

# News In Brief



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**T**hanks to all who participated in and helped make the 2019 RCRI Annual Conference in Dallas on the tenth anniversary of RCRI a most enjoyable and informative experience. The program's theme - *a glorious history to remember...a great history yet to be accomplished* - reflected our gratitude for the gifts of the past, with hope and anticipation for the future of religious life. It was a spirit-filled experience for over 600 leaders, treasurers and CFO's of religious institutes as well as legal advisors from apostolic, contemplative and monastic institutes along with 200 exhibitors attending 39 workshops.

There were many highlights to the conference including the moving keynote address by Sister Norma Pimentel, MJ from the Humanitarian Respite Center in the Rio Grande area of Texas; beautiful liturgies, music and prayer services prepared by John Flaherty from Loyola-Marymount in Los Angeles; excellent accommodations; and, an energy and enthusiasm that permeated the conference environment in Dallas. We are most grateful to all who were with us in Dallas and for your evaluations which will assist us in planning for the 2020 conference in St. Louis.



## A LOOK INTO THE 2019 NATIONAL CONFERENCE



# OASDI and SSI Program Rates & Limits

**2020**

## Old-Age, Survivors, and Disability Insurance (OASDI)

Tax Rates (percent)	
Social Security (Old-Age, Survivors, and Disability Insurance)	
Employers and Employees, each <sup>a</sup>	6.20
Medicare (Hospital Insurance)	
Employers and Employees, each <sup>a,b</sup>	1.45
Maximum Taxable Earnings (dollars)	
Social Security	137,700
Medicare (Hospital Insurance)	No limit
Earnings Required for Work Credits (dollars)	
One Work Credit (One Quarter of Coverage)	1,410
Maximum of Four Credits a Year	5,640
Earnings Test Annual Exempt Amount (dollars)	
Under Full Retirement Age for Entire Year	18,240
For Months Before Reaching Full Retirement Age in Given Year	48,600
Beginning with Month Reaching Full Retirement Age	No limit
Maximum Monthly Social Security Benefit for	
Workers Retiring at Full Retirement Age (dollars)	3,011
Full Retirement Age	66
Cost-of-Living Adjustment (percent)	1.6

a. Self-employed persons pay a total of 15.3 percent—12.4 percent for OASDI and 2.9 percent for Medicare.

b. This rate does not reflect the additional 0.9 percent in Medicare taxes certain high-income taxpayers are required to pay. See IRS information on this topic.

## Supplemental Security Income (SSI)

Monthly Federal Payment Standard (dollars)	
Individual	783
Couple	1,175
Cost-of-Living Adjustment (percent)	1.6
Resource Limits (dollars)	
Individual	2,000
Couple	3,000
Monthly Income Exclusions (dollars)	
Earned Income <sup>a</sup>	65
Unearned Income	20
Substantial Gainful Activity (SGA) Level for the Nonblind Disabled (dollars)	1,260

a. The earned income exclusion consists of the first \$65 of monthly earnings, plus one-half of remaining earnings.



Office of Retirement and Disability Policy  
[www.ssa.gov/policy](http://www.ssa.gov/policy)

Produced and published at U.S. taxpayer expense



## DO WE HAVE TO FILE A FORM 990?

Quite often, members of RCRI are uncertain as to whether their sponsored work is required to file a Form 990. Unfortunately, failing to file a Form 990 when requested or required by the IRS could result in loss of the organization's tax-exempt status after three years of non-compliance. This is a regrettable, yet occasional, occurrence amongst RCRI members.

In light of the article on the Taxpayer First Act found in this edition of *News In Brief*, it may be worthwhile to review some aspects of Form 990. This article should be read in conjunction with the article on the Taxpayer First Act.

### 1. What is Form 990?

**Form 990**, *Return of Organization Exempt from Income Tax*, is an "information return," as distinguished from an income tax return. **Form 990-EZ**, *Short Form Return of Organization Exempt from Income Tax*, is also an information return. Organizations do not report or pay tax with a Form 990 or Form 990-EZ. **Form 990-N** (sometimes referred to as the *e-Postcard*) is a "notice," not signed under penalties of perjury, and requires significantly less information from the filing organization than an information return (see, IRC Section 6033[i]).

According to the IRS, a tax-exempt organization that normally has \$50,000 or more in gross receipts and that is required to file an exempt organization information return must file either Form 990 or Form 990-EZ. See Filing Phase-In for more information about which return to file.

The return is due on the 15th day of the 5th month after the end of the organization's fiscal year. (For example, the 2008 return of an organization whose fiscal year ends on June 30, 2009, would be November 15, 2009.) The due date may be extended for six months, without showing cause, by filing Form 8868 before the due date. An organization will only be allowed an extension of 6 months for a return for a tax year.

Small organizations - those whose annual gross receipts are normally less than the threshold- are not required to file an annual return, but may be required to file an annual electronic notice - e-Postcard.

Organizations that generate at least \$1,000 of gross unrelated business income must file a Form 990-T, *Exempt Organization Business Income Tax Return*, to report unrelated business income and pay any tax due. The organization must file Form 990-T in conjunction with its annual information return (i.e., Form 990, Form 990-EZ, or Form 990-PF).

Public Law 115-97, introduced as the "Tax Cuts and Jobs Act" and signed by President Trump on December 22, 2017, subjected tax-exempt organizations to unrelated business income tax ("UBIT") to the extent they pay or incur expenses for any qualified transportation fringe described in section 132(f) and any parking facility used in connection with qualified parking. The new tax applies to "amounts paid or incurred after December 31, 2017." As a

result, many religious institutes and/or their sponsored works were required to file a tax return, **Form 990-T**, for tax year 2018 even if they did not engage in any unrelated trade or business activities. While Congress has introduced several bills to repeal section 512(a)(7), none have been approved. Accordingly, many religious institutes will be required to file a tax return, Form 990-T, for tax year 2019.

An organization's Form 990-T is due on the 15th day of the 5th month after the end of its taxable year. If an organization has a June 30 year end, its Form 990-T is due on November 15. If it has a December 31 year end, its Form 990-T is due on May 15. Organizations are also required to make installment payments of estimated UBIT if their estimated tax (minus allowable credits) is expected to be \$500 or more. Organizations that do not make estimated tax payments when due may be subject to an addition to tax for failure to make a sufficient and/or timely payment of estimated income tax. The IRS waived the addition to tax for failure to make estimated tax payments for any tax-exempt organization that was filing Form 990-T for the first time in tax year 2018; however, this relief will not be available for tax year 2019.

### 2. As a religious institute, aren't we and our sponsored works exempt from having to file a Form 990?

IRS Publication 1828 states that "generally, all religious organizations ... must file Form 990, Form 990-EZ or Form 990-N." Some of the organizations not required to file this form include:

Churches (as opposed to "religious organizations"), an inter-church organization of local units of a church, a convention or association of churches, or an integrated auxiliary of a church (such as a men's or women's organization, religious school [such as a seminary], mission society, or youth group).

A school (described in section 170(b)(1)(a)(A)(ii) of the Code) below college level affiliated with a church or operated by a religious order, even though it is not an integrated auxiliary of a church.

A mission society sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in, foreign countries.

An exclusively religious activity of any religious order.

See also page 4 of the instructions for Form 990:

<https://www.irs.gov/pub/irs-pdf/i990.pdf>

The *Guidelines for the Annual Filing Requirements for Catholic Organizations* of the USCCB states that it is true that an exception exists from having to file a Form 990/EZ/N for the "exclusively religious activities of any religious order". The *Guidelines* further point out this filing exception does not apply to the entire organization that is a religious order, but only to a specific subset of the organization's

activities. A religious order's "exclusively religious activities" are its activities other than educational, charitable, or other activities which could serve as an independent basis for an organization to be described in section 501(c)(3).

The *Guidelines* also state the filing exemption for the exclusively religious activities of any religious order is limited to the internal matters of the religious order to the exclusion of its charitable ministries. Separately organized entities that are operated, supervised, or controlled by, or supervised or controlled in connection with, a religious order are therefore not exempt from having to file an annual information return on the basis of being an exclusively religious activity of any religious order. In some cases, depending on the facts and circumstances, they may be exempt from having to file an annual information return for other reasons.

See the *Guidelines* for further information.

### 3. What is the difference between a "church" and a "religious organization?"

The meaning and scope of the term "church" has puzzled the Internal Revenue Service, courts, and scholars since Congress excepted churches from the newly imposed unrelated business income tax in the Revenue Act of 1950. The task was not made easier as subsequent acts added provisions that distinguish churches from other religious organizations, but do not define "church." (cf. Robert Liuthian and Thomas Miller, "Defining 'Church' – The Concept of a Congregation").

In making the required distinctions between churches and religious organizations that are not churches, the IRS has followed the basic principles set out in *De LaSalle Institute v. United States*, 195 F.Supp.891 (N.D.Cal.1961). In that case, in deciding that a religious order operating schools and a novitiate was not exempt from unrelated business income tax on its winery, the court stated that in the absence of a statutory definition of "church," the application of "the common meaning and usage of the word" should be employed.

To apply the "common meaning and usage" of the word "church," the IRS attempted to identify historically or judicially recognized objective characteristics of churches. The result was the so-called "fourteen points test," which was later expanded to include a fifteenth criterion – any other facts and circumstances. The word "test" is misleading as there is no minimum number of criteria an organization must meet to be classified as a church. Rather, the criteria serve as a guide to assist case-by-case analysis.

In applying the analysis to determine whether a religious organization may properly be characterized as a church, the IRS considers whether the organization has the following characteristics: (a) a distinct legal existence; (b) a recognized creed and form of worship; (c) a definite and distinct ecclesiastical government; (d) a formal code of doctrine and discipline; (e) a distinct religious history; (f) a

membership not associated with any other church or denomination; (g) an organization of ordained ministers; (h) ordained ministers selected after completing prescribed studies; (i) a literature of its own; (j) established places of worship; (k) regular congregation; (l) regular religious services; (m) Sunday schools for religious instruction of the young; (n) schools for the preparation of its ministers; and, (o) any other facts and circumstances that may bear upon the organization's claim for church status.



On the other hand, the IRS recognizes "religious organizations that are not churches typically include nondenominational ministries, interdenominational and ecumenical organizations, and other entities whose principal purpose is the study or advancement of religion." (See IRS Publication 1828).

### 4. Our sponsored work lost its tax-exempt status for failing to file a Form 990, Form 990-EZ or Form 990-N. We believed the sponsored work was an "exclusive religious activity" of our order. What happened?

It depends.

If your sponsored work receives notification from the IRS stating that a Form 990 (or Form 990-EZ or Form 990-N) return is outstanding, do not simply ignore it under the belief that your sponsored work is exempt from filing. Contact your local IRS office to follow-up on the notice. Failure to file a Form 990 (or Form 990-EZ or Form 990-N) for three consecutive years results in revocation of tax-exempt status of the sponsored work by the IRS.

It may be that the nature of the sponsored work is considered by the IRS as the work of a "religious organization" as opposed to an "exclusive religious activity" undertaken by a religious order. The IRS may have recognized the religious institute as not a "church" per se, but – in its absence – recognized by default the sponsored work is a "religious organization" and failing to recognize the sponsored work as an "exclusive religious activity" undertaken by a religious order. It would be best to discuss this with your local IRS office if you believe this to be the case.

The revocation of an organization's tax-exempt status does not take place until the filing due date of the third year. For example, if your *e-Postcard* was due on May 15, 2018 (for tax year 2017) and you did not timely file in 2017, 2018 or 2019, you lose your tax-exempt status effective on the 2020 due date.

Be prepared to associate yourself with **Rev. Proc. 91-20, 1991-1 C.B. 524** in educating the IRS that your sponsored work fits clearly within "an exclusively religious activity" of your institute.

Go to: [https://www.irs.gov/pub/irs-tege/rp\\_1991-20.pdf](https://www.irs.gov/pub/irs-tege/rp_1991-20.pdf)

## 5. Is it possible to have the tax-exempt status reinstated?

Yes, but you must apply (or reapply) and pay the appropriate user fee to have your tax-exempt status reinstated if it was revoked because the sponsored work failed to file for three consecutive years and it was required to.

An exemption application is required even if the sponsored work was not originally required to file an application. Reinstatement of exempt status, if the application is approved, will generally be effective the date the application was filed, although reinstatement may be retroactive to the date of revocation if the organization shows that it had reasonable cause for not filing for three consecutive years. Reinstatement of tax-exempt status may be retroactive to the date of revocation if the organization can show that it had reasonable cause for not filing. !!

To apply for tax-exempt status, use [Form 1023](#), *Application for Recognition of Exemption* (if you are a section 501(c)(3) organization) or [Form](#)

[1024](#), *Application for Exemption under Section 501(a)* (for other types of tax-exempt organizations).

## 6. Where can I get further information?

See Revenue Procedure 83-23, 1983-1 C.B. 687 for a list of those section 501(c)(3) tax-exempt organizations that are not required to file an annual information return on Form 990. [https://www.irs.gov/pub/irs-tege/rp1983\\_23.pdf](https://www.irs.gov/pub/irs-tege/rp1983_23.pdf)

See also IRS Publication 1828 for additional information, as well as various definitions of important terms. <https://www.irs.gov/pub/irs-pdf/p1828.pdf>

See also the *Guidelines for the Annual Filing Requirements for Catholic Organizations* (September 1, 2017) as published by the USCCB.

Contact RCRI with questions related to the “Parking Lot” Tax and the filing of Form 990-T.



## THE TAXPAYER FIRST ACT (HR 3151)

The Taxpayer First Act (HR 3151), signed into law on July 1, 2019, extends the requirement for nonprofit organizations to electronically file IRS annual information returns (Forms 990, 990 PF, 990-EZ, and 990-T) to all tax-exempt organizations who must file returns.

The new law also requires the IRS to publicly release data from these returns in machine readable format as soon as practicable, and to warn organizations that are delinquent in filing and at risk of losing their tax-exempt status before that status is automatically revoked.

Organizations exempted from filing information returns with the IRS, such as churches and their affiliates, are not affected by these technical changes.

### Gradual Implementation of Mandatory E-Filing

Before enactment of the Taxpayer First Act, only some tax-exempt nonprofit organizations with total assets of \$10 million or more as well as private foundations and charitable trusts that filed 250 or more IRS returns annually, were required to e-file Forms 990 and 990-PF. Under the new law, mandatory e-filing will arrive for most tax-exempt nonprofit organizations in 2021 and for all tax-exempt nonprofits that file returns with the IRS by 2022.

The new requirements apply to calendar-year filers for returns covering tax year 2020 (due May 15, 2021) and to fiscal-year filers for returns covering tax years beginning on and after July 2, 2019 (due the 15th day of the fifth month after the end of the tax period). Because the law takes effect for years starting after July 2, 2019, many nonprofits that just started a new fiscal year on July 1, 2019 will also be required to e-file in 2021 (for the July 1, 2020–June 30, 2021 tax period) rather than in 2020 (for the July 1, 2019–June 30, 2020 tax period).

Those few organizations with fiscal years starting between July 2 and August 31, 2019, such as new organizations



whose initial tax periods are established during this period, are scheduled to take up e-filing sooner, with their first electronic returns due in November or December 2020. However, these early filers may obtain an ordinary six-month automatic extension of time using Form 8868 to push their filing deadline into 2021.

Smaller organizations that file the Form 990-N have already been subject to mandatory e filing since 2007; the 990-N can only be filed directly by those organizations online through the [IRS's website](#) after registering a filing account. Non-profits that do not file the Form 990-N can prepare and submit their own returns electronically using IRS-approved tax preparation software, or by engaging a tax professional who uses software approved for electronic filing. A list of approved e-filing providers has not yet been released for tax year 2019, though it is expected that the [technical guidance on electronic filing options for exempt organizations](#) will be updated as part of the implementation of the new law.

The IRS may delay implementation of obligatory e-filing for up to two years for financially small organizations with total assets of less than \$500,000 and annual revenue less than \$200,000; all organizations filing unrelated business income tax returns; and, any organization facing undue burdens from the change. Organizations eligible for this temporary transitional relief should prepare to e-file their returns beginning in 2022 and beyond, when paper filing will be discontinued.

### **Greater Availability of Nonprofit Data**

A continuing trend in the nonprofit sector is broadening public access to data to promote greater transparency, accountability, and regulatory oversight. As mentioned, the new law requires the IRS disclose return information so computers can process it. This step will reduce barriers for state and federal regulators, charity watchdogs, academics, journalists, and other persons interested in analyzing the activities of nonprofits, and make it easier to scrutinize conflicts of interest, excessive salaries, and other signs of mismanagement and impropriety.

### **Automatic Revocation Reminder Notices**

The IRS must now notify organizations that have not filed a required annual return for two consecutive years, reminding them to file a return and thereby avert automatic revocation of tax-exempt status if a required return is not filed for the third year in a row. The loss of tax exemption for delinquent filers is still likely to continue despite the notice, particularly for organizations that do not keep their contact information up to date with the IRS. If an organization has lost its tax-exempt status for failure to file required returns, it must file a formal application for reinstatement to restore its status. Members of RCRI are especially reminded to investigate whether an annual return should be filed. A notification from the IRS should not be ignored – we have encountered situations where a member's sponsored work or other affiliate has lost its tax-exempt status on account of failing to file an annual return.

## **MEDICARE OPEN ENROLLMENT**

From October 15 to December 7, 2019, Medicare has their annual open enrollment period. This is a time for those on Medicare to make changes to their coverage. AARP says: "Take a hard look at your health care needs. Determine any anticipated changes. List all medications you take regularly and your copays. If you anticipate adding new drugs, put them on your list. Review what your current plan covers. Call Medicare at 800-Medicare (633-4227) or the Medicare Rights Center's helpline at 800-333-4114 with any questions." Changes can be made through the web portal. The open enrollment applies to Medicare part D (prescription drug coverage) as well as traditional Medicare or Medicare Advantage plans.



## **OFFICIAL CATHOLIC DIRECTORY**

The 2019 edition of the Official Catholic Directory (Kenedy Directory) is scheduled for shipment to subscribers in mid to late October.



## IRS UPDATE ON RACIAL NONDISCRIMINATION POLICY FOR SCHOOLS AND PRESCHOOLS OPERATED BY RELIGIOUS INSTITUTES

The Internal Revenue Service (IRS), through new guidance effective May 28, 2019, has added another way for private schools to publicize their racially nondiscriminatory policy to the general community. In *IRS Revenue Procedure 2019-22 (2019)*, the agency has stipulated that a website statement is now a suitable method for providing such a public statement.

Revenue Procedure 2019-22 modifies Revenue Procedure 75-50, 1975-2 C.B. 587, to reflect technological advances since its publication and provides a third method for a private school to satisfy the requirement contained in section 4.03 of the revenue procedure by using its Internet website to publicize the school's racially nondiscriminatory policy as to students.

See: <https://www.irs.gov/pub/irs-drop/rp-19-22.pdf>

This development should be noted by all schools and preschools operated, supervised or controlled by a religious institute.

### Background

Each year, a private school - including a school or preschool operated, supervised or controlled by a religious institute - must file a certificate of racial nondiscrimination (IRS Form 5578) with the IRS, and maintain supporting records documenting compliance with the policy, in order to retain its tax-exempt status. The certificate is due by the fifteenth day of the fifth month following the end of the organization's fiscal year. This is May 15 of the following year for organizations that operate on a calendar-year basis. For example, the Form 5578 for 2019 is due May 15, 2020.

The IRS states:

Every organization that claims exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code and that operates, supervises, or controls a private school(s) must file a certification of racial nondiscrimination. If an organization is required to file Form 990, Return of Organization Exempt From Income Tax, or Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, either as a separate return or as part of a group return, the certification must be made on Schedule E (Form 990 or 990-EZ), Schools, rather than on this form.

As such, a school or preschool operated, supervised or controlled by a religious institute and part of the group exemption number of the USCCB, should first ascertain from a central organization - such as a diocesan schools office or similar office of the religious institute - as to whether a Form 5578 has already been filed. If not, Form 5578 is easy to complete. A religious institute official simply identifies the church and the school and certifies that the school has "satisfied the applicable requirements of sections 4.01 through 4.05 of Revenue Procedure 75-50."

### The Requirements and Guidance

The four requirements are as follows:

1. The school has a statement of its racially nondiscriminatory policy toward students in all its brochures and catalogs dealing with student admissions, programs, and scholarships.
2. The school makes its racially nondiscriminatory policy known to all segments of the general community served by the school in one of the following ways:
  - a. Through the publication of a notice of its racially nondiscriminatory policy at least annually in a newspaper of general circulation;
  - b. Through utilization of the broadcast media; or,



C. based on the latest guidance, through the following third option:

The school may display a notice of its racially nondiscriminatory 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. *IRS Revenue Procedure 2019-22.*

The IRS has clarified that:

A publicly accessible homepage is one that does not require a visitor to input information, such as an email address or a username and password, to access the homepage. Factors to be considered in determining whether a notice is reasonably expected to be noticed by visitors to the homepage include the size, color, and graphic treatment of the notice in relation to other parts of the homepage, whether the notice is unavoidable, whether other parts of the homepage distract attention from the notice, and whether the notice is visible without a visitor having to do anything other than simple scrolling on the homepage. A link on the homepage to another page where the notice appears, or a notice that appears in a carousel or only by selecting a dropdown or by hover (mouseover) is not acceptable. If a school does not have its own website, but it has webpages contained in a website, the school must display a notice of its racially nondiscriminatory policy on its primary landing page within the website.

The IRS has drafted the following statement that satisfies the publicity requirement:

#### **NOTICE OF NONDISCRIMINATORY POLICY AS TO STUDENTS**

The (name) school admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

3. The publicity requirement is not required if one or more exceptions apply. These include the following:

- During the preceding three years, the enrollment consists of students at least 75 percent of whom are members of the sponsoring church or religious denomination, and the school publicizes its nondiscriminatory policy in religious periodicals distributed in the community.
- The school draws its students from local communities and follows a racially nondiscriminatory policy toward students and demonstrates that it follows a racially nondiscriminatory policy by showing that it currently enrolls students of racial minority groups in meaningful numbers.

4. The school can demonstrate that all scholarships or other comparable benefits are offered on a racially non-discriminatory basis.

Filing the certificate of racial nondiscrimination is one of the most commonly ignored federal reporting requirements. Copies of [Form 5578](#) through IRS.gov. Again, however, it should be ascertained whether a central organization already files a Form 5578 on behalf of the school or preschool.

For more information, go to:

<https://www.irs.gov/pub/irs-drop/rp-19-22.pdf>

<https://www.irs.gov/pub/irs-pdf/f5578.pdf>

<https://www.irs.gov/pub/irs-irbs/irb19-22.pdf>

(Attribution to various IRS Publications; Richard R. Hammer, Esq., “Updated IRS Reporting.”)

## About Us...

News In Brief..... Is a publication of the Resource Center for Religious Institutes that provides updates on financial and legal issues of interest to religious institutes and their members. Information contained in this newsletter does not constitute legal or financial advice. For answers to specific questions, consult your attorney, account or auditor.

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Gratitude and  
God's Blessings  
from the Staff of  
RCRI.

Sharon, Larry,  
Chris & Sabrina