SORTING OUT THE FORM 8822-B FOR CHURCHES

Any church that has employees, files employment tax returns, or has a bank or brokerage account must have an “employer identification number” (EIN). This includes nearly every church. An EIN is obtained by filing a Form SS-4 with the IRS using irs.gov or by submitting a paper form. Since 2010, line 7 of Form SS-4 has asked for the name and Social Security number of a "responsible party" of the applicant. The instructions to the form define this term as follows:

A "responsible party" is the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets.

The IRS amended Form SS-4 to obtain the name of a responsible party in order to facilitate communication with employer representatives regarding tax reporting and compliance issues.

By 2013, the IRS had become increasingly frustrated by its inability to communicate with responsible parties identified in employers’ SS-4 forms. This usually occurred because the responsible party designated in an employer’s Form SS-4 no longer served in that capacity due to death, relocation, or resignation. As a result, the IRS adopted an entirely new requirement: Any employer with an EIN must report changes in the identity of its responsible party to the IRS using Form 8822-B. The IRS first announced this new requirement on November 18, 2013, through its Employee Plans News newsletter:

Beginning January 1, 2014, any entity with an EIN, such as a plan sponsor, must report a change in the identity of their plan’s responsible party on Form 8822-B, Change of Address or Responsible Party - Business, within 60 days of the change. If the change is made before 2014, and the sponsor has not previously reported the change, the sponsor should file Form 8822-B prior to March 1, 2014.

A similar notice appeared in the instructions to Form 8822-B. Form 8822-B is used by businesses to report a change of address to the IRS in much the same way that individual taxpayers notify the IRS of a change of address using Form 8822. The “B” in Form 8822-B refers to “business,” and distinguishes it from the Form 8822 used by individuals.

Answers to Seven Questions for Churches

Many church leaders want to know if this new reporting rule applies to churches. The following questions and answers summarize the application of the new rule to churches:

**Question 1. I heard that only public charities that are required to file Form 990 with the IRS are subject to the new reporting requirement. Is this correct?**

**Answer.** No. The Form 8822-B reporting requirement applies to any organization that has an EIN. This includes most churches.

**Question 2. If our church fails to comply with this requirement, either intentionally or inadvertently, what penalties can the IRS assess?**

**Answer.** The instructions to Form 8822-B answer this question as follows:

If you are an entity with an EIN and your responsible party has changed, use of this form is mandatory. Otherwise, use of this form is voluntary. You
will not be subject to penalties for failure to file this form. However, if you fail to provide the IRS with your current mailing address or the identity of your responsible party, you may not receive a notice of deficiency or a notice of demand for tax. Despite the failure to receive such notices, penalties and interest will continue to accrue on any tax deficiencies.

In summary, use of the form is mandatory if there is a change in the responsible party identified on the Form SS-4 that a church filed with the IRS to obtain its EIN. But there are no penalties for noncompliance. However, a church that fails to comply with this reporting requirement, and has a change in the person identified as its responsible party on Form SS-4, may not receive timely notices of deficiencies or demands for taxes from the IRS, which can lead to penalties and additional interest charges.

**Question 3. We are a new church that obtained our EIN in 2012. How does the Form 8822-B reporting requirement apply to us?**

**Answer.** If the responsible party you listed on the Form SS-4 submitted to the IRS in 2012 is the same today, then you have no reporting obligation for now. The Form 8822-B is only used to report a change in your responsible party. In the future, each time that you change your church’s responsible party, file another Form 8822-B with the IRS within 60 days of each change.

Do not regard this new reporting requirement as a burden. It is not. It only takes a few minutes to fill out the form, and doing so will provide the IRS with the name of a person it can contact with tax reporting and compliance issues that in many cases will help the church avoid needless penalties and interest.

**Question 4. Our church was formed in 2010, and we obtained an EIN that year by submitting a Form SS-4 to the IRS. The person we listed as our responsible party has since moved to another community and no longer attends our church. She has been replaced by another member of our congregation. How does the Form 8822-B reporting requirement apply to us?**

**Answer.** If your only reason for using Form 8822-B is to report a change in your church’s responsible party, then do the following:

- Check the box at the top of the form indicating the church is a tax-exempt organization.
- Check box 1.
- Insert the church’s name on line 4a, and EIN on line 4b.
- Report on line 8a the name of the responsible party listed on the Form SS-4 the church filed with the IRS to obtain an EIN, and report this person’s Social Security number on line 9a.
- Report on line 8b the name of the church’s current responsible party, and report this person’s Social Security number on line 9b.
- Have a church officer sign and date Form 8822-B. An officer is your church’s president, vice president, treasurer, or chief accounting officer.
- Submit the completed and signed Form 8822-B to the IRS.

While the deadline for doing so was prior to March 1, 2014, there is no penalty for late filing. Also, a significant number of churches likely will not comply with this reporting requirement because of unfamiliarity, inadvertence, or willful neglect, and this may result in changes in the law that will be reported in future editions of this newsletter.

**Question 5. Our church was formed 50 years ago, and at that time we obtained an EIN by submitting Form SS-4 to the IRS. How does the Form 8822-B reporting requirement apply to us?**

**Answer.** Most churches filed Form SS-4 with the IRS many years ago, and only since 2010 has the form asked for the identity of a church’s responsible party. This means that the IRS has no record of the identities of responsible parties for the vast majority of churches that filed a Form SS-4 prior to 2010. The instructions to Form 8822-B do not address this common scenario directly, and the IRS has provided no guidance. But it is reasonable to assume that the church in this example should file a Form 8822-B with the IRS. The instructions to the form state that “if the change in the identity of your responsible party occurred before 2014, and you have not previously notified the IRS of the change, file Form 8822-B before March 1, 2014.” While the church did not report the identity of a responsible person on the Form SS-4 it submitted to the IRS 50 years ago, that does not mean that the church did not have one or more persons meeting the definition of a responsible party then and in the ensuing years.

The best interpretation of the instructions to Form 8822-B is that the church in this example should file a Form 8822-B listing the current responsible party’s name and Social Security number, and either leaving lines 8a and 9a blank (name and Social Security number of the former responsible party) or inserting on those lines the name and Social Security number of the responsible party who served immediately prior to the current one. While it is true that the IRS would have no record of the “old” responsible party under these circumstances, this does not exempt the church from reporting changes in its responsible party on
Form 8822-B. To conclude otherwise would in effect provide a blanket exemption from the reporting requirement for any church that submitted a Form SS-4 to the IRS before the form was amended in 2010 to ask for the identity of a responsible party. Such an interpretation would be at odds with the purpose of the form.

With regard to the rest of Form 8822-B, the church should:

- Check the box at the top of the form indicating the church is a tax-exempt organization.
- Check box 1.
- Insert the church’s name on line 4a, and EIN on line 4b.
- Report on line 5b the name of the church’s current responsible party, and report this person’s Social Security number on line 9b.
- Either leave lines 8a and 9a blank, or insert on these lines the name and Social Security number of the church's responsible party who directly preceded the current one.
- Have a church officer sign and date Form 8822-B.

**Question 6. We do not understand the definition of “responsible party.” Could you clarify this term?**

**Answer.** In most churches, a church treasurer, lead pastor, or member of the church board would satisfy the definition of a responsible party since they have a sufficient level of control that enables them “directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets.”

While it is true that board members have no direct authority to act unilaterally with respect to the management of church assets, they do have indirect authority in the sense that they act collectively as a board in the management of church funds and assets.

**Question 7. Can we e-file Form 8822-B to the IRS?**

**Answer.** No. At this time the IRS only accepts paper copies of Form 8822-B.

**Coming in the May 2014 Church Finance Today**

In recent months, we’ve fielded numerous questions from church leaders regarding whether church reimbursements of some or all of the premium expenses incurred for an employee’s individual health insurance policy, or arrangements under which the church directly pays the premium for an employee’s individual health insurance policy, are taxable in light of changes resulting from the Affordable Care Act. In the May 2014 issue of Church Finance Today, Richard Hammar covers this topic in extensive detail, which church leaders should note ahead of preparing W-2s in January 2015 for the 2014 tax year.
YOUTH MINISTRY FUNDING

What percentage of your organization's budget is earmarked for youth ministry?

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<th>Respondents</th>
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<td>16% to 20%</td>
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<tr>
<td>2%</td>
<td>21% or More</td>
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—Based on 640 qualified responses to this question provided by pastors, youth pastors, and church leaders in the "Youth Ministry in America" survey conducted in 2013 by Christianity Today and Brotherhood Mutual Insurance Company. Survey respondents were self-selective. Download the full executive report for free at ChurchLawAndTax.com.

APPEAL FILED IN CLERGY HOUSING ALLOWANCE CASE

by Matthew Braunaugh

The U.S. Department of Justice filed a notice of appeal in late January with the Seventh Circuit Court of Appeals in Chicago to challenge a federal district judge's ruling that the clergy housing allowance in her district is an unconstitutional preference for religion.

Federal district court judge Barbara Crabb made her ruling in late November for the Western District of Wisconsin, but stayed the decision pending the outcome of an expected appeals process. The Freedom From Religion Foundation, a nonprofit organization, brought the lawsuit.

The housing allowance is the most important tax benefit for clergy, so the pending outcome is significant. If the Seventh Circuit affirms Judge Crabb's decision, it would affect churches and clergy in Wisconsin, Illinois, and Indiana, the three states covered by the circuit—and the Internal Revenue Service also could choose to apply the decision nationwide for clergy tax purposes. If it's reversed, the benefit remains intact.

**Tax Calendar**

**Important Tax Deadlines in May 2014**

In addition to regular semimonthly and monthly withholding requirements, note the following tax deadlines for next month.

May 10

- Churches having nonminister employees (or one or more ministers who report their federal income taxes as employees and who have elected voluntary withholding) may file their employer's quarterly federal tax return (Form 941) by this date instead of April 30 if all taxes for the first calendar quarter have been deposited in full and on time.

May 15

- Unrelated business income tax return (Form 990-T) must be filed by this date by churches and any other organization exempt from federal income tax that had gross income from an unrelated trade or business of $1,000 or more in 2013.
- Annual certification (for calendar year 2013) of racial nondiscrimination by a private school exempt from federal income tax (Form 5578) must be filed by this date by schools that operate on a calendar-year basis. Fiscal year schools must file the form by the 15th day of the fifth month following the end of their fiscal year. This form must be filed by preschools, primary schools, and secondary schools.

Does your church operate a preschool? An elementary school? A secondary school? A college? If you answered "yes" to any of these questions, then you are required to submit Form 5578 to the IRS each year.

Some independent religious schools are required to file Form 990. Those schools make their annual certification of racial nondiscrimination directly on Schedule E of Form 990, and not on Form 5578.