Section 2

Federal and State Tax Matters

Chapter 8: Tax-Exempt Status

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8.100: Introduction

The IRS considers member congregations, the schools they operate, as well as most other organizations affiliated with the Synod, as tax-exempt entities because they are organizations described in the Synod's group tax-exemption ruling under code section 501(c)(3) of the Internal Revenue Code. A copy of the IRS's letter describing which organizations are included in this ruling is in Section 8.410. Other Synod-related entities not described in this ruling must apply for their own separate tax-exempt status by filing Form 1023.

Once your organization is tax-exempt, it's important to know what activities can put it in danger of losing its exemption or incurring costly sanctions or penalties. The law prohibits three types of activities by religious, non-profit organizations. They include private benefit (inurement), substantial lobbying and political campaigning. Until just recently the only recourse the IRS had for these violations was to revoke the entities' tax-exempt status. Because that was such a drastic step, the IRS tended to do that only in the most extreme cases.

However, since the enactment of the Taxpayer Bill of Rights 2 in 1996, if an exempt organization engages in an "Excessive Benefit Transaction," the IRS can now impose intermediate sanctions, i.e., penalty taxes in lieu of (or in addition to) revoking the entity's tax-exempt status. This tax can be imposed on any "disqualified person" who profits from an excess benefit transaction and the organization's managers who knowingly participate in the transaction.

A "disqualified person" is anyone who is in a position to exercise substantial influence over the affairs of the organization. "Excess Benefit Transactions" is one in which a certain "disqualified person" receives an economic benefit of greater value than the value of the consideration given. Examples include unreasonable compensation and bargain sales.

A disqualified person is penalized more severely than the organizational managers. He or she must pay an excise tax of 25 percent of the excess benefit amount, where the managers must pay an excise tax (in aggregate) that equals 10 percent of the excess benefit (to a maximum of $10,000). The following are steps that have been recommended to all non-profit organizations to avoid these taxes.

1. Review existing compensation agreements.
2. Establish an independent review committee to examine new compensation agreements.
3. Review all property transactions with "disqualified persons."
4. Review family relationships of disqualified persons to identify any potential excess benefit transactions.
5. Do not formulate compensation arrangements based on the organization's net revenues or net income.
6. When an excess benefit transaction is discovered, take immediate corrective action to avoid additional penalties.

8.101: Political Campaign Prohibition

The IRS has begun an aggressive educational and enforcement campaign to make charities aware of the statutory rules against engaging in political activities. Accordingly, the Synod's Accounting Department is also reminding all synodical entities that their efforts, if any, to "educate voters," must comply with tax code requirements concerning political campaign activities. The code absolutely prohibits churches and other religious organizations from endorsing or opposing any candidate for public office.

Whether a particular activity, action, or expenditure constitutes the conduct of prohibited political activity depends on all the facts and circumstances in each case. For example, organizations may sponsor debates or forums to educate voters. However, if the debate or forum shows a preference for or against a certain candidate, it becomes a prohibited activity.

The political activity prohibition does not restrict free expression by leaders of synodical entities who are speaking for themselves. However, ministers and others who commonly speak or write on behalf of a synodical entity must clearly indicate, at the time they do so, that their public comments in connection with political campaigns are strictly personal and not on behalf of the Synod or organization they represent. Partisan comments by employees or representatives of synodical organizations aimed at political candidates must never be made in official organization publications or at official church functions.

The entity could lose its tax-exempt status and/or be assessed an excise tax if IRS finds it violating this prohibition. Also, contributions to organizations that lose their tax-exempt status are not deductible by the donors for federal income tax purposes.

The IRS discusses in greater detail the political prohibition in its fact sheet, FS-2006-17; Publication 1828, Tax Guide for Churches and Religious Organizations; and also Revenue Ruling 2007-41. These publications and other information about the political campaign prohibition are available at www.irs.gov.

8.105: Congregations

Congregations listed in "The Lutheran Annual" are included in a blanket tax-determination letter from the IRS, updated June 3, 1992 (see 8.410). The listing of congregations is updated annually. ***Based on this letter, all listed congregations including those in the formative stages are exempt from income taxes as organizations described in Section 501(c)(3) of the Internal Revenue Code.***

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8.110: Lutheran Schools

All schools (elementary and secondary) that are operated as an agency of an LCMS-member congregation and are not separately incorporated are included in the blanket tax-determination letter from the IRS, updated June 3, 1992 (see 8.410). All schools separately incorporated but controlled by one or more LCMS member congregations may either request to be covered under Synod's blanket tax determination or obtain their own separate determination from IRS that they are tax exempt.

Without exception, each newly formed school must contact its district office so that it can be listed among the other schools published in the "Lutheran Annual." Upon contact, the district's educational executive will submit a "New School" form to the LCMS Statistical Department. For separately incorporated schools, this communication must occur before it may request to be included in Synod's blanket determination.

For the separately incorporated school to be covered by the Synod's group exemption, the following elements must be present in its articles of incorporation and bylaws:

1. Legal control by one or more LCMS member congregations.
2. Language that adequately contains all relevant references to items required by IRS Code Section 501(c)(3).

These references include but are not limited to the following:

- A clause limiting its purpose to one or more of the exempt purposes specified in IRS Code Section 501(c)(3).
- A clause limiting its activities to those fostering its exempt purposes.
- An article specifying that upon dissolution, its assets will be distributed to the Synod, or one of its member organizations.
- A clause that prohibits private advantage.
- A clause that properly restricts its political and lobbying activity.
- A clause pertaining to private foundation status and activity limitations.
- A clause providing that control of the organization is effected by the controlling congregation having the authority to appoint and remove either all or a majority of the directors of this organization.

It's extremely important that your legal counsel has reviewed the organizational documents for coverage of all the above points to ensure the school qualifies for inclusion.

Before the 16th month after the school's incorporation date, a qualified school must submit a written request for participation under the Synod's group exemption. Use the form available in the forms' section of this manual titled, "Request and Authorization for Inclusion in the LCMS Group Tax Exemption." Upon completion, send it to:

LCMS Statistical Department
1333 S. Kirkwood Road
St. Louis, MO 63122-7295

A timely submission ensures the school's exemption on a group basis from the date of its incorporation. A request mailed to the Synod after the 15-month deadline can only be recognized as exempt from the date that the school submits the formal request for inclusion (evidenced by postmark).

Schools operated by more than one congregation may also be identified as Recognized Service Organizations of the LCMS by submitting the required exhibits and the official "Letter of Agreement" provided by the LCMS. *(Find more RSO information on the LCMS website: lcms.org/page.aspx?pid=943.)*

8.115: Early Childhood Centers

If your early childhood center is part of the congregation's ministry, and not separately incorporated, then it may rely on the congregation's tax exempt status.

However, if an early childhood center is separately incorporated, it has two options as to how it can become a tax-exempt entity. One option is to separately file (IRS Form 1023) and request its own tax-exempt status.

The other option is to request participation in the Synod's group ruling, ***if the early childhood center qualifies.*** To qualify, it must be controlled by one or more LCMS congregations. This control must be authorized and evidenced in the center's articles of incorporation and bylaws. The control must also specifically provide that the authority to appoint and remove all or a majority of the directors of the center is vested in the voters' assembly or other official board or committee of the congregations. The center must also obtain and file with the Synod's Statistics Department a "Request and Authorization for Inclusion" form. (A copy is available in the Forms section of this manual.) On this form, the center certifies that it is controlled by an LCMS congregation and that its articles and bylaws are in accordance with all the provisions of Internal Revenue Code Section 501(c)(3).

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8.120: Other Organizations

Organizations associated with congregations that are not schools or early childhood centers may NOT be included in the Synod's Group Tax-Exempt Ruling. Those organizations must obtain their own separate tax-exempt status by filing IRS Form 1023 directly with the IRS.

8.130: Exemption from Filing Form 990 or Form 990-N

Section 6033 of the Internal Revenue Code excuses certain organizations from filing Form 990, the information return generally required to be filed by tax-exempt organizations. Member congregations of the Synod are excused as churches by this section of the law, and this includes the school operated by the congregation under its own structure, that is, not separately incorporated or otherwise operated so as to be distinguishable from the congregation. All elementary and high schools are excused from filing Form 990, even if they are incorporated separately from the congregation or operated by two or more congregations. Neither are these entities required to file the new Form 990-N, Electronic Notice (e-Postcard).

If a congregation receives a request from the IRS to complete and return a Form 990 or Form 990-N, the congregation should return the form to the appropriate IRS office and attach a letter stating that the congregation is exempt from filing Form 990 under Internal Revenue Code Section 6033, which specifically exempts churches, or under the Regulations to Section 6033, which exempt elementary and secondary schools.

8.140: Synod's Employer Identification Number

Upon application, IRS assigns each congregation and *(if separately incorporated)* school with their own Employer Identification Number (see paragraph 7.310). It is used for all of the applicant's IRS filing and reporting requirements (e.g., payroll returns, unrelated business income, IRS Form 1099s, Form 5578). If the assigned EIN is reported incorrectly on such returns, processing can be delayed because the legal name of the organization and its EIN does not match according to IRS's records.

However, other reporting situations may require the disclosure of Synod's EIN in addition to the church's or school's. The EIN number assigned to The Lutheran Church—Missouri Synod is **43-0658188**. Some common examples of when that number is needed includes: satisfying certain grant requirements, a pastor's filing of Forms 4361 or 2031, a congregational member's desire to bequeath to Synod or to designate it as a beneficiary of their trust assets. Using Synod's EIN for any inappropriate purposes is prohibited. If you're in doubt whether it's correct to report your organization's EIN or Synod's EIN, contact your district office.

8.150: Public Disclosure Requirements—Application for Tax Exemption

Section 6104(e) of the Internal Revenue Code requires every tax-exempt organization to allow public inspection of its application for recognition of tax exemption and its Form 990 (including Form 990-T), if the organization is required to file that form. In the Synod, few entities are required to file Form 990. However, some may need to file Form 990-T, but only if any unrelated income exceeds $1,000 (see 11.110). If an organization chooses to file a Form 990-T only to request the Small Business Health Care Tax Credit, these public disclosure requirements do not apply (see 4.800).

Because of the bulk of the documents related to the Application for Recognition of Tax Exemption they have been provided to each district office to be made available to congregations as they may be requested. Congregations are not required to have these documents on file if they can be made available within a reasonable time from the district office. Also, they have been widely made available on the world wide web at www.lcms.org (Synod's Web site).

The IRS can assess penalties on any person failing to comply with this congressional mandate ("person" means any officer, director, trustee, employee or other individual whose duty it is to provide the requested documents). The penalty assessment can be $20 for each day such failure continues without limitation, and an additional $5,000 if the failure is found to be willful.

Should an individual request to see your tax-exempt application, you must be able to acquire a copy of the application for group exemption and make it available for public inspection.

The IRS broadly defines your "application" to include the following: the Synod's initial request for group exemption; any supporting documents filed by, or on behalf of, the Synod in connection with the request (including relevant legal briefs); any relevant IRS responses; and the page in the Synod's membership directory that lists your congregation by name.

Should an individual request to see the Synod's application for tax exemption or its Form 990-T, please refer them to the Synod's Web site, your district office, or the Synod's Accounting Department—Tax & Compliance. The district offices can make these documents available for on-site inspection or provide copies. The district office also has information regarding times for inspection, charges for making copies, mail requests and related matters.

8.155 Synod's Group Exemption Number (GEN)

The group exemption number (GEN) is a number assigned by the IRS to the central/parent organization of a group that has a group exemption letter. The Synod has received such a letter from the IRS (see Sec. 8.410)

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and the GEN assigned to this group is **1709**. Only subordinate units referenced by category in Synod's group exemption letter are tax-exempt under GEN 1709.

8.160
Verifying Tax Exempt Status

Included under Synod's group tax-exempt ruling are LCMS member congregations, the schools they operate and are not separately incorporated, as well as those that are separately incorporated and have consented in writing to be included. Occasionally, these entities need evidence of their "501(c)(3)" tax-exempt status. A request of this nature may be satisfied by providing a copy of the IRS tax-exempt group ruling acquired by the LCMS and reproduced in Section 8.410; and, also a copy of the page found inside "The Lutheran Annual" on which lists your congregation or school as a member of the LCMS. Alternatively, anyone may contact the LCMS Accounting Department directly for verification. Either verification method may be used and are described in IRS Publication 4573. An LCMS congregation or a school it operates need not be listed in IRS Publication 78 or on the EO Business Master File. Donors, grantors, or other interested persons may rely on LCMS verification in this respect.

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8.400:
IRS Rulings

8.405:
Federal Tax Exemption

Internal Revenue Service

Department of the Treasury

District
Director

230 South Dearborn Street
Chicago, IL 60604

The Lutheran Church-Missouri Synod
Attn: George Horensky
1333 South Kirkwood Road
St. Louis, Missouri 63122

Date: JUN 0 3 1992

Re: 43-06~~0~~8188

Gentlemen:

By means of a letter dated July 23, 1941, issued to you under your name at the time (Evangelical Lutheran Synod of Missouri, Ohio and Other States), you were determined to be organized and operated so as to be entitled to be exempt from federal income tax, and to be entitled to receive gifts for which the donors could claim deductions for federal income , gift and estate tax purposes. By means of a letter dated January 8, 1965, certain "subordinate" units were included in a group ruling, excluding, however, your commissions, committees, councils and your radio station, KFUO, all of which were observed to be merely activities of yours and not separate entities.

The purposes of this letter is to assure you that the Synod, including its boards, commissions, committees and councils, and any radio and television broadcast licenses owned by it and not structured as a corporation separate from the Synod, is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, is not required to file federal income tax returns, and contributions to which are deductible by donors as provided in Section 170, 2055, 2106, and 2522 of the Code.

Finally, you may refer to this letter by its date in referring to our determination that you are an exempt organization.

Sincerely yours,

R. S. Wintrode Jr.

R. S. Wintrode, Jr.
District Director

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Internal Revenue Service | Department of the Treasury

District Director | 230 South Dearborn Street
Chicago, IL 60604

Lutheran Church-Missouri Synod
Attn: George Horensky
1333 South Kirkwood Road
St. Louis, Missouri 63122

Date: JUN 03 1992

Re: 43-06~~0~~8188 (5)

Gentlemen:

In a letter dated January 8, 1965 your organization was issued a group ruling under Code Section 501(c)(3) of the Internal Revenue Code to cover your subordinate units. Based on the information recently submitted it is held that the subordinate units referenced below by category are those to be covered by the group ruling:

1. Your fund-raising and fund-administering entities, presently consisting of The Lutheran Church-Missouri Synod Foundation.

2. Your archives, presently consisting of Concordia Historical Institute.

3. The districts of the Synod existing within the United States, including the circuits within those districts.

4. The incorporated church extension, funds of the Synod and its districts, presently consisting of (i) Lutheran Church Extension Fund-Missouri Synod, (ii) Ohio District Lutheran Church Extension Fund, Inc., (iii) The Church Extension Board of the Michigan District of the Lutheran Church-Missouri Synod, and (iv) The Southeastern District-Lutheran Church Missouri Synod Church Extension Fund, Inc.

5. The institutions of higher education of the Synod.

6. The member congregations of the Synod, including those in the formative stages of membership.

7. The elementary schools, middle schools and junior high schools, and high schools (a) that are operated by member congregations of the Synod and are not separately incorporated, (b) as well as those that are either separately incorporated or are otherwise identified as entities separate from congregations and which have consented in writing to be included in this group ruling.

Donors may deduct contributions to these organization as provided in Section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your or for your use are deductible for Federal estate and gift tax purposes if they meet the applicable provisions of Code Sections 2055, 2106, and 2522.

(Continued on next page.)

Because this letter could help resolve any questions about subordinates which are covered by this ruling, you should keep it in your permanent records.

Sincerely yours,

R. S. Wintrode, Jr.

R. S. Wintrode, Jr.
District Director

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