

# ChurchFinanceToday

Vital accounting, finance, and tax developments for church treasurers.

May 2017

## ✓ WHAT'S NEW

### **Company's Contributions Jeopardize Church's Future**

A Wisconsin church may close its doors because of a lawsuit related to an online business that went belly-up, reported the *Milwaukee Journal Sentinel*. The church had received donations directly from supplementwarehouse.com—a company owned by a member of the church. Now that the company has declared bankruptcy, unsecured creditors are seeking to use “clawback laws” to recover \$756,000 donated to the church. Under clawback laws, creditors can claim that the donations amounted to “fraudulent transfer.”

For more insights, check out “Clawbacks of Charitable Contributions—A Continuing Challenge” in *Church Finance*—available on ChurchLawAndTaxStore.com. Also, see Richard R. Hammar’s article “Can Bankruptcy Courts Recover Charitable Contributions?”—available on ChurchLawAndTax.com.

### **Assessor Challenges Church Daycare, Preschool**

The tax assessor for Dover City, New Hampshire, doesn’t believe a local church daycare and preschool should be tax exempt. The city and the church had reached a compromise, “saying the church would make an annual payment that comes to a portion of what it would normally pay in business taxes,” reported SeacoastOnline.com. However, the compromise was put on hold pending “more in-depth information from the assessor,” said the website.

### **No Deduction for \$65 Million Donation**

The US Tax Court upheld the IRS’s denial of a \$65 million charitable contribution deduction because the written acknowledgment issued by the donee was not “contemporaneous” as required by the tax code. Explore the implications of this ruling for churches in the “Recent Developments” section of the May/June 2017 issue of *Church Law & Tax Report*.

## ➤ IN THE NEXT ISSUE

**How to Make the Best Financial Decisions When Hiring**

# The Return of Tax-Free Medical Premium Payments

**New act addresses ACA penalty many employers, including churches, faced.**

By Richard R. Hammar

At the close of 2016, Congress enacted the 21st Century Cures Act, with massive bipartisan support. While the Act addresses several health-related issues, perhaps of most interest to church leaders is a provision relieving many small employers of one of the most feared provisions in the Affordable Care Act: the infamous \$100 per day per employee penalty. Prior to the passage of the 21st Century Cures Act, the Internal Revenue Service could impose this penalty on any employer that continued to pay or reimburse employees’ medical insurance under a private plan.

The \$100 per day penalty applied to all employers, including churches and other religious employers. Employer payment plans have been popular not just among churches, but also among small for-profit employers. As awareness of this penalty built, Congress came under mounting pressure to provide permanent relief. Several employer groups and trade associations lobbied Congress for change, including the National Association for the Self-Employed. Eventually, Congress offered the much sought-after relief through the 21st Century Cures Act.

Small employers are not required to provide health insurance coverage to their employees, and, for some small employers, doing so may not be feasible. Nonetheless, many small employers wish to provide pre-tax funds that employees may use to purchase their own health insurance or pay for expenses not covered by their insurance. However, prior to the 21st Century Cures Act, providing such funds may have exposed a small employer to a substantial excise tax.

### **Get to know QSEHRA**

Under the 21st Century Cures Act, a “qualified small employer health reimbursement arrangement” (QSEHRA) is generally not a group health plan under the tax code, Employee Retirement Income Security Act (ERISA), or Public Health Service Act (PHSA) and, thus, is not subject to the group health



plan requirements. And, most importantly, this means that a QSEHRA will not be assessed the \$100 per day per employee penalty for failure to comply with the ACA’s market reforms that apply to group health plans.

A QSEHRA is defined as an arrangement that:

- is provided on the same terms to all eligible employees (defined below) of an eligible employer (defined below);
- is funded solely by the eligible employer and no salary reduction contributions may be made under the arrangement;
- provides, after an employee provides proof of minimum essential coverage, for the payment or reimbursement of medical expenses of the employee and family members; and
- the amount of payments and reimbursements under the arrangement for a year cannot exceed specified dollar limits (for 2017, the dollar limits are \$4,950 and \$10,000 in the case of expenses of an employee and family members).

The maximum dollar amount of payments or reimbursements that may be made under a QSEHRA, with respect to an eligible employee for a year, is the employee’s “permitted benefit.” An arrangement does not fail to be provided on the same terms to all eligible employees merely because employees’ permitted benefits vary with the price of a health insurance policy in the individual insurance market, based on the ages

of the employee and family members, or the number of family members covered by the arrangement, provided that the variation is determined by reference to the same insurance policy for all eligible employees.

#### Eligible employee

An "eligible employee" means any employee of an eligible employer, except that the terms of the QSEHRA may exclude:

- employees who have not completed 90 days of service with the employer;
- employees under age 25;
- part-time or seasonal employees; or
- nonresident aliens with no earned income from sources within the United States.

#### Eligible employer

"Eligible employer" means an employer that:

- is not an applicable large employer, as defined for purposes of the requirement that an applicable large employer offer its employees minimum essential coverage (that is, generally, an

employer with fewer than 50 full-time equivalent employees during the preceding year), and

- does not offer a group health plan to any of its employees.

#### Churches could still be penalized

The relief from the \$100 per day per employee excise tax will not benefit all churches. A church may still be subject to the penalty if, for example, an employer pays or reimburses premiums for health insurance for the employee and family members purchased in the individual insurance market (referred to as an employer payment plan or EPP), or an employer reimburses the employee for medical expenses generally of the employee and family members (referred to as a health reimbursement arrangement or HRA), and:

- it is an applicable large employer with an average of 50 full-time employees, and "full-time equivalents" (FTEs) during the previous calendar year;
- it offers a group health plan to any of its employees;
- it contributes more than \$4,950 (\$10,000 for a family) to an EPP or HRA (defined above); or

- the arrangement fails to satisfy one or more of the other requirements for a QSEHRA summarized above.

#### Notice and reporting requirements

Within 90 days of the beginning of a year in which an employer will fund a QSEHRA (or, if later, the date on which an employee becomes eligible for the QSEHRA), the employer must provide eligible employees with a written notice containing the amount of the employee's permitted benefit and certain other information. An employer that fails to provide the notice may be subject to a tax penalty of \$50 per employee, subject to a maximum of \$2,500 for the year.

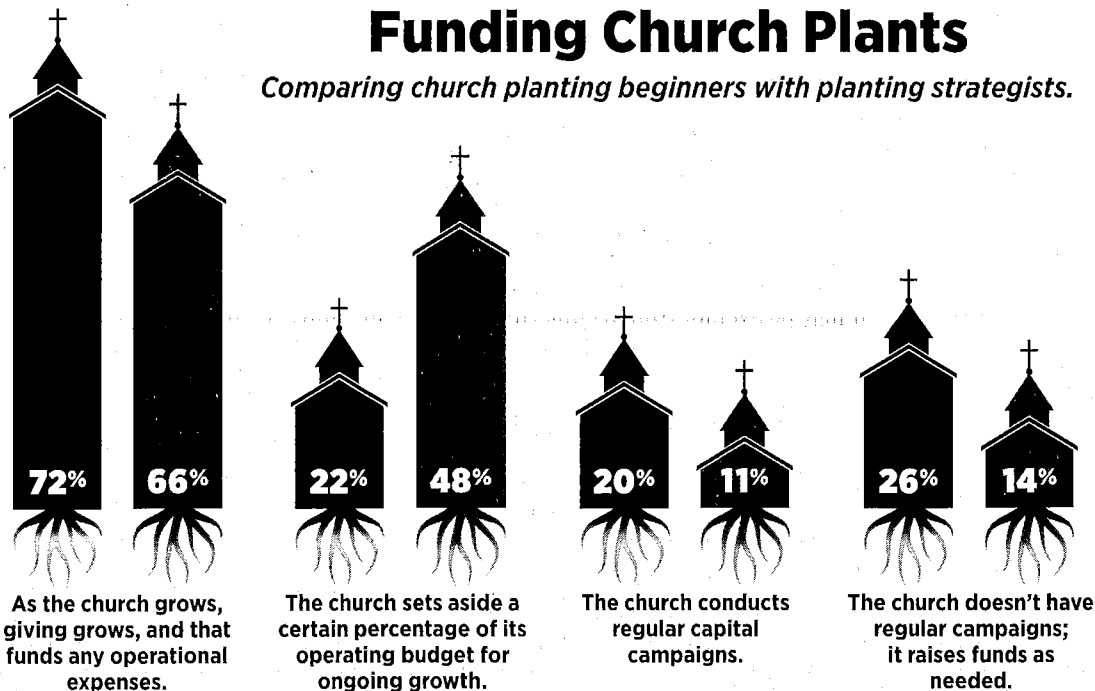
In addition, the employer must report an employee's permitted benefit for a year on the employee's W-2 for the year. An eligible employee who applies for advance premium assistance with respect to Exchange coverage for a year must provide the Exchange with the amount of his or her permitted benefit for the year.

#### Effective date

The new law's provision of relief from the \$100 per employee per day penalty for noncompliant group plans is effective retroactively. ■

## Funding Church Plants

Comparing church planting beginners with planting strategists.



**Planting beginners:**  
Beginners are new to the church plant experience, having started only one or two churches.

**Planting strategists:**  
Strategists have an intentional plan and have fine-tuned their approach by planting four or more semi-independent churches.

Source: More Than Multisite, a Barna resource based on research commissioned by Cornerstone Knowledge Network. The study was conducted online from March 7 to April 6, 2016, with a total of 222 church leaders who have been involved in church planting. The research also includes multisite congregations and "location partners" (a separate congregation meeting at, and sharing resources with, another church).

**Coming in July:**  
Church Finance Today will feature insights into key financial/budgeting findings from the More Than Multisite study.

# Cell Tower Leases: Easy Money or Never-ending Headaches?

**What churches need to know before renting their property to a communications company.**

By Heidi Hall

Competing for greater market share with the promise of better-than-ever coverage, cellular companies are always on the lookout for new places to construct cell towers. That means pastors and church financial directors will continue to be approached—and sometimes even hounded—by companies hoping to build antennas into steeples, disguise them as crosses and bell towers, and slap them on spires.

These arrangements promise hundreds or thousands of dollars per month in lease fees to cash-strapped churches. But the possible pitfalls include hidden tax burdens, opposition from activists and neighbors, and leases that hamstring the church from expansion.

## Pluses and minuses

A quick internet search finds a few examples of churches embroiled in arguments with neighbors and others over whether the tower will change the neighborhood's character. Others oppose the towers out of fears over health problems from electromagnetic radiation—a factor the federal government and multiple studies have dismissed.

Both factors can usually be overcome and, generally, once a tower is up for a while, the neighborhood forgets about it. Sarah Graham, financial administrator at The Church at Green Hills in La Habra, California, said she's unaware of any controversy over the cell tower her church has hosted for 20 years. It's operated by T-Mobile—which pays \$24,000 annually for the lease—and is disguised as a cross.

"My experience has been that the agreement was a good agreement," said Graham, who grew up in the church.

Churches that are satisfied with their leases have maintained control over their property, said Casey Hale, an attorney who works with churches and serves the nonprofit sector for Brown & Streza in Irvine, California.

Hale has seen it far too often: a church signs an agreement, senses something is amiss, and then gives him a call. "Then it's too late," said Hale. "Depending on terms in the agreement, it might make it difficult for the church to make any changes to its property or buildings. [Or] the church could be locked into below-fair-market rental rates for decades."

"In dealing with carriers, you want to be as shrewd as snakes," said Steve Kazella, referencing Jesus' words in Matthew 10:16. Kazella heads Tower Genius, a cell tower lease consulting firm in Lewiston, Idaho. The way to do that, according to Kazella, is to hire people with thorough knowledge of zoning, tax codes, legal issues, and the wireless industry itself. Tower Genius, he said, typically works with lawyers on the latter.

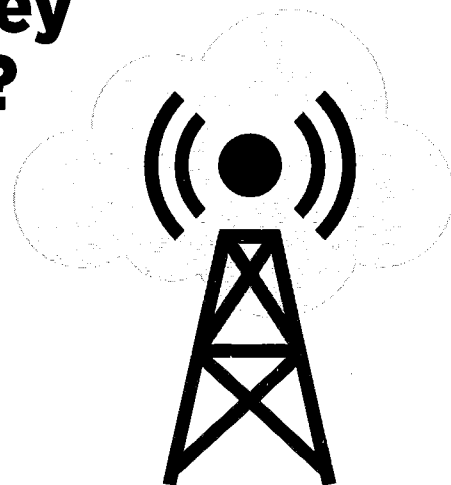
## Following IRS rules

On the tax side, the biggest problems relate to property tax rules, which differ from state to state, and a lack of clarity around Internal Revenue Service rules, said Dave Moja, a Georgia-based CPA with the firm CapinCrouse. Moja helped write a 2014 report to the IRS on issues with unrelated business income tax (UBIT).

Under IRS rules, if a church collects money on an activity unrelated to its ministry, it could be considered taxable income. Those rules can be difficult to untangle, Moja said.

Moja offers these tips for church leaders:

- Check with local government about whether the area of church property where the tower will be erected would be subject to property tax.
- If the church owns the building outright and the IRS considers it "real property," it may be exempt from paying UBIT on rental income from antennas or towers affixed to it.
- If the church already owns a stand-alone radio antenna and allows a cell service provider to affix an antenna to it, the congregation may be subject to UBIT on the net income from the tower rental.
- If the church has debt on its building or land and rents space for a cell tower, it may have to pay tax on the rental fee, depending on the percentage of the property considered debt-financed.
- If the church simply rents land to a communications company and that company constructs a tower and pays all costs associated with operating the tower,



the church will generally not owe UBIT on the land rental. However, if the church has debt on the land, it would be subject to the debt-financed rules.

## Navigating zoning boards

Sometimes churches will find that their neighbors don't want to allow a cell phone tower on church property, but zoning boards generally look favorably upon cell towers at churches, said Kevin Donohue, a partner in the Tower Genius consulting firm.

"If [churches] can hide the antennas, planning boards and zoning boards won't give them a hard time," Donohue said.

## Seek expert help

"The UBIT laws I've been working with for 20 years are probably the best marketing tool for CPAs and attorneys out there," Moja said. "There's a don't-try-this-at-home aspect to this stuff. It comes down to working with your tax advisers and making sure you have good guidance on local, state, and federal laws."

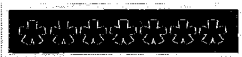
Real estate agent Dominic Dutra, whose California-based firm consults with churches and other nonprofits on cell phone tower leases, urges clients to consider alternatives to cell phone towers. Too often, he's heard of churches devastated by being trapped in contracts that take away control of their property, result in unanticipated taxes, or yield far less income than they should have.

Dutra encourages churches to ask themselves questions like these before signing any cell tower contracts: "Does it do anything for us beyond the income? Does it improve what we do in our ministry or in the community? Or does it constrain what we want to do with our property on a long-term basis?"

He said the biggest question churches should ask themselves is, "Why are we doing this?" ■

## Notes&Numbers

### Pick Strong Passwords



Warn church staff not to put sensitive data and financial information at risk with easily hacked passwords—like “john316,” Bible verses and many other common religious words aren’t good candidates for computer and data protection, reported ChristianityToday.com.

A data breach study of compromised or leaked passwords revealed that popular-but-bad choices included “jesus” or variants like “jesus777” and “jesus143.” Collectively, more than 21,000 people in the breach used the Son of God’s name as a password, said the website.

“You want a password to be unguessable,” ChristianityToday.com recommended. “If you use your life verse as your password—say, for your church’s financial software—you’re opening yourself and your church to potential hacking by choosing something easy to predict.”

For further guidance on choosing and protecting passwords, search “ST04-002” at us-cert.gov.

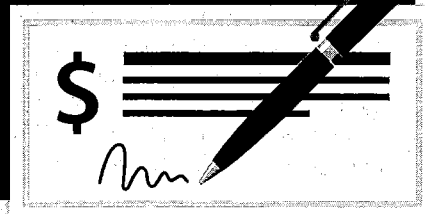
### Renegotiate Payment Processing

If your church is experiencing what’s happening in most churches, then you have [likely] seen a decrease in people giving by check or in the offering on weekends as [many donors have begun] giving through various online payment platforms. You need to dig into what the transaction costs are for those payments. Typically, most of your vendors are open to saving this expense if you just ask. Even a service like PayPal will reduce its fees if you reach out to them. Although the task of switching to another payment processing service is daunting—every one of those automatic payments needs to be switched—it can be worthwhile in the long run with the savings you’ll see.

—Unseminary.com

## Q: What Should We Do with Old, Uncleared Checks?

Two checks written by my church in 2015 have not been cashed and are assumed lost. Since I can’t track down the payees, I want to remove these checks from our records so they no longer show up as uncleared. Any suggestions for how best to do this?



**A:** If the payees do not cash them, you must turn the check amounts over to the state as “unclaimed property” after the passage of a certain amount of time. If you don’t, you will be guilty of breaking “escheatment” rules. These rules vary from state to state. Here is a website that provides the rules in all 50 states: [bizfilings.com/toolkit/sbg/finance/basic-accounting/unclaimed-property](http://bizfilings.com/toolkit/sbg/finance/basic-accounting/unclaimed-property).

—Frank Sommerville, CPA, attorney, and editorial advisor for *Church Finance Today*

To submit a question for consideration in a future Q&A, email [editor@churchlawandtax.com](mailto:editor@churchlawandtax.com).



## Key Tax Reminder

June 30, 2017

➤ Now is a good time to review the 2017 housing or parsonage allowances designated for all ministers on staff. If an allowance designated for 2017 is clearly below actual housing expenses, then the church board should consider declaring a larger portion of the minister’s remaining compensation as a housing or parsonage allowance. A church is free to designate any portion of a minister’s compensation as a housing allowance, but clergy who own their homes may never claim a housing allowance exclusion greater than the fair rental value of the home (furnished, including utilities). Providing a minister a parsonage allowance also must constitute a reasonable, nonexcessive amount.

The free Tax Calendar—available on [ChurchLawAndTax.com/tc](http://ChurchLawAndTax.com/tc)—provides reminders about regular, semiweekly, and monthly withholding requirements, plus other upcoming dates and deadlines related to church taxes.

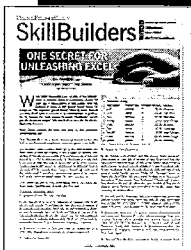
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