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VIA EMAIL

TO: District Business Managers
Educational Administrators

FROM: Karen Sansone

DATE: February 25, 2014

RE: **Form 8822-B**

This memo is to inform you of a new IRS requirement, effective January 1, 2014 for organizations that have their own Employer Identification Number (EIN).

Background

When an organization, including a church or church related organization, applies to IRS for a federal Employer Identification Number (“EIN”), it must submit a Form SS-4. Line 7a of that form asks for the name and SSN, ITIN, or EIN of the organization’s “Responsible Party.” Many organizations submitted their Forms SS-4 long ago; and now the name having been listed on the initial Forms SS-4 as Responsible Party may no longer be applicable, e.g., he or she no longer works or volunteers for the organization in that capacity.

What’s New!

The Treasury Department issued a new regulation (T.D. 9617) requiring each organization with an EIN to update the name of its Responsible Party.

Accordingly, IRS designed a form for each EIN holder to transmit this new information: IRS Form 8822-B (copy available at <http://www.irs.gov/pub/irs-pdf/f8822b.pdf>). This form also serves to report an organization’s change of address. The new requirement to update the Responsible Party **became effective January 1, 2014, and organizations have sixty (60) days to comply**, i.e., March 1, 2014. In the future, whenever there is a change of Responsible Party, organizations must update that information using Form 8822-B within sixty (60) days of the change.

What does this mean?

Most organizations cannot remember who, if any, it last reported to IRS as its Responsible Party; therefore, each is strongly urged to follow the new mandate and file Form 8822-B with the name of its current Responsible Party as soon as possible. And going forward, continue to file anew within 60 days each time that person changes. Form 8822-B is relatively easy to complete. Religious entities closely

affiliated with the LCMS and its member congregations should check the “tax-exempt organization” box at the top of the form, and if they are only reporting a change in Responsible Party, they should also check Box 1 (“Employment, excise, income, and other business returns”).

In addition to reporting the new organization’s Responsible Party on Form 8822-B, the form also requests the name and tax identification of the *old* Responsible Party (Line 8a). The instructions however do not direct what to do if you are unable to find a copy of the initial Form SS-4 with this information, or you find the application but it did not then require this person’s name to be submitted. In either case it is reasonable to believe the IRS would prefer that the organization provide the name of the new Responsible Party and leave the name of the old Responsible Party blank or write “unknown”, rather than not complete the form at all. While omitting this information may prompt an inquiry from the IRS, it is unclear with what else an organization could report under these circumstances.

Consequences for Noncompliance

There seems to be no direct penalty for an organization’s failure to file the form so mandated. Instructions to Form 8822-B reads, as follows:

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.

Who is a Responsible Party?:

As defined in the Instructions to IRS Form SS-4:

... “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. The ability to fund the entity or the entitlement to the property of the entity alone, however, without any corresponding authority to control, manage, or direct the entity (such as in the case of a minor child beneficiary), does not cause the individual to be a responsible party.

The Responsible Party for an organization depends on the legal structure and polity of the organization. Inasmuch as it could be another entity, it is more typically an individual. For most LCMS affiliates or member congregations, the person who best fits the IRS-definition is more likely than not their respective Treasurers because he or she more than anyone else could be said to directly or indirectly “control, manage, or direct the entity and the disposition of its funds and assets.”