<i>Cost per \$1,000 of protection for 1-month period</i>			
<b>Age Brackets</b>	<b>Cost</b>	<b>Age Brackets</b>	<b>Cost</b>
Under 25	5 cents	25 to 29	6 cents
30 to 34	8 cents	35 to 39	9 cents
40 to 44	10 cents	45 to 49	15 cents
50 to 54	23 cents	55 to 59	43 cents
60 to 64	66 cents	65 to 69	\$1.27
70 and above	\$2.06		

**EXAMPLE.** Church A pays the premiums on a \$70,000 group term insurance policy on the life of Pastor B with B’s wife as beneficiary. Pastor B is 29 years old. Church A also pays the premium on a \$5,000 group term policy which covers Pastor B’s wife who is 30 years old. The church would have to report \$19.20 as the imputed cost of the insurance provided to Pastor B and his wife. This amount is computed as follows: (1) For Pastor B, the table shows the “cost” per month for each \$1,000 of group term life insurance in excess of \$50,000. To compute the cost for Pastor B, take 6 cents x 12 months = 72 cents x 20 (corresponding to \$20,000 of group term insurance in excess of \$50,000) = \$14.40. (2) In addition, the cost of the entire \$5,000 of insurance provided to Pastor B’s wife would have to be computed. Take 8 cents x 12 months = 96 cents x 5 = \$4.80. Combine this amount with the cost of Pastor B’s excess insurance to obtain the taxable amount of \$19.20. Church A should include this amount with wages in Box 1 of Form W-2. This amount should also be reported in Box 12 and labeled code C. Any includable amount is subject to income tax as well as Social Security and Medicare withholding for nonminister church employees.

## **Form I-9**

All employers are responsible for verifying the identity and eligibility of employees to work in the United States. As employers, churches must complete an Employment Eligibility Verification form for each new employee. This form is better known as Form I-9.

Form I-9 is not an IRS form and is not filed with any government agency. However, it is important for churches to be familiar with this form because they can be assessed fines for failing to comply with the requirements summarized below.

Churches should:

- Ensure that each new employee completes Section 1 of the Form I-9 on or before his or her first day of compensated work. Review the employee's documents and fully complete Section 2 of the Form I-9 within 3 business days of the hire. Collect a Form I-9 for all employees, including ministers, hired after November 6, 1986, even if the church has no doubt that someone is a U.S. citizen. An employee signs part of the form and the employer signs part of the form. The form's instructions list documents employees may show to verify their identity and eligibility to work in the United States.
- Review the United States Citizenship and Immigration Services website ([uscis.gov](http://uscis.gov)) for instructions that will assist you in completing the Form I-9. You can also download Form I-9 from the USCIS website.
- Collect forms from new employees only, not from all applicants. When extending job offers, churches should clarify that employment is conditioned on completion of a Form I-9. Employers should remind new employees to bring their documents the first day of work. Forms should be completed no later than the end of the employee's third day at work.
- Accept documents that appear to be genuine and relate to the employee. If churches act reasonably when deciding that a document is genuine, they will not be held responsible for a mistake. Churches may keep photocopies of original identification and verification documents with each employee form. This is not required by law but may be helpful in case there is ever a question about whether a document was genuine.
- Employers must retain an employee's completed Form I-9 for as long as the individual works for the employer. Once the individual's employment has terminated, the employer must determine how long after termination the Form I-9 must be

retained, which is either three years after the date of hire, or one year after the date employment is terminated, whichever is later. Forms I-9 can be retained either on paper or microform, or electronically.

- Upon request, show completed forms to authorized officials of the Department of Homeland Security (DHS), Department of Labor, or the Justice Department's Office of Special Counsel for Unfair Immigration-Related Employment Practices (OSC). Officials will give a minimum of three days' notice before inspection.
- Churches, like any employer, can be penalized for failing to comply with the I-9 requirement. If you fail to complete, retain, or make available for inspection a Form I-9 as required by law, you may face a civil penalty for each violation. There are additional penalties for knowingly hiring unauthorized aliens.
- Providing an employee's Social Security number on Form I-9 is voluntary for all employees unless an employer participates in the USCIS "E-Verify" program.

### ***Annual certification of racial nondiscrimination***

Churches and other religious organizations that operate, supervise, or control a private school must file a certificate of racial nondiscrimination (Form 5578) each year with the IRS. The certificate is due by the 15th day of the 5th month following the end of the organization's fiscal year. This is May 15 of the following year for organizations that operate on a calendar year basis. For example, the Form 5578 for 2020 is due May 17, 2021 (May 15 is a Saturday).

A private school is defined as an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly conducted. The term includes primary, secondary, preparatory, or high schools; and colleges and universities, whether operated as a separate legal entity or an activity of a church.

- ✦ **KEY POINT.** The term "school" also includes preschools, and this is what makes the reporting requirement relevant for many churches. As many as 25 percent of all churches operate a preschool program.
- ✦ **KEY POINT.** Independent religious schools that are not affiliated with a church or denomination *and* file Form 990, do not file Form 5578. Instead, they make their annual certifi-



cation of racial nondiscrimination directly on Form 990 (Schedule E).

Form 5578 is easy to complete. A church official simply identifies the church and the school and certifies that the school has “satisfied the applicable requirements of sections 4.01 through 4.05 of Revenue Procedure 75-50.” This reference is to the following requirements:

1. The school has a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy toward students.
  2. The school has a statement of its racially nondiscriminatory policy toward students in all its brochures and catalogs dealing with student admissions, programs, and scholarships.
  - The school makes its racially nondiscriminatory policy known to all segments of the general community served by the school through the publication of a notice of its racially nondiscriminatory policy at least annually in a newspaper of general circulation, through utilization of the broadcast media, or by displaying a notice of its racially nondiscriminatory policy on its primary publicly accessible Internet homepage at all times during its taxable year (excluding temporary outages due to website maintenance or technical problems) in a manner reasonably expected to be noticed by visitors to the homepage. (Allowing the notice to be placed on a school’s website home page is a new concession granted by the IRS in 2019. IRS Revenue Procedure 2019-22.)
- However, such notice is not required if one or more exceptions apply. These include the following: (1) During the preceding three years, the enrollment consists of students at least 75 percent of whom are members of the sponsoring church or religious denomination, and the school publicizes its nondiscriminatory policy in religious periodicals distributed in the community. (2) The school draws its students from local communities and follows a racially nondiscriminatory policy toward students and demonstrates that it follows a racially nondiscriminatory policy by showing that it currently enrolls students of racial minority groups in meaningful numbers.
4. The school can demonstrate that all scholarships or other comparable benefits are offered on a racially nondiscriminatory basis.

Filing the certificate of racial nondiscrimination is one of the most commonly ignored federal reporting requirements. Churches that operate a private school

(including a preschool), as well as independent schools, may obtain Form 5578 from the IRS website ([irs.gov](https://www.irs.gov)) or by calling the IRS forms number (1-800-829-3676).

### ***Charitable contribution substantiation rules***

Several important rules apply to the substantiation of charitable contributions, including the following:

1. **Cash contributions.** All cash contributions, regardless of amount, must be substantiated by either a bank record (such as a cancelled check) or a written communication from the charity showing the name of the charity, the date of the contribution, and the amount of the contribution. The recordkeeping requirements *may not be satisfied by maintaining other written records*. In the past, donors could substantiate cash contributions of less than \$250 with “other reliable written records showing the name of the charity, the date of the contribution, and the amount of the contribution” if no cancelled check or receipt was available. This is no longer allowed. As noted below, additional substantiation requirements apply to contributions (of cash or property) of \$250 or more, and these must be satisfied as well.

Substantiation of contributions of \$250 or more. Donors will not be allowed a tax deduction for any individual cash (or property) contribution of \$250 or more unless they receive a written acknowledgment from the church containing the following information:

- ✓ Name of the church.
- ✓ Name of the donor (a Social Security number is not required).
- ✓ Date of the contribution.
- ✓ Amount of any cash contribution.
- ✓ For contributions of property (not including cash) valued by the donor at \$250 or more, the receipt must describe the property. No value should be stated.
- ✓ The receipt must contain one of the following: (1) a statement that no goods or services were provided by the church in return for the contribution; (2) a statement that goods or services that a church provided in return for the contribution consisted entirely of intangible religious benefits; or (3) a description and good faith estimate of the value of goods or services other than intangible religious benefits that the church provided in return for the contribution.

- ✓ The church may either provide separate acknowledgements for each single contribution of \$250 or more or one acknowledgement to substantiate several single contributions of \$250 or more. Separate contributions are not aggregated for purposes of measuring the \$250 threshold.
- ✓ The written acknowledgment must be received by the donor on or before the earlier of the following two dates: (1) the date the donor files a tax return claiming a deduction for the contribution, or (2) the due date (including extensions) for filing the return.

2. **Quid pro quo contributions of more than \$75.** If a donor makes a “quid pro quo” contribution of more than \$75 (that is, a payment that is partly a contribution and partly a payment for goods or services received in exchange), the church must provide a written statement to the donor that satisfies two conditions:

The statement must inform the donor that the amount of the contribution that is tax-deductible is limited to the excess of the amount of any money (or the value of any property other than money) contributed by the donor over the value of any goods or services provided by the church or other charity in return. The statement must provide the donor with a good faith estimate of the value of the goods or services furnished to the donor.

A written statement need not be issued if only token goods or services are provided to the donor or the gifts given were low-cost items in comparison to the overall donation. For 2020, token goods or services were those that cost the church no more than \$11.20 to produce, contain the church’s logo and were given in exchange for a contribution of at least \$56. Low-cost items include items with a value not exceeding the lesser of \$112 or 2 percent of the amount of the contribution. This amount is adjusted annually for inflation. In addition, the rules do not apply to contributions in return for which the donor receives solely an intangible religious benefit that generally is not sold in a commercial context outside the donative context.

3. **Gifts of property.** Several additional rules apply to the substantiation of contributions of noncash property valued by the donor at \$500 or more. Donors who claim a deduction over \$500 but not over \$5,000 for a noncash charitable contribution must retain certain records and complete the front side (Section A, Part I, and

Part II if applicable) of IRS Form 8283 and enclose the completed form with the Form 1040 on which the charitable contribution is claimed.

Special rules apply to donations of cars, boats, and planes valued by the donor at more than \$500. The church must provide the donor with a written acknowledgment, and send a Form 1098-C to the IRS containing required information about the donation. Form 1098-C can be used as the written acknowledgment that must be issued to a donor. See the instructions to Form 1098-C for more information. Failure to file Form 1098-C can result in penalties assessed to the church and a loss of the donation deduction by the donor.

- ✦ **KEY POINT.** Form 1098-C is required to be provided to the donor within a short time frame from the date of the gift. It is not provided to the donor at the end of the tax year. All Forms 1098-C issued during a tax year and provided to the IRS with Form 1096 by February 28th of the next tax year.

For contributions of noncash property valued at more than \$5,000 (\$10,000 for privately held stock), a donor must obtain a qualified appraisal of the donated property from a qualified appraiser and complete a qualified appraisal summary (Section B of Form 8283) and have the summary signed by the appraiser and a church representative. The completed Form 8283 is then enclosed with the Form 1040 on which the charitable contribution deduction is claimed. The appraisal must be enclosed for contributions of property (other than inventory and publicly traded securities) in excess of \$500,000.

### ***Affordable Care Act reporting***

The ACA imposes the most significant reporting obligations since the introduction of Form W-2 in 1943. In fact, the new reporting obligations are similar to Form W-2 in that there are forms that must be issued to individual employees, and a “transmittal” form that is sent to the IRS along with copies of all the forms issued to employees. And, as with Form W-2, the IRS can assess penalties for failure to comply with the new reporting obligations. Because of the similarities of the new reporting requirements to Form W-2, some are calling them the “Health Care W-2s.” Of course, the analogy is not perfect. The W-2 form reports compensation and tax withholding, while the new forms report health insurance information. The reporting requirements consist of the following forms:

- Providers of minimum essential coverage are required to file Forms 1094-B and 1095-B. These forms are used to report certain information to the IRS and to employees about individuals who are covered by minimum essential coverage and therefore aren't liable for the individual shared responsibility payment penalty. These forms must be filed by February 28, 2021 (March 31, 2021 if filed electronically).
- Applicable Large Employers, generally employers with 50 or more full-time employees (including full-time equivalent employees) in the previous year, must file one or more Forms 1094-C (including a Form 1094-C designated as the Authoritative Transmittal, whether or not filing multiple Forms 1094-C), and must file a Form 1095-C for each employee who was a full-time employee of the employer for any month of the calendar year. Generally, the employer is required to furnish a copy of

the Form 1095-C (or a substitute form) to the employee. These forms must be filed by February 28, 2021 (March 31, 2021 if filed electronically). The information reported on Forms 1094-C and 1095-C is used to determine whether an employer owes a payment under the employer shared responsibility provisions of the ACA (the “employer mandate” or “play or pay” provisions).

See the instructions to these forms on the IRS website ([irs.gov](https://www.irs.gov)) for more information.

✦ **KEY POINT.** Churches with fewer than 50 full-time employees, and an insured group health plan, generally have no reporting obligation. They are not required to file Forms 1094-C and 1095-C since they have fewer than 50 employees, and their group plan insurer files the Forms 1094-B and 1095-B.

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## HELPFUL NUMBERS AND RESOURCES

- **To request IRS forms:** 800-TAX-FORM or 800-829-3676
- **IRS home page:** [irs.gov](https://www.irs.gov)
- **MMBB Financial Services:** 800-986-6222 or [mmbb.org](https://mmbb.org)
- **Internal Revenue Service (IRS):** [irs.gov](https://www.irs.gov)
- **ChurchLawAndTax.com**—A Christianity Today website featuring Richard Hammar and a host of other professionals who provide information on church law, tax, finance, and risk management
- **ChurchLawAndTaxStore.com**—Christianity Today's online store with church management resources to keep your church safe, legal, and financially sound
- **Church & Clergy Tax Guide**—Richard Hammar's comprehensive tax guide published annually by Christianity Today International
- **Church Compensation**—Elaine Sommerville guides you through every aspect of employment compensation in easy-to-understand language