



# **GUIDELINES FOR RECEIVING PASTORAL MINISTERS IN THE UNITED STATES**

## **CIVIL LAW CONSIDERATIONS – FINANCIAL LAW**

*Please note that information provided in this chapter does not constitute legal advice. Dioceses, eparchies, seminaries, institutes of consecrated life, and societies of apostolic life should consult with legal counsel before developing local policies or applying information contained herein to individual cases.*

## CIVIL LAW CONSIDERATIONS - FINANCIAL LAW

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### Introduction

In addition to the requirements of immigration law, local policies regarding international religious workers and seminarians need to incorporate the many legal implications of financial issues that these workers and their ecclesiastical sponsors must address. This chapter of the *Guidelines* will identify key issues for consideration in policy development. Primary emphasis will fall on R visa holders. The issues to be examined include: basic concepts of financial responsibility and organizational structure; general federal income tax and social security tax principles; federal tax-exempt status; the basic operation of the USCCB group tax-exemption

ruling; restrictions on fundraising within the United States; and discrete aspects of these issues as they apply specifically to clerics, non-ordained members of religious orders, and seminarians. In addition to federal income tax and withholding obligations, a religious worker may also be subject to tax and withholding at the state and, less frequently, local level. State and local tax liabilities are beyond the scope of the *Guidelines*.

### **Terminology**

Unless a more limited reference is specified, the term “international religious workers” or “religious workers” is intended to refer to individuals born outside the United States who are clerics, non-ordained religious, and seminarians. Although non-religious lay workers are not the focus of the *Guidelines*, they receive minor mention in order to properly address the tax treatment of certain other religious workers. The term “church employer” includes, but is not limited to, a diocese or eparchy, parish or parish school, and religious order<sup>1</sup> as well as any related charitable or other organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (Code) and listed in the Official Catholic Directory (OCD).

### **Organizations Authorized to Sponsor International Religious Workers**

Among the organizations eligible to sponsor individuals for R visa status are bona fide organizations affiliated with a religious denomination and exempt from taxation under section 501(c)(3) of the Code. To ensure that only qualified organizations sponsor R visa religious workers and that there is proper coordination of the movements and ministries of international religious workers within the United States, it is recommended that eligible sponsoring organizations be limited to section 501(c)(3) organizations affiliated with the Catholic Church in

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<sup>1</sup> As used in this section, the term “religious order” means a canonical religious institute or society of apostolic life that meets the requirements of Rev. Proc. 91-20, 1991-1 C.B. 524.

the United States *at the level of a US diocese or eparchy or a US province of a religious order.*

At a minimum, diocesan/eparchial policies should require that parishes, schools, and related church employers coordinate with the diocese or eparchy prior to sponsoring any international religious worker.

### **Responsibilities of Church Employers**

R visa religious workers are expected to be employed by sponsoring organizations or other church employers as detailed in their visa petitions. The employing organization is responsible for properly classifying workers as employees or independent contractors. The employing organization is also responsible for reporting religious workers' compensation to the federal (IRS), state, and local tax authorities, as required by the Code and other applicable laws. Finally, the employing organization is responsible for all required income tax and employment tax (FICA, Medicare, etc.) withholding.

### **Employment Status Determination**

The IRS has identified twenty (20) criteria for use in determining whether an individual is properly classified as an employee or an independent contractor. These criteria include: instruction; training; integration; services rendered personally; hiring, supervising, and paying assistants; continuing relationship; set hours of work; full-time service; working on employer's premises; order or sequence set; oral or written reports; payment by hour, week, or month; payment of business expenses; furnishing of tools; significant investment; realization of profit or loss; working for more than one firm; services available to the public; right to discharge; and, right to terminate.<sup>2</sup> The IRS has also relied on an approach emphasizing three main factors:

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<sup>2</sup> See Rev. Rul. 87-41, 1987-1 CB 296. The IRS has also relied on an approach emphasizing three main factors: behavioral control, financial control, and type of relationship between the

behavioral control, financial control, and type of relationship between the parties, to determine status as employee or independent contractor. Although all facts and circumstances must be considered, the right to direct and control the performance of services is the key factor in determining one's status as an employee. The application of the twenty factors predictably results in the classification of religious workers who perform services for dioceses, eparchies, or other church employers as employees.

Employers report an employee's wages on IRS Form W-2 and a non-employee's compensation on an IRS Form 1099 series return.<sup>3</sup> A religious worker (or seminarian) must provide either a social security number (SSN) or an individual tax identification number (ITIN) to facilitate these required filings. The SSN or ITIN is required on an income tax return filed by a religious worker (or seminarian). If the religious worker (or seminarian) fails to provide a SSN or ITIN, the employer is required to backup withhold.<sup>4</sup>

#### Social Security Number

An individual who is legally admitted to the United States for permanent residence or who is in other visa categories that authorize US employment is eligible to obtain an SSN,<sup>5</sup> which is obtained by filing Form SS-5, available from the Social Security Administration (SSA). The SSA will contact CIS to verify the individual's immigration status before issuing an SSN.

Individual Taxpayer Identification Number. The IRS will issue an individual taxpayer identification number to a nonresident alien or resident alien who does not have and is not

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parties, to determine status as employee or independent contractor. See IRS Publication 15-A, Employer's Supplemental Tax Guide, for additional discussion of employee classification issues.

<sup>3</sup> A different form (Form 1042-S) is used for non-employee income of nonresident aliens.

<sup>4</sup> IRC § 3406(a)(1)(A). Employers should use Form 945 to report backup withholding.

<sup>5</sup> IRC § 6109(d); Treas. Reg. § 301.6109-1(d)(4).

eligible to obtain an SSN.<sup>6</sup> The ITIN is used for tax purposes only. The ITIN is not to be used as proof of identity for nontax purposes, for example, to obtain a driver's license, legal residency, to seek employment in the United States, or to claim welfare or health benefits. The ITIN is obtained by filing Form W-7, *Application for Individual Taxpayer Identification Number*.

Form W-7 must be accompanied by original documentation necessary to establish identity and foreign status, such as a passport and birth certificate, or copies of these documents certified by the issuing agency. Notarized or apostilled copies of documentation usually will not be accepted. An individual may apply for an ITIN in person at any IRS Taxpayer Assistance Center in the United States or IRS office abroad. Designated IRS Taxpayer Assistance Centers

are able to verify passports and National ID documents and return them immediately.

Application may also be made through an acceptance agent authorized by IRS. For more information about acceptance agents, go to [www.IRS.gov](http://www.IRS.gov) and enter "acceptance agent program" in the search box. Application by mail should be made to Internal Revenue Service, ITIN Operation, P.O. Box 149342, Austin, TX 78714-9342. With certain exceptions, applicants must submit the original completed tax return for which the ITIN is needed along with the Form W-7.

**Case Study #1:** Father A. immigrated to the United States and eventually qualified for US citizenship. He was employed as a chaplain in a Catholic hospital. Father A. used the hospital's status under the USCCB Group Ruling and the hospital letterhead without the knowledge or authorization of appropriate hospital officials or of the diocese. With these pieces of "official representation," Father A. began recruiting religious workers from his country of origin and sponsoring them for R-1 visa status. He misrepresented that paid hospital ministry jobs were available. He also charged each religious worker a \$2,000 fee, which he justified on the grounds

<sup>6</sup> Treas. Reg. § 301.6109-1(d)(3)(ii).

that he was providing housing and food for these workers in his own home. Upon arrival, the religious workers accompanied Father A. to the hospital as unauthorized, unpaid “volunteers.” After the hospital became aware of his unauthorized R-1 visa operation, it terminated Father A.’s employment. This left the illicitly recruited religious workers stranded without employment, housing, or means of support.

This case illustrates immigration fraud. It also highlights the need for coordinating monitoring and reporting by Church employers to prevent such fraud.

*Written Agreement.* All elements of compensation to the religious worker should be identified in a written agreement between the sponsoring US diocese, eparchy, or religious order and its foreign counterpart. In addition to identifying the precise nature, location, and duration of the religious worker’s assignment as well as the party with responsibility for the costs of transportation to the assignment, the written agreement should include the following elements:

1. Salary (annual amount and frequency of payments);
2. Health benefits (describe any required participant contributions);
3. Retirement benefits (describe any required participant contributions);
4. Car (state whether in kind, allowance, or personal responsibility; provide details of ownership and access, of responsibility for car payments, if any, and of responsibility for insurance, repairs, and license fees);
5. Social security obligations (identify responsibility for these payments, which depend on applicable treaty provisions, if any);
6. Housing arrangements (state whether in kind, housing allowance, or personal responsibility; provide details regarding services, amenities);

7. Dependents (state whether dependents will accompany the religious worker; identify financial responsibility for dependent travel, schooling for minors, and other related expenses);
8. Additional benefits and allowances, if any;
9. Contribution, if any, from receiving diocese, eparchy, or religious order to sending diocese, eparchy, or religious order;<sup>7</sup>
10. Return visits to home country (state frequency, duration, and responsibility for costs);
11. Limitations on fundraising activities while in United States.

The written agreement should include a provision indicating that the religious worker is subject to US income taxation on the value of remuneration provided for ministry services, unless a specific tax law exclusion or tax treaty exclusion applies. It should also indicate that the religious worker may be subject to income tax withholding at the federal, state, or local level.

It is recommended that US dioceses and eparchies consider the use of similar written agreements for international seminarians whom they sponsor. The seminarian agreement should identify benefits (both cash and in kind) to be provided by the diocese/eparchy, expenses that are the seminarian's responsibility, and provisions indicating that the seminarian is subject to US income taxation on the value of benefits provided unless a specific tax law exclusion or tax treaty exclusion applies. Seminarians may also be subject to income tax withholding at the federal, state, or local level.

**General US Income Tax Concepts.** Under basic principles of US law, federal income tax is imposed on all income, cash or in kind, from whatever source derived, unless a specific tax

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<sup>7</sup> In order to avoid tax liability for the religious worker, any contribution to the sending diocese, eparchy, or religious order should be addressed independently from salary paid to the religious worker, who should have no right to receipt of such contribution.

law exclusion or tax treaty exclusion applies.<sup>8</sup> International religious workers, their sponsoring organizations, and other church employers must understand that there is no blanket exception for compensation paid to clerics, non-ordained members of religious orders, or seminarians in the exercise of religious ministry. Labeling payments as stipends, allowances, gifts, and “walking around money” and utilizing similar designations do not render these payments non-taxable.

A religious worker is subject to US income taxation on the value of compensation, whether cash or in kind, provided for ministry services, unless a specific tax law exclusion or tax treaty exclusion applies. Certain international religious workers (for example, permanent deacons and priests of Eastern Catholic Churches *sui iuris*) may be accompanied by dependent spouses or children. Payment of expenses for a dependent spouse or children is the personal responsibility of the religious worker. If the sponsoring organization or church employer agrees to pay such personal expenses, it will result in additional taxable income for the religious worker.

Social security obligations of the religious worker are determined according to the provisions of any applicable totalization treaty (see the “*Social Security (“Totalization”) Treaties*” section below).

**Common Exclusions from Income.** Not all payments by the sponsoring organization or Church employer to a religious worker are subject to income taxation. Some common exclusions include: reimbursements of substantiated business expenses incurred by the religious worker paid according to the Church employer’s accountable reimbursement plan; the value of employer-provided health benefits (both insured and self-insured); and qualified tuition reduction payments for religious workers employed at Catholic schools below the graduate level.

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<sup>8</sup> IRC § 61.

*Payments under Employer Accountable Reimbursement Plan.* An accountable reimbursement plan is a plan established by an employer for the purpose of reimbursing substantiated business expenses incurred by an employee. Payments made to a religious worker under a Church employer's accountable reimbursement plan generally may be excluded from income provided three requirements are satisfied: (i) expenses must have a business connection to the employer; (ii) expenses must be substantiated to the employer within a reasonable period of time (60 days); and (iii) excess reimbursement or allowance amounts, if any, must be returned to the employer within a reasonable time (120 days). Substantiation requires that the employee maintain an adequate record of expenses for which reimbursement is sought through receipts or an account book that establishes the amount of each expense, the time and place of the expense, the business purpose of the expense, and with respect to meal expenses for other persons, their business relationship to the employee.<sup>9</sup>

*Employer-Provided Healthcare.* Under section 105 of the Code,<sup>10</sup> the value of health benefits (both insured and self-insured) provided by an employer to or on behalf of an employee is excluded from gross income. This exclusion extends to healthcare benefits provided on an individual or family basis.

*Qualified Tuition Reduction Arrangements.* Section 117(d) of the Code<sup>11</sup> excludes from gross income any reduction in tuition provided to an employee of an educational institution<sup>12</sup> below the graduate level either at the employer institution or another educational institution. This exclusion applies to the employee and any qualified dependents (e.g., spouse or children).

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<sup>9</sup> I.R.C. § 274(d).

<sup>10</sup> I.R.C. § 105(a).

<sup>11</sup> I.R.C. § 117(d).

<sup>12</sup> See I.R.C. § 170(b)(1)(A)(ii).

Tuition reduction may not discriminate in favor of highly compensated employees. Accordingly, an international religious worker employed by a Catholic school below the graduate level may exclude from income the value of any tuition reduction provided to the religious worker or his or her dependents at either the employer school or another Catholic school.

It is important to emphasize that this exclusion does not apply to non-school Church employees. Since neither a Catholic diocese/eparchy nor a parish qualifies as an educational institution, the value of tuition reduction provided to non-school diocesan/eparchial or parish employees is includable in income as additional compensation.<sup>13</sup>

**Special Rules for Clerics.** Two additional income tax exclusions may be available to priests or deacons, provided all eligibility requirements are satisfied.

**Housing/Allowance Exclusion.** Section 107 of the Code provides an exclusion from income for the rental value of a home (rectory or parsonage) provided to a “minister of the gospel” as part of his compensation *or* for a rental allowance paid to a minister of the gospel as part of his compensation, to the extent that it is actually used to rent or provide a home. This exclusion is available only to clerics. It is not available to lay religious workers or non-ordained members of religious orders, whatever the nature of their duties.

Three criteria must be satisfied to qualify for the section 107 exclusion: (1) the housing or allowance must be provided to a minister of the gospel as compensation for ministerial duties; (2) the housing allowance must be designated in advance by proper church authorities; and (3)

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<sup>13</sup> But see IRS Private Letter Ruling 200149030 (September 10, 2001 – released December 7, 2001), in which IRS concluded that the entire education system of a diocese, comprising its schools, the diocesan education office, and a controlled educational subsidiary, constituted a qualified educational institution within the meaning of section 117(d).

the housing allowance must actually be used to rent or provide a home and may not exceed the fair rental value of such home.<sup>14</sup>

The threshold criterion for evaluating eligibility for the section 107 exclusion is status as a “minister of the gospel,” defined as an individual who is a “duly ordained, commissioned, or licensed minister of a church.”<sup>15</sup> The Tax Court has articulated a five-part test to determine qualification as a minister of the gospel, which considers whether the individual:

- administers sacraments;
- conducts worship services;
- performs services in the “control, conduct, or maintenance of a religious organization”;
- is “ordained, commissioned, or licensed;” and
- is considered a spiritual leader by the religious body.<sup>16</sup>

The threshold criterion for evaluating eligibility for the section 107 exclusion is status as a “minister of the gospel,” defined as an individual who is a “duly ordained, commissioned, or licensed minister of a church.”<sup>17</sup> In addition to having the status of “minister of the gospel,” the individual must also be performing duties that are normally performed by ministers of the gospel, which the IRS has identified as including: the performance of sacerdotal functions, the conduct of religious worship, the administration and maintenance of religious organizations and their integral agencies, and the performance of teaching and administrative duties at theological seminaries.<sup>18</sup>

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<sup>14</sup> See *Warren v. Commissioner*, 302 F. 3d 1012 (9th Cir. 2002).

<sup>15</sup> Treas. Reg. § 1.1402(c)-5.

<sup>16</sup> *Knight v. Commissioner*, 92 T.C. 12 (1989).

<sup>17</sup> Treas. Reg. § 1.1402(c)-5.

<sup>18</sup> Treas. Reg. § 1.107-1(a).

If a cleric is provided a housing allowance instead of in-kind rectory housing, it is essential that the allowance amount be designated *in advance* by appropriate diocesan or eparchial officials.<sup>19</sup> The amount of any designated housing allowance is limited to the *least* of the following amounts: the amount designated in advance by appropriate diocesan or eparchial officials; the fair rental value of the residence; or the actual expenses incurred in providing the residence.<sup>20</sup> The cleric is responsible for reporting as income any part of a designated housing allowance that is not actually used for a residence.

Even though the value of housing or a designated housing allowance is excluded from income for income tax purposes, it must be included as income for social security tax purposes (that is, self-employment income or “SECA” tax).<sup>21</sup>

*Meals Provided for the Convenience of the Employer.* Section 119 of the Code provides that the value of meals, which are furnished to an employee by his or her employer on the business premises of the employer for the convenience of the employer, is excludable from income. Meals furnished without charge to an employee are regarded as furnished for the convenience of the employer only if the meals are furnished for a substantial noncompensatory business reason of the employer, as opposed to a means of providing additional compensation to the employee.<sup>22</sup>

Applicability of the section 119 exclusion is likely to be limited to priests living in rectory housing. Section 119 would exclude from income the value of meals provided in the rectory if the priest is required to live there in order to be available on call and if the rectory is

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<sup>19</sup> This advance designation can be evidenced by an employment contract, meeting minutes, or through some other written documentation.

<sup>20</sup> Treas. Reg. § 1.107-1(b).

<sup>21</sup> IRC § 1402(a)(8).

<sup>22</sup> Treas. Reg. § 1.119-1(a)(2)(i).

adjacent to the church so as to qualify as the business premises of the employer. Section 119 does not exclude from income a meal or food allowance but only the in-kind provision of meals.<sup>23</sup> Further, the section 119 exclusion is not available with respect to the value of meals provided to priests classified as independent contractors or for any dependents of a priest, since they do not qualify as employees.

Even though the value of meals is excluded from income for income tax purposes, it must be included as income for social security tax purposes.<sup>24</sup>

Social Security Status. Whether or not a cleric is classified as an employee for income tax purposes, under the Code he is classified as an independent contractor for social security purposes with respect to services performed in the exercise of his ministry.<sup>25</sup> Thus, FICA taxes would not be withheld from such a cleric. Instead, SECA (self-employment) taxes would be imposed on the cleric's compensation, as well as on the amount of housing allowance or value of housing excluded from income under section 107 and the value of meals excluded from income under section 119.

Taxation of Members of Religious Orders. Income tax liability for members of US religious orders generally is governed by a revenue ruling, Rev. Rul. 77-290,<sup>26</sup> which provides that a member of a religious order providing services to a church employer will be considered for tax purposes to be an agent of his or her order, and that member will not be liable individually

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<sup>23</sup> See *Commissioner v. Kowalski*, 434 U.S. 77 (1977).

<sup>24</sup> IRC § 1402(a)(8).

<sup>25</sup> Under IRC § 3121(b)(8)(A), services performed by a minister of the gospel in the exercise of his ministry are not considered "employment" for purposes of FICA tax. Under IRC § 1402(a)(8), self-employment tax is imposed on income from such services.

<sup>26</sup> 1977-2 C.B. 26; see Joint Memorandum of USCCB and Legal Resource Center for Religious, Compensation Paid to Members of Religious Orders (September 11, 2006), available at [www.usccb.org/ogc](http://www.usccb.org/ogc) for more detailed information.

for federal income or employment taxes on compensation paid by the church employer.<sup>27</sup> The religious is not liable for payment of taxes, *provided* that three criteria are met: (1) the religious must be subject to a vow of poverty; (2) the religious must be providing services for a church employer listed in the OCD<sup>28</sup> at the direction of his or her ecclesiastical superior; and (3) the religious must remit the full amount of compensation to his or her religious order, which must be exempt from federal income tax under section 501(c)(3) of the Code. If any Rev. Rul. 77-290 criterion fails to be met, the religious is individually liable for taxable income received as compensation.

Rev. Rul. 77-290 was not intended to apply to members of non-US religious orders.<sup>29</sup> Among other factors, a non-US religious order is unlikely to qualify for section 501(c)(3) status. Even if a sponsoring organization or church employer were to remit compensation earned by an international religious directly to his or her non-US religious order, as is customarily done with compensation earned by members of US religious orders, this practice would not satisfy Rev. Rul. 77-290, which requires that the funds be paid to a section 501(c)(3) tax-exempt organization. Accordingly, international members of non-US religious orders working in the United States usually incur individual tax liability on compensation they earn. In addition, contributions made by an international religious to a non-US religious order do not qualify as

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<sup>27</sup> See IRC § 1402(c)(4) and Treas. Reg. § 1.1402(c)-5(d)(3), IRC § 3121(b)(8)(A) and Treas. Reg. § 31.3121(b)(8)-1(d), and IRC § 3401(a)(9) and Treas. Reg. § 31.3401(a)(9)-1(d), regarding the exceptions from SECA tax, FICA tax and income tax withholding, respectively.

<sup>28</sup> This treatment is also applied to asterisked (domestic non-Group Ruling) listings in the OCD, since these are subject to the same standards of relationship to the Church as are ordinary Group Ruling listings in the OCD.

<sup>29</sup> For purposes of this section, the designation of a religious institute as “non-US” refers to the place of the institute’s organization as a civil entity, not its status as an institute of diocesan or pontifical rite.

deductible charitable contributions under section 170 of the Code, which limits deductibility to contributions made to qualified U.S. organizations.

OCD Listings for Religious Orders. The OCD contains several listings in which a religious order may appear. Only one – the formal diocesan/eparchial listing – serves to verify that a religious order is recognized as a tax-exempt organization under the USCCB Group Ruling and is eligible to sponsor R-visa religious workers.

Religious Represented in Diocese. These listings are located toward the end of each diocese's or eparchy's listing in the OCD and include *Religious Institutes of Men Represented in the Diocese* and *Religious Institutes of Women Represented in the Diocese*. The listing of a religious order in one of these sections signifies only that one or more individual members of the listed religious order are present and performing ministry within the diocese/eparchy. If members of a non-US religious order are present to perform ministry in a US diocese/eparchy, that non-US religious order may be listed in the “Represented in the Diocese” section of the OCD. However, such listing does *not* confer tax-exempt status under the USCCB Group Ruling or eligibility to sponsor R-visa religious workers.

Formal Diocesan/Eparchial Listing as Religious Order. To qualify for formal diocesan/eparchial listing, a religious order must submit to the diocese/eparchy in which its principal office is located a completed Form 0928A, Application for Inclusion in USCCB Group Ruling.<sup>30</sup> The religious order must be organized as a civil entity in the United States, and must meet all the legal requirements and other requirements for inclusion in the USCCB Group Ruling as set forth in the Application and determined by USCCB. Briefly, the religious order must establish that it meets the requirements of section 501(c)(3) of the Code, that it is not a private

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<sup>30</sup> Form 0928A is available at [www.usccb.org/ogc](http://www.usccb.org/ogc) under “Group Tax Exemption.”

foundation under section 509(a), that contributions will qualify as deductible under section 170, and that it is not barred from eligibility under any other ineligibility categories established by the USCCB and set forth in the Application. In addition, the religious order must have a significant relationship to the Church in the United States. The formal diocesan/eparchial listing is the *only* OCD listing that establishes tax-exempt status under the USCCB Group Ruling and eligibility to sponsor R-visa religious workers.

Summary Listings for Religious Orders of Men and Women. Located at the end of the OCD, listings entitled *Religious Institutes of Men* and *Religious Institutes of Women*, including an Index, summarize information about religious orders operating in the United States, including dates of foundation, general headquarters, US provinces, and holdings in the United States. A religious order is not eligible for inclusion in one of these summary listings unless it has first qualified for a formal diocesan/eparchial listing conferring recognition of tax-exempt status under the USCCB Group Ruling and has a canonically established US province. Inclusion of a religious order under one of these summary listings does *not* confer recognition of tax-exempt status under the USCCB Group Ruling or eligibility to sponsor R-visa religious workers.

Incorporation of International Religious Working in the United States. Some international religious performing ministry in the United States have been advised to incorporate and apply for inclusion in the USCCB Group Ruling in an attempt to satisfy the requirements of Rev. Rul. 77-290, thereby avoiding individual US income tax liability. It is recommended that dioceses/eparchies *not* approve applications for inclusion in the USCCB Group Ruling submitted by corporations (or other legal entities authorized under state law) established by members of a non-US religious institute working in the United States, except in the case of canonically-established US provinces of the non-US religious institute. With rare exception, these

corporations (or other legal entities) will not satisfy the criteria for inclusion in the USCCB Group Ruling, for the reasons summarized below.

- The corporation is not likely to satisfy the basic legal requirements of section 501(c)(3) of the Code: this corporation itself does not qualify as a religious order; its governance structure, typically involving control by a small number of international religious and lacking in meaningful supervision and control by US religious superiors, raises significant private benefit issues; and the nature of the charitable and religious activities conducted by the corporation, as opposed to the individual religious, may be unclear.
- Because of the limited sources of funding, typically limited to the compensation earned by a small number of religious from their work for Church employers, the corporation will not qualify as a public charity under section 509(a), which is a prerequisite for inclusion in the Group Ruling.
- The corporation may operate as a conduit into which compensation earned by individual religious, as well as funds solicited to third parties, is paid or donated to support a non-US religious order. Under these circumstances, contributions will not qualify for deductibility under section 170 because they are destined for transmission to a non-qualified beneficiary, the non-US religious order.
- With no structural relationship to or supervision by any US Church entity, the corporation will not be able to demonstrate the relationship to the Church in the United States necessary to qualify for inclusion in the USCCB Group Ruling.
- Religious present in temporary R-1 visa status have a five-year maximum stay, which is inconsistent with the permanence implied by incorporation. Conversely, incorporation

implies intent to remain in the United States that may be inconsistent with R-1 visa requirements.

- Including the corporation in the USCCB Group Ruling and OCD would establish it as a presumptively-valid organization eligible to sponsor other international religious for R-1 visa status. Such an arrangement would be a misuse or abuse of immigration law whereby current R visa holders are sponsoring others for R visa status.

The desire to simplify tax compliance for Church employers does not justify inclusion of an unqualified organization in the USCCB Group Ruling or potential misuse or abuse of immigration law. Such action jeopardizes the integrity of the Group Ruling and risks the future of the religious worker visa program. If a particular non-US religious order increases its numbers in the United States, has members move from temporary R visa status to special immigrant (permanent residency) status, and establishes a more permanent US governance structure, *e.g.*, a US province, at that point a diocese/eparchy may be in a position to approve inclusion in the USCCB Group Ruling, provided all legal and relational requirements can be satisfied.

#### **Classification of International Religious Workers and Seminarians for U.S. Tax**

**Purposes.** Federal income taxation of foreign nationals is in itself complex and confusing, and even more so, because the terminology used for tax purposes is not the same as that used for immigration purposes. For tax purposes, the threshold determination is whether the international religious worker or seminarian is classified as a resident alien or nonresident alien. Penalties may

apply to church employers for failure to determine the correct status, to obtain the proper documentation, or to withhold and report properly.<sup>31</sup>

*Resident Alien vs. Nonresident Alien Status.* Nonresident alien status is the default status.

Thus, unless the religious worker or seminarian satisfies either the “green card test” or the “substantial presence test” for resident alien status, he or she will be considered a nonresident alien.

*Green Card Test.* Individuals who have been issued a permanent resident card or “green card” at any time during the calendar year are treated as resident aliens from the first day that they are present in the United States after receiving the green card.<sup>32</sup> Resident alien status continues unless it is revoked or abandoned. It is revoked upon issuance of a final administrative or judicial order of removal. It is abandoned through administrative or judicial determination of abandonment of resident alien status, which may be initiated by the individual, the CIS or a US consular officer.

*Substantial Presence Test.* If an individual has not been issued a green card, his or her tax status is determined by computing days of physical presence in the United States over a three-year period. The individual must be present in the United States for at least 31 days during the current calendar year and at least 183 days during the current year combined with the two preceding years.<sup>33</sup> This test must be computed for each calendar year that an individual is present in the United States. For purposes of the substantial presence test, “United States” includes all fifty states and the District of Columbia, and the territorial waters of the United States. It does

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<sup>31</sup> Among the applicable penalties are: failure to withhold under section 6672, failure to furnish statements to employees under section 6674, failure to file correct information returns under section 6721, and failure to issue correct payee statements under section 6722.

<sup>32</sup> IRC § 7701(b)(1)(A)(i).

<sup>33</sup> IRC § 7701(b)(3)(A).

*not* include US possessions, territories or airspace.<sup>34</sup> The substantial presence formula gives more weight to days most recently spent in the United States, as follows:

- Current year: Count all days present in United States;  
must be *at least 31 days*
- First preceding year: Count one-third days present in United States.
- Second preceding year: Count one-sixth days present in United States.
- Three-year total: Must be *at least 183 days*

If, applying this formula, an individual's three-year total is 183 days or more, he or she is a resident alien for tax purposes. If the total is less than 183 days, he or she is a *nonresident alien* for tax purposes. It is important to understand that the individual *must* satisfy the thirty-one-day requirement for the current calendar year.<sup>35</sup> If he or she is not present in the United States for thirty-one days during the current year, then the individual will be treated as a *nonresident alien* for tax purposes, even if he or she could otherwise have met the 183-day test. Special rules may apply with respect to the first year and last year of residency.<sup>36</sup>

**Example 1:** Father A arrives in the United States on December 2, 2011, and remains in the United States throughout 2012. For 2011, Father A would be classified as a nonresident alien for US tax purposes. For 2012, Father A would be classified as a resident alien, with the substantial presence test applied as follows:

Number of days present in 2012 (365 x 1):	365 days
Number of days present in 2011 (30 x 1/3):	10 days
Number of days present in 2010 (0 x 1/6):	0 days

<sup>34</sup> Treas. Reg. § 301.7701(b)-1(c)(2)(ii).

<sup>35</sup> Treas. Reg. § 301.7701(b)-1(c)(4).

<sup>36</sup> IRC § 7701(b)(2).

Total number of days present in United States:	375 days
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**Example 2:** Deacon B arrives in the United States on December 2, 2011, but remains in the United States only through January 31, 2012. For both 2011 and 2012, Deacon B would be classified as a nonresident alien for US tax purposes. For 2012, the substantial presence test would be applied as follows:

Number of days present in 2012 (31 x 1):	31 days
Number of days present in 2011 (30 x 1/3):	10 days
Number of days present in 2010 (0 x 1/6):	0 days
Total number of days present in United States:	41 days

For an individual who meets the 183-day substantial presence test, residence is retroactive to the first countable day (*see* below) of presence in the United States in a calendar year. For an individual who meets the green card test, residence begins the first day that he or she was physically present in the United States in green card status. Resident alien status terminates on the last day of the calendar year in which the individual ceases to be a US resident for tax purposes.<sup>37</sup>

Exceptions. An individual is treated as present in the United States on any day he or she is physically present at any time during the day. There are, however, certain exceptions, four of which may be relevant to international religious workers or seminarians. As explained more fully below, the following days are *not* counted as days of presence in the United States for purposes of the substantial presence test: (1) days on which an individual regularly commutes to work in

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<sup>37</sup> Treas. Reg. § 301.7701(b)-4.

the United States from a residence in Canada or Mexico; (2) days on which an individual is in the United States for less than twenty-four hours when in transit between two places outside the United States; (3) days when an individual intended to leave the United States but was unable to leave because of a medical condition that developed while in the United States; and (4) days the individual is classified as an “exempt individual.”

(1) Regular Commuters from Canada or Mexico. An individual is considered to commute regularly if he or she commutes to work in the United States from a residence in Canada or Mexico on more than 75% of the workdays during the working period. “Workdays” are days on which the individual works in the United States, Canada or Mexico. “Working period” means the period beginning with the first day in the current year in which the individual is physically present in the United States to work and ending on the last day in the current year on which he or she is physically present in the United States to work.<sup>38</sup> There can be more than one working period in a calendar year, and a working period can begin in one calendar year and end in the following calendar year.

(2) Days in Transit. An individual is considered to be in transit if he or she is engaged in activities that are substantially related to completing travel to a foreign destination, e.g., traveling between airports in the United States to change planes en route to a foreign destination. An individual is not considered to be in transit if he or she attends a business meeting in the United States, even if the meeting is held at a US airport.<sup>39</sup>

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<sup>38</sup> Treas. Reg. § 301.7701(b)-3(e). In the case of work in the United States on a seasonal or cyclical basis, an individual’s working period begins on the first day of the season or cycle on which he is present in the United States to work and ends on the last day of the season or cycle on which he is present in the United States to work.

<sup>39</sup> Treas. Reg. § 301.7701(b)-3(d).

(3) Medical Condition. An individual's intention to leave the United States is determined based on all facts and circumstances. Days of presence cannot be excluded if: (a) the individual was initially prevented from leaving, subsequently was able to leave, but remained in the United States beyond a reasonable time to make travel arrangements; (b) the individual returned to the United States for treatment of a medical condition that developed during a prior stay; or (c) the medical condition existed before the individual's arrival in the United States and the individual was aware of the condition.<sup>40</sup> The individual excluding days present in the United States on the basis of medical condition must file Form 8843 with his or her income tax return, Form 1040NR or 1040NR-EZ. If he or she is not required to file an income tax return, the Form 8843 must be submitted to the Internal Revenue Service Center, Austin, TX 73301-0215 by the due date for filing Form 1040NR or 1040NR-EZ.

(4) Exempt Individual. Classification as an “exempt individual” does not mean that the individual is exempt from US taxation, but rather that while in exempt individual status, no days present in the United States will be counted toward the 183-day total. An exempt individual will generally be classified as a *nonresident alien*. Although there are four categories of “exempt individual,” only two are relevant to international religious workers or seminarians.

(i) *Student.* An individual who is present temporarily (no more than five calendar years) in the United States as a student on an F, J, M or Q visa and who “substantially complies”<sup>41</sup> with the requirements of that visa excludes days present in the United States in computing the

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<sup>40</sup> Treas. Reg. § 301.7701(b)-3(c).

<sup>41</sup> An individual is considered to substantially comply with visa requirements if he or she has not engaged in activities that are prohibited by US immigration laws and could result in the loss of visa status. Treas. Reg. § 301.7701(b)-3(b)(6).

substantial presence test.<sup>42</sup> This exemption applies to seminarians who are in the United States in F visa student status.<sup>43</sup> An individual excluding days present in the United States under this exception must file IRS Form 8843 with his or her income tax return, Form 1040NR or 1040NR-EZ. If he or she is not required to file an income tax return, the Form 8843 must be submitted to the Internal Revenue Service Center, Austin, TX 73301-0215 by the due date for filing Form 1040NR or 1040NR-EZ.

(ii) *Teacher or trainee.* An individual who is present temporarily (less than two of the current and past six calendar years) in the United States on a J or Q visa as a teacher or trainee and who substantially complies with the requirements of that visa excludes days present in the United States in computing the substantial presence test.<sup>44</sup> An individual excluding days present in the United States under this exception must file IRS Form 8843 with his or her income tax return, Form 1040NR or 1040NR-EZ. If he or she is not required to file an income tax return, the Form 8843 must be submitted to the Internal Revenue Service Center, Austin, TX 73301-0215 by the due date for filing Form 1040NR or 1040NR-EZ.

*Closer Connection to Foreign Country.*<sup>45</sup> An individual who otherwise meets the substantial presence test may be treated as a *nonresident alien* if he or she is present in the United States for fewer than 183 days during the current calendar year, maintains a tax home in a foreign country during the current year, and during the current year has a closer connection to one foreign country in which he or she has a tax home than to the United States (unless he or she has a closer connection to two foreign countries). An individual's tax home is the location of his

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<sup>42</sup> Treas. Reg. § 301.7701(b)-3(b)(4).

<sup>43</sup> Seminarians who are in R visa status do not fall within this exception.

<sup>44</sup> Treas. Reg. § 301.7701(b)-3(b)(3) and (7).

<sup>45</sup> Treas. Reg. § 301.7701(b)-2.

or her main place of business, employment, or post of duty, regardless of where the family home is maintained. The tax home is the place where an individual permanently or indefinitely works as an employee or self-employed individual.<sup>46</sup> An individual will be considered to have a closer connection to a foreign country than to the United States if the IRS determines he or she has maintained more significant contacts with the foreign country than with the United States. An individual who has personally applied or taken other affirmative steps to change his or her status to that of a permanent resident during the current year or has an application pending for adjustment of status during the current year is not eligible for the closer connection exception.<sup>47</sup>

In determining whether an individual has maintained more significant contacts with a foreign country than with the United States, the facts and circumstances to be considered include, but are not limited to, the country of residence designated on forms and documents, the types of forms and documents filed, the location of the individual's family, permanent home, personal belongings, social, political, cultural or religious affiliations, business activities (other than those constituting the tax home), driver's license, and voting jurisdiction.

In order to claim a closer connection to a foreign country, an individual must file Form 8840 with his or her tax return, Form 1040NR or 1040NR-EZ. If he or she is not required to file a tax return, Form 8840 must be submitted to the Internal Revenue Service Center, Austin, TX 73301-0215 by the due date for filing Form 1040NR or 1040NR-EZ.

**Tax Obligations of Resident Aliens.** Generally, individuals who are classified as resident aliens for tax purposes (under either the green card test or substantial presence test described above in the “Green Card Test” and “Substantial Presence Test” sections) are liable for federal

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<sup>46</sup> Treas Reg. § 1.911-2(b).

<sup>47</sup> Treas. Reg. § 301.7701(b)-2(f).

taxes on the same basis as US citizens. They are taxed on their worldwide income (not merely on US source income), which must be reported on their US income tax return, Form 1040 series. Resident aliens may claim the same deductions and credits, are subject to the same income tax withholding, and are taxed at the same rates as US citizens.

*Resident Alien Diocesan/Eparchial Priests.* Diocesan or eparchial priests are subject to income taxation on compensation received from the diocese, eparchy or other church employer under the general principles outlined above. Diocesan or eparchial priests are not subject to income tax withholding unless an affirmative election is made to have income taxes withheld.<sup>48</sup> If a diocesan or eparchial priest elects to have income taxes withheld, he must complete and file Form W-4 with his diocese, eparchy or other church employer. Because diocesan or eparchial priests are treated as independent contractors for social security purposes regardless of how they are classified for income tax purposes, no Federal Insurance Contributions Act (FICA) taxes should be withheld. Instead, Self-Employment Contributions Act (SECA) tax is imposed on the compensation, as well as on: (a) the amount of any housing allowance or the rental value of in-kind housing excluded from income under section 107; and, (b) the fair market value of any meals excluded from income under section 119. It is the responsibility of the diocesan or eparchial priest to compute and pay his SECA tax liability on Schedule SE to Form 1040.<sup>49</sup>

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<sup>48</sup> IRC § 3401(a)(9). Although not required, income tax withholding is encouraged; otherwise, the priest is responsible for making quarterly estimated tax payments sufficient to cover his income tax and SECA liability.

<sup>49</sup> See IRS Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*. A priest may claim conscientious or religious objection to the receipt of public insurance benefits. IRC § 1402(e). This exception applies only to ministers of the gospel, i.e., priests and deacons who are performing duties normally performed by ministers of the gospel. Within two years of ordination, a diocesan or eparchial priest or deacon may elect not to participate in the Social Security system and thus not pay SECA tax. In order to make this election, the priest or deacon would have to file IRS Form 4361, which includes a statement that

Resident Alien Deacons.<sup>50</sup> Depending upon the facts and circumstances of their employment, permanent deacons will be classified for tax purposes either as lay employees or “ministers of the gospel.” In order to be classified as a minister of the gospel, a deacon must qualify as an “ordained, commissioned, or licensed minister” *and* must perform the duties that are normally those of a minister of the gospel. While permanent deacons will meet the first requirement, they do not automatically meet the second requirement. The facts and circumstances of each deacon’s church employment must be analyzed to determine whether he is performing duties that are normally those of a minister of the gospel. Dioceses or eparchies should use the same standards in determining whether international deacons can be classified as ministers of the gospel as they use in making such determinations with respect to their US deacons.

If a deacon is classified as a minister of the gospel for tax purposes, he must be treated consistently as a minister of the gospel for *all* tax purposes. Thus, a deacon so classified would be eligible for the section 107 housing exclusion (assuming all other applicable requirements are met) but must also be treated as self-employed for social security purposes and is responsible for SECA taxes. If a deacon does not qualify as a minister of the gospel for tax purposes, he should be treated in the same manner as diocesan/eparchial lay employees.

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the priest or deacon conscientiously, or because of religious principles, opposes the acceptance of public insurance, and has informed his bishop. The IRS is responsible for verifying that the priest or deacon is aware of the grounds for exemption from Social Security and wishes exemption on that basis. As a practical matter, since the USCCB supports universal participation in Social Security, there is no *religious* basis on which a diocesan or eparchial priest can file Form 4361. However, an individual priest may claim *conscientious* opposition to receipt of Social Security benefits, if permitted under diocesan or eparchial policy. Once filed, the election not to participate in Social Security is *irrevocable*. A priest or deacon who does not participate in Social Security is not eligible to receive Medicare benefits.

<sup>50</sup> This discussion applies to *permanent* deacons.

Resident Alien Lay Religious Workers. For tax purposes, international lay religious workers should be treated in the same manner as diocesan/eparchial lay employees who are US citizens.<sup>51</sup>

Resident Alien Religious. The taxability of resident alien religious will depend on the identity of the religious order of which he or she is a member. If the religious is a member of a US religious order or a non-US religious order with a US province that is tax-exempt under the USCCB Group Ruling, tax liability will be determined by applying Rev. Rul. 77-290. A religious who is a member of a non-US religious order with no tax-exempt US province will be taxable individually, in accordance with his or her status as cleric or lay person and in the same manner as a resident alien diocesan or eparchial priest or resident alien lay religious worker.

Resident Alien Seminarians. International seminarians may be in either R (religious worker) or F (student) visa status. Only those in R visa status could qualify as resident aliens. The scholarship rules of section 117 of the Code apply to resident alien seminarians on the same basis as to US seminarians. Thus, if a seminarian is a degree candidate, the amount of any scholarship that is used to pay for tuition, fees, books, supplies and equipment required by the educational institution is excluded from income.<sup>52</sup> However, any part of a scholarship or payment for other expenses, including room, board, monthly living expense stipends, and health insurance, is included in income. IRS regulations do not require reporting of the taxable portion of scholarship payments to resident aliens,<sup>53</sup> although some dioceses or eparchies report these

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<sup>51</sup> Although lay religious workers may perform some of the duties normally performed by a minister of the gospel, they lack the status of minister of the gospel, and should not be classified as “ministers of the gospel” for tax purposes. Among other things, this means that lay religious workers are not eligible for the section 107 housing allowance exclusion.

<sup>52</sup> IRC § 117(b)(2).

<sup>53</sup> Treas. Reg. § 1.6041-3(n).

amounts on Form 1099-MISC. Nonetheless, dioceses or eparchies should provide each seminarian a valuation of room, board and other benefits provided in order to enable the seminarian to properly report taxable amounts on his Form 1040.<sup>54</sup> It is also recommended that any taxable cash payments made to seminarians, for example, monthly living expense stipends, be reported on Form 1099-MISC to the extent they exceed \$600 annually.

A seminarian in R visa status who is assigned to parish work during summers or vacations, or for a year-long pastoral training assignment, is liable for income tax and social security taxes on amounts earned from such services. If the seminarian has been ordained to the diaconate, he should be treated in the same manner as a permanent deacon for tax purposes. If the seminarian has not been ordained to the diaconate, he should be treated in the same manner as a lay religious worker for tax purposes.

*Individual Mandate to Maintain Health Insurance Coverage.* Although a discussion of the Patient Protection and Affordable Care Act is beyond the scope of these *Guidelines*, resident alien international religious workers and seminarians, unless otherwise excepted, are subject to the “individual mandate” to maintain health coverage that is minimum essential coverage.<sup>55</sup> An individual is an exempt individual for a month in which he or she is a nonresident alien for the taxable year including that month, or if he or she is not lawfully present on any day in that month.<sup>56</sup>

*FBAR Obligations of Resident Aliens.* An individual described in this section who is deemed a resident of the United States is a “United States person” for purposes of having to file FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR), if he or she has a

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<sup>54</sup> See Notice 87-31, 1987-1 C.B. 475.

<sup>55</sup> IRC § 5000A(a).

<sup>56</sup> Treas. Reg. § 1.5000A-3(c).

financial interest in or signature authority over any financial account(s) (e.g., savings and/or checking accounts)<sup>57</sup> outside the United States and the aggregate maximum value of the account(s) exceeds \$10,000 at any time during the year. FBAR reports are due on June 30 of the year following the calendar year being reported. The due date may not be extended. The FBAR is not filed with the individual's Federal income tax return (if any); rather, it must be filed electronically through the Bank Secrecy Act (BSA) E-Filing System.<sup>58</sup>

**Tax Obligations of Nonresident Aliens.** An individual who does not qualify as a resident alien under either the green card test or the substantial presence test is classified as a nonresident alien for tax purposes. Nonresident aliens are subject to income tax on all payments that constitute US source income,<sup>59</sup> including: wages, compensation, payments received as an independent contractor, royalties, commissions, dividends, interest, honoraria, stipends, book allowances, prizes, awards, living allowances, per diem payments and travel expense reimbursements. Special reporting and withholding rules apply to such payments made to nonresident aliens. IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, is an essential resource for dioceses/eparchies that make payments to or on behalf of nonresident aliens. Dioceses/eparchies are responsible for deducting and withholding applicable tax, which varies depending on the type of payment and whether the income is “effectively connected with a trade or business in the United States.”<sup>60</sup> As withholding agents,

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<sup>57</sup> “Financial accounts” include personal accounts and signature authority over any accounts of his sending diocese/eparchy or his or her religious order.

<sup>58</sup> Help completing FBAR is available Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time, at (866) 270-0733 (toll-free within the United States) or (313) 234-6146 (international callers, not toll-free), or by sending an email to [FBARquestions@irs.gov](mailto:FBARquestions@irs.gov).

<sup>59</sup> IRC §§ 861 through 865 deal with income from sources within and outside the United States.

<sup>60</sup> IRC §§ 1441 and 3402.

dioceses/eparchies are liable for any tax that is required by law to be withheld.<sup>61</sup> Nonresident aliens are not subject to SECA (self-employment) taxes unless a social security treaty provides otherwise.<sup>62</sup> Wages paid to employees will be subject to FICA unless a social security treaty provides otherwise.

*Effectively Connected with a Trade or Business in the United States.* An individual performing personal services in the United States at any time during the tax year will usually be considered as engaged in a trade or business in the United States<sup>63</sup> Personal service income includes: wages, salaries, commissions, fees, per diem allowances, and employee allowances and bonuses, whether paid in the form of cash, services, or property. In addition, an individual temporarily present in the United States under an F, J, M or Q visa, who receives income from a training program, is considered to be engaged in a trade or business in the United States.<sup>64</sup> The taxable part of any scholarship or fellowship grant that is US source income is treated as effectively connected with a trade or business in the United States.<sup>65</sup> A seminarian's expenses paid by a US diocese or eparchy would be classified as US source income.

Income received during the tax year that is effectively connected with a trade or business in the United States is, after allowable deductions, taxed at the same rates that apply to US citizens and resident aliens.<sup>66</sup> Special rules apply to the exemptions and deductions that a nonresident alien can take on income tax return Form 1040NR or 1040NR-EZ. A nonresident alien can never claim "exempt" on his or her Form W-4. Withholding must always be done at the

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<sup>61</sup> IRC § 1461.

<sup>62</sup> IRC § 1402(b).

<sup>63</sup> IRC § 861(a)(3).

<sup>64</sup> IRC § 871(c).

<sup>65</sup> Treas. Reg. § 1.863-1(d).

<sup>66</sup> IRC §§ 871(b) and 873.

“single” rate. A nonresident alien can claim only one personal exemption on an income tax return, unless he or she is a resident of Canada or Mexico. A nonresident alien cannot take the standard deduction on an income tax return. He or she must itemize deductions, and deductions are allowed only if and to the extent they are connected to US source income, with the exception of casualty or theft losses, contributions to US charities, and the personal exemption.<sup>67</sup>

*Not Effectively Connected with a Trade or Business in the United States.* Income from US sources that is not effectively connected with the conduct of a trade or business within the United States is taxed at a 30 percent rate<sup>68</sup> (or lower rate if provided by treaty).

*Nonresident Alien Diocesan or Eparchial Priests.* Nonresident alien diocesan or eparchial priests are taxed at the same rate as resident alien diocesan or eparchial priests with respect to their personal service income received from a diocese, eparchy or other church employer, since such income is considered income effectively connected with a trade or business in the United States. Nonresident alien diocesan or eparchial priests, however, are subject to the special withholding rules and the other special tax rules outlined above in the “Resident Alien Diocesan or Eparchial Priests” section. If the nonresident alien priest is an employee, his personal service income should be reported on Form W-2. If he is an independent contractor, his personal service income should be reported on Form 1042-S.<sup>69</sup> Nonresident aliens generally are not subject to SECA taxes. Although priests generally are treated as self-employed for social

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<sup>67</sup> IRC § 873(b) and Treas. Reg. § 1.873-1.

<sup>68</sup> IRC §§ 871(a) and 873.

<sup>69</sup> Form 1099 is not used with respect to nonresident aliens. The Form 1042-S (and Form 1042-T summary/transmittal) should be filed with the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409, by March 15th of the year following the year in which a payment is made. A copy should also be provided to the nonresident alien.

security purposes<sup>70</sup> even if they are treated as employees for income tax purposes, nonresident alien diocesan or eparchial priests are not subject to SECA taxes unless a social security treaty provides otherwise.

*Nonresident Alien Deacons.* Nonresident alien deacons are taxed at the same rate as resident alien deacons with respect to their personal service income received from a diocese/eparchy or church employer, since such income is considered income effectively connected with a trade or business in the United States. Nonresident alien deacons, however, are subject to the special withholding rules and other special tax rules outlined above in the “Resident Alien Deacons” section. If the nonresident alien deacon is an employee, his personal service income should be reported on Form W-2. If he is an independent contractor, his personal service income should be reported on Form 1042-S. Nonresident aliens are not subject to SECA taxes unless a social security treaty provides otherwise. FICA taxes will apply to wages unless a social security treaty provides otherwise.

*Nonresident Alien Lay Religious Workers.* Nonresident alien lay religious workers are taxed at the same rate as resident alien lay religious workers with respect to their personal service income received from a diocese/eparchy or church employer, since such income is considered income effectively connected with a trade or business in the United States. Nonresident alien lay religious workers, however, are subject to the special withholding rules and other special tax rules outlined above. If the nonresident alien lay religious worker is an employee, his or her personal service income should be reported on Form W-2. If he or she is an independent contractor, the personal service income should be reported on Form 1042-S. Nonresident aliens

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<sup>70</sup> IRC § 1402(b).

are not subject to SECA taxes unless a social security treaty provides otherwise. FICA taxes will apply to wages unless a social security treaty provides otherwise.

*Nonresident Alien Religious.* The taxability of a nonresident alien religious will depend on the identity of the religious order of which he or she is a member. If the religious is a member of a US religious order or a non-US religious order with a US province that is tax-exempt under the USCCB Group Ruling, tax liability will be determined by applying Rev. Rul. 77-290. A religious who is a member of a non-US religious order with no tax-exempt US province will be taxable in accordance with his or her status as cleric or lay person in the same manner as a nonresident alien diocesan or eparchial priest or nonresident alien lay religious worker.

*Nonresident Alien Seminarians.* Typically, nonresident alien seminarians are present in the United States on F student visas. Nonresident alien students with F visas are considered to be engaged in a trade or business in the United States. The taxable part of any scholarship or fellowship grant that is US source income is treated as effectively connected with a trade or business in the United States. Payments are sourced according to the location of the payer. If a seminarian's training and related expenses are being paid by a US diocese, eparchy, or other church employer, these payments will be considered US source income. Expenses paid by a non-US diocese/eparchy would not. The qualified portion of any US source scholarship paid to a nonresident alien seminarian who is a candidate for a degree is not subject to withholding. The taxable portion of any US source scholarship paid to or on behalf of a nonresident alien seminarian present on a F student visa is subject to withholding at a 14 percent rate (reduced from the 30 percent withholding rate applicable to nonresident aliens generally).<sup>71</sup> If the nonresident alien seminarian is not a candidate for a degree, the entire US source scholarship is

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<sup>71</sup> IRC § 1441(b)(1).

subject to withholding at a 14 percent rate. The taxable portion of a US source scholarship should be reported on Form 1042-S. No withholding is required with respect to the nontaxable portion of any US source scholarship. Many income tax treaties provide a tax exemption for scholarships, even for an amount that is not a “qualified scholarship” that is excluded from taxation. Often, the exemption is for a limited number of years, and may include an annual maximum exemption amount.<sup>72</sup> The withholding agent must still report the payments using Form 1042-S, even if no income tax is required to be withheld,<sup>73</sup> and the claimant must provide a W-8BEN or Form 8233<sup>74</sup> to claim the treaty benefits. A church employer may satisfy the seminarian’s tax liability, but the payment of the liability constitutes additional income to the seminarian, and the tax reported to the IRS is subject to a “gross up” formula provided in the regulations.<sup>75</sup> A diocese/eparchy may also treat the taxable portion of a scholarship as wages (i.e., subject to graduated withholding) by asking the seminarian to complete a Form W-4. The diocese/eparchy must still provide the seminarian with a Form 1042-S.<sup>76</sup>

A seminarian in F visa status generally may not perform work for wages or salary while in the United States. He may, however, be permitted to participate in a curricular practical training program that is an integral part of an established curriculum. Curricular practical training includes: work/study programs, internships and cooperative education programs. If a nonresident alien seminarian is paid for curricular practical training performed in a parish, his wages would be considered effectively connected with a trade or business in the United States, and they would

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<sup>72</sup> See Rev. Proc. 2005-44, 2005-2 C.B. 110.

<sup>73</sup> Treas. Reg. § 1.1461-1(c)(2)(i)(K).

<sup>74</sup> Form 8233 should be used if the seminarian receives both wages and a scholarship or fellowship from the same church employer and wants to claim treaty exemptions on both kinds of income. See Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

<sup>75</sup> Treas. Reg. § 1.1441-3(f).

<sup>76</sup> Treas. Reg. § 1.1441-4(c); see Rev. Proc. 88-24, 1988-1 C.B. 800.

be taxed at the same rates that apply to US citizens and resident aliens. If the seminarian is an employee, his wages should be reported on Form W-2. There is a FICA exemption for nonresident aliens in F visa status who are providing employment services for purposes specified in their visas.<sup>77</sup> Thus, no FICA taxes need to be withheld from wages paid to nonresident alien seminarians employed by parishes as part of their curricular practical training. If the seminarian is an independent contractor, his payments should be reported on Form 1042-S. Nonresident aliens are not subject to SECA taxes unless a social security treaty provides otherwise.

**Treaty Exceptions.** The general tax rules outlined above with respect to nonresident aliens (and certain resident aliens) can be overridden by the provisions of a treaty between the United States and a particular country.<sup>78</sup> There are two types: tax treaties and social security treaties. Thus, before reaching conclusions concerning liability for taxation, withholding or reporting for an international religious worker or seminarian, the diocese/eparchy or other church employer should determine whether there is a treaty between the United States and the individual's country of origin. Then, it should determine whether any provision of that treaty would alter the result of the general analysis above.

**Tax Treaties.** A tax treaty is a bilateral agreement between the United States and another country that may affect applicability of the tax laws of each country in order to avoid double taxation of the same income. The texts of most United States tax treaties are available at [www.irs.gov](http://www.irs.gov) using “tax treaties” as the search term. IRS Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, contains detailed charts of the withholding rates on personal services income and non-personal services income under various tax treaties. A tax

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<sup>77</sup> IRC § 3121(b)(19).

<sup>78</sup> See e.g., IRC § 7701(b)(6).

treaty may affect: determination of residency status,<sup>79</sup> taxability of wages or other income (e.g., reduction of the 30 percent withholding rate on non-effectively connected US source income), or taxability of scholarship payments.

In order for an individual to claim a treaty exemption from withholding at the time of payment with respect to either wages or independent contractor payments, he or she must submit Form 8233 to the withholding agent (church employer). To claim a treaty exemption from withholding at the time of payment with respect to scholarship payments, the individual must submit Form W-8BEN to the withholding agent. The withholding agent must review the information contained in the form, other information known to the withholding agent, and the provisions of the tax treaty under which exemption is claimed. Based on this information, the withholding agent must decide whether the individual is qualified for the exemption. If so, payment may be made without withholding. If the withholding agent is unable or unwilling to decide whether the individual is qualified for the exemption, or if the withholding agent decides the individual is not qualified, then taxes must be withheld from the payment. The nonresident alien can file a claim for refund of taxes based on the tax treaty when he or she files Form 1040NR or 1040NR-EZ.

Social Security (“Totalization”) Treaties. The United States has also entered into bilateral social security treaties (totalization agreements) in order to permit individuals working in two countries to qualify for social security benefits in one country and to avoid dual taxation. The SSA publishes the complete texts and explanations of the totalization agreements, which are available at [www.ssa.gov/international](http://www.ssa.gov/international). Under the provisions of a totalization agreement, an

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<sup>79</sup> For example, if a tax treaty defines an individual as a resident of a foreign country, that individual will be classified as a nonresident alien for tax purposes, regardless of whether the green card or substantial residence test is met. Treas. Reg. § 301.7701(b)-7.

individual is not subject to FICA or Medicare taxes if he or she can demonstrate that he or she is subject to social security in another country. Agreements are currently in effect between the United States and the following countries: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea (South), Luxembourg, Netherlands, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.<sup>80</sup> In order for an employee to establish that his or her wages are subject to foreign social security taxes only and are exempt from FICA and Medicare taxes, he or she must request a certificate of coverage from the appropriate agency of the foreign country, which is usually the same agency to which the employer will pay foreign social security taxes.<sup>81</sup>

**Departing the United States.** Prior to departing the United States, aliens (both resident and nonresident) are required to obtain certificates indicating that they have complied with all obligations imposed by US income tax laws.<sup>82</sup> IRS regulations provide several exceptions to the certificate of compliance requirement, including students on F visas who have received no US source income other than allowances incident to their study or training, the value of any services or food or lodging connected with their study or training, income from employment authorized by CIS, and interest income on deposits that is not effectively connected with a trade or business

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<sup>80</sup> See [http://www.ssa.gov/international/agreements\\_overview.html](http://www.ssa.gov/international/agreements_overview.html).

<sup>81</sup> If the foreign country does not issue certificates of coverage, the individual or his employer should request a statement that wages are not covered by the US social security system. Such requests should be made to the US Social Security Administration, Office of International Programs, PO Box 17741, Baltimore, MD 21235-7741 or through [www.socialsecurity.gov/coc](http://www.socialsecurity.gov/coc).

<sup>82</sup> IRC § 6851(d)(1).

in the United States.<sup>83</sup> Other exceptions include visitors, aliens in transit through the United States, and commuters from Canada and Mexico.

If an alien does not fall into one of the excepted categories, he or she must obtain a sailing or departure permit. To obtain a permit, the alien must file either Form 1040-C, *U.S. Departing Alien Income Tax Return*, or Form 2063, *U.S. Departing Alien Income Tax Statement*, whichever is applicable, with the local IRS office before leaving the United States. The Form 2063 is a short form that asks for certain information but does not include a tax computation. If an alien tries to leave the United States without a sailing or departure permit and cannot show that he or she is qualified to leave without it, the alien may be subject to examination by an IRS employee at the point of departure.<sup>84</sup>

The alien ordinarily will be required to pay all taxes due with a Form 1040-C. However, payment of taxes due generally will not be enforced prior to the expiration of their due date. In addition, an alien can furnish a bond or an employer letter guaranteeing payment instead of paying the income taxes shown as due on the Form 1040-C. Form 1040-C is not an annual US income tax return. If an annual income tax return is required by law, the alien must file that return even though a Form 1040-C has already been filed.

If the alien furnishes IRS with information showing that he or she intends to return to the United States and that his or her departure will not jeopardize the collection of tax, the alien may obtain a sailing or departure permit by filing the Form 1040-C without having to pay the tax shown as due. However, if collection of taxes would be jeopardized by the alien's departure, the

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<sup>83</sup> Treas. Reg. § 1.6851-2(a)(2)(ii).

<sup>84</sup> Treas. Reg. § 1.6851-2(a).

IRS may require payment of the taxes due at the point of departure.<sup>85</sup> The Form 1040-C must include all income received and reasonably expected to be received during the entire year of departure. A sailing or departure permit issued with this Form 1040-C can be used for all departures during that year.

**Basic Tax Exemption Concepts.** The vast majority of US Catholic dioceses, eparchies, parishes, elementary and secondary schools, colleges and universities, charities, hospitals, nursing homes, and related organizations, as well as US religious orders and their related ministry organizations, are recognized as exempt from federal income tax under section 501(c)(3) of the Code by virtue of their inclusion in the USCCB Group Ruling.<sup>86</sup> Verification of inclusion in the USCCB Group Ruling requires production of the following documents: (1) a copy of the current year's Group Ruling letter issued by the IRS to the USCCB;<sup>87</sup> and (2) a copy of the cover page and the page from the current year's edition of the OCD on which the sponsoring organization is listed. Only organizations that are created in the United States and have a significant structural relationship to the Roman Catholic Church in the United States are eligible for inclusion in the USCCB Group Ruling. No foreign organization may be included in the USCCB Group Ruling.

**Restrictions on Use of Tax-Exempt Organization Funds/Assets.** The funds and assets of a US Catholic diocese, eparchy, parish, school, hospital, religious order, or other church organization, qualified as a section 501(c)(3) tax-exempt organization, must be used exclusively for religious, charitable, educational, healthcare, or other tax-exempt purposes. The funds and

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<sup>85</sup> IRC § 6851(d)(2).

<sup>86</sup> Section 501(c)(3) tax exemption may also be established by application directly to IRS.

<sup>87</sup> A copy of the current USCCB Group Ruling letter, along with related explanatory materials, is available on the USCCB website at [www.usccb.org/ogc](http://www.usccb.org/ogc).

assets of such organizations are not available for the personal use of any individual, including international religious workers or seminarians, with the exception of the payment of authorized, reasonable salary and benefits.

International religious workers are responsible for their own personal expenses (and those of any accompanying dependents). Personal expenses include payments that a religious worker may choose to make to family members or toward religious/charitable works in his or her home country. Any such expenses must be paid from the religious worker's salary payments.<sup>88</sup> Religious workers may not direct or utilize the funds or assets of any diocese, eparchy, parish, school, hospital, religious order or other tax-exempt organization to or for the benefit of personal or family needs, or support of religious or charitable works in their countries of origin.

*Prohibition Against Political Intervention.* In the capacity as a representative of a US diocese, eparchy, parish, school, hospital, religious order, or other section 501(c)(3) tax-exempt organization, a religious worker or seminarian may not endorse or oppose any political candidate or otherwise intervene or participate in a political campaign on behalf of any candidate.<sup>89</sup>

*Fundraising Restrictions.* The immigration issues chapter of these *Guidelines* summarizes restrictions on US fundraising activities by R and F visa holders. Many diocesan or eparchial policies prohibit unauthorized parish-based fundraising appeals. In addition, both universal and particular canon law and US tax law provisions raise significant obstacles to fundraising by international religious workers under diocesan, eparchial, or parish auspices,

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<sup>88</sup> Such payments do not qualify as deductible charitable contributions under section 170 of the Code.

<sup>89</sup> Additional information about permitted and prohibited political intervention is available on the USCCB website at [www.usccb.org/ogc](http://www.usccb.org/ogc) under the heading "Political Activity Guidelines."

whether for personal or family needs or for the support of religious or charitable organizations/works in their countries of origin.

Contributions to Catholic organizations recognized as tax-exempt under section 501(c)(3) of the Code are deductible by individual US donors. Contributions made directly to or indirectly for the benefit of foreign charities, including foreign parishes, dioceses, eparchies, and religious institutes are *not* deductible by individual US donors. Contributions nominally made to US organizations that serve as mere conduits for transmission of contributions to foreign organizations are *not* deductible.<sup>90</sup> The conduit situation frequently arises at the parish level, when an international religious worker may solicit contributions from parishioners under parish auspices for the benefit of a parish, religious institute, or charitable organization in his or her home country. Parishes should not authorize or facilitate such conduit contribution arrangements and must not provide charitable contribution substantiation statements to donors.<sup>91</sup>

**Case Study #2:** Father B. was an R-1 visa priest serving in a US parish. The needs of the Church in his country of origin were great. Father B. approached a wealthy parishioner to request a large contribution to an orphanage in his home diocese. Although the contribution was intended for the foreign orphanage, Father B. advised the parishioner to make her check payable to the US parish in order to qualify for a tax deduction. Father B. assured the parishioner that he would personally carry the funds to the orphanage during his upcoming home visit and further guaranteed that the parish would issue the required IRS substantiation statement to enable the parishioner to deduct

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<sup>90</sup> IRC § 170(c)(2); Rev. Rul. 63-252, 1963-2 C.B. 101; Rev. Rul. 66-79, 1966-1 C.B. 48; Rev. Rul. 66-79, 1966-1 C.B. 48.

<sup>91</sup> Issuance of a false substantiation statement may subject the parish or other issuing entity or its representative to IRS penalties for aiding and abetting the understatement of tax liability under section 6701 and, depending on the facts and circumstances, for directly or indirectly promoting an abusive tax shelter under section 6700.

the contribution on her tax return. This contribution, although nominally made to the US parish, was earmarked for transmission to the foreign orphanage and is not deductible under section 170 of the Code.

This case illustrates how attempts to circumvent federal law regarding charitable contribution deductions can make the parish liable for payment of substantial IRS penalties. The attempts at circumvention also risk allowing the funds to be misappropriated for purposes other than charity or even diverted for terrorist purposes. Additionally, these improper and illegal maneuvers may violate currency restrictions in the United States or other countries.

**Addressing Additional Legal/Financial Issues.** The US legal system is complex and multilayered, involving laws, rules, and regulations at the federal, state, and local levels. The income and social security tax rules relating to international religious workers constitute a distinct specialty area of tax practice. If possible, local practitioners with expertise and experience in this area, particularly in the Catholic context, should be enlisted to assist compliance efforts. In developing policies at the local level, it is imperative that dioceses, eparchies, religious orders, and seminaries involve legal counsel and financial and human resources professionals to ensure uniformity of practice and coverage of relevant state and local law issues.

In addition to relevant policy documents, initial orientation, and child protection training provided to international religious workers and seminarians, it is recommended that dioceses/eparchies, religious orders, and seminaries provide periodic, mandatory education sessions, devoted to discrete aspects of state and local laws and procedures and prioritized according to relevance. In addition to imparting valuable information, these sessions will enable diocesan, eparchial, religious order, and seminary representatives to interact with international

religious workers and seminarians, assess their progress, and identify potential issues for further attention on a group or individual basis. If possible, each religious worker should be assigned a mentor to whom follow-up questions may be directed.

The following non-exhaustive list provides an example of topics that might be covered in monthly education sessions for religious workers or seminarians:

- Diocesan/eparchial/parish structures, key personnel, and chain of command
- Banking basics, including the process for obtaining a tax ID number, opening a checking account, applying for credit cards, and other banking matters
- Eligibility and process for obtaining a drivers license; driving rules; automobile insurance; DUI/DWI standards; restrictions on cell phone use/texting while driving; instructions for behavior during police stop
- Postal system basics
- Outline of federal, state and local government jurisdictions; distinction between civil and criminal systems; key areas of potential criminal and civil liability risk
- Particular state and local law issues; local rules regarding alcohol and other restricted substance usage
- Basic income tax, withholding, and reporting issues
- Basic tax-exemption and fundraising limitations with a particular focus on religious workers in parish assignments; and state/local income, property and sales tax provisions

## **FREQUENTLY ASKED QUESTIONS**

**Q1. The Exempt Individual. A seminarian in the United States on an F visa is classified as an “exempt individual.” Does this mean he is exempt from U.S. taxation?**

A1. No. Being classified as an “exempt individual” has nothing to do with taxation. Rather, it means that the seminarian excludes his days of presence in the United States while in exempt individual status for purposes of the substantial presence test. As a result, the seminarian in the United States on an F visa will usually be classified as a nonresident alien.

**Q2. The Non-Degree Seminarian. An individual enters the United States on an F visa for a year of study in a non-degree program at a diocesan or eparchial seminary. The US diocese or eparchy assumes responsibility for tuition and living expenses. What are the withholding responsibilities of the US diocese or eparchy?**

A2. The seminarian is a nonresident alien. Because the seminarian is not a degree candidate, no part of the payments constitutes a qualified scholarship excludable under section 117. Assuming no treaty provision to the contrary, the total amount paid to or on behalf of the seminarian is reported on Form 1042-S and subject to withholding at the reduced 14 percent rate.

**Q3. OCD Listings for Religious Orders. The OCD contains three types of listings for religious orders. Does each type of listing verify that a religious order is exempt under the USCCB Group Ruling?**

A3. No. In fact, only the formal diocesan or eparchial listing establishes that a religious order is recognized as a tax-exempt organization under the USCCB Group Ruling and is eligible to sponsor R-visa religious workers. To qualify for a formal diocesan or eparchial listing, a religious order must submit to the diocese/eparchy, in which its principal office is located, a completed Form

0928A, Application for Inclusion in USCCB Group Ruling.<sup>92</sup> The religious order must be organized as a civil entity in the United States, and it must meet all the legal and other requirements for inclusion in the USCCB Group Ruling, as set forth in the Application and as determined by the USCCB. The listing of a religious order in the OCD sections entitled *Religious Institutes of Men Represented in the Diocese* or *Religious Institutes of Women Represented in the Diocese* or in the summary listings for Religious Institutes of Men and Women (including the Index) does *not* confer recognition of the religious order's tax-exempt status under the USCCB Group Ruling or its eligibility to sponsor R-visa religious workers.

**Q4. Stipend Paid to an International Religious. A group of international religious provides parish staffing in a particular diocese or eparchy. Under diocesan/eparchial policy, the religious are provided room and board and a monthly stipend of \$600. Are these stipends taxable to the religious? Should the diocese or eparchy report these payments to the IRS?**

A4. International religious are not exempt from US income tax. Designating payments provided to them as "stipends" does not alter their classification as compensation subject to US income tax. These stipend payments are taxable unless all requirements of Rev. Rul. 77-290 are met.

**Q5. Incorporating International Religious. Three members of a non-US religious order with no US province are working in a diocese/eparchy on R visas. The diocese or eparchy has been advised that the members should establish a corporation and have it listed in the OCD, thereby qualifying it for exemption under the USCCB Group Ruling. The diocese or eparchy would then issue checks to the corporation and not have to worry about the complicated tax issues. Should the diocese or eparchy follow this advice?**

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<sup>92</sup> The Form 0928A is available at [www.usccb.org/ogc](http://www.usccb.org/ogc) under the heading "Group Tax Exemption."

A5. No. The diocese or eparchy should *not* approve for inclusion in the USCCB Group Ruling a corporation established by or for members of a non-US religious order working in the United States with no tax-exempt US province, because this corporation will not satisfy the legal or relational criteria for such inclusion. Among other things, the governance structure of the corporation, typically involving control by a small number of R visa religious and lacking control by US superiors, raises significant inurement issues and fails to demonstrate the requisite relationship to the Church in the United States. Funding derived from the deposit of salaries earned by the small number of members will preclude qualification as a public charity under section 509(a). Further, the corporation may function as a conduit for funds to the non-US religious order, thereby jeopardizing the corporation's tax-exempt status.

In addition, this situation raises immigration concerns regarding perceived intent to remain in the United States that is inconsistent with temporary R visa status. Including the corporation in the USCCB Group Ruling would establish it as a presumptively valid organization that is eligible to sponsor other international religious for R-1 visa status. Such an arrangement would be a misuse or abuse of the immigration law whereby R visa holders are sponsoring others for R visa status.

The desire to simplify tax compliance does not justify inclusion of an unqualified organization in the USCCB Group Ruling or potential misuse or abuse of the immigration law. This action jeopardizes the integrity of the Group Ruling and risks the future of the religious worker visa program. If a particular non-US religious order increases its numbers in the United States, has members move from temporary R visa status to special immigrant (permanent residency) status, and establishes a more permanent US governance structure, such as a US province, then, at that point, the diocese or eparchy may be in a position to approve inclusion in the USCCB Group Ruling. This presumes that all legal and relational requirements can be satisfied.

**Q6. Conscientious Objection to Social Security. Is the exemption from payment of SECA (self-employment tax) under section 1402(e) of the Code, on account of conscientious objection to the payment of public insurance, available to an international priest?**

A6. Probably not. A nonresident alien priest is not subject to SECA, unless a social security treaty provision provides otherwise. A resident alien priest is subject to the same tax rules as a US-citizen priest, in which case diocesan or eparchial policy regarding claims of conscientious objection to SECA should be followed. Any such claims will require acquiescence of the diocesan or eparchial bishop.

**Q7. Changing Status. A foreign priest arrives in the United States, intending to stay in the United States no longer than three years. He does not obtain a green card. Under the 183-day substantial presence test, he is initially classified as a nonresident alien and files tax returns accordingly. He is eventually classified as a resident alien under the test. How does this change in status affect his past tax filings?**

A7. It does not. The test is computed anew each calendar year in which the priest is present in the United States. Resident alien status, determined under the test for one calendar year, applies for that year, not for prior calendar years when the priest may have been classified as a nonresident alien.

## **USEFUL FORMS AND IRS PUBLICATIONS**

Form 1040-C, *U.S. Departing Alien Income Tax Return*

Form 1040NR, *U.S. Nonresident Alien Income Tax Return*

Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents*

Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*

Form 2063, *U.S. Departing Alien Income Tax Statement*

Form 8233, *Exemption from Withholding on Compensation for Independent Personal Services of Nonresident Alien Individual*

Form 8840, *Closer Connection Exception Statement for Aliens*

Form 8843, *Statement for Exempt Individuals and Individuals with Medical Condition*

Form SS-5, *Application for Social Security Card*

Form W-7, *Application for IRS Individual Taxpayer Identification Number*

Form W-7(COA), *Certificate of Accuracy for IRS Individual Taxpayer Identification Number*

Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding*

FBAR, *Foreign Bank Account Report FinCEN 114*

Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*

Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*

Publication 519, *U.S. Tax Guide for Aliens*

Publication 901, *U.S. Tax Treaties*

Publication 1915, *Understanding Your IRS Individual Taxpayer Identification Number (ITIN)*