

JANUARY 2021

**GUIDELINES TO OBLIGATIONS OF
BRANCH CHURCHES AND SOCIETIES TO WITHHOLD
FEDERAL INCOME AND SOCIAL SECURITY TAXES
AND TO REPORT COMPENSATION; AND OTHER INFORMATION**

EMPLOYEE OR INDEPENDENT CONTRACTOR

Federal income tax and Social Security taxes (including Medicare) are to be withheld only from the compensation of employees, not independent contractors. Consequently, the first step is to determine whether an employer-employee relationship or an employer-independent contractor relationship exists with each worker. The primary tests for making this determination are whether or not the branch church or society has the right to control and direct the worker as to what is to be accomplished and how it is to be accomplished (employees are subject to this type of control; independent contractors are not), and whether or not the worker makes his or her services available to the general public (as independent contractors typically do, but employees do not). These are just two of the several factors to be applied.

In this guideline, the status of different categories of church workers will be addressed, and you will find that we have clearly identified certain workers as employees. Others, however, will have to be classified according to your own particular circumstances. In order to make an informed decision, we recommend that you refer to the several factors which the IRS describes in **Publication 15-A** “Employer’s Supplemental Tax Guide.” This publication, which can be accessed online at www.irs.gov, will help you determine whether a worker should be classified as an employee of your church or as an independent contractor, by offering examples.

Although it may be helpful to have a written agreement between the church and any independent contractor it employs, a written agreement, by itself, will not guarantee that the IRS will view the worker as an independent contractor. In the event of an audit, the facts of the situation will govern. Consequently, it is important to understand, and when possible to document, the reasons for classifying the individual as an independent contractor. Periodic review of the factors as they apply to your workers will help to ensure proper classification. Although it is very unusual to find a case where an employee should be reclassified as an independent contractor, it is fairly common to discover that an independent contractor has, over time, actually become an employee.

There can be a consequence of treating an employee as an independent contractor. If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be liable for employment taxes for that worker.

If you want the IRS to determine whether or not a worker is an employee, file Form SS-8 “Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.”

REPORTING AND WITHHOLDING RULES

A. Employee

If the worker is determined to be an employee, the following withholding and reporting rules must be observed:

1. Federal Income Tax Withholding — Withholding of federal income taxes must be made from payments to employees who have sufficiently large earnings. You should refer to **IRS Publication 15** titled “Circular E, Employer's Tax Guide” for applicable withholding tables. Please note that even if no withholding is required, employees must report this income on their own income tax returns.
2. Social Security Tax Withholding (FICA) — Churches and societies are covered by Social Security and, therefore, must withhold and pay Social Security taxes (including Medicare) from the earnings of an employee (*except Readers*). In addition, the church or society must contribute an amount equal to the amount contributed by the employee. **IRS Publication 15-A** provides applicable withholding tables.
3. Required Forms for Reporting — On or before January 31 of each year, churches and societies must furnish a Form W-2 to each employee. The church also must send, on or before February 28 of each year, this form to the IRS. In addition, churches and societies must file IRS Quarterly Form 941 showing the amount of Social Security taxes paid during the quarter and any income tax withheld during the quarter. Reader earnings should be included in total reportable wages, but excluded from taxable Social Security wages and taxable Medicare wages. You should check the box at the end of line 4 if wages are exclusively minister earnings not subject to withholding. If wages include both Readers and other employee wages, do not check this box, but write the following between lines 3 and 4: "Note: Includes minister's wages not subject to withholding." General procedural information can be obtained from **IRS Publication 15** referred to above and from the instructions to Forms W-2 and 941.

B. Independent Contractor

If the worker is found to be an independent contractor (also called a “self-employed person”), no federal income tax is withheld from his or her compensation. Because an independent contractor is required to pay self-employment tax (the equivalent of Social Security and Medicare taxes) on his or her self-employed income, there is no withholding of Social Security and Medicare taxes from compensation paid to such persons. However, the following reporting rules must be observed:

Required Forms for Reporting - If an independent contractor is paid \$600 or more during the year (not including itemized reimbursed expenses), you must furnish to him or her a Form 1099-NEC on or before January 31. Beginning in 2021, for payments made to independent contractors, this form also must be sent to the IRS on or before February 1 of each year. If an independent contractor is paid less than \$600 during the year, there is no requirement to report the compensation. *If an independent contractor is incorporated, there is no requirement to report its compensation, even if the amount is in excess of \$600.*

MUSICIANS

Some church soloists and organists are classified as independent contractors, and others as employees. The proper category depends upon the particular facts and circumstances of each case. A musician who has learned to perform in order to accept employment with his or her church, who must be carefully supervised, and who does not make available his or her services to other prospective employers, is clearly an employee. A musician who pursues that line of work beyond the hours he performs at one church's services, who offers his services to others, and who does not have a permanent, ongoing employment relationship with the church, is more likely to be an independent contractor. Substitute musicians who are free to work on an as-needed basis are typically classified as independent contractors.

If the musician is determined to be an employee, the rules for tax withholding and reporting for employees described in A1, A2, and A3 of the Reporting and Withholding Rules section above should be followed. If the musician is determined to be an independent contractor, the rules for reporting his or her annual compensation described in B above should be followed.

CLERK, TREASURER, READING ROOM LIBRARIAN

These individuals are regarded as employees since churches and societies have the right to control and direct them as to what is to be accomplished and how it is to be accomplished. The rules for tax withholding and reporting for employees described in A1, A2, and A3 of the Rules section above should be followed.

CUSTODIANS

Sometimes custodians are hired on an employer-employee basis, in which case the rules for tax withholding and reporting compensation of employees described in A1, A2, and A3 of the Rules section should be followed. Sometimes custodians are independent contractors, and the rules for reporting his or her annual compensation described in B should be followed. The proper category depends upon the particular facts and circumstances of each case.

READERS AND SUBSTITUTES

Readers have a special tax category which is described on page 4 of **IRS Publication 517** ("Social Security and Other Information for Members of the Clergy and Religious Workers") as follows:

"Christian Science Readers are considered the same as ordained, commissioned, or licensed ministers."

On page 3 under the heading "Ministers" it states:

"If you are a duly ordained, commissioned, or licensed minister of a church, your earnings for the services you perform in your capacity as a minister are subject to self-employment tax."

The withholding and reporting rules for ministers are different from those for other church workers, and although Readers' earnings are the same as ministers' earnings and subject to self-employment taxes, the Readers in Christian Science churches are employees. Consequently, for **income tax** purposes, Reader income

is viewed as employee earnings and should be reported on a Form W-2, following the reporting instructions in A3 of the Rules section of this guideline. However, you should not withhold income tax on those earnings as you would for other church employees, unless the Reader requests in writing that you do so by filling out Form W-4 certifying the number of exemptions claimed for withholding purposes. Also, you must not withhold the FICA tax described in A2 because, for **Social Security and Medicare** purposes, Reader income is viewed as self-employment income and is subject to the SECA self-employment tax instead of FICA. Compensation of substitute Readers should be handled in the same way. If a Reader or substitute receives less than \$600 for the year, that compensation does not have to be reported on a W-2 nor included on Form 941.

Some Readers claim exemption from self-employment tax by making a timely filing of IRS Form 4361. The basis of the exemption and the procedure for claiming this exemption is described in our INFORMATION FOR READERS. Regardless of whether or not the Reader claims exemption from self-employment tax, no Social Security taxes (including Medicare) should be withheld from his or her pay.

Because Form W-2 is normally used only for employees whose earnings are subject to withholding, we recommend typing the following phrase at the top of each W-2 prepared for your Readers: “Minister earnings not subject to withholding.” We also recommend that you access **IRS Publication 517** online as a reference for the special tax category of ministers and related procedures for reporting minister income. IRS forms and publications mentioned in this guideline can be accessed online at www.irs.gov.

LECTURERS

U.S. Citizens - Lecturers are independent contractors. If the lecture fee is less than \$600 no Form 1099-NEC is required. When the lecture fee (not including itemized, reimbursed expenses) is \$600 or more, it is necessary to file Form 1099-NEC with the IRS, as explained in B of the Independent Contractor portion of this guideline. This requires obtaining the lecturer’s Social Security Account Number (SSAN) at the time of or prior to the lecture. In this regard, we recommend that you ask the lecturer to complete IRS Form W-9 which will provide you with the lecturer’s correct name, address, and SSAN for inclusion on Form 1099-NEC.

Reimbursed expenses incurred by the lecturer do not need to be reported on IRS Form 1099-NEC if the lecturer adequately accounts to the sponsoring branch church or society for these expenses. If the lecturer does not account for his or her expenses, the lecturer must include any reimbursement in income. The lecturer must keep adequate records of his or her expenses whether or not he or she accounts to the sponsoring branch church or society for expenses. Please refer to section 6 of IRS Publication 463 “Travel, Entertainment, Gift, and Car Expenses” which contains a segment on independent contractors.

Non-U.S. Lecturers – Special tax rules apply to non-U.S. lecturers. In some cases it may be necessary to withhold a percentage of their lecture fee for remittance to the IRS, depending upon the lecturer’s country of origin. Lecture fees of non-U.S. lecturers need to be reported to the IRS if over \$600. However, they are not reported on Form 1099-NEC as for U.S. citizens, but rather on Form 1042-S. The non-U.S. lecturer’s Social Security Number or Individual Tax Identification Number needs to be obtained at the time of or prior to the lecture and included on IRS Form 1042-S.

In addition to special tax rules which apply to non-U.S. lecturers, it is currently difficult for such a lecturer to obtain a visa which authorizes him or her to give a lecture in the U.S. and receive compensation. The Mother Church is aware of the issue of non-U.S. lecturers having a challenge obtaining visas to lecture in the U.S. and

receive compensation and has been working with outside legal counsel about how to obtain a long-term solution from USCIS.

Contact the Board of Lectureship for more specific information before seeking to engage a non-U.S. lecturer.

MISCELLANEOUS IRS TAX REPORTING FORMS

Form 8822-B - The IRS now requires *any* organization that has an Employer Identification Number (EIN) – this includes both for-profit and non-profit organizations, including churches – to file Form 8822-B whenever there is a change of address *or* if there is a change in the “responsible party” identified on the Form SS-4 that the organization filed with the IRS to obtain its EIN. Since Form SS-4 was amended in 2010 to require the listing of “responsible party” it is likely that many churches that obtained their EIN many years ago did not designate a responsible party at that time. A typical responsible party is the church’s treasurer. It is recommended that churches and societies file Form 8822-B and list the current responsible party’s name and Social Security Number (as is required on the form and its instructions) and leave those lines blank which ask for the former responsible party’s name and SSAN. There are *presently* no penalties for not filing this form; however, your church or society may not receive timely notices of deficiencies or demands for taxes from the IRS (in relation to payroll taxes, for example), which can lead to penalties and additional interest costs, if you do not file Form 8822-B.

Form 990, 990-EZ - Churches are specifically exempt from the IRS requirement that non-profit organizations must annually file a Form 990 or 990-EZ information return. The IRS Form 990 Instructions state on page 4 thereof that a church is not required to file a Form 990 or 990-EZ.

FUTA - Religious organizations that are exempt from federal income taxation are not subject to the Federal Unemployment Tax Act (FUTA) and do not have to file IRS Form 940. Exemption information is set forth on page 2 of the IRS Instructions for Form 940.

GIFT SUBSTANTIATION REQUIREMENTS

There are several requirements for donors and branches to meet in order for donors to be eligible to use the gift values as charitable deductions in their income tax returns. For an explanation of these requirements, see the separate pages titled “CHARITABLE CONTRIBUTIONS – SUBSTANTIATION AND DISCLOSURE REQUIREMENTS.”

PROVING TAX EXEMPT STATUS OF YOUR CHURCH

Branch churches and societies are called upon to prove that they are tax exempt under Internal Revenue Code section 501(c)(3). Branches are tax exempt as “subordinate units” of The Mother Church (see IRS determination letter dated June 3, 1941). The reference in that letter is to Code sec. 101(6). This is the same Code section that appears in the current Code as section 501(c)(3). If asked for proof of your tax exempt status (by financial institutions for account purposes (typically in compliance with Patriot Act requirements), in connection with a grant application, donors seeking a charitable deduction for a contribution, estates, trusts, etc.), you should give the requester a copy of the 1941 letter, four additional letters dated May 25, 1936, May 24, 1994, February 3, 2016, and September 17, 2019 respectively, and a copy of the page from the most recent edition of *The*

Christian Science Journal where your branch is listed, as evidence that you are recognized as a branch in good standing by The Mother Church. <http://directory.christianscience.com/> The IRS provides an online “Search for Charities” which allows anyone to confirm that The Mother Church is *currently* recognized by the IRS as a tax-exempt parent organization. In addition, the Church Activities department of The Mother Church can provide a Letter of Affiliation, which certifies that your branch church or society is in good standing and is exempt under TMC’s Group Exemption.

This package of information, when provided to the requester, almost always satisfies the inquiry. If further questions persist, call the Office of the General Counsel at the numbers below. IRS Publication 4573 covers group exemptions, including groups of churches. This publication can also be accessed online at www.irs.gov and is a good source of information for sharing with a requester.

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To order IRS forms and publications, call IRS at: 1-800-829-3676, or access them **online at www.irs.gov.**

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