

SEPTEMBER 29, 1999

SUBJECT: Guidance on Tax Exempt Status for Churches in the
Child and Adult Care Food Program and
Summer Food Service Program

TO: Regional Directors
All Regions
Special Nutrition Programs

This memorandum is intended to provide guidance and to clarify ongoing inquiries from regional offices and State agencies as to the eligibility requirements of churches seeking participation as sponsors in Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP). We have reviewed current Internal Revenue Service (IRS) documentation requirements with regard to tax exempt status of churches. Based on the review, churches seeking to participate in CACFP or SFSP will no longer be required to provide Federal tax exempt status documentation to State agencies. Background on the issue follows.

Statutory and Regulatory Requirements **CACFP**

Section 17 of the National School Lunch Act (NSLA), the statutory authority for CACFP, mandates two basic requirements for private organizations wishing to operate the CACFP:

- (1) the organization must be nonprofit (section 17(a));
or
- (2) the organization must have tax exempt status under the Internal Revenue Code of 1986, be “moving toward compliance with the requirements for tax exempt status”, or be currently operating a Federal program requiring nonprofit status (section 17(d)).

The two basic requirements listed above are codified in section 226.15 of the CACFP regulations.

SFSP

Section 13(a) of the NSLA, the statutory authority for SFSP, requires only that the organization be nonprofit in order to be eligible for program participation. Section 225.2 of the SFSP regulations define the terms private nonprofit and private nonprofit organization, and section 225.14 (b) includes private nonprofit organizations among the list of eligible sponsors.

Nonprofit vs Tax Exempt

Nonprofit status and tax exempt status are State law concepts; nevertheless, they are not interchangeable terms. Most States allow an entity to incorporate as a nonprofit or not-for-

profit organization. However, an organization with one of these designations is not exempt from Federal income tax. To qualify as a tax exempt organization, an entity must meet requirements set forth in the Federal Internal Revenue Code (IRC).

Tax Exempt

Tax exempt status can be at the Federal, State, or local level. For purposes of CACFP and SFSP participation, Federal status only is relevant. In implementing the tax exempt status requirement, some regions and State agencies require all private nonprofit organizations, including churches, to provide a copy of an IRS-generated document indicating recognition of the organization as tax exempt. However, this practice is inconsistent with IRS's application of the rules.

Churches are exempt automatically if they meet the requirements of section 501(c)(3) of the IRC under "organized for a religious purpose." This means that they are not required to apply for a document that they have tax exempt status. The May 1997 IRS Publication 557, page 20, "Tax Exempt Status for Your Organization", outlines two basic guidelines used for determining whether an organization meets the religious purposes test:

- (1) that the particular religious beliefs of the organization are truly and sincerely held,
and
- (2) that the practices and rituals associated with the organization's religious belief or creed are not illegal or contrary to clearly defined public policy.

Deadline Extensions

As a reminder, effective October 1, 1998, as mandated by the Child Nutrition Reauthorization Act of 1998 (Public Law 105-336), for those nonprofit organizations in a "moving toward" status would only be allowed up to 180-days to obtain their tax exempt status. At the discretion of the State agency, an organization could be granted a one-time 90-day extension, if the organization demonstrates that failure to obtain the tax exempt status within the 180-day timeframe was beyond its control. Prior to this change, there was no time limit or restrictions on CACFP participation for institutions.

Summary

IRS is the agency with jurisdiction over questions of tax exempt status under the IRC. Should there be concerns regarding:

- (1) the legitimacy of any organizations claiming to have tax exempt status by virtue of being a church,
or

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- (2) any other concerns regarding non-profit vs tax exempt status, we recommend that you contact a local or regional IRS office or their website (www.irs.ustreas.gov/plain/bus_info/eo/index.html) While churches are not precluded fro seeking IRS recognition of tax exempt status, they may choose not to do so.

In conclusion, effective immediately, Federal documentation of tax exempt status shall not required when considering a church's request to participate in CACFP or SFSP. If you hay any questions concerning this guidance memorandum, please contact Norma Ball or Melissa Rothstein at (703) 305-2620.

/Original Signed/

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Director

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