

Four Ways to Legally Organize Your American Church or Ministry **By Dr. Roger Sapp**

We recognize that some of you on our email list are not in America but perhaps you could send this information to your American Christian friends. We promise not to send out too many things that only speak to the American church.

According to the IRS Publication entitled *Tax Guide for Churches and Religious Organizations*, there are at least four different ways to organize a legal ministry or church. All four forms of organization are legal and all four can receive completely tax-deductible gifts from donors and offer completely legal receipts for those gifts. The donors to all four kinds of organization are able to take the donations off their taxes without fear if it was a genuine donation and no services or items of value were received in exchange. Here is a quote from page 2 from the IRS *Tax Guide for Churches and Religious Organizations*:

Churches and religious organizations may be legally organized in a variety of ways under state law, such as unincorporated associations, nonprofit corporations, corporations sole, and charitable trusts.

These are the four kinds of organizations that the IRS describes as being appropriate for a Christian group that is receiving donations:

1. *The unincorporated association*
2. *The non-profit corporation*
3. *The corporation sole*
4. *The charitable trust*

It is our purpose in this article to give a little information about the strengths and weaknesses of each of these forms of legitimate organization. In this article, we are not attempting to give every detail of how these organizations function but simply to describe them briefly. We will write about these forms of organization in the order that the IRS publication listed them.

1. The unincorporated association: This is the form of all Christian groups that are meeting with little formal organization, constitutions or charters. It could be called the *unorganized religious organization*. If a religious organization has not opted to be another kind of organization, then they are considered by the IRS as an unincorporated association. These organizations are completely legal to take donations. Most churches and christian works of various types in America were this kind of organization until the non-profit corporation became popular a few decades ago. Many unincorporated associations still exist today and do God's work in the United States and are completely legal to take donations and provide receipts for the donors without organizing further.

The IRS recognizes that there is a separation between church and state in the Constitution and that government cannot legally tax or regulate the church. The United States government also has some prohibition in defining what a church is legally. The courts have upheld this prohibition repeatedly. The First Amendment to the Constitution of the United States of America prohibits the federal government from legislating for or against religion. It says:

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof....".

Therefore, even the unorganized church group cannot be taxed as no legal law can be written to tax a religious organization or the donations received by a religious organization. Some have called this prohibition the *Constitutional Tax-Immunity* of the Church. You need not be organized to have *tax-Immunity*. You simply must be truly a religious organization that could be called a church. The Supreme Court and lower courts have consistently refused to define "church" or "religion" as a result of this prohibition in the Constitution and therefore a great variety of groups do qualify for tax-immunity. However, someone trying to abuse tax-immunity by forming a bogus organization or taking donations under false pretenses will probably be charged, convicted and go to prison. The courts have not refused to declare some organizations as tax-evasion scams. Nevertheless, an ordinary Christian church or ministry that has most of the ordinary characteristics of Christian groups is in no danger legally by not organizing further.

If you meet regularly for worship, prayer, and/or Bible study or you preach the gospel of Christ and teach out of the Bible, you will be considered legitimate. If you support genuine Christian ministers, home and foreign missions work, and help the poor, the IRS will consider you a legitimate tax-immune organization without further approval from anyone. You need not do all the things that we mention above but if the primary activity of your organization is genuine Christian work in any form, then you need not fear.

The idea that the church is not regulated by government may be confusing to some believers and even to some leaders. There is much confusion over organization and taxes in our day and leaders are making bad decisions out of this confusion. The IRS has not been much help. The IRS does seem to want churches to remain ignorant about tax-immunity and to create a situation where the activities of the Church are regulated by government. Church leaders may not know that churches are already exempt, not only from taxation, but from notifying the Secretary of the Treasury that they are seeking tax exempt status as stated in Section 508(c)(1)(A) of the IRS code. In other words, churches have tax exemption and tax-immunity without asking anyone's permission in the government because it was granted by the First Amendment of the Constitution which formed the American government.

Churches are exempt from filing returns of any kind and there are no record keeping requirements imposed by the IRS. (Section 6033) In other words, a religious organization can legally exist without government permission due to First Amendment rights to freedom of religion and as such, there is no law respecting its establishment or operation. You do not need permission from any federal or state authority or any agency to exist, operate or cease operations. You need not do anything other than be a Christian group to be an unincorporated association. However, you must still abide by the laws of the land and no individual in an Christian organization of any type is protected against lawsuits, appropriate criminal charges or having their private or organizational financial or organizational records, private or public, called into a court proceeding.

What about donations? At the beginning of each year in operation, a church will probably need to provide letters to its donors documenting the giving of donors for the previous year stating that the donations were given without services or something of material value in exchange. This is strictly a convenience to your donors and cannot be required of a tax-immune organization by the government. Your donors could present other forms of proof on their taxes that they gave to your tax-immune church or religious organization such as cancelled checks and they would suffice to prove a tax-deduction.

The bottom line for many Christian groups is simply having assurance that you do not have to form one of the next 3 kinds of organizations to be completely legal to take donations. We assure you that this is true. You are completely tax-immune if you are a genuine Christian religious organization or church.

The next form of organization described in this article is the best known in our day and the most used but it is also the most misunderstood.

2. The non-profit corporation which often called the 501(c)3 non-profit corporation. These numbers and the letter describe the portion of the IRS code where this corporation is described and regulated. This kind of organization is often mistakenly thought to be the only form of organization that the IRS and government recognizes. At this writing, the author suspects that 95% of leaders in the Church in America have this misconception and therefore are quick to form this kind of organization because they think that they have no other choice.

When someone or a group incorporates, they are creating a legal entity that has rights and privileges under the law similar to a living person. A corporation can own property like a person. It can sue and be sued like a living person, etc. In the case of a church, the congregation is incorporated and then can act as a single person in owning property, and other activities that a living person would engage in such as buying and selling. The congregation in this form of organization are like the "stockholders" in a business corporation and have the right to vote and be involved in the decisions of the corporation according to IRS

regulations. This is important. If you do not really intend to run your religious organization as a voting democracy, then don't form this kind of organization.

The non-profit corporation is most highly regulated by federal and state law of the four organizations. The law requires extensive record-keeping, strict rule-adherence in this form of organization. The IRS also requires a detailed annual public report of income, activities, officers and assorted other information if the income of the non-profit corporation exceeds \$25,000 in that year.

The IRS produces a large number of publications to instruct this kind of organization in what is allowed and not allowed. Some of the confusion in the Church in America about organization is a result of the huge mass of regulations concerning the 501(c)3 non-profit organization contained in IRS publications. Many think that these regulations apply to all forms of tax-exempt and tax-immune organizations but they do not apply. These publications often state things about *tax-exempt organizations* as if it applied to all organizations and churches but they are often only describing those organizations that are formed by the government under the provisions of 501(c)3 and are not describing churches or religious organizations that are exercising tax-immunity under the Constitution. You often have to look in these publications for what organizations are exempt from these regulations to determine this. Churches are often the first thing listed as being exempt from the regulations. Churches are exempt from the regulations but a church that becomes a non-profit organization under the law is not exempt from the regulations.

There are serious criminal penalties for breaking the rules in this form of organization as all the rules are made by the government. In the last 50 years, there has been a strong trend towards churches and other groups becoming this kind of organization often because they thought that they could not legally receive donations otherwise. This misconception actually has caused them to give up their Constitutional rights as a church as a result of the separation between church and state.

At the beginning of this article, we stated that the Church cannot be regulated by the government due to the First Amendment to the Constitution and yet we are describing a great deal of regulation by the government. Here is the explanation:

When you form this kind of organization, you cease being a legally tax-immune church any longer and voluntarily become a government controlled corporation.

Therefore, the Constitutional protections of being a church no longer apply. When you form this kind of organization, you are no longer legally a church. In other words, the government can regulate a non-profit corporation but not a church. A Christian group that forms a 501(c)3 corporation actually gives up its status as being *tax-immune* under the Constitution and agrees to operate as a government regulated non-profit corporation rather than a church. The

government then grants to them a lower tax status of being *tax-exempt* if they keep all the government's rules. Should they break the rules the courts can decide to dissolve the corporation and give the property of the non-profit corporation to another non-profit government formed corporation. It might be better to give up a tax-exempt status in favor of a tax-immune status before something like this occurs. Most, if not all, records of a non-profit organization are considered public records and can be used against the organization and its leaders in court.

Religious groups organized as non-profit organizations are also highly restricted and regulated about their involvement in political campaigns or even if they express strong views on subjects of morality that may be also political such as homosexuality, abortion, and the immoral behavior of public officials. There are non-profit organizations that have lost their real estate and other property because of a single sermon on a so-called "political" topic. In other words, you give up your freedom to speak on any subject and support any cause and give the government the right to judge your messages and ministry when you form this kind of organization.

This kind of organization can have serious trouble when there is a church split as members of the congregation can stage a legal takeover of church property. The church's physical property is entirely owned by the non-profit corporation. An organization like this will often lose control of the situation to the courts. This is particularly true if the non-profit corporation has not been abiding by its constitution and actually voting on matters involving the church. If it can be shown that the non-profit's constitution has been violated or ignored, then the church's property may be forfeited to another state regulated non-profit organization or given to one faction of the split church. Other kinds of issues involving property owned by the non-profit corporation often arise in this kind of highly regulated organization that may even create a criminal situation for its leaders. Many think that this is a dangerous way to organize a ministry or church particularly since it is not necessary. It might even become more dangerous if the Church becomes less popular in the United States in the future.

The IRS allows ministers in this kind of organization to take a non-taxable housing allowance. This allows a non-profit religious organization to give a substantial part of a minister's salary in a tax-beneficial way to the minister. However, it is not necessarily an advantage when compared with ministers operating in other forms of organization and living by a different theology can do concerning their tax-liability. This is probably a good time to remind everyone that tax-evasion is a serious crime. No one should form a religious organization to try to avoid paying taxes. However, tax-reduction through proper planning and understanding of the law is legal, a sign of good stewardship and is not discouraged by the government.

This kind of organization does get a discount on postage at the United States Postal Service as do all non-profit corporations, religious or otherwise. This may be a significant financial advantage for those doing a great deal of ministry through bulk mailings. Care should be exercised here also since some non-profit Christian groups have had significant legal problems with the postal authorities judging their material as not fitting the requirements of a non-profit organization. You can avoid this scrutiny by paying the normal bulk rate which is not significantly higher in our thinking.

Another small advantage of this kind of organization is that the IRS gives it a written approval of the tax-deductible status of donations before they are given. For instance, the IRS lists approved 501(c)3 non-profit corporations on its website and in Publication 78. The IRS does admit that the list is incomplete and does not include anyone who is simply being a tax-immune church without becoming a 501(c)3 non-profit organization. The IRS states in their publication *Tax Guide for Churches and Religious Organizations* on page 4:

Note that not every organization that is eligible to receive tax-deductible donations is listed in Publication 78. For example churches that have not applied for recognition of tax-exempt status are not included in the publication.

The IRS does mention this small advantage of being listed in their publication *Tax Guide for Churches and Religious Organizations* on page 3. There they state in two paragraphs:

Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS.

Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because such recognition assures church leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits. For example, contributors to a church that has been recognized as tax exempt would know that their contributions generally are tax-deductible.

Here the IRS states without equivocation that *churches are automatically considered tax-exempt*. A church does not have to legally apply for status with the IRS to have tax-deductible status but if you do so, the IRS will formally recognize you in their publications if you agree to their 501(c)3 requirements but not otherwise. They state that your donors may be more confident in giving you donations because you are listed by the IRS. Because of the widespread ignorance of the tax-immune status of the Church under the Constitution, this is probably true. However, it is still a bad idea. Simply educate your folks on the Constitutional status of your church or religious organization rather than submitting to the ignorance. Many donors do think that this government created

and government regulated form of organization is the only kind of religious organization that you can give to and get a tax-deduction. You need to educate them properly on this matter. You can give them this article to begin that process.

We remind you that donations to other forms of religious organizations that are not listed on the IRS website are not problematic. These donations will not cause you trouble with the IRS if you are a legitimate religious organization taking donations for legitimate religious purposes. Your donors will not have problems either with the IRS. The writer of this article functioned with a ministry that was an unincorporated association and received many donations over a decade without a single inquiry from the IRS for himself or his donors. He now is the office holder in a corporation sole and has functioned this way for a number of years and received legal donations without any trouble for himself or his donors.

3. The corporation sole: This is the oldest form of religious organization recognized by the U.S. government. While it has the word *corporation* in its name, it is not the same type of corporation as the non-profit corporation. The corporation sole is an ecclesiastically formed entity rather than a government formed organization such as the non-profit corporation. The government simply recognizes its existence rather than forming it through law. Therefore, this form of religious organization does not lose its tax-immunity under the Constitution. This form of organization is not highly regulated but has all the rights and powers due to any incorporated entity.

Because this type of organization is not well understood in the United States any longer, we will offer a brief explanation. The corporation sole has some unique elements not found in other types of organizations. A corporation sole consists of one person only (hence the term *sole*) and his successors, in some particular station, a religious office, such as *Overseer* or *Director*, that is incorporated through ecclesiastical authority. This gives the church or ministry that forms this kind of organization some legal capacities and advantages, particularly that of *perpetuity*, which in their natural persons they could not have had. For instance, the corporation sole is *the incorporation of a perpetual religious office*. Property and powers of a corporation sole are transferred on the death or resignation of an incumbent to successors to the incorporated office not to heirs or through executors. Since there is no transfer of money or property to individuals, there is no tax liability when an incumbent is replaced by a successor. The perpetual office remains intact and unchanged when a successor takes over the office.

The corporation sole lacks the usual trappings of a modern corporation. It does not normally have a board of directors, officers, bylaws, official minutes or a voting congregation. It might have a congregation such as a church but the congregation does not make final decisions. The office holder makes those decisions. Historically, in Europe, kings and a variety of clergy such as Roman Catholic and Anglican bishops qualified as corporation soles in their official capacities. The religious form is older, dating to the mid-fifteenth century and

brought to the American shores before the U.S. Constitution was written. Because the corporation sole existed in America before the U.S. Constitution was written, it enjoys recognition by the government even though it is not formed by the government.

A number of religious organizations in the United States of America, large and small, are incorporated in this fashion. About one-third of the various states in the United States of America have specific laws concerning the corporation sole. Those states that do not have specific laws concerning the corporation sole, do legally recognize the corporations sole formed in other states as legitimate tax-immune religious organizations as does the federal government.

A corporation sole is relatively easy to set up in comparison to the non-profit corporation and you need not pay anyone to do it if you chose to organize in this fashion. You need not inform the IRS of your incorporation as a corporation sole either. You will not need a lawyer either as most are unfamiliar with this form of organization. Some states, such as Nevada, only require filing out a one-page form to receive recognition. In turn, other states, even the state that you may reside in, will recognize you if any other state has recognized you.

The corporation sole, in the writer's opinion, best represents the theology of stewardship in the New Testament. A New Testament steward believes that God owns all things and he owns nothing. A minister in a corporation sole will own nothing. Therefore, in a corporation sole, the office holder does not draw a taxable salary as he or she might do in a non-profit organization. In the past and in the present, the corporation sole provides support for those ministers or priests who have taken a vow of poverty or perhaps another similar commitment to own nothing. The corporation sole takes physical care of the minister/priest by providing clothing, shelter, transportation and food but the minister/priest does not personally own any assets used in his care and thus incurs no tax-liability associated with drawing a salaried income and acquiring property of value. Other ministers functioning in a corporation sole who are not the office holder have a similar situation.

If the corporation sole has a weakness, it is the lack of familiarity that most people, including lawyers, accountants and government officials, have with it. Since this is an ecclesiastically formed organization, lawyers don't study it in law school and most are completely unfamiliar with it. Nearly everyone who sets up a corporation sole spends some time educating people about its legitimacy. This means that when a corporation sole buys property and tries to establish its tax-immune status with the government, there are a few more hurdles to cross because of people's ignorance about this form of organization. For instance, when most corporations buy real estate, the board of directors as officers of the corporation must sign the documents. In the case of the corporation sole, a single (sole) person signs. This may initially confuse people and require explanation of what a corporation sole is to the interested parties.

There have been some unscrupulous individuals trying to sell corporations sole to the public who have made false claims about them being a way to legally avoid paying taxes and having a kind of impenetrable protection from lawsuits. This is not true. We recommend avoiding anyone trying to sell you a corporation sole. We remind the reader that the IRS will not judge an organization on its theology but it will judge them on their sincerity. If it is clear to the IRS that the organization is not sincerely a religious organization and is simply a tax-evasion scam, then serious criminal charges and heavy fines will occur. Therefore, we highly recommend that only those who are legitimately in ministry and can embrace fully the stewardship theology behind a corporation sole attempt to organize as a corporation sole. Actually this warning goes for any kind of religious organization. The IRS is looking for and prosecuting tax-evasion through bogus religious organizations of all types.

4. The charitable trust: Groups or individuals may form trusts to do charitable work, religious or otherwise. Many times wealthy Christians will form this kind of organization to finance God's work. They receive tax-credit for their donations to the organization that they formed and have a measure of control how that money is used. These organizations can also receive donations and provide the donor with a receipt for a tax-deduction. The IRS also highly regulates the details of charitable trusts and require detailed record keeping and yearly reporting. Proper legal operation of a charitable trust is complex and often requires the oversight of a lawyer or tax-specialist to avoid trouble. There are quite a few IRS publications devoted to the rules concerning a charitable trust. It also does seem that this kind of organization is not seen as the church and therefore gives up its tax-immunity under the Constitution but this does seem less problematic than the non-profit corporation due to the fact that there are unusually fewer people involved who could cause trouble and this kind of organization is not expected to be democratic in operation. We do not recommend a church becoming a charitable trust for some of the same reasons that we cannot recommend a 501(c)3 non-profit corporation. However, this kind of organization may be appropriate for wealthy Christians with considerable legal help available to distribute funds in a wise way to further kingdom purposes and to be a good steward of the resources that the Lord has given them.

In conclusion, we remind the reader that the New Testament offers an interesting principle... *The law brings about wrath and where there is no law, there is no violation. (Romans 4:15)*. While we recognize that this verse is specifically about the Law of Moses, the principle also works in human law. Anyone seeking freedom to operate their ministry should not seek to be regulated by the government. The more law that you submit to voluntarily, the more potential for violation of that law and therefore more potential to experience the wrath of the government. If you must organize beyond simply being the church, then seek a form of organization that is not highly regulated.

Consider this quote from a retired IRS agent is appropriate in light of the principle above. In the words of Steve Nestor, a retired IRS Senior Revenue Officer :

I am not the only IRS employee who's wondered why churches go to the government and seek permission to be exempted from a tax they didn't owe to begin with, and to seek a tax deductible status that they've always had anyway. Many of us have marveled at how church leaders want to be regulated and controlled by an agency of government that most Americans have prayed would just get out of their lives. Churches are in an amazingly unique position, but they don't seem to know or appreciate the implications of what it would mean to be free of government control." (Quote from the Forward of In Caesar's Grip, by Peter Kershaw)

We recommend reading the *Paid in Full* series of books by Dr. Roger Sapp www.allnationsmin.org to better understand Christ's teaching of stewardship. The Church at large fails to teach what Christ taught about stewardship and tends to narrowly define the word as meaning *giving*. These books survey the teaching of Christ and His apostles on the entire subject of money, wealth, property and possessions.

We recommend that any leader of an Christian organization research the information in this article to determine for themselves if it is true. The author simply wanted to point the way to the truth. The author will not take responsibility for the failure of a ministry to abide by the law. The author is not a lawyer, does not earn his living by setting up ministries and will not offer advice on specifics of the operation of any ministry or changing from one form of organization to another. The information contained in this article should not be considered legal advice. Keep in mind that IRS regulations do change. Consult a lawyer familiar with matters of the Church, the Constitution, and taxes for legal advice.

Any comments, positive or negative, concerning this article should be directed to info@allnationsmin.org