

## Record Keeping

*By Richard R. Hammar*



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Churches maintain many documents—some they must maintain permanently, others only briefly. Those responsible for their upkeep deserve accurate information regarding how to responsibly look after each document. With so much personal and organizational information in their care, record keeping is an opportunity to display stewardship and respect to church members.

The following articles will explain: which documents compose a church's records; how to maintain confidential documents; how to determine when it is appropriate to grant access to sensitive information; and how to establish policies for discarding or retaining church records.

Use this material to review of your current record keeping practices or as an introduction for someone new to church record keeping.

We hope this material helps you build a ministry that honors God and your members by being a good steward of church records.

—*Richard Hammar*

## Church Records 101

Before you can maintain them, you have to know what they are.

The following documents qualify as “church records.”

**Articles of Incorporation.** If your church is incorporated, the document that you submitted to the Secretary of State to become incorporated is known as the Articles of Incorporation (also known as a charter). It is a short document that contains the church’s name, address, period of duration, initial board of directors, and statement of purposes. It is the most authoritative legal document that a church has. In the event of a conflict between the charter and any other church legal document, the charter will control.

**Constitution or bylaws.** This is the document that contains most of a church’s rules of internal administration. At a minimum, church bylaws should include: church business meetings; selection and expulsion of members; responsibilities of board members and pastors; methods of amending the bylaws; purchase and conveyance of property; and other matters of organization, discipline, and administration as necessary. Avoid ambiguous language in your bylaws; it can lead to legal trouble.

**Financial records.** Church board members owe various fiduciary duties to their church, and these include familiarity with the church’s financial records. It is the church’s responsibility to implement safeguards regarding the handling of contributions and the recording of expenses, as well as to ensure that the church is properly receipting donors for their contributions.

**List of members.** Because many churches grant their members the power to decide administrative actions, it is critical for a church to be able to identify those persons who are active voting members. Make sure your church has an up-to-date list and a method for periodically reviewing and updating the list.

**Minutes of membership meetings.** Most churches conduct annual business meetings and occasional special meetings. Maintain records of all such meetings.

**Minutes of board and committee meetings.** Churches should maintain a complete set of the minutes of board and committee meetings. Insurance policies. Be familiar with where your church’s insurance policies are maintained and what the terms of your policies are. In situations where coverage may be limited (e.g. sexual misconduct), seek additional coverage and work to reduce the risk.

**Tax records.** These include payroll tax forms, housing allowance designations, contribution records, and any other forms you have filed with a government tax agency.

**Annual reports filed with the Secretary of State.** In many states, incorporated churches are required to file an annual report with the Secretary of State. This is a simple form that takes only a few minutes to complete. Churches should maintain a full set of all corporate annual reports filed with the Secretary of State’s office.

**Employment records.** These include applications for employment, reference checks, information concerning disciplinary actions, the I-9 immigration form that all employers must maintain for each new employee, and any other document relating to employees.

**Deeds.** Churches must be able to locate the deed to their church property. Church deeds often contain restrictions on the use of church property that are vital if your church ever seeks to relocate, expand, or conduct non-ministry operations on the premises.

**The Model Nonprofit Corporation Act**, under which many churches are incorporated, requires

incorporated churches to maintain complete books and records of account, minutes of business meetings, minutes of board meetings, and a listing of current members. ■

### Discuss

1. How often do we review our charter, bylaws, and financial records?
2. When does our church's charter expire? How long should we renew it for?
3. What restrictions on the use or sale of our property came with the deed to our location?

## Confidentiality

Your church must be careful with the confidential information it controls.

Some documents and records that churches maintain are private. Examples of confidential information include:

- Members' contributions records.
- Counseling notes taken by a pastor or church counselor.
- References you obtain when screening youth workers.
- Minutes of board meetings at which sensitive issues are discussed.

A church faces possible legal liability if it permits disclosure of any of these kinds of confidential records. As a result, it is important for church board members to take steps to insure that confidential information is not leaked or inadvertently disclosed. There are a number of ways this can be done, and to a great degree it is simply a matter of recognizing the problem and using common sense.

Precautions for keeping confidential information:

1. Keep confidential information in a locked, fireproof file, and give the keys to a designated person such as the treasurer or senior pastor, depending on the nature of the records involved.
2. Confidential information is often stored as files on church computers, and steps must be taken to restrict access to this data by unauthorized persons.
3. Confidential information should not be disclosed to persons without a legitimate need to know. For example, if the board dismisses a staff member due to a confession

of misconduct, the pastor and board must recognize that public disclosure of this information can result in legal liability.

4. The church board should consider adopting a covenant of confidentiality each year. This means that board members sign a covenant agreeing not to disclose any confidential information shared during board meetings without the unanimous consent of the board. This kind of covenant serves a few important purposes. First, it helps to impress upon the board the highly confidential nature of some information, and second, it reduces the legal risk to the church in the event that a board member violates the covenant and leaks confidential information. Of course, it will not work unless everyone consents, so if one or more board members refuse to sign, they must be excused from any discussion of confidential information.

5. Pastors often maintain counseling notes or other highly confidential records, and steps must be taken to ensure the proper disposition of this information in the event of the sudden death or incapacity of the pastor. ■

### Discuss

1. Which boards and committees in our church would benefit from a covenant of confidentiality?
2. How can we educate our staff and board members on the risks of publicly disclosing private information?
3. What is our church's current method of storing confidential information? How can we improve upon this process?

## Privacy

There are legitimate reasons for your church to reveal its private documents.

Church members have no inherent right to inspect church records. Such a right must be granted by some statute or legal document. Here are four ways that this can occur.

### State Nonprofit Corporation Law

If a church is incorporated, then your state nonprofit corporation law may permit members to inspect records in some situations.

The Model Nonprofit Corporation Act, which has been adopted in most states, gives members of an incorporated church the right to inspect corporate records for any proper purpose at any reasonable time. The act defines records as books and records of account, minutes of business meetings, minutes of board meetings, and a listing of current members. There are a number of things to note about this provision. First, it applies only to incorporated churches. Second, it applies only to members. Third, the right of inspection must be exercised at a reasonable time. And fourth, the right of inspection only applies if a member has a proper purpose in wanting to inspect church records.

As a general rule, if a member's request relates to some legitimate question of church administration or governance, as opposed to idle curiosity, then it should be viewed as proper.

### Church Charter or Bylaws

A second legal basis for a right to inspect church records is the church's own charter or bylaws. Occasionally, these documents will contain a provision addressing the inspection of church records.

### State Securities Law

If your church issues securities, such as bonds or notes, then state securities law will give investors, whether members or not, the right to inspect church financial records.

### Subpoena

A fourth legal basis for a right to inspect church records is a subpoena. Members and nonmembers alike may compel the disclosure or inspection of church records as part of a lawsuit against a church if the materials to be disclosed or inspected are relevant and not privileged. Although all states consider confidential communications to be privileged when they are made to a minister acting as a spiritual adviser, several courts have held that this privilege does not apply to church records. Two situations exist, however, in which a church may be able to avoid complying with a subpoena (although it still must submit a proper objection in court). First, churches should object to subpoenas that seek notes prepared in the course of spiritual counseling, since these materials would be viewed as privileged in most states.

Second, churches should not respond to attorney requests to turn over records unless presented with a subpoena, since this could expose the church to legal liability. It is better practice to inform the attorney that you will turn over the documents only in response to an enforceable subpoena, since this will reduce if not eliminate any liability to the church.

### FOIA and the First Amendment

Finally, there are two points church leaders should understand:

1. Privacy Act/Freedom of Information Act (FOIA). These laws apply to records maintained by the government, not churches, and are no basis for revealing records.

2. Most courts have ruled that the First Amendment does not insulate church records from inspection by members. ■

2. What are some good principles to have in place when we are suspicious of a person's motives for wanting access to church records?

3. How is maintaining and protecting records a form of stewardship?

### Discuss

1. What rights do our church charter and bylaws give to those who wish to see our records?

## Records Retention

Set rules for retaining or discarding church documents.

Church staff members need a records retention policy based on legal considerations and your church's needs. Making this policy systematic and rational will lighten your church administrator's workload.

Here are some guidelines for developing your church's records retention policy:

- Keep in mind that there are many reasons to keep church records. These include legal requirements under state or federal law, possible relevance in future litigation, the needs of the church, and historical importance.
- Make an inventory of existing records.
- Even when the period you have set for keeping a particular record has expired, do not automatically destroy it. You still may want to retain the document because of possible future litigation, or for historical purposes.
- Maintain permanent records in a secure location, such as a locked, fireproof cabinet. Retain additional copies of sensitive documents in multiple locations.
- Some churches maintain a "destruction of records journal." When the period of time for keeping a record has expired, the record is described in the journal before being destroyed.

Church leaders must recognize that some records should be kept permanently. Insurance policies should be kept permanently because

you will need them to establish what insurance company has a legal obligation to defend you in the event of an injury or loss occurring during the term of the insurance contract. Screening forms and references are another category of record that should be kept permanently for the same reasons as insurance policies. This may be necessary many years, and in some cases decades, after you hired or selected the worker.

Many kinds of corporate records should also be kept permanently. These include your corporate charter, bylaws, minutes of congregational and board meetings, and any annual corporate reports that you file with the Secretary of State. Some tax records should be kept permanently, and these include any forms relating to your exemption from federal or state taxes.

Most church records, however, you do not need to keep permanently. Federal law specifies that employers should retain a variety of payroll tax forms for at least four years, including forms W-2, W-4, 1099, and 941. The period for keeping other tax records generally corresponds to the period of time that the IRS can conduct an audit and assess back taxes—usually six years. Even so, there is no limit on how far back the IRS can assess taxes in cases of fraud, filing a false return, willfully attempting to evade tax, or failing to file a return. If there is any possibility that one of these "unlimited" assessment periods may apply, then you should keep relevant records permanently. ■

### Discuss

1. What are the guidelines we currently use when deciding whether to retain or discard records?

2. Based on the article, which documents should our church plan to permanently retain?

3. What types of records are not mentioned above that we could begin to discard?

## How Long Should We Keep Church Records?

It is a legitimate question. After all, church offices can become overwhelmed with old records and forms.

Unfortunately, there are no easy answers.

Churches approach recordkeeping in a number of ways. Some retain records “forever” just in case they may be needed even though most records have not been looked at in years. Others react to growing piles of clutter by going on occasional “search and destroy” missions. Some churches have adopted the rule that “if it hasn’t been touched in one year, then throw it out.”

None of these rules is either appropriate or desirable. It is possible to keep some records too long—well beyond what is required by law. In some cases this can result in the retention of records that might be harmful in future litigation. On the other hand, disposing of records too soon can lead to unanticipated problems—both with various state and federal government agencies and in future lawsuits.

What is needed is a records retention policy based on applicable legal considerations and your church’s needs that will make records retention and disposal decisions systematic and rational. The “guesswork” and arbitrary nature of record retention decisions must be replaced with a sound and consistent policy. The tables included will assist you in developing such a policy with regard to corporate records.

In establishing a records retention policy you should consider a number of factors in addition to how long to keep records. These include: (1) when to make copies of records; (2) maintaining the security of records (especially records you plan to keep permanently), including backups of

computer records; and (3) developing a record retention schedule (a document that summarizes records, lists how long you plan to keep them, and indicates where they are kept).

Here are some additional factors to consider in developing a records retention policy for your church:

- Make an inventory of existing records.
- The church board should develop and approve your records retention policy.
- Your records retention policy should be reviewed by a local attorney (who can check local and state requirements), a CPA, and your insurance agent.
- There are many reasons to keep church records. These include legal requirements, potential relevance in future litigation, the needs of the organization, and historical importance. The table reproduced in this article suggests minimum periods of time for retaining various church records. Some of the suggested retention periods are based on legal requirements, while others are based on practical considerations. You may want to keep some records longer than the table suggests.
- Some organizations maintain a “destruction of records journal.” When the period of time for keeping a record has expired, the record is described in the journal before being destroyed.

• Do not destroy records, even when the period for keeping them has expired, if they may be relevant in pending or threatened litigation or in

pending or threatened government (including IRS) investigations. ■

<b>Record Retention Guidelines for Corporate Records</b>			
<b>Document</b>	<b>Description</b>	<b>How long to keep (minimum)</b>	<b>Comments</b>
charter (articles of incorporation)	a legal document usually issued by the Secretary of State confirming corporate status	permanently	<ul style="list-style-type: none"> <li>the “charter” is the articles of incorporation that have been approved by the Secretary of State</li> <li>contains basic information such as name, address, the initial board members, duration, and purpose</li> <li>append all amendments to the charter</li> </ul>
constitutions or bylaws	rules of internal church governance	permanently	be sure the current version is distinguishable from obsolete versions (i.e., affix an effective date to all copies)
certificate of incorporation	a legal document issued by the Secretary of State confirming incorporation	permanently	a corporation’s “birth certificate”
certificate of good standing	a legal document issued by the Secretary of State confirming current corporate	permanently	it is a good practice to obtain one annually to validate corporate status
minutes of membership meetings	summaries of actions taken at regular and special membership meetings	permanently	minutes contain important information on many issues of church governance
minutes of board meetings	summaries of actions taken at regular and special board meetings	permanently	minutes contain important information on many issues of church governance
annual corporate reports	an annual report that in many states must be filed annually with the Secretary of State by any corporation incorporated under the general nonprofit corporation law	permanently	<ul style="list-style-type: none"> <li>failure to file this report can result in a “lapse” of corporation status</li> <li>obtaining an annual certificate of good standing ensures that the corporate status has not lapsed</li> </ul>

Record Retention Guidelines for Tax Records			
Document	Description	How long to keep (minimum)	Comments
Form W-2 (wage and tax statement)	reports wages paid and taxes withheld	at least 4 years after filing the return	retain the employer's copy of W-2 forms issued to employees
Form W-4 (withholding allowance certificate)	employees report withholding allowances on this form to enable their employer to withhold the correct amount of income taxes	at least 4 years after filing the return	<ul style="list-style-type: none"> <li>all lay employees should complete and submit this form to the church treasurer</li> <li>ministers' wages are not subject to tax withholding, but ministers who report their income taxes as employees can elect voluntary withholding of taxes by completing and submitting this form to the church treasurer</li> </ul>
Form 941 (employer's quarterly tax return)	used by employers to report wages paid and taxes withheld for each calendar quarter	at least 4 years after filing the return	<ul style="list-style-type: none"> <li>churches must file this form if they have at least one lay employee (or one minister who has elected voluntary withholding)</li> <li>amounts reported on W-2 forms issued by the church should reconcile with the 941 forms for the year</li> </ul>
Form 990-T (unrelated business income tax return)	tax return that tax-exempt organizations (including churches) file to report taxable income from an unrelated trade or business	at least 3 years after filing the return	<ul style="list-style-type: none"> <li>some exceptions apply (such as activities conducted by volunteers, sale of donated goods, and activities not regularly carried on)</li> <li>rent from debt-financed property may be taxable unless there is a plan to use the property for exempt purposes within 15 years of acquisition</li> </ul>
Form 1023 (application for recognition of exemption)	used to apply for IRS recognition of exemption from federal income taxes	permanently	<ul style="list-style-type: none"> <li>churches are not required to file this form, since they are automatically assumed to be exempt</li> <li>it often is desirable to have IRS recognition of exemption (though not required)</li> <li>many churches are recognized by the IRS to be exempt because they are included in denominational group exemptions</li> <li>churches not covered by group exemptions can file this form to obtain IRS recognition of exemption</li> </ul>
Form 1099-MISC (miscellaneous income)	used to report compensation paid to nonemployees of \$600 or more during the year	at least 4 years after filing the return	<ul style="list-style-type: none"> <li>churches use this form to report compensation of \$600 or more paid to self-employed clergy or any other self-employed worker, including itinerant evangelists and guest speakers</li> <li>not issued to corporations</li> <li>\$600 amount is net of accountable expense reimbursements and housing allowance</li> </ul>
Form 5578 (annual certification of racial nondiscrimination)	filed annually by private schools (preschool through graduate school)	at least 4 years after filing the return	used by private schools even if church-affiliated to certify compliance with federal nondiscrimination requirements (due by the 15th day of the 5th month following the close of each fiscal year)

IRS Publication 1828 contains the following information on the retention of church records: “The law does not specify a length of time that records must be retained; however, the following guidelines should be applied in the event that the records may be material to the administration of any federal tax law.” Publication 1828 lists the following guidelines:

Type of Record	Length of Time to Retain
records of revenue and expenses, including payroll records	retain for at least four years after filing the return to which they relate
records relating to acquisition and disposition of property (real and personal, including investments)	retain for at least four years after the filing of the return for the year in which disposition occurs

### Record Retention Guidelines for Tax Records—cont.

Document	Description	How long to keep (minimum)	Comments
Form 945 (annual return of withheld federal income tax)	employers use this form to report “backup withholding”	at least 4 years after filing the return	<ul style="list-style-type: none"> <li>employers are required by law to withhold 28% of the compensation paid to independent contractors who fail to provide a Social Security number</li> <li>the withheld taxes are reported to the IRS on Form 945</li> <li>churches can use Form W-9 to obtain the Social Security number of an independent contractor</li> </ul>
Form W-9 (request for taxpayer identification number)	employers use this form to obtain the Social Security number of an independent contractors	at least 4 years from the filing deadline of the contractor’s tax return	<ul style="list-style-type: none"> <li>churches should have any nonemployee complete this form who will be paid \$600 or more during the year</li> <li>corporations are exempt from backup withholding</li> </ul>
Form 8283 (noncash charitable contribution)	used by donors to substantiate certain noncash contributions valued at more than \$500	at least 4 years from the filing deadline of the donor’s tax return	only retain a copy if required to sign the “appraisal summary,” Section B, Part IV (donations of property valued at more than \$5,000)
Form 8282 (donee information return)	churches that sell donated property (valued by the donor at more than \$5,000) within 2 years of the donation file this form with the IRS	at least 4 years after filing the return	this form is only required if a church signed Section B of the donor’s Form 8283 (appraisal summary)
offering envelopes	church-issued envelopes used by donors for cash contributions	at least 4 years from the filing deadline of the donor’s tax return	Some churches issue donors a periodic summary of contributions that includes a statement advising donors to question any discrepancies quickly since all documentation (including offering envelopes) the church relied on in preparing the summary will be disposed of within a specified period of time (e.g., six months). Such a statement relieves the church of the responsibility of warehousing offering envelopes and other supporting documentation for long periods of time.
contribution statements	periodic summaries of contributions provided to donors by a church	at least 4 years from the filing deadline of the donor’s tax return	Contribution statements must contain language prescribed by the tax code to substantiate individual gifts of \$250 or more.

Record Retention Guidelines for Tax Records—cont.			
Document	Description	How long to keep (minimum)	Comments
"written acknowledgements" of charitable contributions	the tax code requires any individual contribution (cash or property) of \$250 or more to be substantiated with a "written acknowledgement" from the charity	at least 4 years from the filing deadline of the donor's tax return	<ul style="list-style-type: none"> <li>the tax code specifies language that must be included (e.g., "Thank you for your contribution of \$500. No goods or services were provided in exchange for your contribution other than intangible religious benefits.")</li> <li>churches often insert the required language in periodic "contribution statements" instead of issuing separate acknowledgments for each gift of \$250 or more</li> </ul>
"written acknowledgements" for short-term missions trips participants	participants in short-term missions trips can claim a charitable contribution deduction for travel expenses they incur if they receive a written acknowledgment from the church	at least 4 years from the filing deadline of the donor's tax return	the tax code specifies language that must be included
accountable reimbursement policy	church policy that reimburses employees' substantiated business expenses	permanently	<ul style="list-style-type: none"> <li>the policy usually is reflected in a board resolution or employee handbook</li> <li>be sure all amendments are dated</li> </ul>
accountable reimbursement policy receipts	employees must substantiate reimbursements with adequate documentation	at least 4 years from the filing deadline of the employee's tax return	<ul style="list-style-type: none"> <li>the regulations require employers to maintain receipts and other records used by employees to substantiate their reimbursed business expenses</li> <li>the IRS has indicated that it may relax this requirement, but it has not done so</li> <li>if an employer does not maintain these records, its employees will have to substantiate expenses if audited</li> </ul>
all records associated with nonaccountable expense reimbursements	reimbursement of personal expenses, or unsubstantiated business expenses	at least 4 years from the filing deadline of the employee's tax return	<ul style="list-style-type: none"> <li>churches must report nonaccountable reimbursements as taxable income to the employee</li> <li>failure to do so can expose the employee to substantial penalties (intermediate sanctions)</li> </ul>
housing allowance	board or church resolution or budget item designating a portion of a pastor's compensation as a housing allowance	at least 4 years from the filing deadline of the pastor's tax return	housing allowances are nontaxable (for income taxes) only to the extent they are used for housing expenses, and, for ministers who own their home, do not exceed the home's fair rental value
estimated housing expense form	churches often base housing allowances on a list of estimated housing expenses provided by a pastor	at least 4 years from the filing deadline of the pastor's tax return	if estimated expenses are significantly above the fair rental value of a pastor's home, the allowance should be reduced (otherwise the pastor's W-2 wages will be too low, which can create tax liabilities for a pastor who assumes that the W-2 reflects true compensation)
safety net housing allowance	continuing resolution designating a specified percent of the salary of any staff pastor as a housing allowance if no allowance has otherwise been declared	permanently	<ul style="list-style-type: none"> <li>such resolutions avoid loss of the housing allowance if a church neglects to designate an allowance for the year, or is late in doing so</li> <li>also useful when a church hires a pastor in mid-year (when designation of a housing allowance is often neglected)</li> </ul>

**Record Retention Guidelines for Tax Records—cont.**

Document	Description	How long to keep (minimum)	Comments
job descriptions of staff pastors	describe the duties for which the pastor is employed	at least 4 years from the filing deadline of the pastor's tax return	<ul style="list-style-type: none"> <li>• a housing allowance must represent compensation paid to a pastor for the exercise of ministry</li> <li>• job descriptions will indicate whether a pastor's duties constitute the exercise of ministry</li> </ul>
Form 8274 (certification by churches requesting exemption from FICA taxes)	used to exempt a church from the employer's share of FICA taxes	permanently	<ul style="list-style-type: none"> <li>• Churches with nonminister employees in July 1984 could exempt themselves from the employer's share of FICA taxes by filing this form with the IRS by October 30, 1984.</li> <li>• An exemption makes nonminister church employees self-employed for Social Security (they pay the full 15.3% self-employment tax like ministers). They are not exempt.</li> <li>• Churches hiring their first nonminister employee after 1984 have until the day before the due date for their first quarterly 941 form to file the exemption application.</li> </ul>
property tax exemption applications and certificates	application form used to apply for exemption of church property from taxation, and the certificate issued by the taxing authority recognizing the exemption	consult local law	<ul style="list-style-type: none"> <li>• churches generally must apply for property tax exemption under local law</li> <li>• in some states the exemption must be renewed periodically</li> <li>• an exemption application must be filed by the "tax day" specified by local law</li> </ul>
sales tax exemption applications and certificates	application form used to apply for exemption of state sales taxes, and the certificate issued by the taxing authority recognizing the exemption	consult local law	<ul style="list-style-type: none"> <li>• churches are exempt from sales tax in 41 states</li> <li>• exemption generally requires an application</li> <li>• exemption generally must be renewed periodically</li> <li>• the exemption varies from state to state</li> </ul>
tax-sheltered annuity salary reduction agreements	designations by employees of the amount of their salary to be reduced and placed in their retirement account	at least 4 years from the filing deadline of the employee's tax return	tax-sheltered "403(b)" annuities are the most common retirement program for church staff
cafeteria plan	popular fringe benefit plan allowing employees to use pre-tax salary reductions to pay for a menu of fringe benefits	permanently	be sure all plan amendments (with dates) are recorded
Form 990-T (exempt organization's business income tax return)	churches use this form to report "unrelated business income tax"	at least 4 years from the filing deadline of the tax return	examples of an unrelated trade or business include restaurants, and rent or fees from parking lots, communications towers, and some debt-financed buildings
retirement gifts	generally a resolution of the board or membership authorizing a gift to a retiring staff member	at least 4 years from the filing deadline of the employee's tax return	<ul style="list-style-type: none"> <li>• retirement "gifts" paid by a church to a retiring employee are taxable (even if labeled "love gifts")</li> <li>• exception for some gifts of insignificant value</li> <li>• exception for some "employee achievement awards" (property valued at less than \$400)</li> </ul>

**Record Retention Guidelines for Tax Records—cont.**

<b>Document</b>	<b>Description</b>	<b>How long to keep (minimum)</b>	<b>Comments</b>
special occasion gifts	generally a resolution of the board or membership authorizing a holiday, birthday or anniversary gift to a staff member	at least 4 years from the filing deadline of the employee's tax return	<ul style="list-style-type: none"> <li>• special occasion "gifts" paid by a church to an employee are taxable (even if labeled "love gifts")</li> <li>• exception for some gifts made directly to an employee by a church member</li> </ul>
health plans	employer-sponsored group health plans	permanently	<ul style="list-style-type: none"> <li>• be sure all plan amendments (with dates) are recorded</li> </ul>
documents defining compensation	generally in minutes of church board or membership meetings	at least 4 years from the filing deadline of the employee's tax return	<ul style="list-style-type: none"> <li>• compensation includes salary, expense reimbursements, fringe benefits, housing allowance, retirement plan contributions, insurance coverage, etc.</li> <li>• documentation may be needed in the event an employee's tax return is audited</li> </ul>
correspondence received from the IRS or state and local tax agencies	may pertain to questions about a tax return (W-2, 941, etc.), a donor's contributions, eligibility for property tax exemption, etc.	permanently	correspondence from taxing authorities may be relevant in future years

### Personnel Records

Every church keeps personnel records. In small churches that employ only the pastor, these records may include an application for employment, reference checks, a job description, and annual W-2 or 1099 forms. In larger churches that employ one or more nonminister employees, the list of personnel records can be long (including many of the forms listed in the table). The table lists most of the kinds of personnel forms that a church will use, along with a description of each form and a minimum time to keep each record.

***Key point.** Some of the recordkeeping requirements summarized in the table are based on federal laws that apply only to employers that are engaged in “interstate commerce.” Most local churches are not engaged in interstate commerce, unless they have substantial commercial transactions across state lines. For example, a church that sells tapes of its weekly services to individuals in other states may be engaged in interstate commerce. If in doubt, church leaders should assume that their church is engaged in interstate commerce.*

***Key point.** The rules listed in the table are based on federal law requirements. Most states have their own requirements which may apply to churches. A local attorney should be consulted to determine the application of state law.*

***Key point.** The rules summarized in the table are designed for the typical local church. Additional requirements may apply to large churches, denominational agencies, and parachurch ministries. To illustrate, the federal Family and Medical Leave Act imposes additional recordkeeping requirements on employers engaged in interstate commerce and employing 50 or more employees. The Civil Rights Act of 1964 imposes additional recordkeeping requirements on employers engaged in interstate commerce and employing 100 or more employees.*

***Key point.** The recordkeeping rules for corporate and tax records were addressed in a table appearing in the February 1994 edition of Church Treasurer Alert! This table included some personnel records, including W-2 forms, W-4 forms, 1099 forms, receipts substantiating business expense reimbursements, and housing allowance designations.*

***Note.** The recordkeeping periods are minimums. Do not destroy any record that may be relevant in pending or threatened litigation or a government investigation that has historical value, or that otherwise may be useful or relevant.*

Record Retention Guidelines for Payroll Records		
Document	Description	How Long to Keep (choose the relevant rule or rules)
applications for employment (hired)	churches often have prospective employees complete an application for employment that asks question about an applicant's background, education, and prior work experience	<p><b>RULE 1.</b> Employers subject to Title VII of the Civil Rights Act of 1964 (15 or more employees, and engaged in interstate commerce) must retain "any personnel or employment record" for at least 1 year after the record was made, or until the disposition of a discrimination charge. <i>29 CFR 1602.14.</i></p> <p><b>RULE 2.</b> Employers subject to the Americans with Disabilities Act (15 or more employees, and engaged in interstate commerce) must retain such records for at least 1 year after the record was made, or until the disposition of a discrimination charge.</p> <p><b>RULE 3.</b> Employers subject to the Age Discrimination in Employment Act (20 or more employees, and engaged in interstate commerce) must retain such records for at least 1 year from the date of the personnel action to which the document relates. <i>29 CFR 1627.3.</i></p> <p><b>RULE 4.</b> If an employment application includes screening questions to determine an applicant's fitness and suitability, or a statement authorizing the employer to obtain references (and releasing the references from liability) the application form should be retained permanently. If the employee later assaults or molests an adult or minor, this evidence will be helpful in proving that the church was not negligent in hiring the person.</p>
applications for employment (not hired)	churches often have prospective employees complete an application for employment that asks question about an applicant's background, education, and prior work experience	<b>RULE 1.</b> (above).
screening forms	used to determine the suitability of an individual to work with children (whether a paid employee or volunteer); includes background information on the individual's criminal convictions, prior church membership, and prior involvement with youth activities	<b>RULE 5.</b> Permanently. If the employee or volunteer later assaults or molests a minor, this evidence will be helpful in proving that the church was not negligent in hiring the person. Because of liberalized statutes of limitation in many states, lawsuits can be filed long after an alleged offender leaves the church.
reference forms—general	forms or letters completed by current or former churches, employers, schools, friends, or relatives, addressing the suitability of an applicant for employment	<b>RULE 6.</b> Permanently—if the employee counsels adults (or works with minors—see below). If the employee or volunteer later assaults or molests a counselee, this evidence will be helpful in proving that the church was not negligent in hiring the person. Because of liberalized statutes of limitation in many states, lawsuits can be filed long after an alleged offender leaves the church.
reference forms—for youth workers	forms or letters completed by current or former churches, employers, and youth organizations addressing the suitability of an applicant for youth work (paid or volunteer)	<b>RULE 7.</b> Permanently. If the employee or volunteer later assaults or molests a minor, this evidence will be helpful in proving that the church was not negligent in hiring the person. Because of liberalized statutes of limitation in many states, lawsuits can be filed long after an alleged offender leaves the church.
job descriptions	a summary of the duties the employer expects an employee to perform	<p><b>RULE 1.</b> (above).</p> <p><b>RULE 8.</b> Retain for the duration of the employee's employment. If the employee is dismissed (or resigns) under circumstances making a lawsuit against the employer reasonably foreseeable, then retain for the applicable statute of limitations period (for the foreseeable theory of liability, including breach of contract, discrimination, or personal injury) following the date of dismissal or resignation.</p>

Record Retention Guidelines for Payroll Records		
Document	Description	How Long to Keep (choose the relevant rule or rules)
employee manuals or handbooks	documents prepared by some employers setting forth the terms and conditions of employment, a summary of fringe benefits, and the grounds and procedures for discipline or dismissal	<b>RULE 9.</b> Permanently. Be sure to retain copies of all editions or versions, and be able to demonstrate which manual or handbook applied to any given period of time.
employee statement	a statement, signed by an employee, acknowledging that he or she understands the terms and conditions of employment (including grounds for discipline or dismissal) and agrees to them	<b>RULE 8.</b> (above).
payroll records	the following records for each employee: name, address, date of birth (if under 19), gender, occupation, rate of pay, hours worked each workday and week, compensation earned each week	<p><b>RULE 10.</b> Employers subject to the Fair Labor Standards Act (any church-operated school or preschool, or a church engaged in interstate commerce regardless of the number of employees) must keep such records for 3 years "from the last date of entry." <i>29 CFR 516.5.</i></p> <p><b>RULE 11.</b> Employers subject to the Age Discrimination in Employment Act (20 or more employees, and engaged in interstate commerce) must retain such records for at least 3 years after the record was made. <i>29 CFR 1627.3.</i></p> <p><b>RULE 12.</b> Employers subject to FICA (social security) taxes must retain these records for 4 years after the due date of the tax for the return period to which the records relate, or the date such tax is paid, whichever is later.</p>
contracts of employment	an agreement setting forth the terms and conditions of employment between a church and an employee	<b>RULE 10.</b> (above).
performance evaluations	periodic (i.e., annual) evaluations of several criteria of employee performance, including efficiency, ability, initiative, and attitude	<p><b>RULE 1.</b> (above).</p> <p><b>RULE 8.</b> (above).</p>
dismissal records	documents explaining the basis for an employee's dismissal	<p><b>RULE 1.</b> (above).</p> <p><b>RULE 8.</b> (above).</p>
testing records	tests administered to employees or prospective employees to measure intelligence or various job skills	<p><b>RULE 1.</b> (above).</p> <p><b>RULE 3.</b> (above).</p>
reports of work-related injuries and illnesses	reports noting the dates and circumstances of work-related injuries or illnesses of any employee, and completed within 6 working days of the injury or illness (OSHA Form No. 200 can be used)	<b>RULE 13.</b> Employers subject to the Occupational Safety and Health Act (any employer with 1 or more employees that is engaged in interstate commerce) must keep such records for "5 years following the end of the year to which they relate." <i>29 CFR 1904.6.</i>

Record Retention Guidelines for Payroll Records		
Document	Description	How Long to Keep (choose the relevant rule or rules)
fringe benefit plans	employer-sponsored plans addressing the terms and conditions of “specified fringe benefit plans” described in section 6039D of the Internal Revenue Code, including employer paid group life insurance premiums, accident and health plans, employer-provided group legal services, cafeteria plans, employer-provided educational assistance, and employer-provided dependent care	<b>RULE 14.</b> Employers maintaining a “specified fringe benefit plan” for any year must keep such records as may be necessary to establish that the requirements for maintaining such a plan have been met—for 7 years following the end of the year the documents were created.
Form I-9	immigration form completed by employers and new hires, demonstrating an employee’s identity and eligibility to work	<b>RULE 15.</b> All employers regardless of size must retain such records for 3 years after the date of hire or 1 year after an employee’s termination, whichever is later.

# Resources

## ONLINE RESOURCES:

**ChurchLawAndTax.com** provides comprehensive, searchable, and easily-accessible information on legal, tax, financial, and risk management matters affecting churches and clergy. The full archives of both *Church Law & Tax Report* and *Church Finance Today* reside on the site as does the Richard R. Hammar Legal Library.

**ManagingYourChurch.com** serves church leaders by providing accurate, authoritative, and timely law, tax, finance, church administration, and risk management articles and resources.

## PUBLICATIONS:

**Church Law & Tax Report** (published bi-monthly) provides practical information to church leaders on important legal and tax developments that have a direct impact on ministry. In each issue, Editor Richard R. Hammar, J.D., LL.M., CPA, provides summaries of the most recent tax laws affecting churches and ministries, plus compelling case studies. This vital publication keeps pastors, board members, attorneys, CPAs, and church business administrators apprised of the ever-changing tax laws allowing for sound decisions.

**Church Finance Today** (published monthly) keeps church treasurers and bookkeepers informed with timely and practical information on issues all churches face when managing money: internal controls, compensation, reporting, and budgeting. In addition, subscribers receive *SkillBuilders*, a bi-monthly supplement offering specific steps to improve money management practices.

## FOR BOOKS AND OTHER RESOURCES VISIT [ChurchLawAndTaxStore.com](https://ChurchLawAndTaxStore.com):

### **Church & Clergy Tax Guide**

Find comprehensive help understanding United States tax laws as they relate to pastors and churches with **Richard Hammar's** annual *Church & Clergy Tax Guide*. Tax law in general is highly complex and ever changing. Add to that the many unique rules that apply to church and clergy and you're set up for a challenging task that requires an expert's guidance.

### **Church Finance: The Complete Guide to Managing Ministry Resources**

Overseeing the financial health of a church is no simple task. Increased regulations, IRS audits, and changing technology are a few of the challenges facing both new and experienced treasurers, bookkeepers, business administrators, and executive pastors. *Church Finance*, the comprehensive guide created by respected experts and CPAs, **Michael E. Batts** and **Richard R. Hammar**, gives you the confidence you need to manage every aspect of your job.

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