

Church Finance

A MONTHLY REVIEW OF ACCOUNTING, FINANCIAL, AND TAX DEVELOPMENTS AFFECTING CHURCHES AND CLERGY SINCE 1992.

TODAY

Form 8822-B (Rev. August 2013) Department of the Treasury Internal Revenue Service	Change of Address or Responsible Party — Business	OMB No. 1545-1163
<p>▶ See instructions on back. ▶ Do not attach this form to your return. ▶ Information about Form 8822-B is available at www.irs.gov/form8822.</p>		
<p>Before you begin: If you are also changing your home address, use Form 8822 to report that change.</p>		
<p>If you are a tax-exempt organization (see instructions), check here <input type="checkbox"/></p>		
<p>Check all boxes this change affects:</p>		
<p>1 <input type="checkbox"/> Employment, excise, income, and other business returns (Forms 720, 940, 941, 990, 1041, 1065, 1120, etc.)</p>		
<p>2 <input type="checkbox"/> Employee plan returns (Forms 5500, 5500-ES)</p>		

SORTING OUT THE FORM 8822-B FOR CHURCHES

What this new IRS requirement means for congregations nationwide.

By Richard R. Hammar

Any church that has employees, files employment tax returns, or has a bank or brokerage account must have an “employer identification number” (EIN). This includes nearly every church. An EIN is obtained by filing a Form SS-4 with the IRS using *irs.gov* or by submitting a paper form. Since 2010, line 7 of Form SS-4 has asked for the name and Social Security number of a “responsible party” of the applicant. The instructions to the form define this term as follows:

A “responsible party” is the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets.

The IRS amended Form SS-4 to obtain the name of a responsible party in order to facilitate communication with employer representatives regarding tax reporting and compliance issues.

By 2013, the IRS had become increasingly frustrated by its inability to communicate with responsible parties identified in employers’ SS-4 forms. This usually occurred because the responsible party

designated in an employer’s Form SS-4 no longer served in that capacity due to death, relocation, or resignation. As a result, the IRS adopted an entirely new requirement: Any employer with an EIN must report changes in the identity of its responsible party to the IRS using Form 8822-B. The IRS first announced this new requirement on November 18, 2013, through its *Employee Plans News* newsletter:

Beginning January 1, 2014, any entity with an EIN, such as a plan sponsor, must report a change in the identity of their plan’s responsible party on Form 8822-B, Change of Address or Responsible Party - Business, within 60 days of the change. If the change is made before 2014, and the sponsor has not previously reported the change, the sponsor should file Form 8822-B prior to March 1, 2014.

A similar notice appeared in the instructions to Form 8822-B. Form 8822-B is used by businesses to report a change of address to the IRS in much the same way that individual taxpayers notify the IRS of a change of address using Form 8822. The “B” in Form 8822-B refers to “business,” and distinguishes it from the Form 8822 used by individuals.

Answers to Seven Questions for Churches
Many church leaders want to know if this new reporting rule applies to churches. The following questions and answers summarize the application of the new rule to churches:

Question 1. I heard that only public charities that are required to file Form 990 with the IRS are subject to the new reporting requirement. Is this correct?

Answer. No. The Form 8822-B reporting requirement applies to any organization that has an EIN. This includes most churches.

Question 2. If our church fails to comply with this requirement, either intentionally or inadvertently, what penalties can the IRS assess?

Answer. The instructions to Form 8822-B answer this question as follows:

If you are an entity with an EIN and your responsible party has changed, use of this form is mandatory. Otherwise, use of this form is voluntary. You

will not be subject to penalties for failure to file this form. However, if you fail to provide the IRS with your current mailing address or the identity of your responsible party, you may not receive a notice of deficiency or a notice of demand for tax. Despite the failure to receive such notices, penalties and interest will continue to accrue on any tax deficiencies.

In summary, use of the form is mandatory if there is a change in the responsible party identified on the Form SS-4 that a church filed with the IRS to obtain its EIN. But there are no penalties for noncompliance. However, a church that fails to comply with this reporting requirement, and has a change in the person identified as its responsible party on Form SS-4, may not receive timely notices of deficiencies or demands for taxes from the IRS, which can lead to penalties and additional interest charges.

Question 3. We are a new church that obtained our EIN in 2012. How does the Form 8822-B reporting requirement apply to us?

Answer. If the responsible party you listed on the Form SS-4 submitted to the IRS in 2012 is the same today, then you have no reporting obligation for now. The Form 8822-B is only used to report a *change* in your responsible party. In the future, each time that you change your church's responsible party, file another Form 8822-B with the IRS within 60 days of each change.

Do not regard this new reporting requirement as a burden. It is not. It only takes a few minutes to fill out the form, and doing so will provide the IRS with the name of a person it can contact with tax reporting and compliance issues that in many cases will help the church avoid needless penalties and interest.

Question 4. Our church was formed in 2010, and we obtained an EIN that year by submitting a Form SS-4 to the IRS. The person we listed as our responsible party has since moved to another

In most churches, a church treasurer, lead pastor, or member of the church board would satisfy the definition of a responsible party since they have a sufficient level of control that enables them 'directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets.'

community and no longer attends our church. She has been replaced by another member of our congregation. How does the Form 8822-B reporting requirement apply to us?

Answer. If your only reason for using Form 8822-B is to report a change in your church's responsible party, then do the following:

- Check the box at the top of the form indicating the church is a tax-exempt organization.
- Check box 1.
- Insert the church's name on line 4a, and EIN on line 4b.
- Report on line 8a the name of the responsible party listed on the Form SS-4 the church filed with the IRS to obtain an EIN, and report this person's Social Security number on line 9a.
- Report on line 8b the name of the church's current responsible party, and report this person's Social Security number on line 9b.
- Have a church officer sign and date Form 8822-B. An officer is your church's president, vice president, treasurer, or chief accounting officer.
- Submit the completed and signed Form 8822-B to the IRS. While the deadline for doing so was prior to March 1, 2014, there is no penalty for late filing. Also, a significant number of churches likely will not comply with this reporting requirement because of unfamiliarity, inadvertence, or willful neglect, and this may result in changes in the law that will be reported in future editions of this newsletter.

Question 5. Our church was formed 50 years ago, and at that time we obtained an EIN by submitting Form SS-4 to the IRS.

How does the Form 8822-B reporting requirement apply to us?

Answer. Most churches filed Form SS-4 with the IRS many years ago, and only since 2010 has the form asked for the identity of a church's responsible party. This means that the IRS has no record of the identities of responsible parties for the vast majority of churches that filed a Form SS-4 prior to 2010. The instructions to Form 8822-B do not address this common scenario directly, and the IRS has provided no guidance. But it is reasonable to assume that the church in this example should file a Form 8822-B with the IRS. The instructions to the form state that "if the change in the identity of your responsible party occurred before 2014, and you have not previously notified the IRS of the change, file Form 8822-B before March 1, 2014." While the church did not report the identity of a responsible person on the Form SS-4 it submitted to the IRS 50 years ago, that does not mean that the church did not have one or more persons meeting the definition of a responsible party then and in the ensuing years.

The best interpretation of the instructions to Form 8822-B is that the church in this example should file a Form 8822-B listing the current responsible party's name and Social Security number, and either leaving lines 8a and 9a blank (name and Social Security number of the former responsible party) or inserting on those lines the name and Social Security number of the responsible party who served immediately prior to the current one. While it is true that the IRS would have no record of the "old" responsible party under these circumstances, this does not exempt the church from reporting changes in its responsible party on

Form 8822-B. To conclude otherwise would in effect provide a blanket exemption from the reporting requirement for any church that submitted a Form SS-4 to the IRS before the form was amended in 2010 to ask for the identity of a responsible party. Such an interpretation would be at odds with the purpose of the form.

With regard to the rest of Form 8822-B, the church should:

- Check the box at the top of the form indicating the church is a tax-exempt organization.
- Check box 1.
- Insert the church's name on line 4a, and EIN on line 4b.
- Report on line 8b the name of the church's current responsible party, and report this person's Social Security number on line 9b.
- Either leave lines 8a and 9a blank, or insert on these lines the name and Social Security number of the church's responsible party who directly preceded the current one.
- Have a church officer sign and date Form 8822-B.

Question 6. We do not understand the definition of "responsible party." Could you clarify this term?

Answer. In most churches, a church treasurer, lead pastor, or member of the church board would satisfy the definition of a responsible party since they have a sufficient level of control that enables them "directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets."

While it is true that board members have no *direct* authority to act unilaterally with respect to the management of church assets, they do have *indirect* authority in the sense that they act collectively as a board in the management of church funds and assets.

Question 7. Can we e-file Form 8822-B to the IRS?

Answer. No. At this time the IRS only accepts paper copies of Form 8822-B. ■

FINANCIAL Q&A ?

MUST WE COMPLY WITH A SUBPOENA FOR GIVING RECORDS?

Six things to note when a legal request for information is made to the church.

By Richard R. Hammar

Q: Our church received a subpoena requesting the donation records of someone in our congregation. The person is in a court case involving child support, and his ex-wife's lawyer wants to see how much money he has been giving to the church to prove he's making more than he says. Do we have to comply?

A: Let me make several observations in response to your question.

1. Church records are not inherently "privileged." The term "privilege" or "privileged" refers to evidence that is not admissible in court because of some fundamental public policy. Records that are not privileged generally are subject to the subpoena power like any other organization. No state or federal law confers special "privileged" status on all church records.
2. There may be a very limited exception for notes created by a pastor that summarize the content of counseling sessions with parishioners if the sessions qualify for the clergy-penitent privilege under state law. In

general this means that the counseling consisted of confidential, spiritual counsel with the minister. But aside from this, neither the courts nor state or federal legislatures have recognized any generalized privilege for church records.

3. Note that a subpoena issued by a state court ordinarily is unenforceable outside the state, or in some cases the county, where it was issued. It is possible in some cases, however, for a subpoena issued by a court in one state to be "processed" in another state. This requires additional work, and so many attorneys seek to avoid this step by attempting to have a church voluntarily respond to a subpoena that technically is not enforceable because it was issued by a court in another state.
4. Nearly 30 states have enacted the Uniform Interstate Depositions and Discovery Act, which allows subpoenas issued in one state to be enforceable in another, under some conditions. So, church leaders should not assume that a subpoena issued by a court in another state is not enforceable.
5. The federal Church Audit Procedures Act allows church records to be subpoenaed under some circumstances, which demonstrates the absence of any general church records "privilege."
6. If any doubts exist regarding a church's legal obligation to respond to a subpoena, be sure to consult with legal counsel. ■

To submit a question for consideration in a future Q&A, email: CFEditor@ChristianityToday.com.

Coming in the May 2014 CHURCH FINANCE TODAY

In recent months, we've fielded numerous questions from church leaders regarding whether church reimbursements of some or all of the premium expenses incurred for an employee's individual health insurance policy, or arrangements under which the church directly pays the premium for an employee's individual health insurance policy, are taxable in light of changes resulting from the Affordable Care Act. In the May 2014 issue of CHURCH FINANCE TODAY, Richard Hammar covers this topic in extensive detail, which church leaders should note ahead of preparing W-2s in January 2015 for the 2014 tax year.