

FOREIGN ACTIVITIES BY US RELIGIOUS ORGANIZATIONS

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1. Tax Deductible Contributions for Foreign Activities and Recordkeeping

The “Earmarking” and “Conduit” Restrictions

Two elements must be met to qualify a payment as a tax-deductible contribution. First, the amount must be paid to a qualifying organization without the exchange of any goods or services. However, if the amount is designated for a specific purpose, one must look beyond the immediate recipient to determine whether the payment constitutes a charitable contribution. See *Thomason v. Commissioner*, 2 T.C. 441 (1943); Rev. Rul. 54-580, 1954-2 C.B. 97; and Rev. Rul. 63-252, 1963-2 C.B. 101.

Rev. Rul. 63-252 then sets forth five examples of the arrangements between US charities and foreign organizations, each with their tax consequences:

- (1) A mere conduit entity formed by the beneficiary foreign organization to tap into United States resources; (NOT DEDUCTIBLE)
- (2) An organization with a similar origin and function to the first example, the only difference being that it was formed by persons in the United States interested in helping the designated foreign entity; (NOT DEDUCTIBLE)
- (3) An exempt domestic charity that is prevailed upon by a specific foreign organization to canvass for donations in the United States and to direct contributions to that foreign organization; (NOT DEDUCTIBLE)
- (4) An exempt domestic charity that makes grants to foreign charities after reviewing the grant applications to ensure that the foreign activities will further its charitable purposes; and (DEDUCTIBLE)
- (5) An exempt domestic charity that forms a subsidiary organization in a foreign country for administrative efficiency in conducting its foreign charitable programs and minutely manages its foreign subsidiary. (DEDUCTIBLE)

A common thread in the first three cases is that the organizations are charities nominally created in the United States but organized or operated solely to solicit funds on behalf of a pre-existing foreign entity. The domestic entities are, in effect, agents or conduit organizations for the foreign beneficiaries. As such, contributions to them are not deductible. (Note the distinction the Tax Court made in *Bilingual Montessori School of Paris, Inc.*, *supra*, between mere funding and actual involvement in operations.) Examples four and five discuss organizations that both solicit funds without any express understanding that they would be forwarded to a foreign entity and **exercise “discretion and control”** over the funds solicited from within the United States. These domestic entities, in other words, are independent actors with their charitable programs, not mere intermediaries for foreign-based organizations; consequently, they are found to warrant deductible contributions.

The organizations described in examples four and five are commonly known as “friends (of) ...” organizations.

What constitutes adequate control of the donated funds was clarified in Rev. Rul. 66-79, 1966-1 C.B. 48. That revenue ruling discusses the situation of a domestic charity soliciting contributions in the United States for a specific project with a foreign counterpart organization. The **board of directors has taken specific steps to review the project before funding and monitoring its continued adherence to the domestic charity’s goals.** Notwithstanding that the donations are technically “earmarked,” as in negative examples one through three of Rev. Rul. 63-252, the domestic organization has demonstrated that **it has complete control of the donated funds** and discretion as to their use to ensure that the funds will be used to carry out the domestic charity’s function and purposes. These standards **entail more than** merely being able to decide whether or not to contribute and **being able to require the foreign recipient to furnish a periodic accounting.**

Another analysis of the control and accountability factor is set out in Rev. Rul. 75-65, 1975-1 C.B. 79. That revenue ruling discusses a domestic charity formed to deal with the problem of plant and wildlife ecology in a foreign country through programs that include grants to foreign private organizations. The domestic charity **maintains control and responsibility** over the use of any funds granted to a foreign organization by first making an investigation of the purpose to which the funds will be put, by then entering into a **written agreement with the recipient organization,** and lastly by making **field investigations** to see that the money is spent following the agreement. The charity exercises power to require fund accountability over these programs. Contributions to the organization are deductible under IRC 170.

2. The Restrictions of IRC 501(c)(3) in Foreign Contexts

a. Inurement and Private Benefit

The requirements against inurement and private benefit apply to foreign activities the same as domestic operations. Furthermore, reliance on local law or custom as to what constitutes a charitable operation will not prevent an inquiry into whether private benefit or inurement is involved. Thus, for example, if local custom provides that the applicant will **give money to a person who dispenses money as he/she sees fit with no separate account** for moneys received from the United States for charitable purposes, **the exemption would be denied** under IRC 501(c)(3) on the grounds of inurement, serving a private interest, and/or failing to serve any charitable purpose. **Even if the recipient were to use the funds only for charitable purposes,** he/she would still **have to account for their use,** and the organization applying for recognition of exemption under IRC 501(c)(3) would have to **retain discretion and control** over the use of the funds for the exemption to be recognized. See Rev. Rul. 68-489, *supra*. Furthermore, **records of the charity dispensed must be maintained.** See Rev. Rul. 56-304, 1956-2 C.B. 306.

b. Lobbying and Electioneering

As with inurement and private benefit, the restriction against lobbying and **the prohibition against political activity on behalf of or in opposition to a candidate for elective public office (electioneering) also exist in a foreign context.** For example, Rev. Rul. 73-440, 1973-2 C.B. 177, concludes that the term “legislation” includes foreign as well as domestic laws for purposes of the IRC 501(c)(3) lobbying restriction. Great care should be taken in applying this principle, however. The regulations under IRC 501(c)(3) carefully limit the definition of legislation to actions by legislatures or the public through a referendum, initiative, constitutional amendment, etc. See Reg. 1.501(c)(3)-1(c)(3)(ii). The regulations under IRC 4911 develop this definition by providing that legislation does not include action by the executive, judicial or administrative bodies. See Reg. 56.4911-2(d). Therefore, it should be kept in mind that it may be improper to characterize various types of resolutions, mandates, etc., of a wide assortment of state bureaucracies as “legislation.” This is particularly so in dealing with an authoritarian or theocratic regime where the legislative process, as it is known in the United States, is unknown in that country.

c. Illegal Activities and Activities Contrary to Public Policy

It is settled that the **conduct of illegal activities or activities contrary to public policy** may jeopardize IRC 501(c)(3) exempt status regardless of the locus of the activity. What is not settled, however, is whether an activity conducted in a foreign country is illegal for IRC 501(c)(3) purposes because **it is illegal under the laws of that country.**

Public policy considerations relating to activities conducted in a foreign country center around the problem of ascertaining whether **foreign schools are racially discriminatory.** The declared Federal public policy against racially discriminatory schools is so pervasive that foreign schools must furnish the information required by Rev. Proc. 75-50, 1975-2 C.B. 587. However, if a **foreign school can demonstrate that the information is impossible** to collect because collecting it **would be illegal under foreign law or impractical** under the circumstances and can make a prima facie showing that the allegation is true, such as a copy of the law or regulation and an English-language translation thereof, the **Service will waive** so much of the information required by Rev. Proc. 75-50, as is based upon such statistics. See G.C.M. 37867 (Feb. 27, 1979).

4. **Foreign Grantmaking Rules**

Domestic charities have increasingly become involved in international grantmaking.

Making grants to a foreign grantee that does not have a ruling or determination letter classifying it as an IRC 509(a)(1), (2), (3) public charity, or as an “exempt operating foundation” creates considerable difficulties. The first problem is outlined in Reg. 53.4945-(6)(c)(1), which provides that since a private foundation **cannot make an expenditure for a purpose** other than for one described in IRC 170(c)(2)(B), it may not make a grant to a non-IRC 501(c)(3) organization unless (1) the making of the grant itself constitutes a **direct charitable act** or the making of a program-related investment, or (2) the grantor is reasonably assured that the grant will be **used exclusively for purposes described in IRC 170(c)(2)(B).** Reg. 53.4945-6(c)(2)(ii)

makes just a general statement as to how a grantor foundation can be “reasonably assured” that a foreign organization that has no IRC 501(c)(3) ruling or determination letter will be treated as an organization described in that subparagraph -- it requires that a foundation manager make a “reasonable judgment” that the foreign grantee organization is described in IRC 501(c)(3).

In theory, a private foundation intent on making a grant to a foreign organization, after reasonably assuring itself that the grantee is the equivalent of an IRC 501(c)(3) organization, **would make the grant and exercise expenditure responsibility**. However, as discussed more fully below, exercising expenditure responsibility is a complicated and arduous process. Consequently, a private foundation will seek to prevent the necessity of exercising expenditure responsibility.

Reg. 53.4945-5(a)(5) provides that a grantor may avoid the expenditure responsibility requirement if it makes a **good faith determination** that the grantee is an organization described in IRC 509(a)(1), (2), or (3). (The regulations do not mention “exempt operating foundations” because IRC 4940(d)(2) was enacted after the regulations were promulgated. However, a “good faith determination” that the grantee is described in IRC 4940(d)(2) would also avoid the expenditure responsibility requirement.) Reg. 53.4945-5(a)(5) further provides that a “good faith determination” may be based on **an affidavit of the grantee or an opinion**. Reg. 53.4945-6(c)(2)(ii) does not prescribe any particular manner for the exercise of “reasonable judgment;” it merely states: “The term ‘reasonable judgment’ shall be given its generally accepted legal sense within the outlines developed by judicial decisions in the law of trusts.”

Each grantor must make its own “good faith determination” about a particular grantee; in other words, **each grantor must prepare its affidavit or opinion**.

Grants to foreign governments and international organizations may also be excepted from the expenditure responsibility rules. Reg. 53.4945-5(a)(4)(iii) provides that a foreign government, any instrumentality or agency thereof, or an international organization designated by Executive Order under 22 U.S.C. 288 will be considered an IRC 509(a)(1) organization provided that the grant is made for exclusively charitable purposes as described in IRC 170(c)(2)(B). Effectively, this means that grants to foreign governments, their instrumentalities, or international organizations are treated in the same manner as to their United States counterparts -- **the grant must be for exclusively charitable purposes** and not for governmental ones.

If the foreign grantee does not fall within the above exceptions, then the **expenditure responsibility rules apply**. As outlined in IRC 4945(h), these rules require the private foundation to exert all reasonable efforts and establish adequate procedures to (1) see that the grant is **spent solely for the purpose** for which it is made, (2) obtain **full and complete reports** from the grantee regarding how the funds were spent, and (3) make **full and complete** reports to the Service.

Reg. 53.4945-5 sets forth the rules for satisfying the expenditure responsibility requirement. Reg. 53.4945-5(b)(2)(i) requires a pre-grant inquiry that should be complete enough to give a reasonable person assurance that the grantee will use the grant for the proper

purposes. Reg. 53.4945-5(d) provides that private foundations must report expenditure responsibility grants to the Service on Form 990-PF and specifies the required information. The pre-grant inquiry and reporting requirements are the same for grants to domestic and foreign organizations.

However, the rules relating to terms of grants contain a special rule where foreign grantees are concerned. Under the general rule in Reg. 53.4945-5(b)(3), each grant must be made subject to a **written commitment signed by an appropriate officer, director, or trustee of the grantee organization**. The commitment must specify the purposes of the grant. It must also include provisions relating to the **repayment of funds not used** for the grant's purposes; the submission of **annual reports**; and the **maintenance of books and records**, which are to be made available to the grantor at all reasonable times. Furthermore, under Reg. 53.4945-5(b)(3)(iv), the commitment must contain the grantee's agreement **not to use any funds** (1) to carry on propaganda or otherwise to attempt **to influence legislation** (within the meaning of IRC 4945(d)(1)); (2) to influence the outcome of any **specific public election** or to carry on, directly or indirectly, **any voter registration drive** (within the meaning of IRC 4945(d)(2)); (3) to make any grant to an individual or organization; and (4) to undertake any activity for any noncharitable purpose, to the extent that use of the funds would be taxable to the grantor foundation. The special rule concerns the grantee's agreement: Reg. 53.4945-5(b)(5) provides that in the case of a grant to a foreign organization, the requirement is satisfied if the agreement contains **"substantially equivalent" restrictions**. These restrictions may be phrased in appropriate terms under foreign law or custom. The requirement will be met if the grantor's or grantee's **counsel renders an opinion or affidavit stating that the restrictions are "substantially equivalent."** (Note: Reg. 53.4945-5(b)(4)(iv) contains an equivalent agreement requirement for program-related investments, and the special rule of Reg. 53.4945-5(b)(5) applies to that agreement requirement also.) Where a grant is made by a private foundation to a **foreign organization that is not a public charity**, the foundation, in addition to exercising **expenditure responsibility**, must also maintain the grant **funds in a separate account dedicated** to one or more exempt purposes described in IRC 170(c)(2)(B). See Reg. 53.4945-6(c)(2)(i).

5. Payments to Foreign Nationals

ORGANIZATION pays **nonresident aliens for services in the United States**. These types of transactions require tax compliance.

Payments to nonresident aliens are first classified according to where the services are being rendered. Tax implications ensue if the payment is for services in the United States. If the nonresident alien is in the United States for less than 30 days within a calendar year ("personal presence test") and ORGANIZATION's payment is less than \$3,000.00 for the entire calendar year ("income test"), then no United States tax rules are implicated. If the nonresident alien is from Mexico or Canada, then the nonresident alien must be in the United States for less than 183 days during a calendar year. If either the personal presence or income test is not complied with, then ORGANIZATION must comply with the tax rules.

Assuming the personal presence or income test is not met, the ORGANIZATION must withhold thirty percent (30%) of the payment unless a treaty changes the rate. Some nonresident

aliens qualify for exemption from mandatory withholding. To receive the exemption, the nonresident alien must give ORGANIZATION IRS Form 8233. ORGANIZATION must send the IRS Form 8233 at least ten (10) days before any payments are made. Since Form 8233 requires a taxpayer identification number, the nonresident alien may submit Form W-7, Application for Taxpayer Identification Number, with Form 8233. Without Form 8233, the thirty percent (30%) withholding is mandatory.

If the personal presence or income test is not met and Form 8233 is not filed timely, then the thirty percent (30%) withholding applies unless a treaty sets a different lower rate. To determine whether a lower rate applies, the nonresident alien must fill out Form W-8ECI and give it to the ORGANIZATION. If you need further guidance, please ask.

If any withholding applies, ORGANIZATION should issue Form 1042-S to the nonresident alien and file the original with the IRS along with the amount withheld.

6. Payments to US Citizens working outside the United States

If the missionary is a US Citizen, they owe federal income taxes on their worldwide income. Unless a treaty alters the default treatment, the missionary is responsible for Social Security and Medicare taxes on their worldwide income. The first issue is whether the missionary is an employee of the local Church though serving in a foreign land. The IRS examines 20 factors to determine whether a missionary is an employee. If the Church solely supports that missionary, this factor favors employee status. If the Church controls the details of how the missionary conducts ministry, this factor favors employee status. If the Church provides fringe benefits to the missionary, such as health insurance, vacation, or retirement, this factor favors employee status. The Church should seek professional guidance in making this determination. If the missionary is an employee, the Church must determine whether the missionary qualifies to be treated as a minister under the Internal Revenue Code. If the missionary has been licensed, commissioned or ordained by a church, and the missionary performs the duties of a minister, then the missionary will be treated as a minister. Assuming the missionary is treated as an employee/minister, the Church should issue a Form W-2 to the missionary and not withhold income taxes, Social Security, or Medicare taxes.

If the missionary is a US citizen and an employee of the Church, the Church should **register with the host country** as a church employer. The Church will be required to also withhold and pay local taxes to the host country if the host country has such taxes. The Church must also file an annual report with the host country in many countries. The Church will also need to **purchase insurance in the host country** since nearly all US insurance policies are restricted to claims arising in the US. The Church should **retain host country attorneys** and accountants to assist it in complying with all employment and registration regulations applicable to the Church in the host country. In this circumstance, many churches find it desirable to **set up a nonprofit corporation in the host country** so that the Church pays the nonprofit corporation instead of paying an employee in that country.

If the missionary is a U.S. citizen but does not qualify as an employee of the Church, the Church is required to issue Form 1099 for all compensation paid to the missionary, except for the

housing allowance that the Church has designated. Again, the Church will need to check with attorneys and accountants in the host country to determine the Church's obligations in that country.

If the missionary is a U.S. citizen and receives expense reimbursements, the expense reimbursements are included in taxable compensation unless the Church has adopted and followed an accountable expense reimbursement plan applicable to the missionary.

If the Church utilizes **deputational fundraising** (where the individual raises their support), then special rules apply to prevent inurement and private benefit issues from arising. The Church must accept the funds; the donor cannot require funds to go to a particular individual. The personal compensation that the missionary receives must be set by the Church and not variable depending on the amount of funds raised. A detailed letter from IRS on this issue is available upon request from fsommerville@nonprofitattorney.com.

7. **Anti-Terrorist Rules**

If the Church sends the funds to the host country through a bank account owned by the Church in the host country, the Church must notify the IRS of foreign bank accounts. The Church should use Form TD F 90-22.1 at www.IRS.gov.

The Church is responsible for complying with all suspected terrorist regulations issued by the United States Department of the Treasury. Every transfer of funds outside the United States must be tested against the suspected terrorist list published by the Department of the Treasury. If the Church's funds fall into the hands of terrorists on the list, those who authorized the transfer may be charged criminally with aiding and abetting terrorists. Here are the three lists that must be checked before disbursing the funds internationally:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

<http://www.state.gov/j/ct/list/index.htm>

<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

8. **Short-Term Mission Trip Rules**

Individuals may deduct contributions that are (1) **GIFTS TO** or (2) **FOR THE USE OF** a qualified organization. As discussed below, both types of contributions have additional requirements that must be met.

CASH DONATIONS

GIFTS TO QUALIFIED ORGANIZATIONS: Since churches are qualified organizations, direct cash payments are tax deductible if the donor does not receive any goods or services for the payment. This would include instances where the Church collects the funds for the ministry trip. Does the donor receive any goods or services when they pay the Church to go

on a mission trip? It depends on the Trip. We must first analyze the primary purpose of the Trip. A direct connection between the expense incurred and the charitable volunteer services rendered must exist. If the primary purpose is ministering to others in the Church's name, then the Trip qualifies as a church trip and is mostly deductible.

On the other hand, **if the Trip is a retreat** where the individual receives ministry from the Church, the individual receives good and/or services. **This Trip is personal** and nondeductible. Trips where the primary purpose is to educate participants also fall into this category, i.e., trips to Israel.

The Internal Revenue Code states, "No deduction shall be allowed under [charitable contributions] for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, **unless there is no significant element of personal pleasure, recreation, or vacation in such travel.**" This provision has several requirements. First, the term "away from home" has the same meaning as it does for business travel. That is, one must travel overnight away from their "tax home" while rendering charitable, volunteer services. One's tax home is generally where one works and lives.

Next, we must examine whether the Trip contains significant characteristics that make the Trip comparable to a pleasure trip. In adding this provision to the Code, the Senate Committee observed that travel expenses remain deductible though the individual receives substantial pleasure from serving others through charitable works. In other words, **the pleasure one receives from the ministry will not preclude a deduction.**

Internal Revenue Service rules prohibit the deduction of travel expenses that may *appear to be a vacation*. The IRS has developed rules defining business trips to ensure that businesses are not deducting vacations as volunteer/business trips. Initially, you must **differentiate between charitable/business days and personal days**. It is a charitable/business day if: (1) you are traveling, (2) your presence was required for a charitable/business meeting, (3) you conducted significant charitable/business, and (4) qualifying weekends and holidays. To conduct significant charitable/business on a day, **you must spend the majority of your working hours** actively conducting business. You may count weekends and holidays if you must conduct business the day before and the day after the weekend or holiday. For example, you may not count as charitable/business days the weekend if you conduct charitable/business on Friday and do not have charitable/business the following Monday. **All days that do not count as charitable/business days are counted as personal days.**

Meals, transportation, or lodging are not business expenses for personal days. To determine the appropriate expense for business transportation, you must prorate your transportation costs by the ratio of business days to total traveled days. For example, the airfare was \$1000 to transport you to a foreign land. If eight of the days qualified as business days, only \$800 of the airfare would qualify as a business expense. If six days are personal (more than 50% of the total days), then none of the airfare qualifies as business expenses.

These rules do not mean all trip days must be charitable work days. It simply means that the expenses associated with pleasure days are not deductible. The Church must disclose that

fact to the trip participants. For example, the Church could tell participants that the Trip costs \$600.00, \$400.00 of which is tax deductible.

Finally, the travel expenses **must be reasonable** in amount. The more luxurious the accommodations and meals, the more likely they are unreasonable. Please note that the IRS will likely use “luxurious” accommodations to demonstrate that the Trip contained substantial elements of personal pleasure.

To prove the extent and duration of volunteer services, the taxpayer should **keep an hour-by-hour itinerary of the entire Trip**. The itinerary should separate those times when the volunteer is on duty for the charitable organization from when the volunteer is free to choose his or her activities. The taxpayer should **retain detailed documentation and photos** to support the itinerary. Churches that send nonexempt employees on mission trips should check with a labor lawyer to determine whether the minimum wage and overtime laws could apply to that Trip.

CASH TRIP EXPENSES

FOR THE USE OF QUALIFIED ORGANIZATIONS: If the payment is for the use of the Church, then it is tax deductible. For example, if the trip cost collected by the Church does not include the evening meals, the participant may deduct the cost. This rule would apply to every expense the individual pays directly. If the entire cost is paid directly to travel vendors by the individual, it is still deductible if the Trip meets the abovementioned rules. If the expenses exceed \$250, the donor/volunteer must secure a letter from the Church acknowledging the volunteer services and that certain expenses were not paid by the Church.

PAYING FOR OTHERS TO GO

Many members have the skills needed on a trip but lack the funds to pay for the Trip. As a result, many church groups raise funds to pay for the Trip by soliciting donations from friends and relatives. These contributions are deductible if the **Church controls the selection** of the recipient of the funds. A gift designated by the donor to send Susie on the youth trip is not tax deductible. Instead, a gift designated by the donor to support the youth trip is tax deductible. From a tax perspective, the best way to raise money for the youth trip is to raise money for the whole group. If it costs \$20,000.00 to send the youth on a mission trip to Costa Rico, they must raise money together to meet that goal. Another approach would be for the Church to select the participants and then ask the donors to underwrite the cost of sending each on the Trip. In other words, the Church may raise funds to send Susie on the Trip, but the donor cannot require the Church to send Susie on the Trip.

REFUNDING PAYMENTS

If the payment to the Church for the mission is tax deductible, then the Church may not refund the payment. On the other hand, if the payment to the Church for the mission trip is not tax-deductible, then the Church may refund the payment. The Church must notify the payor at the time of solicitation whether this payment is tax deductible. All solicitation letters should be reviewed before being sent to potential donors.

MISSION TRIP RISKS
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Plan for Risks

- A. Security Risks -- www.travel.state.gov
- B. Locate potential sources of aid. Embassy or Consulate availability? What services can they provide?
- C. Health Risks – What are the health risks of the host country? What is the state of health care? Where are the hospitals? Emergency Rooms? Doctors? Dentists? Pharmacies?
- D. Liability Risks – What are the laws of the host country? How do they influence ministry? Who does the driving?
- E. Criminal Risks – Does any activity include a criminal risk?
- F. Travel Risks – What options exist if flights are cancelled? Lost luggage? Lost hotel reservation? Bus travel? Car travel? Food issues?
- G. Natural Disasters – What risks exist for natural disasters? Earthquake? Hurricane? Flooding? Tornado?
- F. Is the area prone to violence and kidnapping from drug or trafficking cartels? Is the area experiencing civil unrest or potential military actions?

Prepare for the Worst

- A. Expect security breaches of security. Kidnapping? Theft?
- B. Evacuation – Plan how to evacuate if needed.
- C. Recruit a health care professional to participate in Trip. (Doctors, nurses, etc.)
- D. Carry medicines and well equipped first aid kit.
- E. Keep printed maps to embassy, consulates, hospitals, emergency rooms, doctors, dentists, and pharmacies.
- F. Locate lawyers in host country to advise the Church on local laws.
- G. Locate insurance companies that can write policies for coverage in host country.
- H. Secure bail bond coverage, if available.
- I. Secure travel interruption insurance.
- J. Plan for survival if a natural disaster prevents continuing the normal activities.
- K. Secure evacuation insurance.

Prepare Participants

- A. Screen all participants – medical history, physical capability, criminal history, references

- B. Plan adequate supervision.
- C. Require participants to sign acknowledgement of risks and release.
- D. Require all participants to buy insurance.
- E. Require all participants to provide emergency contact information.
- F. Require all participants to provide copies of all travel documents (passports, driver's license, vaccination records and travel itineraries)
- G. Require minors to submit parent permission and limited healthcare power of attorney form.
- H. Suggest that participants leave valuables at home.
- I. Suggest that participants use address other than at home address on luggage and place contact information inside all luggage.
- J. Suggest secure ways to carry personal belongings.

Carry out the Trip

- A. Develop a communication plan between trip participants and home.
- B. Develop emergency contingency plans.
- C. Develop a media response plan.
- D. Maintain regular communications.
- E. Have church leaders keep copies of emergency contact information handy.
- F. Have trip leaders keep key phone numbers and emergency plan handy.
- G. Have church and trip leaders keep insurance claim contact information handy.
- H. Pray that you never have to use any of the above.

**Foreign Country
Participation Agreement and Waiver**

In consideration for and as a condition to the undersigned participant being permitted to participate in the Mission Trip (as defined below), I (being either the participant or if the participant is a minor, then the participant's parents or guardians on behalf of the participant) agree as follows:

I acknowledge that travel to/from and participation in the _____ Church's Mission Trip to _____ (the "Foreign Country") (such mission trip being referred to as "the Mission Trip") involves risks to the participant and may result in various types of injury including, but not limited to, the following: sickness, bodily injury, death, emotional injury, personal injury, property damage, and financial damage. I certify that I am free from any health condition preventing me from participating safely in the Mission Trip.

I assume, acknowledge and accept the risks associated with travel to/from and participation in the Mission Trip. I accept personal financial responsibility for any injury or other loss sustained during the Mission Trip and all medical treatment and costs of medical care rendered to the participant. ON BEHALF OF MYSELF, MY PERSONAL REPRESENTATIVES, ASSIGNS, INSURERS, HEIRS, EXECUTORS, ADMINISTRATORS, SPOUSE, AND NEXT OF KIN, I HEREBY RELEASE, WAIVE, AND FOREVER DISCHARGE AND HEREBY AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS _____ CHURCH AND ITS AGENTS, EMPLOYEES, OFFICERS, MINISTERS, VOLUNTEERS, OR ANY OTHER REPRESENTATIVES AND THEIR SUCCESSORS AND ASSIGNS (COLLECTIVELY REFERRED TO AS THE "RELEASED PARTIES") FROM AND AGAINST ANY AND ALL DAMAGES, INCLUDING WITHOUT LIMITATION, SPECIAL AND CONSEQUENTIAL DAMAGES, AND ANY AND ALL CLAIMS FOR ANY INJURY ARISING DIRECTLY OR INDIRECTLY OUT OF THE MISSION TRIP, WHETHER SUCH INJURY ARISES OUT OF THE NEGLIGENCE OF THE RELEASED PARTIES, THE PARTICIPANT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, SICKNESS, INJURY, OR DEATH THAT MAY RESULT FROM INADEQUATE MEDICAL SERVICES AND SUPPLIES, HAZARDOUS TRAFFIC, POORLY CONSTRUCTED ROADS, DANGERS RESULTING FROM MILITARY OR POLITICAL PROBLEMS, DANGERS RESULTING FROM POLITICAL OR CIVIL UNREST, CRIMINAL ACTIVITY, WARFARE, VIOLENCE, TERRORISM OR ANY OTHER VIOLENT ACTIVITY; ILLNESS OR ACCIDENT IN REMOTE PLACES IN, TO OR FROM THE FOREIGN COUNTRY, WHICH MAY BE WITHOUT IMMEDIATE ACCESS TO MEDICAL FACILITIES; ILLNESS AND ACCIDENT DUE TO THE FORCES OF NATURE; SICKNESS OR DISEASE (INCLUDING WITHOUT LIMITATION, MALARIA OR OTHER ILLNESS OR DISEASES CONTRACTED DURING THE TRIP); INJURY OR SICKNESS FROM ANY ANIMAL, QUARANTINE, OR GOVERNMENT RESTRICTION OR REGULATION; ANY ACT OR OMISSION BY ANY STEAMSHIP, AIRLINE, RAILROAD, TAXI, BUS, HOTEL, RESTAURANT, OR UNIVERSITY; OR ANY FINANCIAL OBLIGATION OR LIABILITY, OR DAMAGE OR INJURY TO ME, OR TO MY PROPERTY.

I give the _____ Church and the Released Parties permission to authorize medical and/or hospital treatment for any sickness or injury sustained by the participant during the Mission Trip.

I accept responsibility for obtaining and carrying my passport, visa, or other document required for participating in the Trip.

I acknowledge that _____ Church has provided me with an itinerary for Mission Trip and has held informational meetings to assist me in participating in the Mission Trip. I have been allowed to attend informational meetings regarding the Mission Trip and request any additional information desired. Based on the information provided, I acknowledge that I have been fully informed concerning

the specific places we will be visiting during the Mission Trip and the living conditions that I will experience while on the Mission Trip.

I acknowledge that I have read and accepted the U.S. State Department's Consular Information Sheet for the Foreign Country, all Travel Warnings and Public Announcements. I am aware of the risks involved with international travel in general and specifically with the risks involved with travel in and to this Foreign Country.

I certify that I have either (a) coverage under a current health insurance plan or (ii) I participate in a health sharing ministry that satisfies the requirements of the Affordable Care Act, which will provide coverage while participating on the Mission Trip. PROOF OF INSURANCE IS REQUIRED AND MUST BE ATTACHED TO THIS FORM. I acknowledge and agree that _____ Church has no obligation to provide any health or medical insurance coverage. I assume full financial and other responsibility for all of the participant's medical costs and expenses during and after the Mission Trip, including but not limited to emergency transportation costs.

I grant permission for _____ Church to use the participant's image for its publicity and publications, including, but not limited to, the _____ Church's website, Facebook page or other social media, and printed material.

We are Christians and believe that the Bible commands Christians to make every effort to live at peace and resolve disputes in private or within the Christian Church (see Matthews 18:15-20; 1 Corinthians 6:1-8). Therefore, I agree on behalf of myself and any of my relatives or legal representatives that any claim or dispute arising from my participation in the Mission Trip or related to this Agreement shall be submitted to biblically-based mediation and, if necessary, legally binding arbitration following the *Rules of Procedure* published by the Institute of Christian Conciliation (the "Rules"). The complete text of the Rules may be obtained by accessing <http://www.iccpeace.com/Rules/index.html>. All such mediation and arbitration shall occur in _____, Florida. Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction in _____, Florida. The parties understand that these methods shall be the sole remedy for any controversy, claim, or dispute arising from my participation in the Mission Trip or this Agreement. They expressly waive their rights to file a lawsuit in any civil court against one another for such controversies, claims or disputes, except to enforce an arbitration decision. In any legal proceeding, including arbitration, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable and necessary attorneys' fees, expert fees, and costs arising from the proceeding.

I further agree that this Participation Agreement and Waiver (this "Agreement") is binding upon me, my relatives, heirs, executors, administrators, assigns and legal representatives. This Agreement is to be governed by the laws of the State of _____ and is intended to be as broad and inclusive as permitted under _____ law. If any portion of this Agreement is held invalid, then that provision will be modified to the minimum extent necessary to make it enforceable, and the rest of the Agreement will remain in effect as written.

I HAVE READ THIS AGREEMENT, FULLY UNDERSTOOD ITS TERMS, UNDERSTAND THAT I MAY HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE, OR GUARANTEE BEING MADE TO ME. I INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

Participant's Name (Please Print): _____

Signature of Participant: _____ Date: _____

Signature of Parent/Guardian: _____ Date: _____
(If the Participant is a minor)

Foreign Activities by US Churches

Frank Sommerville, JD, CPA

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Topics

- Supporting missions
- Missions trips

2

Supporting Missions

- International activities are a priority for IRS
- IRS is seeking to prevent funding terrorists
- I have more IRS exams on international issues than ever in 30 years
- Many new auditors for IRS

3

Supporting Missions

- Churches must take control over donations supporting foreign entities
- Passthrough donations are not allowed
- Churches should use a US missions organization or their denomination's foreign missions organization

4

Basic Rules for Sending Funds Overseas

- All funds must be spent furthering the church's exempt purposes
- Church is responsible for documenting use of funds
- Church must follow both IRS and OFAC rules
- Jail time for church officials that allow funds to fall into hands of suspected terrorist

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Terrorist Lists

- Suspected Terrorists:
<http://www.treas.gov/offices/enforcement/ofac/sdn/>
- Terrorist Organizations:
<http://www.state.gov/s/ct/list/index.htm>
- Other Lists:
<http://www.treasury.gov/offices/enforcement/ofac/programs/terror/terror.pdf>.

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Two Ways to Comply

- Get foreign entity to file and be approved by IRS as Section 501(c)(3) organization
 - Or get a USA attorney to render a legal opinion that it would qualify if it applied
- Retain administrative control over the funds until spent furthering exempt purposes
 - Treat funds as if it was a department of the church and require documentation like the church requires for all its other departments

7

Recordkeeping – Administrative Control

- Church **MUST** have documentation of all expenditures using church funds
- Church must ensure than no recipient of church funds is on suspected terrorist list
- Church should visit and audit the recipients
- All expenditures must be reasonable

8

Best Practices – Administrative Control

- Have a written agreement with recipients
- Approve a written budget for use of church funds
- Transfer funds into a segregated account
- Require documentation and copies of bank statement
- Audit expense reports and documentation

9

Other Cautions

- Paying US citizen requires Form W-2 or Form 1099
- All compensation must be reasonable
- Require compliance with an accountable expense reimbursement plan
- Check with local authorities regarding church responsibilities in the host country

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Overview – Mission trips

- Planning mission trips
- Volunteers – adults, teenagers, groups
- Tax deductible volunteer expenses create a charitable contribution

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Fund Raising for Missions trips

- Individual versus group fund raising
- Individual versus group expenses
- Fund raising letters
- Payroll tax issues

12

Requirements

- Volunteer expenses qualify as charitable contribution
- Volunteer services/activities qualify as charitable services
- Recordkeeping and documentation
- Volunteer work majority of the day

13

Tax Court Examination

- *Field v. Commissioner*, Tax Court Summary Opinion 2005-184
- Allocation of time for volunteer services
- Verdict – the disallowance of deduction

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Planning Opportunities

- Itinerary detail per participant, per hour
- Discuss the application of IRS foreign business travel rules
- Business day v. Personal day
- Proration of expense

15

Recordkeeping

- Detailed itineraries
- Photos of activities
- Expense receipts

16

Risk Management

- Security Risks
- Health Risks
- Weather risks
- Transportation risks
- Liability Risks

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Thank You!

- Frank Sommerville, JD, CPA
- fsommerville@nonprofitattorney.com

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