

Misc. Tax Issues for Treasurers

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Conference Treasurers' Orientation

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Tax Cuts and Jobs Act of 2017

Impact on Adventist Employees and Organizations

- ▶ Became effective January 1, 2018
- ▶ **Moving Expenses**
 - Prior law – generally deductible, or a non-taxable reimbursement by an employer
 - New law – No longer deductible and taxable if paid for or reimbursed by an employer
- ▶ **Unreimbursed Business Expenses**
 - Prior law – Allowed itemized deduction for qualified miscellaneous expenses, subject to 2% floor of AGI, including unreimbursed business expenses
 - New law – Miscellaneous itemized deductions no longer allowed.

Tax Cuts and Jobs Act – Impact (Continued)

▶ **Charitable Contributions**

- Higher threshold to itemize on return, so fewer able to
- Increased percentage of income limitation to deduct contributions from 50% to 60% of AGI
- Impact on Giving – ???

▶ **Section 529 Qualified Tuition Programs**

- Prior law – Tax free savings plans for post-secondary educational expenses
- New law – Extended to eligible expenses of primary and secondary education
- Potential benefit for Adventist education

Tax Cuts and Jobs Act – Impact (continued)

- ▶ Proposed ideas that didn't get included – Thankfully...
 - Tuition assistance for educational employees
 - Political Activity of tax exempt entities
 - Graduate Student tuition waivers
 - Student loan interest deduction
 - Classroom expense above the line deduction
 - Employee Educational Assistance programs

Parsonage Exclusion Legal Challenge

- ▶ *Gaylor v. Mnunchin* in US District Court for the Western District of Wisconsin held in October 2017 that the parsonage allowance (IRC Section 107(2) only) exclusion to be unconstitutional.
- ▶ Currently on Appeal to the 7th Circuit Court of Appeals. Briefs are due to be filed later this month.
- ▶ We are actively monitoring this case, and will likely be involved as *amici curiae* in this appeal, and any appeal that may follow it to the US Supreme Court.
- ▶ Outcome is uncertain at this point. If this decision is upheld it will have a major financial impact.
 - Legislative solution – ???

Payroll Tax (FICA) and Income Tax Withholding Responsibilities

- ▶ **Unique mix of variations on the theme**
 - Regular employees subject to normal withholding
 - Ministers are exempt – both FICA and *withholding***
 - Independent Contractors vs. Employees
 - Payments to nonresident aliens for services
- ▶ **Deadlines for Tax Deposit and Reports -- Responsible Person can be held personally responsible for noncompliance – Who?**
 - The person who has accountability for and authority to collect and pay the employment taxes and direct the financial affairs. Can't be avoided by delegation.


Tax reporting for non-employee compensation

- ❖ When should 1099s be used? **For outside/independent contractors**
- ❖ Misclassification of employees as independent contractors *
IRS and states have announced new enforcement efforts
- ❖ Can an individual receive both a W-2 and a 1099-MISC from the same organization? **Not recommended.**
- ❖ For a literature evangelist working on a cash basis (not an employee), generally should receive a 1099-MISC - (Special Rules for Direct Sellers)
- ❖ Payments to nonresident aliens for work in the US—tax reporting and withholding.
 - ❖ 30% Withholding rate (unless Treaty rate - Form 8233)
Report on 1042 and 1042-S

Ministerial Tax Status

- ▶ Tax “benefits” of qualifying as a minister regarding *the services they perform in the exercise of ministry* are:
 1. Eligible for a housing allowance and parsonage exclusion
 2. Self-employed status for Social Security (if not exempt)
 3. Wages exempt from withholding (Can do so on a voluntary basis. Otherwise quarterly estimates)
 4. May opt out of Social Security if certain conditions are met (Not recommended)

Who qualifies as a minister?

1. Must be ordained, licensed or commissioned by the Church.
 2. Perform services in the exercise of ministry:
 - Perform Church sacerdotal functions (baptism, communion, weddings, funerals)
 - Conduct religious worship
 - Administrative/management functions for the Church (local or for denomination)
 - Be recognized as a religious leader by the Church
 - Teaching and administrative duties at theological seminaries (may also include other Church controlled institutions.)
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Other Ministerial Tax Issues

- ❖ Is it optional? No
- ❖ Parsonage Exclusion Challenges
 - FFRF litigation challenging constitutionality – Round 1 – On standing issue, the 7th Circuit overturned District Court decision that it was unconstitutional. April 6, 2016 FFRF refiled a new lawsuit attempting to cure the standing issue in order to challenge it again. District Court held it unconstitutional in October 2017. Now back to 7th Circuit. Briefs to be filed this month. Stay tuned...
- ❖ Do pastors working in schools qualify? Yes
- ❖ What about part time pastors? Depends...
Bi-vocational pastors, lay pastors, chaplains

Group Tax Exemption

- ▶ The General Conference maintains a Federal group tax exemption granted in 1950 that covers US based entities of the denomination.
- ▶ Group tax exemptions are provided for under Internal Revenue Service Procedure Ruling 80-27.
- ▶ The parent organization (General Conference) has administrative responsibility for processing and overseeing and confirming exempt status of subordinate organizations under the ruling.
 - Administrative responsibility is delegated to the North American Division

Verifying Tax Exempt Status

- ❖ Where do you go to verify tax exempt status of an organization?
 - ❖ If under the Church's group tax exemption –
 - ❖ The General Conference, Office of General Counsel
 - ❖ Call my assistant Maria, at 301-680-6326
 - ❖ A letter specific to the organization will be sent
 - ❖ This includes local churches and schools
 - ❖ If not under the group exemption –
 - ❖ IRS website – www.irs.ustreas.gov
IRS Publication 78 – print edition no longer published
Now online as *Exempt Organization Select Check*


Administration of Group Exemption

- ▶ Annual report is made to the IRS of changes to list and/ entities in the list
- ▶ SDA Yearbook viewed as official list for group exemption
- ▶ Office of General Counsel is the record keeper
- ▶ Inquiries and requests for confirmation of exempt status are to be directed to the parent organization (i.e. the GC) – **DO NOT CONTACT THE IRS FOR CONFIRMATION**
- ▶ Future Plans – Coordination of confirmation through e-Adventist

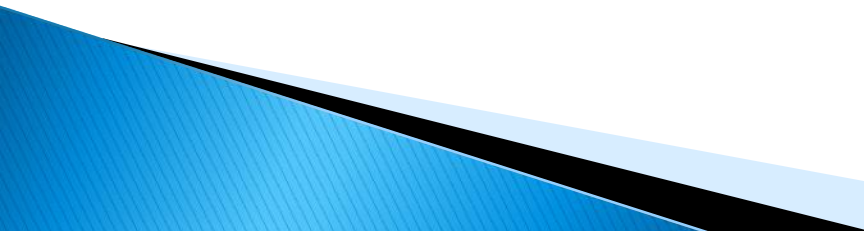
Denominational Status Policy

- To be under the group exemption an organization must comply with the Denominational Status Policy found at North American Division Working Policy C 47 (The alternative to having denominational status is being an independent ministry.)
- An application along with organizational documentation must be submitted to the Secretary of NAD
- Office of General Counsel reviews application and documents for policy compliance
- The NAD Executive Committee must approve the denominational status before the organization can be recognized as exempt under the group exemption

Benefits of Denominational Status

- ▶ Inclusion under the Group Exemption
 - ▶ Listing in the SDA Yearbook
 - ▶ Right to use the denominational owned trademarks
 - ▶ Option to participate in church employee benefits plans
 - ▶ Coverage by insurance provided through Adventist Risk Management
 - ▶ Within audit responsibility of GCAS
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Organizational Document Requirements – NAD WP C 47

- ▶ Affiliation with the Seventh-day Adventist Church clearly identified
 - ▶ Corporate Members – must be members of the SDA Church and at least a majority from entities listed in the SDA Yearbook
 - ▶ Board of Directors – Appointed by the corporate membership and a majority must be members of the SDA Church
 - ▶ Dissolution – Net assets must be transferred to a denominational organization upon dissolution
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Separate Exemption

- ▶ Can a denominational organization apply directly to the IRS for a separate exemption letter?
 - **Yes** – But it must still meet NAD WP C 47 requirements and OGC must be notified so that it can be specifically excluded from group exemption list
 - IRS Form 1023 “Application For Recognition of Exempt Status” must be filed with, processed and approved by the IRS
 - **IRS does not allow recognition under both methods**

Basic Tax Issues Relative to Church Structure

- ❖ Significance of Private Foundation vs. Public Charity Status
 - ❖ Source of Funding is primary difference
- ❖ Private Inurement and Private Benefit
 - ❖ Not organized or operated for personal gain, profit or benefit
- ❖ Methods of obtaining recognition of Exempt Status
 - IRS Form 1023
 - Unique Church Rule in Code
 - Group Tax Exemption ([ACT Report released June 15, 2011](#))
- ❖ NAD WP C 47: Denominational Status for SDA Organizations – Criteria
 - Requirements for denominational status
 - Procedures for obtaining and maintaining denominational status
 - Significance of the SDA Yearbook
- ❖ IRS Form 990 filings – Who files, who doesn't
 - Churches and Integrated auxiliary are exempt, but hospitals and higher ed are not
 - Related Organizations – reporting of compensation of board members
 - [990 “e-postcard”](#)

Types of Organizational Structure

- ▶ **Incorporated** – Application for Denominational Status must be submitted and approved to have denominational status and to be included under the group tax exemption. (ECECs)
- ▶ **Not incorporated** – Same as above, if separately organized and operated as a separate entity from local conference.
- ▶ **Department/Ministry** – If part of local conference, the tax exempt status and denominational status is that of the local conference. It would be merely the local conference doing business as “XYZ Ministry”.
 - No application necessary.

An overview of Federal tax identification numbers


- ❖ Can a Conference and an Association use the same number, or do they have to have separate numbers? **Must have separate numbers**
- ❖ What about local churches and schools? Do they need a separate number? **Yes for each**
- ❖ What if an organization is planning to merge the conference and association? Which number?
- ❖ When applying for a separate number, how do you answer question #10 “Reason for applying”?
- ❖ **IRS Form 8822– Update of info regarding EIN change of address, responsible person, etc.**

Prohibited Political Activity and Lobbying Restrictions

For all entities exempt under 501(c)(3) –

- ❖ No political activity either in favor of or against any candidate for public office
 - ❖ No resources of the organization to be used for political activity
- ❖ Lobbying (efforts to influence legislation) is permissible as long as insubstantial

State Tax Exemption

- ▶ Confirmation of Federal Exemption usually required
 - ▶ Income Tax – exemption may not be automatic – state law varies and may require separate state application for exemption
 - ▶ Sales Tax Exemption– Where available separate state application required
 - ▶ Property Tax – Exemption varies from state to state
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Unrelated Business Income Tax (UBIT)

❖ Overview

- Definition – Income from an business activity, regularly carried on that is not substantially related to the exempt purposes of the organization.
- What types of income are specifically excluded?
Rental and investment income**, Activity entirely conducted by volunteers, sale of donated goods, business activity conducted for the convenience of employees, members, or students
- ** Unless generated by debt financed property

Unrelated Business Income Tax (UBIT)

- ❖ Form 990-T – Tax return for reporting UBIT
 - Who should file the 990-T, especially if the UBI is earned by an unincorporated academy, or an ABC?
 - The Conference – but that isn't written in stone.
 - What is the UBI dollar amount threshold that triggers the need to file?
 - \$1000

Charitable Contributions

- ❖ What qualifies as a tax deductible charitable contribution?
 - ❖ *A gift of cash or property to or for the use of a qualified organization made unconditionally without personal benefit to the donor.*
- ❖ What does not qualify?
 - Rent-free use of property
 - Volunteer time and services
 - Payment (at FMV) for goods or services
 - Tuition and so-called “Temple Plans”
 - Gifts to or earmarked for a specific individual, such as the pastor or individual students
 - Donations given direct to a foreign entity

Charitable Contribution Receipts

- ❖ Restrictive endorsement stamp recommended for checks for non-deductible payments to church or school and separately receipted from donations
- ❖ Payments for which partial return value is received by donor – Quid Pro Quo Donations
 - Items of token value bearing logo or name of organization may be disregarded. (generally aggregate cost less than \$10.70 for 2017 for donations of at least \$53.50.) Other gifts (premiums) for donations, fair market value can't be more than the lesser of 2% or \$107.
 - Recipient Organization is responsible for informing donor of FMV of premium in excess of the above received by the donor for donations over \$75.

Charitable Contributions

❖ Non-cash contributions

- Valuation is responsibility of donor
 - FMV is generally deductible within specified limitations (Special rules for vehicles and boats)
- Property worth \$500 or more
 - Taxpayer (donor) must file Form 8283 with tax return
- Property worth \$5,000 or more
 - Acknowledgment of receipt portion of Form 8283 must be signed by organization receiving donation
 - Qualified appraiser must attest value of property
- If charity/church disposes of property within three years it must file Form 8282 within 125 days of disposal of property.

Charitable Contributions

- ❖ Restricted Gifts
 - Must be used for intended purpose
 - Obtain clear documentation of the terms of the gift
 - May effect deductibility
- ❖ Legislative proposals to limit contribution deduction for high income individuals – Seem to be dead at this point for lack of support.
- ❖ Tax Cuts and Jobs Act – Increased percentage of income limitation for cash contributions raised to 60%.

Pledges – How can we determine when an “intention to give” becomes “legally enforceable”?

- ❖ Accounting standards require “promises to give” to be recorded in the period in which the promise is made; but state that “intentions to give” should not be recorded unless they are “legally enforceable.” What makes an “intention” “legally enforceable”? Best if evidenced by something in writing or actions taken in reliance on promise.

FBAR Compliance

- ▶ **Foreign Bank Account Report (FinCEN Report 114)**
 - Who must file? – Any “US person” (includes US entities) with a financial interest in or “signatory authority” over at least one financial account outside of the US with aggregate value of all foreign financial accounts exceeding \$10,000.
 - Report due June 30.
 - Similar reporting also with individual tax returns
 - Penalties – Non-willful up to \$10,000; Willful up to \$100,000 or 50% of account balance.
 - Helpful chart – [Comparison-of-Form-8938-and-FBAR](#)

Miscellaneous topics/questions

(Time Permitting)

- ❖ Spouse travel –Taxable (Unless substantial services provided at request of organization)
- ❖ Task Force Volunteers – May provide only meals, lodging and travel in kind or as expense reimbursement on similar basis as employee on assignment away from home overnight, *if specific conditions are met.* Otherwise it all becomes taxable and they are effectively employees.

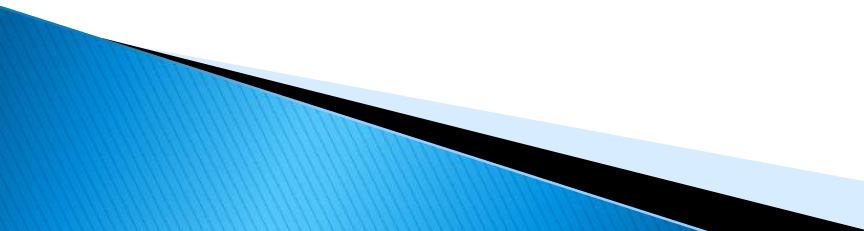
Miscellaneous topics/questions

(Time Permitting)

- ❖ Employee benefits – Affordable Care Act impact on Church plans
 - No exemptions for church plans
 - Dependent coverage
 - Up 26 years of age, unless employer has healthcare plan
 - No pre-existing condition exclusion allowed for children under 19 years of age
 - No lifetime limits on “essential health benefits”
 - New restrictions on annual benefit limits
 - An FSA or an HSA cannot cover over-the-counter medicine without prescription

Miscellaneous topics/questions

(Time Permitting)

- ❖ Tuition Assistance – How far can we push the educational employee exclusion of IRC 117(d) for educational department people at the local conference, union and beyond? Is there any chance for a tax break for anyone else here? **No**
 - ❖ On Campus Faculty Housing – What qualifies as tax free? **Dormitory Deans**
 - ❖ Any other question... ECECs?
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Resources

- ❖ What resources are available to assist with any questions on these or any other church or clergy related tax issue?
 - ❖ 2016 Church & Clergy Tax Guide
By Richard R. Hammer, J.D., L.L.M., CPA
<http://churchlawandtaxstore.com>
 - ❖ Or call me at 301-680-6325, or
E-mail me at - wetmoret@gc.adventist.org

Questions