



IRS and Financial Compliance/Awareness Checklist

Association of Christian Schools International
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Introduction

The following is a checklist of common IRS and financial requirements for schools. ACSI is **not** rendering legal or accounting advice in providing this checklist, nor does it claim that the list is all-inclusive. Rather, this checklist represents a general survey of laws and regulations that commonly apply to private schools. Furthermore, this list will change over time since laws and regulations are changed on a regular basis. These reference materials include federal reports that your school may need to file with the IRS or other federal agencies. While it is provided to assist ACSI member schools in maintaining awareness and compliance with applicable laws and regulations, ACSI cannot verify that the list covers all laws that apply to any particular school.

Though many filing dates relate to the calendar year-end of December 31, for those that relate to a fiscal year-end, we have assumed a fiscal year-end of June 30. Please note that each school is also required to be in full compliance with all applicable state reporting requirements, which are not addressed here.

NOTE: To gain further information, forms, policies regarding the topics that are being presented you may visit the websites of governmental agencies provided in the various sections below. For further information regarding tax forms, you may contact the IRS toll-free number for nonprofit tax questions: 877-829-5500. You may also obtain forms and information at the following IRS website: www.irs.gov.

For more significant questions and analysis of how any of these subjects may apply to your specific situation, you may want to consider consulting with a certified public accountant or attorney that specializes in these areas.

NOTE: Paragraphs that are shaded have been added or have had changes made recently!

NEW HIRE AND PAYROLL ISSUES

(1) IRS Form W-4 Form W-4 has two uses: new hire reporting and excessive exemption reporting.

Form W-4 should be obtained from all employees. In addition to holding the form in the school's payroll files, a copy of Form W-4 must be sent to certain government agencies to fulfill state "new hire" laws.

Employers must send a W-4 form to the IRS for any employees claiming more than 10 withholding exemptions or claiming exempt status and the employer anticipates the employee's wages will exceed \$200 per week. The W-4 form is used to report name, address, social security number, and number of exemptions. This requirement does not apply, however, to a minister employed in the capacity of a minister.

Employers are encouraged, but not required, to file electronically. These forms must be filed with the IRS quarterly, along with the employer's Form 941.

Employers are required to report, usually within twenty days of hiring, an employee's name, address, and social security number to a state agency—usually the state labor department. [States with different reporting time limits include AL and ME, 7 days; GA, 10 days; MA, and SC, 14 days; IA, MS, and RI 15 days.] States may authorize an equivalent form. The reporting is required by federal law to help improve:

- enforcement of child support laws;
- checking for fraud under unemployment laws; and
- checking for fraud under workers' comp laws.

There are no exemptions for churches or religious organizations. Penalties run from \$25 to \$500 per non-reported employee.

(2) IRS Form 941 “Employer’s Quarterly Federal Tax Return” Form 941 is used to report income and FICA tax withholding from wages; due at end of the month following end of quarter (e.g., April 30 for the quarter ending March 31). The IRS encourages employers to file Form 941 electronically, but it currently does not require electronic filing.

Form 941 can be found at the [IRS Website for Form 941](#), and the Form 941 instructions can be found [here](#).

(3) Electronic Deposits of Taxes (26 USC § 6302[h]) All federal taxes must be deposited via electronic funds transfer (EFT) after a one-year grace period, once total federal taxes exceed \$200,000. Add up the school's payroll taxes; taxes withheld from non-payroll items (e.g., pensions); and any other taxes. If, say, your total depository taxes exceed \$200,000 in 2007, the requirement to deposit via EFT begins in 2008. For information regarding the EFT enrollment process and/or to obtain Form 9779a necessary for enrollment, call 800/555-4477. The enrollment process can take 2–10 weeks. You can also check <http://www.eftps.gov> for more information.

(4) U.S. Tax Code – Willful Failure to Collect Taxes (26 CFR § 6672) Any corporate officer (board member), director, or employee who is responsible for withholding taxes or paying them to the government can be held personally liable for 100 percent of the taxes if the school fails to make the payment.

To fall under this requirement, a person must both be a “responsible person” and “willfully” fail to pay the taxes. A “responsible person” is one who controls finances or has the power to control the decision-making process by which the corporation allocates funds to other creditors in preference to the withholding tax obligation.

To fall under the “willful” definition, courts have ruled that an individual need only act voluntarily, consciously, and intentionally in failing to withhold or pay the taxes. No bad motive is necessary. Schools must pay their taxes ahead of other creditors!

(5) U.S. Tax Code – Social Security Numbers (26 USC § 6109) Employers break the law if they hire people who refuse to obtain Social Security numbers because they have religious objections. (Decision by the 8th U.S. Circuit Court of Appeals in *Seaworth v. Pearson*, 2000.)

(6) 403b Retirement Funds (26 USC Sect. 403 (b)) 403b retirement plans are similar to 401k retirement plans except they are set up for individuals working for non-profit organizations. Educators may make arrangements with their employers to withhold from their payroll checks pretax

funds for retirement in either self-directed accounts for the purpose of purchasing mutual funds or in an employer-sponsored retirement plan.

In most existing retirement plans, salary reduction contributions are an option that employees must choose. The Pension Protection Act of 2006 allows an employer to automatically have employee's make salary reductions, unless the employee chooses not to. Generally, automatic enrollment results in higher participation.

Form 5500 must generally be **filed** by the last day of the seventh month following the end of the plan year, unless an extension applies. Therefore, employers with employee benefit plans that operate on a calendar year basis must **file Form 5500** (or **Form 5500-SF**) for 2021 no later than July 31, 2022.

In **2022** the retirement plan dollar limit increases by \$1,000. The IRS allows a maximum salary deduction of \$20,500. Individuals over 50 years of age that have not been saving money on a regular basis may add an additional \$6,500 for **2022**.

(7) Paying Deferred Compensation (IRS Code, Section 409A) Deferred compensation is compensation that occurs beyond the normal work period and extends over two calendar years. This is the typical situation for Christian school administrators and teachers who may be reimbursed over a 12-month period starting in the fall of one year and continuing into the summer of the following year, 2 months or more beyond the period in which the compensation was earned.

The regulations, found in the IRS Code, Section 409A, provide that a recurring part-year compensation arrangement (in which an employee elects to defer all or a portion of compensation into a calendar year later than the calendar year of service) will comply with Section 409A if an election is made before the services begin and if the arrangement does not defer payment of the compensation to a date that is beyond the end of the 13th month from the first day of the service period. The school is not subject to Section 409 A regulations if the amount deferred does not exceed the 402(g) amount of \$20,500 in **2022**.

If your school requires employees who receive deferred compensation to be paid over a 12-month period, and the employees are not given an option of choosing between 10-month, 11-month, or 12-month payments, you as an employer do not need to do anything.

However, if your school offers employees a choice regarding the length of their payment period, they must "request" or "elect" in writing to have compensation deferred through an 11- or 12-month plan, which would defer compensation beyond the time it was earned.

The following guidelines, found at <https://www.irs.gov/newsroom/frequently-asked-questions-sec-409a-and-deferred-compensation> should be helpful:

- Have employees sign this simple written request or statement regarding election before their work begins; then file the statements in the individuals' payroll files or personnel files.

If an employee doesn't submit an election, or submits an election after the deadline, the employee must be paid in the same way as other employees who do not make an election. For example, a school district may provide that if a teacher submits an election on time, the teacher will be paid ratably over 12 months starting with the beginning of the school year, but if the teacher is late or never submits an election, the teacher will be paid during the school year only....

...An arrangement may provide that a pre-existing election will remain in place until the employee elects a change. For example, a teacher could elect to receive his or her salary over 12 months, and that election could remain in effect indefinitely until the teacher changed the election. However, if the teacher wants to change his or her election, the change must be made before the beginning of the school year to which the change applies and could only apply to that future school year.

- Add a simple statement about deferred compensation election to contracts before they are signed by administrators and teachers each spring.
- Have any non-contractual employees who have deferred compensation sign the election statement as well, and then file the signed forms in their payroll the files.
- Communicate clearly that the election must be irrevocable and allow no changes after the start of the work period.

For more information from the IRS website that helps explain Section 409A, visit <https://www.irs.gov/newsroom/frequently-asked-questions-sec-409a-and-deferred-compensation>.

(8) Social Security Taxes The Social Security payroll tax on individuals (FICA and Medicare) is 7.65%. The employer's share of Social Security (FICA and Medicare) tax is 7.65%.

FEDERAL IRS FORMS REQUIRED FOLLOWING CALENDAR YEAR-END

(1) IRS Form W-2 “Wage and Tax Statement” Used to report employee wages. Each employee must receive his or her W-2 by January 31. If the employer files more than 250 such forms annually, this form is subject to IRS/SSA requirements for electronic/magnetic media reporting.

It is important to distinguish the requirement for the electronic filing of forms from the requirement for electronic deposit of taxes. The electronic deposit of taxes is triggered by the amount of tax paid of \$200,000 or more. The electronic filing of forms, however, is triggered by the number of forms filed.

(2) IRS Form W-3 “Transmittal of Income and Tax Statements” Used to summarize the total of all W-2 wages for employees during the preceding year. This form and copies of Form W-2 are required to be filed by January 31.

(3) IRS Form 1099-B “Barter Income” Used to report barter-type arrangements when an individual receives payments that exceed \$600 in a calendar year. A typical barter situation is when a school would use products or goods (as opposed to cash) as a form of payment. This applies to parents or students trading work at school for tuition payment that exceeds \$600 in cash value. Please note that you may also report certain barter-type income on a 1099-MISC. Each individual must receive Form 1099-B by January 31.

If the employer files more than 250 such forms annually, this form is subject to IRS requirements for electronic/magnetic media reporting.

More information on Barter income from the IRS can be found [here](#).

Special Note Regarding Bartering: Bartering for services is legal. However, there are some pitfalls if the school administration is not watchful:

- Information about bartering is for a calendar year, not a school year.

- A 1099-B or 1099-MISC form must be supplied to individuals receiving \$600 or more in discounted tuition. Information about bartering is for a CALENDAR year, not a school year.
- Be sure to check and see if the number of hours being worked at least equals the required minimum wage when compared to the amount of tuition being discounted.
- Be sure that the bartering “employee” is covered by workers comp or school will be directly responsible for paying medical fees if there is an “on-the-job” accident. Discuss your bartering “employee” situation with your worker’s comp carrier.
- Does this “employee” have to meet the same lifestyle requirements as all other school employees? He/she may be in the school working on a fairly regular basis. This is an important issue for your school to decide.
- To what degree do you try to integrate the bartering “employee” with other employee meetings, etc.? Does the bartering person attend staff in-service at the beginning of the year? Staff meetings during the year? Etc.

(4) IRS Form 1099-C “Cancelled Debt” This form is to be used if a school tuition debt is forgiven. Debts of tuition that are forgiven are taxable to the debtor. More information from the IRS can be found at <https://www.irs.gov/forms-pubs/about-form-1099-c>.

(5) IRS Form 1099-INT “Interest Income” Used to report all interest payments to an individual that exceeds \$10. Each individual must receive Form 1099-INT by January 31.

If the employer files more than 250 such forms annually, this form is subject to IRS requirements for electronic/magnetic media reporting.

(6) IRS Form 1099-MISC “Miscellaneous Income” Used to report all payments to service providers who are not considered employees (i.e., independent contractors). The form needs to be used in situations in which payments to an individual for rent, services, prizes and awards, or other income payments exceed \$600. Each individual must receive Form 1099-MISC by January 31. This form is also used to report all payments to attorneys, even if their law firm is incorporated.

If the employer files more than 250 such forms annually, this form is subject to IRS requirements for electronic/magnetic media reporting.

(7) IRS Form 1096 “Annual Summary and Transmittal of U.S. Information Returns” Used to summarize all 1099-MISC, 1099-INT, 1099-B, or 1099-R payments. Each type of income (i.e., miscellaneous, interest, barter, and distributions from retirement plans) requires a separate 1096 to be filed. The form, along with federal copies of 1099s, is required to be filed by February 28.

(8) IRS Form 940 “Annual Summary of Federal Unemployment Taxes” Through a U.S. Supreme Court case and action by Congress, religious schools are now exempt from mandatory participation in the federal unemployment tax program. Religious schools no longer must file this form.

[Note: In most states church-affiliated schools have the option of whether to pay state unemployment taxes. It’s not mandatory. In some states independent, lay-board-operated schools also have the option. Check with your school’s CPA to learn whether the state unemployment tax is mandatory.]

(9) Determining the Taxability of Love or Special Occasion Gifts.

Gifts by a Ministry For example, a school pays a bonus at the end of the year to its school employees. Is that income taxable? In answering that question, one must consider the nature of any bonus. Bonuses typically are given as a result of services rendered. Therefore, they constitute income and must be reported on the employee's W-2 form for the year the bonus is actually given.

Another category of potential income is a "love gift" given by the ministry itself. There are probably three basic types of "love gifts."

- The first type of "love gift" generally is given on a special occasion such as Christmas or at special times throughout the school year. In determining if this type of gift is taxable, the school must determine whether or not the purpose of the gift was to compensate the employee more fully for services rendered on behalf of the ministry. If this is the case, then the amount given represents taxable compensation for the services rendered by the employee. It is a taxable gift. The controlling issue is the intention with which the school ministry made the payment.
- In contrast to that type of "love gift" is the one provided by the ministry solely to show goodwill, esteem, or kindness. This type of gift has no taxable income. The school and employees, however, have a high burden to show the gift is not as a result of employment or services rendered.
- The final type of "love gift" a ministry may occasionally give involves responding to a particular need a staff member may have. For example, the family was in a serious automobile wreck and has extensive financial needs. The ministry responds by giving the staff member a "love gift." Is this taxable? Again, if the gift is provided out of esteem, respect, or compassion for need and not to compensate because of or for services, it is non-taxable and does not need to be reported on the employee's W-2 form. It is generally easier to show that this type of special occasion gift was not a result of services rendered, especially if the ministry provides similar gifts on occasion to non-employees.

In summary, in most cases, if a school gives a special gift from its general operating budget or takes a special gift offering, it is doing so "in recognition of services rendered." The IRS tends to view such gifts as taxable income. Thus, the gift must be reported on the employee's W-2 form.

Gifts by an Individual What occurs when a personal gift is made directly by an individual connected in any way with a church or school ministry to an employee of the school? Generally, such gifts are non-taxable income to that employee. The donor should not receive any contribution credit since the gift was given directly by the individual to the employee.

However, if the individual makes the contribution to the school ministry, which receives a charitable contribution credit and passes the gift to the designated employee, the school must report the gift as taxable compensation.

Material for the above section prepared by attorney John L. Cooley

FEDERAL IRS FORMS REQUIRED FOLLOWING FISCAL YEAR-END

(For the following forms, the fiscal year-end is assumed to be June 30.)

(1) IRS Revenue Procedure 75-50 – Policy on Racial Nondiscrimination An annual nondiscrimination notice is to be published in a local newspaper. Church-related schools are to file IRS Form 5578 on an annual basis. Independent schools use Schedule A when filing their Form 990. (See sections below for additional information.)

New option rather than newspaper. According to [Rev. Proc. 2019-22](#), a school can now display a notice of its racial nondiscrimination policy “on its primary publicly accessible Internet homepage at all times during its taxable year (excluding temporary outages due to website maintenance or technical problems) in a manner reasonably expected to be noticed by visitors to the homepage.”

The following records and materials are to be kept by the school for three years:

- a. Records indicating the racial composition of the student body, faculty, and administrative staff for each academic year
- b. Records sufficient to document that scholarship and other financial assistance is awarded on a racially nondiscriminatory basis
- c. Copies of all brochures, catalogs, and advertising dealing with student admissions, programs, and scholarships
- d. Copies of all materials used by or on behalf of the school to solicit contributions

At least two federal laws or regulations ask for the racial composition of a school. Revenue Procedure 75-50 asks about staff and students. The Equal Employment Opportunities Commission requires that employers provide the commission with the racial breakdown of employees if 100 or more people are employed. These larger employers must submit an **EEO-1 Survey** by May 31st of each year. (For information regarding the EEO-1 Survey and to obtain the form, call 866-286-6440. There is also information at this website: <https://www.eeoc.gov/employers/eeo-1-survey>.)

ACSI recommends that you wait to ask for the racial breakdown of school employees until after they have been hired. A good time to ask is when you give the new hire the form to fill out where you ask their Social Security number, who to contact in case of emergency, etc. If you ask job applicants for their race or ethnicity before they are hired, someone who is not hired could allege later that the school discriminated against them because of their race. On any form where you are asking for racial information it is a good idea to list why you are asking since many may think that it is illegal to ask such a question. IRS Revenue Procedure 75-50 allows you to estimate the racial breakdown of staff and students. That is probably the best approach. That form is explained in the next paragraph below.

(2) IRS Form 5578 “Annual Certification of Racial Non-discrimination for a Private School Exempt from Federal Income Tax” Used to comply with IRS Revenue Procedure 75-50 regulations as to the school’s racial nondiscrimination. Category I (church owned and operated schools) and Category II schools (church owned and operated, but separately incorporated schools) file Form 5578. Independent schools file a different form (see below). For schools using a July 1– June 30 fiscal year, Form 5578 must be filed with the IRS by November 15. (15th day of the fifth month after the close of the fiscal year.)

(3) IRS Form 990 or Form 990-EZ “Annual Information Return” Used to report information regarding the finances, expenses, services, and administration of tax-exempt independent schools. Generally, only those schools that are not operated, supervised, controlled, or principally supported by a church or convention or association of churches are required to file this return. The return is required to be filed by November 15 (5 1/2 months after fiscal year-end). Form 990-EZ may be used by a school with gross receipts of less than \$200,000 for the year and total assets of less than \$500,000 at the end of the year.

Under IRS Revenue Procedure 75-50 regulations, independent schools are required to annually fill out nondiscrimination compliance information on Schedule E of Form 990. For schools using a July 1–June 30 fiscal year, Form 990 must be filed with the IRS by November 15.

Note for Small Organizations: Congress amended the tax code in 2006 to add a return filing requirement for small tax-exempt organizations: those with average gross income (contributions and all other sources) are normally \$50,000 or less.

The law now requires small organizations to file Form **990-N**, which is done at the [IRS website](#). This applies to small independent Christian Schools or Preschools.

If a small organization is exempt from filing as a church or integrated auxiliary of a church, it is not required to file because of this law. Church-sponsored Christian Schools and Preschools are exempt from filing the 990.

A small organization subject to this filing obligation which does not file "for three consecutive tax years will automatically lose its tax-exempt status." (IRS website)

(4) Public Disclosure of 501(c)(3) Exemption Applications and Forms 990 (26 USC § 6104[e][1]) Category III, or independent schools have public disclosure requirements:

- a. The application for tax exemption must be available without charge for review by anybody who asks for it in person. This applies to the 501(c)(3) application if it was filed after July 15, 1987, or if filed earlier, was in the possession of an organization on July 15, 1987.
- b. The previous three years of Form 990 must be made available without charge to anybody who requests to see them from an independent school.
- c. A copy of these documents must be provided if requested (whether in person or in writing). A reasonable reproduction fee (generally not more than \$.20 per page) and the actual mailing costs may be charged.
- d. Satisfy in-person requests immediately. Copies in response to written requests must be provided within 30 days.
- e. The list of donors is not required to be provided and should not be provided. Many organizations have begun limiting the address information for officers and directors on these forms as well.
- f. These requirements to provide copies of tax forms apply to Form 990-T (unrelated business income) also. Form 990-T must be released to the public upon request. This includes church-owned schools. (Please see number 5 below.)

Financial penalties can be imposed on organizations that do not comply (26 USC § 6685). Larger organizations (with receipts in excess of \$1,000,000) are subject to larger than normal fines for failure to file an information return (26 USC § 6652[c][1]).

(5) IRS Form 990-T “Unrelated Business Tax Return” Used to report income from unrelated trade or business activities regularly carried on by a school. Generally, this covers income other than donations, tuition, and passive investment income.

Unrelated trade or business does not include the following:

- Activities in which substantially all the work is performed by unpaid volunteers (example: sale of scrip for fund-raising purposes if volunteers are handling the transactions).
- Activities carried on by a church or other charitable organization primarily for the convenience of its members, students, or employees (example: vending machine sales).
- Selling merchandise, all of which has been received by the exempt organization as gifts or contributions (example: sales in a secondhand store where all merchandise has been contributed).

Three conditions must be met for an activity to be classified as an unrelated trade or business whereby the profits are subject to tax:

- The activity must be a trade or business.
- The trade or business is carried on “regularly.”
- The trade or business is not substantially related to the organization’s exempt purposes.

Determining liability for unrelated business taxes is a complex accounting area. Professional tax advice should usually be obtained when considering whether income may be taxable as unrelated business income.

Form 990-T is required to be filed by November 15 (5 1/2 months after fiscal year-end), if the school has gross income from an unrelated business activity in excess of \$1,000. IRS information on the 990-T can be found at <https://www.irs.gov/pub/irs-pdf/i990t.pdf>.

Note: The Pension Protection Act of 2006 amended the tax code to make the annual unrelated business income tax return (Form 990-T) subject to public inspection. This applies to not only independent schools, but even to church owned and operated Christian schools which don’t usually have to make financial documents public upon request. The law specifies that the forms “shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization...” If you have questions about this requirement, please contact your CPA or attorney.

See Legal Legislative Update 22.1 article on UBIT.

(6) IRS Form 5500 or 5500-C/R “Annual Return/Report of Employee Benefit Plan” Used to report information on pension plans, certain annuities, welfare benefit plans, and custodial accounts. Applies to all employee retirement and benefit plans covered by the federal pension and benefit law (ERISA), with exceptions for some smaller plans.

The form is required to be filed seven months after the plan year-end. Often, the plan year coincides with a school’s fiscal year (July 1–June 30), resulting in the filing being due by January 31.

Federal Requirements for Contributions

(1) Contribution Receipts All charitable donations of cash must be substantiated either with a bank record or written communication from the donee, regardless of the amount of the donation. Previously, contributions of less than \$250 did not require a receipt or other specific documentation to be claimed for a tax deduction, though it was good practice. For contributions by personal check or credit card, there will be the bank record. A \$20 bill in the church offering plate, however, will not be deductible unless the church (or school) issues a receipt. And it won’t be able to do that without a system (such as envelopes) for connecting that \$20 bill to an individual.

The receipt may be provided at the time of the gift or in the form of a periodic report summarizing gifts during the reporting period. The donor must have a qualifying receipt by the due date of his/her tax return or when filed, if earlier, in order to receive a contribution deduction.

A qualifying receipt contains these elements:

- a. Name of organization.
- b. Name of donor.
- c. The amount of cash received, or a description of the property donated. [Note: the value of the property should not be listed on the receipt.]

- d. A description and valuation of any property or service provided to the donor by the organization, or a statement that no property or services were provided.
- e. If only intangible religious benefit was provided to the donor, a statement that only intangible religious benefit was provided. Here is a sample statement:

We have not provided any goods or services in consideration of your contribution. Therefore, your entire contribution may be deductible as a charitable contribution for federal income tax purposes.

Please note that **NO** tax-deductible contribution receipts are available for people's donated time or services to their church or school. This includes the value of income lost while they work as an unpaid volunteer.

Disclosure rules for "quid pro quo" contributions. A contribution made by a donor in exchange for goods or services from the ministry is known as a *quid pro quo* contribution. In this situation, a donor may only take a contribution deduction to the extent that his/her contribution exceeds the fair market value of the goods and services the donor receives in return for the contribution unless the goods or services are of "insubstantial value."

"Insubstantial value" is defined as having a fair market value of not more than 2% of the amount of the donation (up to a maximum of \$117 in 2022). A school can disregard low-cost premiums (gifts to donors) if (1) the contribution is at least \$58.50 in 2022, (2) the organization's cost for the item is not more than \$11.70 in 2022, and (3) the items are tokens bearing your school's name and logo.

You must provide a written statement to a donor who makes a payment exceeding \$75 partly as a contribution and partly for goods and services. (Note: this \$75 figure is not adjusted annually for inflation.)

Example. If a donor gives a Christian school a payment of \$100 and, in return, receives a ticket to an event valued at \$40, this is a *quid pro quo* contribution, and only \$60 is deductible by the donor. Even though the deductible amount does not exceed \$75, since the *quid pro quo* contribution the school received is in excess of \$75, the school must provide the donor with a written disclosure statement. The statement must include the: (a) amount of the payment, (b) value of the goods and services received by the donor, and (c) amount of the contribution, which would be tax deductible (the amount in excess of the value of the goods and services provided).

See [IRS Publication 1771](#).

Can we give donation receipts for donations for tuition? Parents and relatives do not qualify for tax-deductible contribution receipts if they donate for their own children, adopted children, grandchildren, or children of their extended family's benefit such as nieces and nephews. However, if individuals donate to the school's financial aid fund or scholarship fund and the school has (1) full control over how the money will be spent, and (2) truly objective standards (which should be written and understood by everyone) are followed in the awarding of the funds, the answer is YES. Schools are urged to adopt and follow objective financial aid programs. The school should also consider having the financial need evaluation done by a neutral third-party which shall include the ranking of the families applying for financial aid.

A tax-deductible receipt can be provided to an individual that donates for a needy child and suggests that the school consider a particular non-related child. However, if the person designates the funds to a particular child without the school having full and final discretion in the spending of the funds, no tax-deductible receipt should be given.

For more detailed information about contribution issues you need **IRS Publication 526 Charitable Contributions**. This includes information on a variety of topics including what to do if contributions are made through payroll deductions, how much of a deduction a donor can use in any one tax year, and how deductions may be carried forward to future tax years. You can secure a copy of Publication 526 by going to the following IRS website:

<http://www.irs.gov/publications/p526/index.html>.

(2) IRS Form 8283 “Noncash Charitable Contributions” Used to report a donor’s contributions of property valued at \$500 or more if the donor plans to claim a deduction for the contribution. Property greater than \$5,000, other than publicly traded securities, will generally need to have an **independent appraisal** and a **signed acknowledgement** by the donee (school or church) on Part IV of Form 8283. Donors must have a completed Form 8283 by the due date of their tax return in order to receive contribution deductions.

Note: There are new IRS regulations regarding the donation of cars to a nonprofit organization. Be sure to check for updated information (see below).

(3) IRS Form 8282 “Donee Information Return” Used by a donee organization (school or church) to report the sale, exchange, consumption, or other disposition of donated property (valued \$5,000 or more) within a three-year period following the original contribution date for which the donee signed an acknowledgement on Form 8283. The charity is required to use the property for three years in order for the donor to receive a deduction equal to fair market value, or to provide both the donor and the IRS with a statement indicating that the continued use was impossible or infeasible to implement. If the charity sells the property within three years and there is no such certification, then the donor’s charitable deduction is reduced from fair market value to cost basis.

(4) Clothing and Household Item Donations No deduction is allowed for charitable contributions of clothing and household items if such items are not in good used condition or better. The IRS may deny by regulation a deduction for any item with minimal monetary value. A donor who contributes a single item of clothing or a household item for which a deduction of more than \$500 is claimed will be required to file a qualified appraisal of the donated property with the donor’s tax return. (See item Number 2 above)

(5) IRS Car Donation Guidance is provided by the IRS regarding Vehicle donations at <http://www.irs.gov/pub/irs-tege/pub4302.pdf>.

(6) School Scrip Programs It is recommended that schools operating school scrip programs have their attorney or accountant carefully examine the operation of the program to avoid significant tax consequences.

(7) Religious Liberty and Charitable Donation Protection Act (P.L. 105-244) Bankruptcy trustees are prohibited from objecting to bankruptcy plans because the debtor proposes to continue making charitable contributions.

Trustees are also prohibited from recovering contributions made by bankrupt debtors to a church or other charity prior to declaring bankruptcy unless the contributions were made with the intent to defraud creditors. Contributions are protected if they amount to less than 15 percent of a debtor’s gross annual income, or more if the debtor can establish a regular pattern of having given more.

Employee Educational Discounts

(1) IRS Code – Staff Tuition Discounts (26 USC § 117) The school may adopt by board action a **QTR** plan (**Qualified Tuition Reduction** plan) according to IRS regulations for those on its staff receiving tuition discounts (26 USC § 117[d]). The plan must offer the same discount to all within a board-determined “class” to be a tax-free benefit. Board action determining the different classes of workers and their discounts is to be reflected in the official board minutes.

Staff members without school-age children do not need to be offered some other benefit in lieu of tuition reduction. This is an exception to the general rule of “equal pay (or benefits) for equal work.”

Staff members must not pay any of their children’s tuition owed to the school with **pretax** dollars by reducing their total salary by the amount of owed tuition or by having the tuition deducted from their salaries before the taxes are paid.

Highly compensated employees (**\$135,000 or more the preceding year in 2022**) may be given the discount, but the amount of the discount must be added to their W-2 forms.

Tuition discounts for church staff – In 2004, IRS Private Letter Ruling 200149030 was issued regarding the applicability of school tuition discounts for church staff. The IRS clearly indicated that church employees who do not have a function or role in their own Christian school do not qualify for a tax-free tuition discount under the IRS Code. If a discount is given to these individuals, the amount of the discount must be reported as income on the W-2 form. Under IRS rules a QTR plan is specifically a benefit for the employees of an educational institution, not a church or religious organization.

The IRS ruling did not answer the question about giving tax-free discounts to church staff that teach Bible or other classes in the school or that have other direct roles such as administration. This remains a gray area. Until there is a further IRS ruling or clarification, most Christian schools will probably continue to give discounts to church employees who have a significant or identifiable role in the school and not report the amount of the discount on W–2 forms, unless they meet the definition of “highly compensated employees.”

(2) Economic Growth and Tax Relief and Reconciliation Act of 2001 (P.L. 107-16) Expanded the opportunity for employers to reimburse postsecondary educational expenses of employees. An employer may reimburse undergraduate or postgraduate expenses up to \$5,250 per year on a tax-free basis for classes as long as they are not for sports, games, or hobbies. Reimbursements do not cover meals and transportation; just tuition and textbooks. The employer’s educational reimbursement program must be in writing and cannot discriminate in favor of highly compensated employees. Any reimbursements that exceed \$5,250 in a calendar year must be added to the recipient’s W-2 form.

In January 2013, The American Taxpayer Relief Act extends permanently the exclusion from income and employment taxes of employer-provided education assistance up to \$5,250.

IRS Operational Issues

(1) Federal Minimum Wage Law (29 USC § 206) The school must pay at least federal minimum wage (\$7.25 after July 24, 09) to support staff and to “volunteers” working for tuition. (Several states have a higher state minimum wage which must be paid instead of the federal minimum wage.)

(2) U.S. Tax Code – Mileage Rates (26 CFR § 601.105 in conjunction with Revenue Procedure 2000-48) As of January 1, 2021 the business mileage rate remains the same at 57.5 cents per mile. The tax-deductible rate for using an auto for medical purposes remains at 17 cents per mile. The

tax-deductible rate for using a vehicle for charitable purposes remains unchanged at 14 cents per mile. These rates can change on an annual basis.

(3) Political Activity by Nonprofit Organizations (26 USC § 501[h])

The IRS puts limits on political activity by tax-exempt organizations. The following information should provide you general guidance.

Tax-Exempt Organizations CAN:

- Conduct Nonpartisan voter registration drives.
- Distribute unbiased, nonpartisan voting records and candidate surveys. The surveys must cover a broad range of issues, not just the church's/school's known agenda. The materials must not unfairly describe any candidate's position on an issue or unfairly summarize a candidate's voting record. Also, the materials must not be distributed only near election time. They must be distributed at least one other time during the year, in a non-election season.
- Educate their members on specific issues or pending legislation.
- Have issues awareness committees and meetings to educate members on specific issues or pending legislation.
- Enlighten members on what they can do if they support or oppose a particular issue.
- Expend up to 5% of their total budget on direct lobbying or on contributions to individuals or groups for the purpose of supporting or opposing specific legislation (not candidates).
- Encourage prayer for a particular issue or public official.
- Host candidate forums if all candidates for a particular office are invited and the forum is conducted in a nonpartisan manner.

Tax-Exempt Organizations CANNOT:

- Endorse a political candidate.
- Make contributions to a political candidate.
- Participate in political fund-raising endeavors for a political candidate.
- Distribute political materials for a candidate.
- Pay for individuals to attend a caucus for a state or national political convention.
- Donate their mailing list to a candidate or political party.

In summary, IRS guidelines greatly restrict Christian organizations in matters concerning political candidates and elections but permit them to attempt to influence voters or legislators regarding issues.

For more information about lobbying activities by nonprofit organizations, check this website: <http://www.irs.gov/Charities-&-Non-Profits/Churches-&-Religious-Organizations>

(4) IRS Issue – Highly Compensated Employee (IRS Notice 99-55) Certain IRS tax benefits do not apply if a person is a “highly compensated employee.” This includes such examples as certain tax benefits in qualified tuition reductions for his/her own children, cafeteria plans, employer-provided educational assistance, and dependent care assistance. **In 2022 a person earning \$135,000 or more per year is “a highly compensated employee.”** Inflation will cause this figure to occasionally increase.

(5) Housing Allowances Staff members claiming housing allowances as licensed or ordained ministers must meet all IRS criteria for the church/school to grant the allowances. Misclassifying a person as qualifying for the minister tax status could subject the school to significant tax liability.

In order to qualify, the person claiming the minister tax status must hold a genuine license, commission, or ordination from a church. Documentation obtained only for “tax purposes” won’t suffice.

ACSI strongly urges schools seeking to grant housing allowances to carefully check with a qualified CPA or legal counsel regarding the necessary qualifications of the individuals and how to implement the process as part of the school’s payroll and accounting systems. Misclassification may subject the school to paying back taxes, penalties, and fines.

(6) Sales and Use Taxes Some, but not all, states provide a sales tax exemption for churches and religious schools. Check to see whether purchases by your school are exempt from sales taxes.

(7) Beware of Personal Liability for Ministry Loans The Uniform Commercial Code (U.C.C.) is very specific about how an employee signs for a commercial loan on behalf of his/her employer, corporation, or business.

Section 3-403(2) of the U.C.C. states that “an authorized representative who signs his own name to an instrument...is personally obligated if the instrument names the (company) represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the (company) represented but does show that the representative signed in a representative capacity.”

When signing a loan on behalf of your church or Christian school, be sure that it looks like this:

ABC Christian School
By: _____(signed)_____
(Title) and Authorized Agent

(8) Sarbanes/Oxley Act (15 USC Section 7201, et seq) This federal law applies to profit-making U.S. corporations. The Act increases the accountability of corporations to the IRS and to the general public. The U.S. Congress continues to consider proposals to make U.S. nonprofit organizations more accountable. There will likely be similarities between the proposals and the Sarbanes/Oxley Act. New accountability laws are expected to be adopted for nonprofits. Here are three things that you church and Christian school can do to get ready:

(1) Be sure that your school board addresses conflict-of-interest issues by board members. ACSI recently published an article along with two sample conflict-of-interest forms that nonprofit boards could use for this purpose. The forms should be filled out by board members on an annual basis.

(2) Adopt protection for “whistle blowers.” Your organization needs a policy that clearly states that any employee that brings to the administration or board information about perceived wrongdoing in the school or by the school’s business practices be protected against adverse job discrimination by making such a report.

(3) The school board needs to establish an audit sub-committee made up of some of the board members. Since this is to be an independent committee that checks the finances and the financial integrity of the organization, no school employees should serve on this committee. Each of these three items is expected to be required in the expected new laws for nonprofit organizations. Why not get a head start on them and seek voluntary compliance? All three ideas make good sense.

(9) Fair Credit Reporting Act (15 USCA § 1681 et seq.) Obtaining and using credit reports is regulated under the Fair Credit Reporting Act.

An “investigative consumer report” about an applicant for employment may not be obtained or prepared unless the applicant has received a disclosure that an investigative consumer report (with information about character, general reputation, personal characteristics, and mode of living) may be requested or obtained. Disclosure must be as specified in the law. It must be clear, conspicuous, and in writing, and cannot be a part of an employment application.

<https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>

When adverse employment action is taken on the basis of information in a credit report, the person must be so advised. *[Note: The federal Bankruptcy Code prohibits a prospective employer from refusing to hire a candidate for employment due to bankruptcy.]*

(10) Fair and Accurate Credit Transactions (FACT) Act This act was passed to fight against the increasing problem of identity theft and consumer fraud. It requires every employer to appropriately dispose of any documents—whether paper, electronic, or other format—that contain personal information derived from a credit report or other types of consumer information reports obtained from third parties such as credit reporting agencies when it comes time to purge your employees’ personnel files.

The Federal Trade Commission does not specify how information must be disposed of, but it says that reasonable measures must be taken to protect against unauthorized access to or use of the information. Disposal could be as simple as using a paper shredder for paper items. Information stored electronically, such as on computer discs or hard drives, could be overwritten or wiped clean using tools you can purchase or obtain for free on the Internet, or even, as the FTC suggests, by taking a hammer to the disc or hard drive containing the information.

(11) Title III, Consumer Credit Protection Act (15 USC § 1671 *et seq.*; 29 CFR 870)

This Act protects employees from being discharged by their employers because their wages have been garnished for any one debt and limits the amount of employees’ earnings that may be garnished in any one week.

(12) Fair Debt Collection Practices Act (FDCPA) (15 U.S.C.A. § 1692f) The FDCPA applies only to third-party debt collectors, not the internal collectors for a creditor. If you have a school employee that is getting a lot of calls about debt collection, he/she can tell a bill collector that his/her employer objects to these calls. The third-party bill collector cannot continue contacting the employee at work. If this request is ignored, a complaint may be filed with the Federal Trade Commission by calling 877-382-4357, or check the Commission’s website: <http://www.ftc.gov/>.

(13) Employee Retirement & Income Security Act of 1974 (ERISA) (29 USC § 1001 with further amendments in 1990) All organizations with 25 or more employees must comply with ERISA, which sets minimum compliance standards for benefit plans offered by employers. Benefit plans have been broadly defined to include retirement, medical, health care, and other types of “vesting” benefits such as vacation plans. ERISA requires that all employees similarly situated (for instance, all full-time employees) must receive the same benefits from programs and plans provided through the employer. Employers must make available complete plan-description booklets to employees who request them.

(14) Flexible Spending Accounts (FSA) A Flexible Spending Account (also known as a flexible spending arrangement) is a special account that employees can put money into and use it to pay for certain out-of-pocket health care expenses.

There are two types of FSAs—medical and dependent care. FSAs are popular because they allow employees to set aside a portion of their pre-tax wages to pay for prescriptions, prescription

insurance co-pays, and for dependent care expenses, depending on how the employer sets up the FSAs.

Over-the-counter medications as of 2012 no longer qualify for reimbursement under medical FSA plans. FSAs not only help employees save income taxes and Social Security (FICA) taxes on the pretax money set aside, but the employers save money too because they don't have to pay 7.65% FICA taxes, that they would normally have to pay, on the amount of pre-tax money set aside by their employees.

FSAs have a “use-it-or-lose-it” rule whereby any funds not spent during the year are forfeited to the employer. Employees can put up to \$2,850 (as of **January 1, 2022**) into an FSA each year. The employee generally must use that money within the plan year. However, the employer may offer one of two options:

- It can provide a “grace period” of up to 2.5 extra months to use the money in their FSA. (At the end of the grace period the employee loses any remaining balance in the FSA.)
- It can allow the employee to carry over up to \$570 per year to use in the following year and still contribute \$2,700.

Employers can offer either one of these options but not both and it is not required to offer either one.

(15) Health Savings Account (HSA) A Health Savings Account is a type of savings account that lets you set aside money on a pre-tax basis to pay for qualified medical expenses. By using untaxed dollars in a Health Savings Account (HSA) to pay for deductibles, copayments, coinsurance, and some other expenses, you can lower your overall health care costs.

An HSA can be used only if you have a High Deductible Health Plan (HDHP) — generally any health plan with a deductible of at least \$1,400 for an individual or \$2,800 for a family for **2022**.

For **2022**, you can contribute up to \$3,650 for self-only HDHP coverage and up to \$7,300 for family HDHP coverage. HSA funds roll over year to year if you don't spend them. An HSA may earn interest, which is not taxable.

Some health insurance companies offer HSAs for their high deductible plans. Check with your company. You can also open an HSA through some banks and other financial institutions. You can learn more about an HSA at <https://www.irs.gov/publications/p969>.

(16) Identity Theft Red Flags Rule The Federal Trade Commission (FTC) has promulgated new regulations and guidelines titled Identity Theft Red Flags. These final rules became effective on May 1, 2009. Under the rules, each “financial institution” or “creditor” holding a “covered account” or other account for which there is a reasonably foreseeable risk of identity theft needs to develop and implement an Identity Theft Prevention Program. The program must include reasonable policies and procedures to “detect, prevent, and mitigate identity theft” and must accomplish the following:

- Identify relevant red flags (patterns, practices, and specific forms of activity that signal possible identity theft)
- Detect red flags that have been first identified and then incorporated into the program
- Respond appropriately to any detected red flags
- Ensure that the program is periodically updated

This regulation would apply to Christian Schools that basically require parents to sign a financial agreement that the parents owe the tuition for the year but are allowed to make monthly payments throughout the year.

Notice: *This article is designed to provide accurate and authoritative information in regard to the subject matter covered. It has been provided to member schools with the understanding that ACSI is not engaged in rendering legal, accounting, tax, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. Laws vary by jurisdiction, and the specific application of laws to particular facts requires the advice of an attorney.*

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