EDITOR'S NOTE

Welcome!
Churches frequently open their doors to outside groups to use their facilities. Sharing church space can be a wonderful way to steward a church’s resources and build relationships with other groups and organizations in the community.

At the same time, churches expose themselves to increased risk of liabilities when they invite outsiders onto the premises. In this issue's feature article, "Sharing Space with Outside Groups," I cover a recent court case in which a church was named as an “additional insured” on the outside group's insurance policy. Unfortunately, this common practice failed to protect the host church from legal responsibility for injuries sustained on their premises by a visitor from an outside group. To help mitigate this and other risks related to sharing your church facility with outsiders, I've included a handy risk management checklist.

Also, ministers who use a home office as their primary place to work may qualify for a home office tax deduction. The IRS recently announced a simplified “safe harbor” for computing this deduction. Find out the rules for eligibility starting on page 3.

Blessings as you serve—

Richard R. Hammar

facebook.com/ChurchFinanceToday
@RichardHammar
CFTeditor@ChristianityToday.com

SHARING SPACE
WITH OUTSIDE GROUPS

Being listed as “additional insured” may not reduce risk of liability.

By Richard R. Hammar

Churches often allow outside groups to use or lease their premises. Obviously, the use of church property by an outside group exposes the church to potential liability for injuries that may occur, and this risk escalates if the property is being used for an activity that involves minors. Consider the following examples.

Example. A church leases a portion of its premises one evening per week to a local scout troop.

Example. A church leases several rooms to an outside group to operate a preschool.

Example. A church leases a room one morning each week to an outside group for the operation of an exercise class.

Churches respond to this risk in various ways. Many require the outside group to list the church's name as an "additional insured" in its general liability insurance policy. A recent case in New York suggests that this practice may be unavailing and full church leaders into a false sense of security.

the New York case
A church leased a portion of its premises to an outside group for three days to conduct a dance competition. The lease required the group to name the school as an additional insured in its liability insurance policy.

A woman was injured when she fell on a sidewalk while walking from the parking lot behind the school to the front entrance in order to attend the dance competition. She sued the church, claiming that her fall was caused by the church’s negligence. The church contacted the outside group's insurer and requested that it provide a legal defense of the victim’s claims and indemnification for any verdict or settlement. When the insurer refused, the church asked a court to compel it to do so.

The court noted that the insurance policy defined an “insured” to include any organization to whom the insurer was obligated, by virtue of a written contract, to provide liability insurance, “but only with respect to liability arising out of [its] operations.” In other words, the fact that the church was named as an additional insured on the policy did not mean that it was entitled to a legal defense and indemnification against any loss. The section in the policy limiting coverage to liability “arising out of [the insured’s] operations” required that there be “some causal relationship between the injury and the risk for which coverage is provided.”

The court concluded that the church failed to demonstrate the existence of such a causal relationship. The outside group’s “operations” consisted of conducting a dance competition in the school auditorium and three classrooms. Bodily injury occurring on a sidewalk outside the leased premises, in an area which the outside group had no responsibility to maintain or repair, “was not a bargained-for risk.” Rather, the group’s operations at the school merely furnished the occasion for the accident.

Christ the King Regional High School v. Zurich Insurance, 936 N.Y.S.2d 680 (N.Y.A.D. 2012)
relevance to church leaders

Many churches allow outside groups to use or lease their property. It is common for churches to require that an outside group's insurance policy list the church as an additional insured. But as this case illustrates, such a practice will not necessarily provide coverage for the church in the event of an injury, especially one that bears no direct relationship to the nature of the outside group's activities. This can result in an unexpected and potentially significant liability for the church.

The takeaway point is this: church leaders should not agree to the use of their property by outside groups on the assumption that being listed as additional insured in the outside group's insurance policy will create an effective firewall against church liability. Before allowing outside groups to use or lease church property, discuss the issue of insurance with your insurance agent as well as legal counsel so that you clearly understand the availability of coverage under the outside group's policy. On the basis of this information then, churches can make an informed decision on whether to allow the outside group to have access to church property and any additional precautions that may be necessary.

risk management checklist

Before allowing outside groups to use or lease church property there are several points to consider, including the following:
- Use of church property by an outside group will expose the church to potential liability, especially for activities involving minors.
- There is no way to create a “firewall” that insulates a church from all risk of liability under these circumstances.
- Churches should consider several risk management options before allowing church property to be used by outside groups.
- All general liability insurance policies have a “named insured,” which generally is the entity that procured the insurance. The named insured can add one or more other entities as additional insureds. Having your church’s name added as an additional insured” to the general liability policy of an outside group that uses or leases church property for a specified purpose or activity is one way that a church can manage the risk of liability in the event of an injury.

But, as this case illustrates, it is not fool-proof. Conditions apply, and church leaders need to be familiar with the conditions so they can accurately evaluate coverage. The last thing you want to do is assume that having your church named as an “additional insured” will create an effective firewall when in fact this is not the case. So, it is important to discuss this option with your insurance agent, and legal counsel, so that you are fully informed concerning the viability of this option for managing risk.
- The risks associated with the use of church property by outside groups can be mitigated in other ways. Consider the following:
  ✓ Check with the church’s insurance carrier to evaluate coverage in the event of an injury during

A: A church’s payment of an employee’s charges to a church credit card without adequate substantiation constitutes a nonaccountable reimbursement that must be reported by the church as taxable income on the employee’s W-2. A church’s payment of charges that are adequately accounted for by the employee represent an “accountable” reimbursement that is not taxable income. An accountable reimbursement, for most business expenses, is a reimbursement that meets the following four requirements:

1. only ordinary and necessary business expenses are reimbursed;
2. no reimbursement is allowed without an adequate accounting of expenses within a reasonable period of time (not more than 60 days after an expense is incurred);
3. any excess reimbursement or allowance must be returned to the employer within a reasonable period of time (not more than 120 days after an excess reimbursement is paid); and
4. an employer’s reimbursements must come out of the employer’s funds and not by reducing the employee’s salary.

Under an accountable plan, an employee reports to the church rather than to the IRS. The reimbursements are not reported as income to the employee, and the employee does not claim any deductions.

Can the church reduce an employee’s salary by the amount of its payment of nonaccountable charges to a church credit card? That depends on state law. In many states the ability of employers to unilaterally reduce an employee’s wages is strictly prohibited, with some exceptions. Churches should never reduce employee compensation to pay for nonaccountable expense reimbursements without legal counsel to insure compliance with state law. Obviously, the better way to handle nonaccountable charges to a church credit card (for either business or personal expenses) is to not reimburse them in the first place. The “best practice” is to limit employer reimbursements to those charges and expenses that meet the four requirements of an accountable plan summarized above.

To submit a question for consideration in a future Q&A, email: CFEditor@ChristianityToday.com.

UNDOCUMENTED CHURCH CREDIT CARD CHARGES

Can we deduct employee’s wages for credit card use?

By Richard R. Hammar

Q: We are having a problem with our associate pastors not turning in their church credit card receipts. Our senior pastor would like to deduct any undocumented church credit card charges from the offending employees’ pay. I’m not sure this is legal. Of course, they know that they are never to use the card for personal expenses. We do not doubt some charges are legitimate church expenses, and we do trust our pastors, but we need to account for each transaction. Is it legal to deduct personal charges from their pay?
use of church property by an outside group.
✓ You must assess the increased risk of legal liability associated with the use of your property by outside groups. Some risks may be too great to even consider, especially when you consider the relatively modest user’s fee, if any, that will be assessed.
✓ Any activity involving minors represents the highest risk. The outside group must provide evidence of insurance in an amount that is acceptable to you.
✓ Have the outside group sign a “facilities use agreement” that (1) provides the group with a mere license to use the property; (2) contain hold harmless and indemnification clauses; (3) states that the church provides no supervision or control over the property when being used by the group. This document should be prepared by an attorney.
✓ Review the outside group’s liability policy to ensure that it provides adequate coverage. Be certain that it does not exclude sexual misconduct. Also, pay close attention to the coverage limits. Are they adequate?
✓ Add the church as an additional insured under the outside group’s liability insurance policy. This may not be effective in all cases, but it will be in some and so is definitely worth doing.
✓ If the group’s activities will involve minors, have a written acknowledgment from the group that all workers have been adequately screened.
✓ Note that release forms are generally unenforceable against minors who are injured since they have no contractual capacity to sign such a release and their parents or guardians lack the legal authority to release a minor’s legal rights.
• There are other issues to be considered when a church allows outside groups to use or lease its facilities that are beyond the scope of this article. These include the application of the federal unrelated business income tax, the loss of the church’s exemption from property tax, either fully or on a prorated basis, and, the potential violation of local zoning laws.
• It is highly recommended that a church seek legal counsel when considering the use of church property by one or more outside groups.

For more information on sharing church facilities with outside groups, purchase the downloadable resource, Managing Church Facility Use, available at YourChurchResources.com.

IRS SIMPLIFIES HOME OFFICE TAX DEDUCTIONS
Four requirements for ministers’ eligibility.
By Richard R. Hammar

Earlier this year the IRS announced a simplified “safe harbor” that taxpayers can use to compute a tax deduction for the business use of their home. According to IRS data, about 3.5 million taxpayers claim a deduction for the business use of their home (commonly referred to as the home office deduction).

The new optional deduction, capped at $1,500 per year based on $5 a square foot for up to 300 square feet, will reduce the paperwork and recordkeeping burden on taxpayers by an estimated 1.6 million hours annually.

“This is a common-sense rule to provide taxpayers an easier way to calculate and claim the home office deduction,” said Acting IRS Commissioner Steven T. Miller. “The IRS continues to look for similar ways to combat complexity and encourages people to look at this option as they consider tax planning in 2013.”

The new option provides eligible taxpayers an easier path to claiming the home office deduction. Currently, they are generally required to fill out a 43-line form (Form 8829) often with complex calculations of allocated expenses, depreciation, and carryovers of unused deductions. Taxpayers claiming the optional deduction will complete a significantly simplified form.

Though homeowners using the new option cannot depreciate the portion of their home used in a trade or business, they can claim allowable mortgage interest, real estate taxes, and casualty losses on the home as itemized deductions on Schedule A.

These deductions need not be allocated between personal and business use, as is required under the regular method.

Current restrictions on the home office deduction, such as the requirement that a home office must be used regularly and exclusively for business and the limit tied to the income derived from the particular business, still apply under the new option. Relatively few ministers will satisfy the restrictions on a home office deduction under current law, making the new “safe harbor” unavailable. However, for those that do qualify, the safe harbor will provide a simplified method for computing the home office deduction.

For ministers to be eligible for a home office deduction, the following four requirements must be met:

1. The home office must be exclusively used in the minister’s “trade or business.” This means the home office must not be used by other family members (for example, to watch television or do homework). The use of a part of your home for both personal and business purposes does not meet the exclusive use test. If, for example, you use a room in your home for personal purposes as well as a place where you prepare sermons and occasionally counsel church members, you may not deduct any expenses for the business use of that part of your home.

2. The home office must be used on a regular basis in the minister’s “trade or business.” This means the home office must be used on a continuous basis by the minister for professional purposes (e.g., preparing sermons, conducting counseling, doing research, contacting members, writing correspondence, preparing for board meetings). Occasional or incidental use of the office for such purposes is not enough, even if the office is used for no other purposes.

continued on page 4
3. If the minister is an employee, the home office must be for the convenience of the employer. This means the home office must do more than make the employee's job more easy or efficient—it must be essential to the performance of the job. This ordinarily is not the case when an office is available in the church. The courts and the IRS have ruled that if an employer provides employees access to an office on its premises for the performance of their duties and an employee elects to conduct these duties at home as a matter of personal preference, the employee's use of the home office is not for the convenience of the employer, and no deduction is allowed.

4. The home office must be the minister's principal place of business. The tax code specifies that a home office qualifies as a principal place of business if (a) the office is used by the taxpayer exclusively and regularly to conduct administrative or management activities related to a trade or business, and (b) there is no other fixed location where the taxpayer conducts substantial administrative and management activities of the trade or business. Taxpayers who meet these requirements are eligible for a home office deduction even if they conduct some administrative and management activities at a fixed location of their business outside their home—so long as those activities are not substantial.

Ministers who satisfy the requirements summarized above may be able to claim a full or partial deduction of their home office expenses—assuming that the limited exception applies. Perhaps even more importantly, they may be able to deduct their transportation costs from their home to their church, since they are traveling from one business location to another and, as a result, are not commuting. In some cases, these transportation costs will exceed the value of a home office deduction. However, ministers must recognize that few will be able to satisfy all of the requirements. After all, how many ministers have a home office that is used exclusively and regularly for business purposes and do not have an office in the church?

**KEY POINT.** The new simplified option is available starting with the 2013 return most taxpayers file early in 2014. Further details on the new option can be found in Revenue Procedure 2013-13, posted today on IRS.gov and in the 2014 edition of Richard Hammar's Church & Clergy Tax Guide, available on YourChurchResources.com.

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**Tax Calendar**

**Important Tax Deadlines in May 2013**

In addition to the regular semimonthly and monthly withholding requirements, churches should note the following dates for this month. If the regular due date falls on a Saturday, Sunday, or legal holiday, file by the next business day.

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 2012.

- Annual certification (for calendar year 2012) 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 and secondary schools. Some independent religious schools are required to file Form 990. These schools make their annual certification of racial nondiscrimination directly on Schedule E of Form 990, and not on Form 5578.