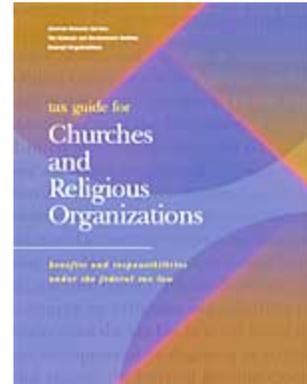




Tax Status and Exemptions

The Internal Revenue Service (IRS) has a procedure by which a parent organization (in this case the Evangelical Lutheran Church in America) can establish for its subordinate organizations group ruling tax exempt status for federal income tax purposes.

Exemptions from sales and real estate taxes are determined by each individual state. The IRS exempt status is primary to securing other tax exemptions.



For more information see [A Brief Description of the Group Exemption Procedure](#)

- [Federal tax exemption](#)
- [State tax exemption](#)
- [Local real estate tax issues](#)
- [How do I apply for ELCA Group Tax Exemption?](#)
- [Taxation of a Congregation's Rental Income](#)
- [IRS Tax information for Churches and Religious Organizations](#)
- [IRS Tax Guide for Churches and Religious Organizations](#) 
- [Political activity and tax status](#)
- [Endorsing a commercial third party product](#)
- [Tax information for donors](#)
- [Tax information for the clergy](#)
- [Does our congregation need to file an IRS form 990 or 990T?](#)
- [Independent Contractor -vs- Employee](#)

Federal Income Tax Exemption

In order to be included in the annual ELCA filing, an affiliated organization must meet the following criteria:

- It must have authorized its inclusion in writing;
- It must have a nine-digit Federal Employer Identification number (EIN);
- It must NOT have received its individual letter of determination from the IRS, as a consequence of having filed an application on IRS Form 1023;
- It must be "controlled or supervised" by ELCA; and
- It must, in its governing documents, contain appropriate clauses that establish its character as a public charity. These clauses include prohibition against any of the assets income inuring to the benefit of private persons, and provision

that upon dissolution of the organization its assets will go to another organization qualifying as tax exempt under 501(c)(3) of the Internal Revenue Code.

- The certification letter issued by the ELCA General Counsel confirms that a subordinate organization has been included in the ELCA Group Exemption filing. Please go through our email processing at 501c3@elca.org to secure this certification.
- **This Federal Income Tax Exemption letter may be requested in any of the these additional situations:**
- Application for a [Post Office Bulk Mailing Permit. U.S. Post Office Publication 417](#), Nonprofit and Other Qualified Organizations. An additional resource for information is provided by the Alliance of Nonprofit Mailers .
- Application for state sales tax exemption; (Exemption from state and local sales and other taxes does not automatically follow because one has exempt status from federal income tax purposes; however, in many states proving exempt status from federal income tax is a prerequisite for applying for exemption from sales and other local taxes.)
- Application seeking a grant or matching funds from some other 501(c)(3) organization (e.g., a fraternal life insurance company).
- Settlement of an estate where money has been left to an affiliated organization named as a charity.
- Donations are tax deductible. How can I explain to potential donors that my congregation (or other organization) is exempt from federal income taxes because the ELCA holds a group ruling exemption from the IRS?

State Sales Tax Exemption

In many states an application form is required. It is often necessary to show proof of exemption from federal income taxes. (The proof that the church organization is a 501(c)(3) entity) Some additional requirements will often include an application form and proof of incorporated status. Once a state sales tax exemption is granted, it is important that the congregation monitor its use. The authorized user will often need to present to the merchant a copy of the letter issued from the appropriate state authority or the state tax exempt identification number. It is certainly proper for the congregation to use the exemption for purchases of church supplies, foodstuffs, and other materials used directly for church purposes. However, it is important that all staff and members understand that it is illegal to use the tax exemption for personal purchases.

Local Real Estate Tax

Exemption from real estate taxes is governed by state law. Application for exemption from real estate tax may vary from county to county within the same state. In some states, what the local tax assessor/collector says or thinks the state law is, controls. Check with the local taxing authorities or a local tax professional to find out whether the congregation will lose its real estate tax exemption if it leases property.

Group tax exemption procedures for the congregations, synods and agencies of Evangelical Lutheran Church in America

The Internal Revenue Service (IRS) has the Group Ruling exemption procedure by which a parent organization (in this case ELCA) can establish for its affiliated organizations tax exempt status for federal income tax purposes.

Even though an affiliated organization is listed in the ELCA Yearbook, they also must have been included in one of the filings to IRS made by ELCA annually. In order to be included in the ELCA's group ruling, an affiliated organization must meet and substantiate the following criteria:

1. Must have authorized its inclusion in writing by completing; (Form No. 1 for congregations; Form No. 2 for other affiliated organizations);
2. Must have a nine-digit Federal Employer Identification number (EIN);
3. Must not have received an individual letter of determination from the IRS, as a consequence of having filed an application on IRS Form 1023;
4. Must be "controlled or supervised" by the ELCA; and
5. Must, in its governing documents, contain appropriate clauses that establish its character as a public charity. These clauses include prohibition against any of the assets income inuring to the benefit of private persons, and provision that upon dissolution of the organization its assets will go to another organization qualifying as tax exempt under 501(c)(3) of the Internal Revenue Code.

The advantage of compliance with this group exemption procedure is that an affiliated organization can then obtain a certification letter from the ELCA General Counsel indicating that the affiliated organization has been included in ELCA's group exemption filing. This letter is comparable in effect to a determination letter issued to organizations that file application for exempt status on IRS Form 1023. The certification letter issued by the ELCA General Counsel confirms that an affiliated organization has been included in the ELCA Group Exemption filing. This letter could be requested and used in any of the following situations:

- Application for a bulk mailing permit issued by a U.S. Post Office;
- Application for state sales tax exemption; (Exemption from state and local sales and other taxes does not automatically follow because one has exempt status from federal income tax purposes; however, in many states proving exempt status from federal income tax is a prerequisite for applying for exemption from sales and other local taxes);
- Application seeking a grant or matching funds from another 501(c)(3) organization (e.g., a fraternal life insurance company);
- Settlement of an estate or receipt of a gift where money has been left to a subordinate organization; or
- On occasion, the donor to an affiliated organization will request proof of the donee's organization tax exempt status. Affiliated organizations are included in the ELCA's annual filings with IRS under one of these specific categories:
 - Churchwide Organizations

- o Synods
- o Other National Organizations
- o Other Synod Related Organizations
- o Seminaries
- o Colleges and Schools
- o Social Ministry Organizations
- o Camps and Conference Centers
- o Campus Ministry Organizations
- o Continuing Education Centers
- o Coalitions
- o Congregations, Multi-point Ministries, and Other Ministries Under Development
- o Synodical Women's Organizations
- o Synodically Authorized Worshiping Communities/Chapels
- o Supporting Organizations
- o Congregation Related Organizations

How to Contact Us Regarding a Certification Letter*

To initiate the Group Ruling Exemption process for your congregation or other ELCA entity*, please send an email to 501c3@elca.org with the subject line: Tax Exempt Status.

We prefer that any requests be sent from your church email address.

You will receive an automatic reply which states: "Please provide your entity name, address, city, state, as well as the 9-digit Federal Employer Identification Number (EIN) currently used for filing wage statements or quarterly reports with the IRS."

This information will be verified with the group ruling to be sure our records are current. If there is no change, we will send the certification letter and attachments by PDF to your email location. If there are any changes with the information currently in the group ruling, we will request documentation.

We strongly prefer to send all our replies to a church email address. If that is not possible, please explain why there is no church email address that can be used.

*Please note that new inclusions for social ministry organizations, congregations under development, synodically authorized worshiping communities and campus ministries need to contact the Congregational and Synodical Mission unit of the churchwide organization to start the process.

Forms: 

[Form 1 for congregations](#)

[Form 2 for other ELCA affiliated organizations](#)

Will our congregation's tax status change if we rent or lease our property?

Some other unrelated organization wants to rent space in our congregation's building to hold their meetings, to operate an after school program, or for some other purpose. If we lease space to them, what are the legal problems?

The following is a very brief discussion identifying important issues that a congregation should consider. The congregation should consult with a lawyer or other advisor, since the following discussion is not intended as legal advice in particular situations.

Federal Income Tax - The leasing of property owned by a church will NOT result in the loss of the church's exempt status for federal income tax purposes. However, the congregation may be subject to federal income tax on some or all of the net rental income if the church has outstanding indebtedness. If the congregation is debt free, none of the net rental income will be subject to tax. Even where the congregation has some indebtedness, there are several exceptions that avoid the imposition of tax. This question of federal income taxation is discussed in more detail in another explanation, *Taxation of a Congregation's Rental Income*.

State Income Tax - Many states mirror the federal tax treatment. If the congregation is located in a state that does not follow the federal definitions for exempt entities and taxable income, it will be doubly important to check with a tax professional who is knowledgeable about income taxation by the particular state.

Local Real Estate Tax - Exemption from real estate taxes is governed by state law and varies from state to state. What is exempt in one state may be taxable in another state. Furthermore, exemption from real estate tax may vary from county to county within the same state. In some states, what the local tax accessor / collector says or thinks the state law is, controls. Therefore, check with the local taxing authorities or a local tax professional to find out whether the congregation will lose its real estate tax exemption if it leases property.

Taxation of a Congregation's Rental Income

Since 1969, churches have been subject to the Unrelated Business Income Tax (UBIT) for federal income tax purposes, to the same extent as other 501(c)(3) tax-exempt organizations. A church that is liable for UBIT must file an IRS Form 990-T by the 15th day of the 5th month following the end of its fiscal year.

Section 511 of the Internal Revenue Code of 1986 (Code), as amended, imposes the corporate tax rate on Unrelated Business Taxable Income (UBTI). UBTI is defined in Code Section 512. Rental income is excluded from taxation under Code Section 512(b), unless the rental income is derived from Debt-Financed Property (DFP) (as defined in Code Section 514) that is subject to outstanding Acquisition Indebtedness (AI) incurred in acquiring or improving the property. If a congregation is debt free, none of its rental income could be derived from DFP subject to AI, since there obviously is no outstanding debt. Therefore, a congregation that is debt free will not incur any liability for UBIT with respect to its rental income.

There are exceptions that may remove rental income from taxation, even when the church has outstanding AI. These exceptions are complicated and may be difficult to apply in specific situations. Only two are mentioned here. One is where more than 85 percent of the use of the DFP is devoted to the church's exempt purposes (see Income Tax Regulation §1.514(b)-1(b)(1)). A second exception is where the rent is received from a related organization for an exempt purpose use (see ITR §1.514(b)-1(c)(2)). An example of a related organization is a separately incorporated school whose board of directors is elected by the congregation.

Where the church does have outstanding AI, and none of the exceptions apply, some or all of the "net" rental income will be subject to taxation. "Net" rental income is the gross rents less allowable deductions, including depreciation, attributable to the rented space. The percentage (never more than 100 percent) of "net" rental income that will be subject to taxation is determined by the following fraction: Average outstanding AI / Average adjusted basis

Average adjusted basis is the cost of the property including improvements reduced by accumulated depreciation allowable.

It is strongly recommended that a congregation secure the services of a competent tax professional if it has or believes it may have exposure for UBIT.

This explanation on federal income tax consequences of a congregation leasing its property was prepared in February 1998, by Mr. David J. Hardy, senior attorney, in the Office of the Secretary of the Evangelical Lutheran Church in America, 8765 West Higgins Road, Chicago, IL 60631. It is informational only and may not be considered legal advice.

Will our congregation's political activity affect its tax status?

Are there examples of what kind of political activity is and is not permissible?

The congregation must understand what political activity is permissible and what is not in order to maintain itself as a tax exempt organization.

501(c)(3) organizations are prohibited from certain political activity. It is important to understand what political activities are strictly prohibited and what constitute permissible actions.

See the three references listed below for more information:

Examples of prohibited activities:

- Contribution to candidates or campaigns
- Direct endorsement of a candidate
- Indirect activities that would clearly favor one candidate

Examples of permissible activities:

- Voter guides/encourage voting
- Debates
- "Equal opportunity" speeches
- Lobbying activities are not completely prohibited, but are limited. Test is whether a substantial part of the non-profit's activities are to influence legislation. Most congregations do not exceed substantial part tests.

For additional helpful information, with examples, regarding political activity see also:

- [See IRS Publication 1828 Tax Guide for Churches and Religious Organizations](#) 
- [IRS Revenue Ruling 2007-41](#)
- [Called to be a Public Church: 2014 ELCA Voting and Civic Participation Guide](#) 
- [Political Activity Guidelines for Catholic Organizations 2007](#)
- [Politics and the Pulpit 2004: A Guide to the Internal Revenue Restrictions on the Political Activity of Religious Organizations](#) 

Congregations Endorsing or Sponsoring Commercial Third Party Products

From time to time congregations are asked to endorse or promote third party products in return for a fee, rebate or contribution from that third party. Such a venture might be promoting long distance telephone service by members, use of a special credit card or endorsing a certain line of commercial products.^[1]

When a congregation is asked to promote or endorse third party commercial ventures, it is important to seriously consider disadvantages or complications if such a venture is supported.

1. The congregation's mission does not entail promoting commercial secular third party ventures, sales or products.
2. Secular commercial ventures can take away from the true ministry and work of the congregation.
3. Unless congregations have a way of evaluating or rating secular services or products, they should not endorse, sponsor or otherwise promote products merely because they may raise some funds for the congregation.
4. Once the door is open for endorsing, sponsoring or receiving remuneration for a secular commercial venture, it becomes increasingly difficult to say "no" to other requests for church participation.
5. The congregation's reputation and mission can be sullied by a poorly performing product, disputes between the vendor and the purchaser, collection actions, or even injuries involving the sponsored product.
6. When members "contribute" by purchasing products or becoming involved in secular fund raising plans, their commitment to charitable giving may diminish.
7. When a congregation receives outside income from a secular source it will need to take on additional record keeping, tax reporting requirements, and potentially tax payment requirements.
8. If endorsement, promotion or sponsorship is given, it is essential that the congregation have a legal reviewed disclaimer to protect itself from responsibility or liability.
9. Often the funds raised for the congregation are not very significant.
10. If there are two congregation members who are selling or providing the same product, it may create conflict in the congregation if one is chosen over another.
11. If the person selling the product wants to, he or she can certainly contribute a share of the sales directly to the congregation or a share of the sales that come from congregation member business.
12. Depending on the nature of the enterprise, the congregation may face tax, insurance, zoning or similar complications.

Congregations should also be aware of the ELCA position on commercialism.

^[1] Different products and services may include toys, books, foodstuffs, health supplements, cleaning products, lawnmowers, home repair and improvements, real estate sales, etc.

Information for Donors about Gifts to ELCA Congregations and Organizations

This is an explanation of the group ruling process for potential donors to Evangelical Lutheran Church in America (ELCA) congregations, synods and other affiliated organizations.

The ELCA is a 501(c)(3) tax exempt organization. In addition, the Internal Revenue Service (IRS) has issued a letter to the ELCA churchwide organization giving the ELCA authority to determine and verify which congregations, synods and other affiliated organizations are included in the ELCA's group exemption from federal income tax because they qualify as affiliates or subordinates.

[IRS Publication 4573](#), explains that the central organization church, the ELCA churchwide organization, may issue a letter verifying inclusion of an ELCA congregation or other affiliated ELCA organization in the group exemption. That letter from the ELCA is accompanied by a copy of the IRS inclusion letter.

[IRS Publication 4573](#) also explains how donors may verify the inclusion of the ELCA in the group ruling exemption with the IRS. They may also search for the ELCA on IRS.gov using the "[Exempt Organization Select Check](#)" tool.

This online resource lists the Evangelical Lutheran Church in America, Chicago, Illinois. As stated by the IRS, the actual donee, such as a congregation or affiliated or subordinate organization, need not itself be listed online. "Donors may rely upon central organization verification with respect to deductibility of contributions to subordinates..." ([IRS Publication 4573](#))

We hope this assists you in understanding the group ruling process and specifically the way donors may review the documentation of tax deductibility of gifts to ELCA congregations and organizations.

For more information on the group ruling process see [ELCA Group Exemption Procedure](#).

Clergy Tax Issues

IRS Publication 517 [Social Security and Other Information for Members of the Clergy & Religious Workers](#) 

IRS Publication 1828 [Tax Guide for Churches and Religious Organizations](#) 

The IRS has released a [Minister Audit Technique Guide](#). This resource provides insights into how the IRS examiners will review tax returns for clergy if they are audited.

[IRS Publication 517](#) is a very useful reference tool in navigating the maze of IRS regulations that pertain to members of the clergy and religious workers. In this publication you will find step by step instructions on all things pertaining to pastoral tax returns, including:

- Personal income tax
- Social Security taxes
- Self-employment taxes and exemptions
- Exemption from FICA taxes
- Retirement savings arrangements
- Earned income credit and
- W-2 information

What is great about this publication is that it includes a comprehensive example of a sample pastor's return with all the forms filled in. Click on the link below to print a copy of this useful IRS publication.

For more information, go to www.irs.gov and search under clergy tax or similar topics.

Clergy Tax resources from Portico Benefit Services

Another aid is the **2013 Tax Return Preparation Guide for 2012 Returns for Clergy**. This is an 83-page document, but is easy to read and understand. It also includes completed examples of the required tax forms and explains in detail how the specific tax rules are applied to clergy. What is unique about this guide is that it goes into detail on each step of each form so it can be used as a reference guide if you need more detail regarding a specific issue or situation. This guide, available from Portico Benefit Services, can be obtained using the following instructions:

Log in to your retirement account at the [Portico Benefit Services website](#);

1. Click on **Retirement Center** dark grey menu across the top of the page;
2. Click on **Tax Planning Resources** under **Tools and Information**; and
3. Click on **Tools** all the way on the right, and then select **2013 Tax Return Preparation Guide**.

Does my congregation have to file the IRS Form 990 or 990T to report income?

ELCA congregations are not required to file IRS Form 990. [IRS Publication 1828](#) explains this on page 22:

Exceptions to file Form 990, 990-EZ and 990-N

The following is a list of some of the organizations that are not required to file Form 990, 990EZ or 990-N:

- Churches (as opposed to “religious organizations,” defined earlier)
- Inter-church organizations of local units of a church
- Mission societies sponsored by or affiliated with one or more churches or church denomination, if more than half of the activities are conducted in, or directed at, persons in foreign countries
- An exclusively religious activity of any religious order

See the form instructions for a list of other organizations that are not required to file.

Some congregations that have unrelated business income must file a IRS Form 990 T to report [unrelated business income tax \(UBIT\)](#).

Independent Contractor -vs- Employee

The IRS has put increasing emphasis into reviewing an organization's independent contractors to see if they are more correctly classified as employees. Of course, if an independent contractor gets reclassified by the IRS, the organization under audit is responsible for back payroll taxes, interest and penalties.

The basic difference is that employers generally control when, where and how the work gets done by their employees, while contractors, in their arrangements, have more autonomy and control over when, where and how the work gets done for their clients. Certain attributes tend to make an arrangement look a certain way. One-client contractors tend to look like employees, particularly if they are working full time. Other strong indicators of employee status include the employer providing dedicated office space, equipment, supplies, etc.

The checklist we have provided will help you review a particular arrangement and will permit you to document that a reasonable decision on status has been made. It is always advisable to consult with an employment law attorney regarding the classification.

Employee/Term Employee vs. Independent Contractor Checklist¹

Utilization	Employee/Term Employee	Independent Contractor
1. The congregation/church entity will control how, when and where the work is performed	Yes	No
2. The congregation/church entity will provide training.	Yes	No
3. The individual's work will be integrated into the overall business operations of the congregation/church entity.	Yes	No
4. The services will be rendered personally by the individual	Yes	No
5. The individual will hire employees, assistants or subcontractors	No	Yes
6. The congregation/church entity will hire, pay and supervise assistants.	Yes	No
7. The relationship between the congregation/church entity and individual will have a definite term.	No	Yes
8. The congregation/church entity will determine the number of hours to be worked.	Yes	No
9. Individual will provide services on a full-time basis.	Yes	No
10. Services to be rendered require specialized skills.	No	Yes
11. The congregation/church entity will assign	Yes	No

additional projects to the individual.		
12. The work will be done exclusively on the congregation/church entity premises.	Yes	No
13. The congregation/church entity will determine the order or sequence of work to be performed.	Yes	No
14. The congregation/church entity will require regular oral or written reports.	Yes	No
15. The congregation/church entity will pay hourly, weekly or monthly.	Yes	No
16. The congregation/church entity will pay a commission or on a per-assignment basis.	No	Yes
17. The congregation/church entity will pay business and travel expenses	Yes	No
18. The congregation/church entity will furnish necessary tools, equipment and materials.	Yes	No
19. Individual will invest in own facilities and equipment.	No	Yes
20. Individual has independent opportunity for profit or loss.	No	Yes
21. Individual will work for more than one principal at a time.	No	Yes
22. Individual's services are available to the general public.	No	Yes
23. The congregation/church entity will provide employee benefits.	Yes	No
24. The congregation/church entity will deduct for withholding tax.	Yes	No

¹ It is important to note that no single factor may be outcome determinative on the issue of independent contractor and employee. The factors included herein tend to be indicative to one or the other. Some factors clearly will carry more weight than others. For example, the fact that the congregation/church entity controls the number of hours worked and how the work is done is more significant than the fact that the congregation/church entity requires written report or that the work is done exclusively on the congregation/church entity premises.

Related links on IRS.gov

[Independent Contractor \(Self-Employed\) or Employee?](#)

[Know Who You're Hiring: Independent Contractor \(Self-employed\) vs. Employee](#)

[Employer's Supplemental Tax Guide \(Publication 15-A\)](#) 

[Exempt Organizations: Independent Contractors vs. Employees](#)