
2020 Tax & Legal Update for Religious Organizations

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COVID-19

- a. **Families First Coronavirus Response** – Employers must provide new benefits until December 31, 2020.
- b. **The Emergency Paid Sick Leave Act** requires employers to provide an employee with up to 80 hours of paid sick time if the employee cannot work or telework due to a need for leave because: (1) the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (2) the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; (3) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis; (4) the employee is caring for an individual subject to an order described in clause (1) or has been advised as described in clause (2); (5) the employee is caring for the employee's son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19 precautions; or (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.
- c. **Employers may take a credit against payroll taxes for the payment of the paid sick leave.** Different limitations for different circumstances under which qualified sick leave wages are paid. With paid sick time qualifying under clauses (1), (2), or (3) above, qualified sick leave wages considered for the credit may not exceed \$511 for any day (or any portion thereof) for which the individual is paid as sick time. With paid sick time qualifying under clauses (4), (5), or (6) above, qualified sick leave wages considered may not exceed \$200 for any day (or portion thereof) for which the individual is paid such sick time. Also, the aggregate number of paid sick leave days for the calendar quarter for an individual under all clauses may not exceed ten days overall.
- d. **Required Emergency Family Medical Leave** -- If an employee cannot work or telework, because they are the only one available to care for their child under age 18 because the school or place of care has been closed, or the child care provider, is unavailable, due to a public health emergency, the employer must provide up to ten weeks of paid leave, after the first two weeks. The first two weeks can be covered by paid time off or the above sick leave. The pay is two-thirds of their regular pay, capped at \$200 per day and \$10,000 per employee. Employers may take a credit for 100% of the amounts paid under the Emergency Family Medical Leave Act.
- e. **PPP Loan Forgiveness** – Churches are eligible to apply for a PPP loan forgiveness after 24 weeks have passed since receiving the loan. The church will have up to 5 years to repay the 1% interest loan. Or the loan may be forgiven if the church incurs

qualifying expenses within 24 weeks (or eight weeks for earlier loans, if elected) of receiving the loan, or December 31, 2020. Qualifying expenses include payroll costs, rent of real or personal property, interest on certain loans, and utilities. The sick and emergency leave wages cannot be used in the PPP loan forgiveness calculation. The bank has sixty days to process the application for forgiveness. The SBA has ninety days to process the application for forgiveness after it receives the application from the bank. There are now three available loan applications, so churches should take care to select the best one for their loan situation.

- f. **Reopening Issues** – Risk management is imperative. Constantly monitor federal, state, and local health authorities. Follow all suggestions. Sanitize frequently. Practice social distancing (six feet normally, twenty feet when singing or public speaking). Mandate (and offer) masks when possible and practical. Reduce touch points by eliminating bulletins, hymnals, offering plates, and pew Bibles. Plan your response for when a member or staff catch COVID-19. Remember privacy issues when communicating about individuals infected by COVID-19.

IRS Activity

- a. **News Release 2019-71** – Service spends 2 weeks visiting 100 employers believed to have potential serious employment tax practices. Results: 12 individuals indicted; 4 search warrants executed; 6 individuals sentenced with approximately 24 more enforcement actions planned.
- b. **Notice 2020-36** – IRS revamps the group exemption rules. The new rules become effective at various dates. Some will be effective upon publication and some one year after publication. Each subordinate organization to be included in the group exemption letter be affiliated with the central organization and subject to its *general supervision or control* and be exempt under the same Internal Revenue Code section of Section 501(c) and must be a public charity under Section 509. **Supporting organizations do not qualify for the group.** The IRS is considering requiring the same classification for Section 170. Subordinate organizations included in a group exemption letter must have the same or similar purposes and be classified under the same National Taxonomy of Exempt Entities (NTEE) Code. The subordinate organization must use governing documents promulgated by the supervising organization.
 - A. **General supervision. A subordinate organization is subject to the central organization’s general supervision if the central organization—**
 - (i) annually obtains, reviews, and retains information on the subordinate organization’s finances, activities, and compliance with annual filing requirements (see section 7 of this revenue procedure), and
 - (ii) transmits written information to (or otherwise educates) the subordinate organization about the requirements to maintain tax-exempt status under the appropriate paragraph of § 501(c), including annual filing

requirements (see section 7 of this revenue procedure).

- B. **Control. A subordinate organization is subject to the central organization's control if—**
- i. The central organization appoints a majority of the subordinate organization's officers, directors, or trustees; or
 - ii. A majority of the subordinate organization's officers, directors, or trustees are officers, directors, or trustees of the central organization.

Tax Exemption Issues

- a. ***Korean-American Senior Mutual Association***, T.C. Memo. 2020-129. – *Exempt Activities* - Providing burial and funeral expenses for members caused the loss of tax exemption.
- b. ***Nonbelief Relief, Inc. v. Rettig***, 2020 WL 122974 (D.D.C. 2020) – *Church Exemption from filing Form 990* – Charitable organization challenged the revocation of tax exemption for failure to file Form 990 by claiming the filing exemption for churches was unconstitutional. The Court determined that the charity lacked standing.
- c. ***Lloyd v. Commissioner***, T.C. Memo 2020-92 – *Exempt Activities* - The minister's claim he was exempt from income tax because he was a church failed.
- d. **PLR 202041016** – *Exempt Activities* – Owning and operating an orchard to fund charitable mission prevents tax exemption.
- e. **PLR 202041007** – *Exempt Activities* – Operating a program to help underprivileged males not tax exempt because the founder owns the intellectual property used in the program.
- f. **PLR 201944016** – *Exempt Activities* --Organization not tax-exempt because it earned most of its income from royalties from its software. That the software was provided for free to other tax-exempt entities did not make it exempt.
- g. **PLR 2020040112** – *Exempt Activities* --The entity leases its facility to others to use, including church organizations, a college, and for special events such as weddings, banquets, meetings, family reunions, concerts, etc. Some space in the facility is leased to other entities for ongoing business activities. The entity also permits several nonprofit groups to use its facility regularly for a reduced fee or for free, depending on their event. The entity is not tax-exempt because its lease terms are comparable to commercial leases.
- h. **PLR 202007018** -- *Organizational Test* – Governing documents did not include a proper dissolution clause, so tax-exempt status was revoked.
- i. **PLR 202024016** – *Inurement* – Operating an animal rescue charity where the charity leased space in the founder's home, bought the founder's car, and paid the founder's personal expenses is not exempt.

Grant Programs

- a. **PLR 202014015** -- Organization formed to raise bail money and defense costs for an individual is not exempt.
- b. **PLR 202016026** -- Organization formed to give college scholarships to members of a specific family is not exempt.
- c. **PLR 202016022** -- Organization formed to host galas to raise funds for college scholarships for specific family members is not exempt.

Unrelated Business Income/Commercial Purposes

- a. **Form 990-T** revised for TCJA changes.
- b. **Repeal of IRC 512(f)** – Tax on qualified transportation fringe benefits repealed as if it never existed.
- c. **TAM 202039018** – Operating a job placement website for members created unrelated business income.
- d. ***Waszkczuk v. Commissioner***, T.C. Memo 2020-75 – Alleged whistleblower reported that his former employer improperly failed to report unrelated business income and owed \$50 million in back taxes. A whistleblower claimed a 10% award of the unreported unrelated business income. The IRS and Tax Court denied his claim because the IRS audited his former employer and found it correctly reported all unrelated income.
- e. **PLR 202032008** - Operating a restaurant that reserved tables for low-income families to receive a free meal does not qualify as tax-exempt.
- f. **PLR 202015021** -- Operating a low-cost grocery in a poor neighborhood is not tax-exempt because operating a grocery store is not an exempt activity.
- g. **PLR 202007019** – Operating a coffee shop where all profits support missions' activities is not tax-exempt because operating a coffee shop is not a tax-exempt activity.
- h. **PLR 201934008** – Organization formed to operate a coffee house to provide a platform for building community relationships is denied exempt status since the coffee house is a substantial unrelated business.
- i. **PLR 201925017** – Organization formed to assist nonprofits in marketing and business development is operated primarily for an unrelated business and does not qualify for exemption.

Payroll & Fringe Benefits

- a. **Exempt Employee Test** - DOL announces a new proposed minimum salary level for exempt employees. Effective 1/1/2020, the proposed minimum weekly salary is \$684.
- b. **HRA Changes for 2020** – Final regulations issued allowing health reimbursement accounts to be integrated with individual health insurance plans. Effective for plan years beginning on or after January 1, 2020, an HRA can be integrated with

individual ACA compliant health plans if group health plans are not offered. There are rules to be followed, and most important, employees must be notified at least 90 days before the beginning of the plan year.

- c. **Payroll Tax Deferral** – President Trump signed an Executive Memorandum authorizing the optional deferral of the employee portion of FICA taxes from September 1, 2020, through December 31, 2020, until January 1, 2021, through April 30, 2021, for employees making less than \$4,000 on a bi-weekly basis. While guidance is slim, it does appear this is offered to employees at the discretion of the employer. If the payroll taxes are deferred, the employer bears the responsibility for repaying the deferred amount in 2021 even if the employee has left employment.
- d. ***Congregation Bais Yakoof v. Commissioner***, T.C. Summ. Op. 2020-21. Church liable for payroll tax and penalties for unpaid payroll taxes. IRS Appeal Officer's decision not to abate penalties affirmed because the Congregation failed to establish reasonable cause for the nonpayment.
- e. ***Kuma v. Greater New York Conference of the Seventh Day Adventist Church***, 2020 WL 5096003 (S.D. N.Y. 2020). Minister discovers upon retirement that he is not eligible for Social Security and Medicare benefits because his employer did not withhold FICA and Medicare taxes from his pay. Minister sues church because it failed to withhold FICA and Medicare taxes from his pay. Suit dismissed because the church complied with the law regarding FICA and Medicare withholding applicable to ministers.

Charitable Contributions

- a. **IRA Contributions** – Contributions from IRA accounts that are qualified distributions should not be included on a donor's regular contribution statement but do need a qualifying receipt to be legitimate.
- b. ***Emanouil v. Commissioner***, T.C. Memo 2020-120. Donation of land allowed because the appraisal "substantially" complied with the appraisal requirements. It did not include that it was prepared for the tax deduction and the proposed date of donation.
- c. ***Dickinson v. Commissioner***, T.C. Memo. 2020-128. Donation of stock to donor advised fund followed by sale avoided capital gain tax on the sale and generated a charitable contribution for the fair market value.
- d. ***Brannen Sand Gravel Company v. Commissioner***, T.C. Memo 2020-76. Donation of water storage rights is not deductible due to the failure to have a qualified appraisal and failure to disclose the consideration given.
- e. ***Presley v. Commissioner***, 790 Fed. Appx. 914 (10th Cir. 2020) –The optometrist/minister leased his farm to his controlled Section 501(c)(3) ministry so the farm's income could support his ministry. He deducted the cost of improving the farm a ministry contribution. He also donated his personal residence to the ministry and designated it as a parsonage. Besides the disallowed charitable deductions, the

- court awarded a substantial underpayment penalty of 20%. The appellate court affirmed both the tax and penalties and observed that the taxpayer could not prove reasonable reliance on his CPA and CPA/attorney's advice. Besides, his Form 8283 for the residence did not come close to meeting the statutory requirements.
- f. ***Loube v. Commissioner***, T.C. Memo 2020-3 - Taxpayer deducted the difference between the FMV before Second Chance removed reusable building materials and after their removal. Besides problems with Form 8382 appraisals, the court ruled that each item of reusable building materials must be separately appraised.
 - g. ***Campbell v. Commissioner***, T.C. Memo 2020-41 – Charitable deduction scheme failed. The taxpayers bought \$50,000 of designer eyewear from a manufacturer. They held the property one year then donated the eyewear to Lions in Sight, a Section 501(c)(3) organization that provides glasses to impoverished individuals. They deducted the retail FMV of the eyewear using an appraisal hired by the tax shelter promoter.

Employment Law Updates

- a. ***Our Lady of the Guadalupe School v. Morrissey-Berru***, 140 S.Ct. 2049 (2020). The ministerial exception includes teachers with spiritual duties, even if the teacher is not a part of the faith sponsoring the school.
- b. ***Bostock v. Clayton County, GA***, ___ U.S. ____ (2020). When Title VII uses the term “sex,” the term encompasses gender, biological sex, sexual orientation, sexual identity, and transgender. The opinion specifically reserves addressing whether the decision applies to religious organizations.
- c. ***Demkovich v. St. Andrew the Apostle Parish***, 973 F.3d 718 (7th Cir. 2020). The ministerial exception does not prevent harassment or other tort claims against the church by ministers.
- d. ***Scaffidi v. New Orleans Mission, Inc.***, 2020 WL 1531266 (E.D. La. 2020). The court determined that a jury must decide if the downtown gospel mission qualifies as a religious organization. The court noted that the mission was not affiliated with any specific church and had no clergy on its board. Though the board and employees were required to agree with the statement of faith, its governing documents did not call it a religious organization. Its fundraising materials did not describe it as religious.
- e. ***Edley-Wolford v. Virginia Conference of the United Methodist Church***, 430 F.Supp.3d 430 (E.D. Va. 2019). The Director of Inclusion for the Conference was not clearly subject to the ministerial exception. The court authorized discovery to disclose the facts for presentation to the court and jury.
- f. ***Tucker v. Faith Bible International***, 2020 WL 2526798 (D. Col. 2020). The former chaplain was dismissed as a chaplain but allowed to remain in the teacher position. After being dismissed, the teacher contests whether the ministerial exception

applied once he was removed as a chaplain. The court authorized discovery to disclose the facts for presentation to the court and jury.

- g. *Duquesne University of the Holy Spirit v. National Labor Relations Board*, 947 F.3d 824 (D.C. Cir. 2020).** The National Labor Relations Board had no jurisdiction over the religious university when it ordered the University to accommodate the effort to unionize the adjunct faculty.
- h. *Doe v. Apostolic Assembly of the Faith in Christ Jesus*, 2020 WL 1684227 (W.D. Tex. 2020).** A son of a pastor abused a 15-year-old girl while he was her youth pastor. The parents reported it to the pastor, who denied his son did anything improper. The parents then reported it to the police, who brought in the FBI because they found 50 pictures of naked girls in his Snapchat account. Son is serving 72 months in federal prison and will serve 15 years of probation. The state charges are not disclosed. The Court denied the church and pastor's motion to dismiss based on the ecclesiastical exception, the ministerial exception, negligence, gross negligence. The court dismissed the liability from failure to report the abuse and breach of fiduciary duty.