

Christian Legal Society Annual Conference
Representing Churches & Other Nonprofit Entities Workshop
Nonprofit Law Basics

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1. Incorporation/liability protection

- 1.1. If your church is not incorporated (i.e., it is still run by trustees), it should be.
- 1.2. Benefits of incorporation:
 - Defined legal existence – facilitates legal and financial relationships, transactions
 - Limitation of personal liability

2. 501(c)(3) tax-exemption recognition

- 2.1. Benefits of obtaining IRS 501(c)(3) tax-exemption recognition
 - No taxes
 - Tax deductions for donors
 - Facilitates financial relationships, transactions
 - Seek grants
- 2.2. Churches are automatically tax-exempt
- 2.3. But some larger churches seek formal IRS recognition of 501(c)(3) status anyway
 - Formal proof of tax deductible donations for donors
 - State sales tax exemption
 - Grants
 - Bulk mailing rates
- 2.4. Form 990s (“tax return” for tax-exempt orgs) - Churches, associations of churches, integrated auxiliaries of churches, certain foreign missions organizations and certain other specifically-listed types of nonprofit organizations are exempt from filing annual report Form 990, 990-EZ or 990-N, regardless of their size.

Tax-exemption requirements IRS info: <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations>
Tax Information for Churches and Religious Organizations IRS Info: <https://www.irs.gov/charities-non-profits/churches-religious-organizations>
Annual Reporting & Filings IRS info: <https://www.irs.gov/charities-non-profits/annual-reporting-and-filing>

3. Board of director duties

- 3.1. Parish council = board of directors, but different in that it works in conjunction with the parish priest pursuant to the jurisdiction’s constitution
- 3.2. Fiduciary duty to act in the best interest of the parish - be reasonably informed, exercise independent judgment
- 3.3. Duty of loyalty to the organization
- 3.4. Meeting minutes = legal document

4. No private inurement/benefit

- 4.1. Inurement to Insiders - No unreasonable compensation.
- 4.2. Private Benefit - Activities must be directed exclusively toward charitable, educational, religious or other exempt purposes; may not serve the private interests of any individual or organization. Beneficiaries must be recognized objects of charity (e.g. poor) or the community at large (e.g. promotion of religion)
- 4.3. Festal gifts
 - When parishioners give cash gifts to priests directly, that is strictly between the parishioner and the priest – the parishioner may not take a tax-deduction.
 - Cannot be a “pass-through” – donation must be to the parish, council must separately determine a compensation “bonus” to be given to priest.
 - Priest reasonable compensation – overall compensation, including gifts, must be reasonable.
- 4.4. Giving to missions
 - Can't give to individuals unless meet approved criteria; should document approval
 - OK to give to other 501c3's
 - Foreign charities: must be charities; must avoid links to terrorism

Inurement/Private Benefit IRS info: <https://www.irs.gov/charities-non-profits/charitable-organizations/inurement-private-benefit-charitable-organizations>

5. Unrelated business income

- 5.1. May engage in income-producing activities unrelated to their tax-exempt purposes, as long as the unrelated activities are not a substantial part of the organization's activities.
- 5.2. Net income subject to unrelated business income tax (UBIT) if the following conditions are met:
 - a) the activity constitutes a trade or **business**,
 - b) the trade or business is **regularly carried on**, and
 - c) the trade or business is **not substantially related to the organization's exempt purpose**. (The fact that the organization uses the income to further its charitable or religious purposes does not make the activity substantially related to its exempt purposes.)
- 5.3. **Rental of facilities** - if done for the dominant purpose of generating revenue, rather than a ministry, is likely unrelated business income.
- 5.4. Exceptions to UBIT
 - Even if an activity meets the above criteria, the income may not be subject to tax if it meets one of the following exceptions:
 - (a) substantially all the work in operating the trade or business is performed by **volunteers**,
 - (b) the activity is conducted by the organization primarily for the **convenience of its members** or
 - (c) the trade or business involves the selling of **merchandise** substantially all of which was **donated**.
- 5.5. **Rental of property** - In general, rents from real property, royalties, capital gains, and interest and dividends are not subject to the unrelated business income tax unless financed with borrowed money.
 - 5.5.1. Generally, income derived from the rental of real property and incidental personal property is excluded from unrelated business income.

- 5.5.2. Exception: if a church rents out property on which there is debt outstanding (for example, a mortgage note), the rental income may constitute unrelated debt-financed income subject to UBIT.
- 5.5.3. Exception to exception: if a church intends to use it for exempt purposes within 15 years of the time of acquisition, then income from the rental of the land may not constitute unrelated business income.
- 5.6. Tax on Income-Producing Activities - If a church, or other exempt organization, has gross income of \$1,000 or more for any taxable year from the conduct of any unrelated trade or business, it must file IRS Form 990-T.

Unrelated Business Income Tax IRS info: <https://www.irs.gov/charities-non-profits/unrelated-business-income-tax>

6. Political campaign activities

- 6.1. Absolutely prohibited from directly or indirectly participating in any political campaign on behalf of (or in opposition to) any candidate for elective public office. Violation may result in revocation of tax-exempt status and the imposition of excise tax.
- 6.2. Certain voter education activities, activities intended to encourage people to participate in the electoral process, conducted in a non-partisan manner do not constitute prohibited political campaign activity.
- 6.3. Prohibition does not apply to leaders speaking for themselves, as individuals.

Restriction of Political Campaign Intervention by Section 501(c)(3) Organizations IRS info: <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501-c-3-tax-exempt-organizations>

7. Substantial lobbying activity

- 7.1. Prohibited: substantial part of its activities in attempting to influence legislation.
- 7.2. Churches may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.

Lobbying IRS info: <https://www.irs.gov/charities-non-profits/lobbying>

8. Donation receipts

- 8.1. **Recordkeeping Rules** - A donor cannot claim a tax deduction for any contribution, unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity, the date of the contribution and the amount of the contribution.

8.2. Substantiation Rules

- 8.2.1. A donor can't claim a tax deduction for any single contribution of \$250 or more unless the donor obtains a contemporaneous, written acknowledgment of the contribution. An organization can assist the donor by providing a timely, written statement containing:
- name of the church
 - date of the contribution

- amount of any cash contribution, and
- description (but not the value) of non-cash contributions

8.2.2. Also include:

- statement that no goods or services were provided by the church or religious organization in return for the contribution;
- statement that goods or services that a church or religious organization provided in return for the contribution consisted entirely of intangible religious benefits, or
- description and good-faith estimate of the value of goods or services other than intangible religious benefits that the church or religious organization provided in return for the contribution.

Substantiating Charitable Contributions IRS info: <https://www.irs.gov/charities-non-profits/substantiating-charitable-contributions>