November 2011

Tax and Legislative Developments Affecting Exempt Organizations

Presented by:
John Butler, Tax Counsel
Agenda: Long Term – Be Thinking About

• Senator Grassley Investigation and ECFA Response
• Health Care Reform-2014 Impact
• Challenges to Minister’s Housing Allowance
• Executive Compensation
Agenda: Short Term – Take Action Now

• Form 990 Issues
• Health Care Reform 2011-2013
• Small Organization Premium Refund
• Volunteers and Interns
• Cell Phones
Senator Grassley
Investigation
and ECFA Response
Senate Investigation – Process

Sen. Grassley investigated 6 churches

- Televised evangelists operating as churches
- Three year process
- One responded fully & joined ECFA
  [Joyce Meyer Ministries]
- One responded fully
  [World Healing Center (Benny Hinn)]
Senate Investigation – Churches

Four resisted with partial or no responses

1. World Changers Church International (Creflo and Taffi Dollar)
2. New Birth Missionary Baptist Church (Bishop Eddie Long)
3. Without Walls International Church (Paula White)
4. Eagle Mountain International Church (Kenneth Copeland)
Senate Investigation – Discoveries

Common Traits of Churches
• Multiple companies (many not filing 990s)
• Multiple, expensive homes of leaders
• Multiple vehicles (Rolls Royce, Bentley)
• Aircraft (often plural)
• Employment of relatives of CEO for high salaries
• Board controlled by family members
Senator Grassley & ECFA

January 7, 2011

• Senator Grassley asked ECFA to address issues raised by his investigation
• ECFA formed: Commission on Accountability and Policy for Religious Organizations
• See website:
  http://religiouspolicycommission.org/
Commission on Accountability and Policy for Religious Organizations

September, 2011:
• All Commission Members & Panels appointed
• Structural plan
• Challenging objectives
• 2-3 year time-frame
Health Care Reform – 2014 Impact
Health Reform Law in 2014

Major impact in 2014 from current law

- **No Exemptions** for Churches, Foreign Mission Agencies or Religious Orders
- Individual mandate to have insurance
- Employer mandate to provide insurance
- More reporting, probably including churches
Litigation: Health Care Reform Constitutional?

- Several challenges to constitutionality
- Focuses of courts:
  - Individual insurance mandate constitutional?
  - Can unconstitutional part be severed?
  - Is it to soon to decide?
- Lower level courts decisions-mixed
- Nothing matters until US Supreme Court decides
2014 Compliance: Individual Mandate

Penalties if no coverage, but Exceptions

1. “Amish” type religions
2. Religious expense sharing participant
3. Eligible for Foreign Earned Income Exclusion
4. Persons without coverage for < 3 months
5. Financial hardship/low income
2014 Compliance: Employer Mandate

Over 200 Full Time Employees
- Automatic enrollment after 90 days
- Effective after issuance of guidance (2014)

50 or more FTE*
- Must offer coverage
- Effective 2014

* 30 or more hours/week
2014 Employer Compliance

Major options:

• Ignore-It maybe unconstitutional, or revoked by Congress

• If under 50 employees-compliance may be fairly easy-keep abreast of issues

• If over 50 employees-compliance probably not easy-start planning
Challenges to Minister’s Housing Allowance
Housing Allowance Court Case

10/2009
Freedom From Religion Foundation, Inc. filed case alleging minister housing allowance is unconstitutional

4/2011
Supreme Court “no standing”: Arizona Christian School Tuition Org. v Winn

6/2011
Case dismissed w/o prejudice
Minister w/ 2 “Homes”
*Driscoll vs. Commissioner*

**Facts of the Case**

- Minister Driscoll was president of a para-church ministry
- He had a house in town, and a house at the lake
- The IRS agreed he had a “town home” & a “lake home”
- The IRS did not challenge his eligibility for a housing allowance
Court Opinions in *Driscoll*

**He wins**

**Majority:**
IRS conceded 2 homes & law doesn’t prohibit 2 homes

**Concurring:**
IRS shouldn’t have conceded 2 homes and should have raised eligibility, but didn’t

**He should lose**

**Minority:**
Even though statute doesn’t prohibit 2 homes, it is nearly impossible to have 2 homes at the same time, and he didn’t have 2 homes
Impacts of *Driscoll*

- IRS will never again concede a minister has 2 homes
- Court case now describes why it is nearly impossible to have 2 homes
- Therefore, no more ministers with 2 homes

Really bad press for housing allowance, when it is being seriously questioned anyway
Executive Compensation
Executive Compensation

Congress & public concerned about nonprofit executive & minister pay

• Panel on the Nonprofit Sector
• IRS Executive Compensation Initiatives
• Congressional Hearings (Grassley Six)
• Increased Form 990 reporting
Principles for Good Governance and Ethical Practice
A Guide for Charities and Foundations

REFERENCE EDITION

Panel on the Nonprofit Sector
Convened by Independent Sector
OCTOBER 2007
Panel on the Nonprofit Sector

Report – October 2007

• Standards that preserve and strengthen public confidence
• Self-regulation begins with good governance
• Broad nonprofit involvement
• 33 Standards adopted
• 8 relate to compensation
Executive Compensation

IRS Regulation – reasonable compensation:

• The amount that would ordinarily be paid for like services by like enterprises (whether taxable or tax-exempt) under like circumstances

• Emphasizes comparisons

• Does application of standard match your constituency’s expectation?
Rebuttable Presumption Requirements

1. Disinterested board or subcommittee approves
2. Approval before payment
3. Rely on Appropriate Data
   - An organization with under $1 million in gross receipts may rely on compensation data from only five organizations
4. Concurrent record of decision and information
Rebuttable Presumption Safe Harbor

Benefits of Safe Harbor

1. Better decisions from more knowledge
2. Put **IRS** on **Defensive**
   - IRS must prove compensation is unreasonably high
3. Protect board members, even if loose
   - Good faith reliance on appropriate data protects from 10% penalty
Executive Compensation

Recommendations

- Heads-up: this is a lively issue
- Know your constituencies’ perspectives
- Use “Rebuttable Presumption Process”
- Be alert to Form 990 reporting changes
- If you have to file Form 990
- If you want to know the public expectation
Short Term: Take Action Now
Form 990
Form 990: Non-Filer Exemption Revocation

• Who is subject to non-filer exemption revocation
• Who is getting notices of exemption revocation
• What action should be taken
• IRS website: http://www.irs.gov/charities/article/0,,id=239696,00.htm
Form 990: Communicate!!

• How many opportunities for First Impression?
  • Part I, Line 1: Excitement
  • Part I, Line 6: Volunteers
  • Part III, Line 1: Official Mission Statement
  • Part III, Line 4 a-c: What is happening?!

• Who Communicates to Constituency?
Form 990: Non-Filers - Study

- Tax compliance checklist
- Public expectation of behavior checklist
- Potentially public disclosure checklist
2011-2013 Compliance

- **No Exemptions** for Churches, Foreign Mission Agencies or Religious Orders
- No requirement to have a health plan
- Most health plans have new requirements
- Reporting of employer provided health coverage on Form W-2 (delayed for all to 2012; small employers delayed longer)
- Other reporting delayed
2011-2013 Compliance: Plan Requirements

• Some Requirements apply to all plans
• Additional requirements for non-grandfathered plans
• All plans required to extend coverage to 25 year old child
2011-2013 Compliance: Grandfathered Plans

Definition: A plan in effect and essentially unchanged since March 23, 2010

• Employees must be notified of Grandfathered Plan status

• Additional information at:

See link “Grandfathered Health Plans”
2011-2013 Compliance: Form W-2 Reporting

• Employer provided medical in 2012 on W-2 issued January, 2013
• Small Employer: < 250 W-2 forms
• Medical includes: insurance premium and allocated self insurance expense
• Medical does not include: HSA, MSA, employee contribution to FSA, dental, vision
Small Organization Premium Refund
Small Organization Premium Refund

- Refund of up to **25%** of medical premium if:
  1. Under 25 FTE
  2. Average wages under $50K
  3. Employer Pay 50% of premium
- Reduced for some employers
- 2011 & after: non-discrimination
Small Organization Premium Refund

1. Under 25 FTE

• Divide: (a) Hours of service for which organization paid wages during the year, by (b) 2,080

• Don’t count hours over 2,080 that an employee worked

• Include minister’s paid hours
Small Organization Premium Refund

2. Average annual wages under $50K

- Divide the total wages the organization paid by the number of FTE employees
- Wages are wages for FICA purposes
- Wages paid ministers are not counted
Small Organization Premium Refund

3. Employer pay 50% of premium

- Premiums paid by employee w/ cafeteria plan, HSA or FSA contributions do not count
- Employer paid premiums for ministers are counted
Small Organization Premium Refund

Reductions in refund

• Premium limited to average of small group market premium
• Refund reduced if >10 FTE or $25K wage
• Refund limited to payroll tax:
  • Required withholding
  • Employee & Employer Medicare
Small Organization Premium Refund

Getting the Refund!

• Form 8941 documents compliance with requirements & amount
• Attach Form 8941 to Form 990T for filing
• Normally, 990T is for UBI, but file for refund even if no UBI
• Return due 4 ½ months after year-end (calendar year organization due May 15)
Handling Volunteers and Interns
Short-Term Help: Who Cares What They’re Called?

- Internal Revenue Service
- Department of Labor (and state equivalents)
- Worker’s Compensation Board
- Unemployment insurance agency
Who is a Volunteer?

- An employee can also be a volunteer
- Employees required to “volunteer” aren’t volunteers
- Employee volunteering must volunteer in tasks unrelated to work for which paid
Who is a Volunteer?

- A volunteer is not paid for services
- Providing personal needs = payment
- Common payments
- Reimbursing expenses of ministry activity is not payment for services
  - Accountable Reimbursement Plan for expenses
Who is an Intern?

• Confusion over meaning of **intern**
• In exempt organization, “intern” usually a volunteer
• If pay them, they are employee
• DOL criteria for interns include
  • Intern’s training is like vocational school & for benefit of the trainee
  • No benefit to employer & operations may be impeded
  • No job guarantee or promise
Cell Phone Taxation Changes
IRS Cell Phone Notice

• No tax on employer-provided cell-phone IF
  • Substantial business reasons
  • Non-compensatory

• Substantial Business Reasons
  • Emergencies
  • Travel
  • Time zones

• Notice 2011-72 (IR-2011-93), issued 9/14/11
IRS Cell Phone Memorandum

• No tax on allowance for cell phone IF,
  • Employer requires cell phone for use in employer’s business
  • Cell phone coverage reasonably related to business
  • Reimbursement only covers expenses
• Memorandum for All Field Examination Operations (Control # SBSE-04-0911-083)
Questions?
Thanks!
For your time and attention

Contact Information
John Butler, JD
Tax Counsel
jbutler@capincrouse.com
(317) 885-2620, ext. 1150