

IRS EIN Responsible Party Requirement

Dear Treasurer and Finance Committee Chairs:

This letter is to inform you of a new IRS requirement, effective January 1, 2014.

Background

When an organization, including a church or church related organization, wants to obtain a federal Employer Identification Number (“EIN”), it must apply for the EIN by submitting IRS Form SS-4 (copy attached). Line 7 of the Form SS-4 asks for the name and SSN/ITIN/EIN of the organization’s “Responsible Party.” In general, the Responsible Party is an individual who has direct or indirect authority over the organization and its assets. (See the more detailed discussion below on who is a Responsible Party.) Basically, the IRS wants the name and Social Security Number of a specific person it can contact if something is amiss concerning the organization. However, many organizations submitted their Forms SS-4 long ago, and the names listed on those Forms SS-4 as Responsible Parties may no longer be Responsible Parties, e.g., they no longer work for the organization, and in some cases, they may even be deceased.

Requirement

In 2013, the Treasury Department/ IRS issued a new regulation (Treasury Decision (T.D.) 9617) requiring each organization with an EIN to update the name of its Responsible Party. And the IRS has a form to be used for this purpose: [IRS Form 8822-B](#) (Form 8822-B is also now the form used to report an organization’s change of address.) This new requirement to update Responsible Parties became effective January 1, 2014, and organizations had sixty (60) days to comply, i.e., March 1, 2014. Going forward, whenever there is a change of Responsible Party, organizations must update that information using Form 8822-B within sixty (60) days of the change.

Form 8822-B is relatively straightforward and shouldn’t take very long to complete. Churches should be sure to check the “tax-exempt organization” box at the top of the form, and if they are only reporting a change in Responsible Parties, they should also check Box 1 (“Employment, excise, income, and other business returns”).

Note that to report a change of the organization’s Responsible Party, you must also list the name and SSN/ITIN/EIN of the old Responsible Party on Form 8822-B. But what if an organization can’t find its old Form SS-4 or, as has happened, the IRS accepted a Form SS-4 in the past without the name of a Responsible Party? The instructions to the form do not address this circumstance, but

our legal advisors think the IRS would much prefer that the organization provide the name of the new Responsible Party (leaving blank the name of the old Responsible Party) than not completing the form at all. While leaving the old Responsible Party line blank may prompt a call from the IRS, it is unclear what else an organization could do to comply with the new requirement in this circumstance.

Penalties for Noncompliance

As for penalties for noncompliance with the new requirement, we quote from the instructions to Form 8822-B:

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 short, every organization with an EIN (including churches) must comply with the new requirement to update the name of its Responsible Party, but there are no (direct) penalties for not complying.

Who is a Responsible Party?

Finally, we want to discuss in more detail who would be the Responsible Party for an organization. The instructions to Form SS-4 give the definition of a Responsible Party as: “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.

So who would that individual be for a local church? As you know, our church structure and polity doesn't often fit neatly into government definitions and rules. But we still have to do the best we can. Our legal advisors opinion is that the persons who best fit this definition for local churches are their respective treasurers. Arguably, they, more than anyone else in their respective entities, could be said to directly or indirectly “control, manage, or direct the entity and the disposition of its funds and assets.” In any case, the IRS wants a name and a SSN, and it can't be just anyone associated with the organization.

Action Step

Fill out the [IRS Form 8822-B](#) and return it to the Cincinnati address ASAP.

