

FAQ on Property Tax for Churches and Homeschool Programs

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Many homeschool groups use churches for their educational programs. These groups are grateful to the churches for allowing homeschoolers to use their building, sometimes without charging rent.

But some homeschool programs are organized and operate as for-profit businesses and that could threaten the church's property tax exemption. Churches are granted property tax exemption by their states for conducting religious activities or worship services. In most states, a church cannot let their building be used for activities with a "view to profit" or for "pecuniary gain" (gain of monetary value) or the church could lose part or all of its property tax exemption.

Here are some frequently asked questions about property tax, churches and homeschool groups.

If my homeschool group is a nonprofit organization, can we use the church building?

Yes, probably. Nonprofits, especially those with a religious purpose, do not have a "view to profit" or engage in activities for "pecuniary gain," (those phrases are used in several state statutes regarding property tax exemption) so they may use church property without posing a threat to the church's property tax exemption.

What if my business doesn't make a profit?

The property tax exemption is based on the use of an exempt property (i.e., the church building) by a for-profit business. Exemption is not based on the profitability of the business entity using the church's property.

If I don't make a profit from my business, I'm a nonprofit then, right?

No. An organization is only a nonprofit if it is organized (with a board, bylaws, etc.) and operated (with a religious, education or charitable purpose) as a nonprofit. What you are is an unprofitable business, but not a nonprofit organization.

I'm not a business; we're just a bunch of moms gathered together to educate our children.

If you received money and in return offered as service (such as educational classes), then you are operating a business. You are not "just a bunch of moms."

What if my business doesn't pay rent to the church?

It is commonly assumed that if a church does not charge rent to a for-profit business, then no *income tax* would be owed by the church. That is usually correct and refers to unrelated business income tax (UBIT). No income, therefore no income tax to pay.

But income tax and property tax are two separate taxes. The property tax exemption is based on use of the church's real and personal property, not on any income the church receives from rental activities. Therefore, the fact that a church is generous and does not charge rent to the business owner using the church building, does not change the fact that the church's property tax exemption is at stake.

Renting out space could incur unrelated business income tax (UBIT). The IRS assess UBIT on churches and all 501(c)(3) tax exempt nonprofits if they receive income from conducting a business unrelated to the church's religious purpose. If a church rents space to a for-profit business, the church is conducting a business and may be required to pay UBIT. There are several exceptions to UBIT, so the church should discuss the issue with their CPA.

What if my business gives a love offering or donation to the church?

Calling what you give to the church a "donation" or "love offering" is a simply renaming the payment. Calling your payment a donation does not change the fact that you are giving money to the church in exchange for use of its space. Even if the church does not bill you, it is payment for use of space and not a donation. Be honest. Call it what it is: rent.

Attorney and CPA, Frank Sommerville, says

"Many churches try to disguise rents by using other terminology or by claiming that the other organization is simply giving a donation to the church. Other times the church calls it a "cleanup fee" or tells the tenant to pay the janitor directly for his services. None of these name games work. If any amount is paid by the other organization to the church or the church's workers, then the IRS and state taxing authorities will likely treat it as rent paid to the church."

Source: <https://www.wkpz.com/content/files/Use%20of%20Church%20Facilities%20by%20Outside%20Groups.pdf>

Will the church lose its 501(c)(3) tax exempt status for hosting a for-profit business?

The church has 501(c)(3) tax exempt status as a religious organization and probably also charitable and educational purposes as well. As long as the church's activities are exclusively religious, charitable, and/or educational, their 501(c)(3) status is not in jeopardy. But two other issues need to be considered: inurement and unrelated business income tax (UBIT).

The church could lose its 501(c)(3) tax exempt status if they practice inurement. Inurement means "benefit" and includes the transfer or use of property to insiders for less than fair market value. The IRS forbids a 501(c)(3) tax exempt organization to use its income or assets to directly or indirectly benefit an individual, a person with a close relationship with the organization, or a person who is able to exercise significant control over the organization. These "insiders" can be board members or donors and would also include the pastor, leaders, elders, deacons, trustees, and staff and their family members.

Here's the IRS definition of inurement:

*A section 501(c)(3) organization must not be organized or operated for the benefit of private interests, such as the creator or the creator's family, shareholders of the organization, other designated individuals, or persons controlled directly or indirectly by such private interests. No part of the net earnings of a section 501(c)(3) organization may **inure** to the benefit of any private shareholder or individual. A private shareholder or individual is a person having a personal and private interest in the activities of the organization.*

Source: <https://www.irs.gov/charities-non-profits/charitable-organizations/inurement-private-benefit-charitable-organizations>

For example, the spouse of a pastor operating her for-profit business on the church's property could threaten the church's 501(c)(3) tax exempt status because the church may be guilty of inurement.

Inurement is a very serious matter and the IRS has revoked the 501(c)(3) tax exempt status from churches for practicing inurement.

Renting space is a commercial activity and not a religious, charitable or educational activity. So the IRS considers income from renting space as “unrelated business income” and will charge an unrelated business income tax (UBIT) on the profits from the rented space.

Property tax and unrelated business income tax are two separate taxes. Property tax is determined by state laws and administered by local county government. It is an ad valorem tax, meaning based on value. An ad valorem tax is based on the assessed value of an item such as real estate or personal property.

UBIT is determined and administered by the IRS at the federal level. It is a tax based on income, specifically business income unrelated to the exempt purpose of the tax exempt entity. Most churches strive to avoid UBIT and many enact policies prohibiting for profits businesses to rent or use the church’s property to avoid UBIT.

My business has a religious purpose. I’m a Christian, we pray before classes and quote Bible verses. So I fit the religious purposes of the church, right?

Having a religious faith or conducting religious activities such as prayer, Bible teaching, etc. does not mean your business has an exempt religious *purpose*. As a business, your purpose is to make a profit. Many state statues regarding property tax exemption are specific on what type of entities can claim the religious exemption.

What if the church knows I’m operating a for-profit business and doesn’t mind or doesn’t care?

It is quite rare for a church to knowingly allow a for-profit business use their facilities. The church is putting itself at risk of losing part or all of its property tax exemption. The church may be ignorant of their state’s prohibition against using their tax-exempt property to conduct for-profit activities. Or you may have misrepresented the true nature of your business. Or you may have spoken with a pastor and not the church’s business administrator or board of trustees, who are more aware of the legal and financial matters of the church.

What if my homeschool program is a nonprofit but I hire my teachers/tutors as Independent Contractors?

Many small nonprofits desire to avoid the hassles of employees and payroll, but hiring workers who provide the key activity of the nonprofit’s purpose (education in the case of a homeschool program), means that these individuals are still conducting their for-profit businesses on the church’s property. That could still threaten the church’s property tax exemption. An educational nonprofit should treat workers (i.e., teachers or tutors) providing the key activity of their nonprofit (education) as employees.

Other workers such as a website designer or outside bookkeeper, who do not provide the primary or key services of the nonprofit, can be treated as Independent Contractor without threatening the church’s property tax exemption.

What if my business is an LLC (Limited Liability Company)?

A single-member LLC taxed as a sole proprietorship is still a for-profit business. If you regularly conduct your for-profit business on the church’s property, it could threaten the church’s property tax exemption.

Isn’t it the responsibility of the church to ask if my homeschool program is a for-profit business?

It is quite unusual for a church to let a for-profit business use their facilities, so they may not have even thought of asking. The church may be ignorant of their state’s prohibition again using their tax-

exempt property to conduct for-profit activities. Additionally, you may have misrepresented yourself as “just a bunch of moms” or as a homeschool groups and not disclosed the for-profit nature of the business. You bear responsibility for disclosing the true nature of your business to the church.,

My church houses a bookstore/coffee shop/Weight Watchers, etc.? How is that legal but my homeschool business program is not?

These examples may be for-profit businesses operating in a church and may threaten the property tax exemption of the church. Alternately, the church may be paying property tax on the portion of the building being used by the businesses (if their state allows partial nonexempt use).

How do I know what my state laws say about property tax exemption for churches?

Do an internet search on property tax exemption and your state. Or search this pdf file (466 pages long) from The Civic Federation. <https://www.civiced.org/file/4794/download?token=3ifCi8dl>. It lists the property tax laws or each state. After you do a search for state laws, call your local county tax assessor. The state sets the laws, but the local assessor applies the law to specific situations. Ask the assessor about business use of a church’s building affecting property tax exemption.

Our church pastor/deacon/elder’s spouse is the business owner. Is that a problem?

It could be. The church's 501(c)(3) status makes them exempt from *federal income tax* and usually state income tax as well. Hosting a for-profit business does not typically threaten the church's 501(c)(3) tax exempt status, but if the for-profit business is owned by a church "insider" or family member of an insider, the church could be guilty of inurement and that may threaten their 501(c)(3) status. Prohibited inurement includes the transfer or use of property to insiders for less than fair market value.

Aren’t the churches making a big fuss over nothing?

Maybe not. Read this story about a church in Miami, FL that was assessed a \$7.1 million dollar property tax bill for conducting a for-profit school on their church property.

https://www.miamiherald.com/news/business/real-estate-news/article222993435.html?fbclid=IwAR2EhjdP7kYjJQFeJHipP_wBKMxhJfc3U33vi0SNwwBMkqtzudi_dSryE9g

The facts in this case are different from most homeschool programs, but a tax assessor can levy a tax lien against a church for conducting a for-profit business (in this case a Christian school) on the church’s property.

What should I do if I am the business owner?

- Become informed about the limits on business activities conducted by churches in your state’s property tax exemption laws. This document may help you start your research:<https://www.civiced.org/file/4794/download?token=3ifCi8dl>This pdf file is 466 pages and lists the state statuses for every state. Then do an internet search “YOUR STATE nonprofit property tax exemption” or “YOUR STATE church property tax exemption.”
- Call the government agency responsible for assessing property tax. In most states that is your local county property tax assessor. In other states, it may be the state department of revenue. Ask the person with the knowledge and authority to assess property tax, "Can a church let a for-profit business use the church’s building on a regular basis without harming our property tax exemption?" Ask for an assessment to be conducted and an estimate of the property tax to be calculated. Determine if your business can afford to pay the property tax bill.

- Talk to your host church about this issue. Ask what they know about limits on business activity for churches in your state.
- Consider looking for a location that is not a church or other property tax exempt nonprofit organization.
- Consider converting your business to a nonprofit organization with a religious and educational purpose. That involves forming a board to operate the program, drafting bylaws, etc. It takes time and money, but then the nonprofit organization could use the church's space without being concerned about threatening the church's property tax exemption.
- Seek competent legal advice on your business' use of church property regarding property tax exemption, UBIT, and inurement.

What should I do if I am a church leader/pastor/elder, etc.?

- Call the government agency responsible for assessing property tax. In most states that is your local county property tax assessor. In other states, it may be the state department of revenue. Ask the person with the knowledge and authority to assess property tax, "Can a church let a for-profit business use the church's building on a regular basis without harming the church's property tax exemption?"
- Cease offering space to for-profit businesses. Draft a policy prohibiting the use of the church's property by for-profit businesses on a regular, continual basis.
- Continue being generous, especially to nonprofit homeschool groups.
- Explain to the business owner that she can convert her for-profit business to a nonprofit organization with a religious and educational purpose. It involves giving up control of her business activities to a board, drafting bylaws, incorporating as a nonprofit with the state, etc. It takes time and money, but then the nonprofit organization could use the church's space without being concerned about threatening the church's property tax exemption.
- Ask anyone desiring to use the church's space if they are a nonprofit organization and perhaps ask for bylaws, Articles of Nonprofit Incorporation, or the IRS 501(c)(3) determination letter as proof of their nonprofit status and religious purpose.
- Seek competent legal advice on use of your church's property regarding property tax exemption, UBIT, and inurement.