



# **ANNUAL FILING REQUIREMENTS FOR CATHOLIC ORGANIZATIONS**

**The United States Conference of  
Catholic Bishops**

**Office of General Counsel**

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These guidelines do not constitute legal advice. They are provided for information purposes only. Whether an organization is required to file an annual information return (Form 990, 990-EZ, 990-N or 990-PF) is a facts-and-circumstances determination. Organizations are *strongly advised* to consult with a tax advisor regarding their filing requirements.

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## INTRODUCTION AND PURPOSE

The USCCB Office of General Counsel is providing these guidelines to (arch)dioceses, parishes, and other Catholic organizations (“Catholic organizations”) exempt from federal income tax under section 501(a) of the Internal Revenue Code (“Code”)<sup>1</sup> and described in section 501(c)(3) to assist them in understanding their annual reporting requirements under section 6033. The guidelines are intended for Catholic organizations included in the USCCB group ruling. The USCCB group ruling is sometimes referred to as “GEN 0928,” because of its designation in IRS records. “GEN” refers to “Group Exemption Number.” (“GEN 0928”).

These guidelines discuss which organizations are exempt from having to file an annual information return or electronic notice, and if an organization is required to file an annual information return or electronic notice, which form it should file (i.e., Form 990, Form 990-EZ or Form 990-N).

There is a misunderstanding that organizations included in a church group ruling do not have to file a Form 990, Form 990-EZ or Form 990-N. This has not been true for approximately forty years.<sup>2</sup> Generally, all Catholic organizations are required to file annually a Form 990, Form 990-EZ or Form 990-N unless exempted by a specific statutory or regulatory provision. Generally, only dioceses, parishes, schools below college level, and provinces of religious institutes (but not their affiliated ministries) can claim exemption from having to file a Form 990, Form 990-EZ or Form 990-N, unless the organization can properly be classified as an integrated auxiliary of a church.

The term “integrated auxiliary” is also somewhat misunderstood. As explained in [Integrated Auxiliaries](#), below, whether a Catholic organization included in the group ruling qualifies as an “integrated auxiliary” ultimately depends on an objective analysis of the nature of the organization’s activities as they relate to the public rather than a subjective determination of the degree of relatedness to or control by another church organization. Because all organizations that are eligible for inclusion in the USCCB group ruling will satisfy the first two of the three prongs of the test for integrated auxiliary status, the relational or affiliation requirement for integrated auxiliary status will be met by all group ruling organizations. Additional relational factors, such as whether and to what extent an organization is controlled by an affiliated parish, diocese or religious institute, or the composition of an organization’s board of directors, are irrelevant.

These guidelines also address the requirement that Catholic schools (elementary, high school and college) adopt a racial nondiscrimination policy, operate in accordance with that policy, make it known to all segments of the general community served by the school, and certify annually that they meet the requirements of Revenue Procedure 75-50 by filing Form 5578,

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<sup>1</sup> All references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise indicated.

<sup>2</sup> The IRS exercised its discretion to exempt organizations included in church group rulings until 1975.

Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.

These guidelines do not address other annual or periodic reporting requirements that may apply to Catholic organizations or their officers, directors, trustees or employees, including but not limited to Form 990-T, Exempt Organization Business Income Tax Return, Form 941, Employer's Quarterly Federal Tax Return, or FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR).

## **HISTORY AND BACKGROUND OF ANNUAL REPORTING REQUIREMENTS**

### ***Terminology***

Form 990, Return of Organization Exempt From Income Tax, is an “information return,” as distinguished from an income tax return. Form 990-EZ, Short Form Return of Organization Exempt from Income Tax, is also an information return. Organizations do not report or pay tax with a Form 990 or Form 990-EZ. Form 990-N (sometimes referred to as the *e-Postcard*) is a “notice,” not signed under penalties of perjury, and requires significantly less information from the filing organization than an information return.<sup>3</sup> For purposes of these guidelines, when referring to all three forms or a requirement that is applicable to all three forms, the term “annual information returns” or “annual information return” will be used, or the applicable form(s) will be referred to, e.g., Form 990/EZ, or Form 990/EZ/N, or Form 990-N. Form 990-T, Exempt Organization Business Income Tax Return, is an income tax return.

### ***History and Background***

Tax exemption under section 501(a) and eligibility to receive income tax deductible charitable contributions under section 170(c) are a form of tax subsidy authorized by Congress in the Internal Revenue Code.<sup>4</sup> The statutory requirement for tax-exempt organizations to file reports with the IRS, coupled with statutory provisions regarding public inspection of such reports, permits the IRS and the public to ensure that an organization's tax subsidy is warranted and that the organization is complying with federal tax laws.

Congress first began requiring tax-exempt organizations to file information returns in 1943, seven years before tax-exempt organizations were required to report and pay tax on their unrelated business taxable income. Until 1969, Congress provided a broad exemption from the information return filing requirement in section 6033(a) for any “religious organization described in section 501(c)(3)...[or] organization described in section 501(c)(3), if...operated, supervised, or controlled by or in connection with [such] a religious organization....” As part of the Tax Reform Act of 1969, however, Congress eliminated the broad filing exemption for religious organizations and replaced it with a more narrow exemption for churches, their

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<sup>3</sup> See Section 6033(i).

<sup>4</sup> *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 544 (1983).

integrated auxiliaries, conventions or associations of churches, and the exclusively religious activities of any religious order.<sup>5</sup>

### ***Catholic Organizations in the Group Ruling***

In order for an organization to be included in the USCCB group ruling, it must complete Form 0928A, Application for Inclusion in USCCB Group Ruling, and submit it to the Chancery Office of the diocese in which the organization's principal office is located. Organizations already included in the Official Catholic Directory ("OCD") that wish to be included in IRS records (i.e., the Exempt Organizations Business Master File extract, or "EO BMF") also must file Form 0928A. Section I of Form 0928A asks the applicant whether it is exempt from having to file an annual information return, and if it is exempt, to explain the reason for its exemption. If the diocese recommends an organization for inclusion in the group ruling, it submits to the USCCB a Form 0928-1. If the USCCB approves the organization for inclusion, it completes the Form 0928-1 with the organization's public charity status and its filing requirement or filing exemption, as applicable, and sends this form to the IRS, and a copy to the diocese along with a Notice of Acceptance. The Form 0928-1 signed by the USCCB indicates whether an organization must file a Form 990/EZ/N or, if it is exempt from filing, on what basis it is exempt. If an organization was given a filing requirement and it believes it should be exempt, the organization may file Form 8940, Request for Miscellaneous Determination, with the IRS to request exemption from filing Form 990/EZ/N.

### **FILING EXEMPTIONS**

This section discusses which exemptions from having to file a Form 990/EZ/N may apply to Catholic organizations. These guidelines are provided for informational purposes only. Whether an organization is required to file an annual information return, and if so, which form, and if not, why not, is a facts-and-circumstances determination. Organizations are strongly advised to consult with a tax advisor.

### ***Churches and Conventions or Associations of Churches***

An organization that is a church or a convention or association of churches is not required to file an annual information return.<sup>6</sup> The IRS uses 14 criteria or characteristics to determine whether an organization described in section 501(c)(3) qualifies as a church or a convention or association of churches.<sup>7</sup> For Catholic organizations, generally only (arch)dioceses, eparchies

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<sup>5</sup> Section 6033(a)(3)(A)(i), (iii).

<sup>6</sup> Section 6033(a)(3)(A)(i). *See also* Treas. Reg. § 1.6033-2(g)(1)(i).

<sup>7</sup> The criteria are (1) a distinct legal existence; (2) a recognized creed and form of worship; (3) a definite and distinct ecclesiastical government; (4) a formal code of doctrine and discipline; (5) a distinct religious history; (6) a membership not associated with any other church or denomination; (7) a complete organization of ordained ministers ministering to their congregations; (8) ordained ministers selected after completing prescribed courses of study; (9) a literature of its own; (10) established places of worship; (11) regular congregations; (12) regular

and parishes qualify for a filing exemption as a church or a convention or association of churches. Ministries and other activities that are separately incorporated or otherwise have a separate civil structure (e.g., a trust) from (arch)dioceses, eparchies and parishes are not exempt from filing as a church or a convention or association of churches, regardless of the nature and extent of the control the diocese, eparchy or parish has over the separately organized ministry or other activity.

The following examples illustrate the provisions of this section.

*Example: Parish and Parish School*

Parish A is in the USCCB group ruling. It operates Catholic School X, which provides education through a general academic program to children from kindergarten through 8<sup>th</sup> grade. Catholic School X has a school building and employees, but it is not separately incorporated and does not otherwise have a separate civil legal existence under state law from Parish A, although it does have its own employer identification number, or EIN. Catholic School X is an activity of Parish A, is covered by Parish A's filing exemption as a church under section 6033(a)(3)(A)(i). Catholic School X must still comply with Revenue Procedure 75-50.<sup>8</sup> See [Racial Nondiscrimination Policy](#), below.

*Example: Parish and Separately Incorporated Parish School*

Parish B is in the USCCB group ruling. It operates Catholic School Y, which provides education through a general academic program to children from kindergarten through 8<sup>th</sup> grade. Catholic School Y is separately incorporated as a nonprofit corporation under the law of State, and so has a separate civil legal existence from Parish B. Catholic School Y is not covered by Parish A's filing exemption as a church under section 6033(a)(3)(A)(i). However, Catholic School Y may nevertheless be exempt from having to file an annual information return. See [Schools Affiliated with a Church or Operated by a Religious Order](#), below.

*Example: Diocese and Diocesan Support Organization*

Diocese is in the USCCB group ruling. It operates Diocesan Support Organization ("DSO"), which holds legal title to certain real and personal property. DSO is organized and operated exclusively for the benefit of Diocese, which supervises and controls DSO. DSO is a section 509(a)(3) Type I Supporting Organization. DSO is separately incorporated as a nonprofit corporation under the law of State,

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religious services; (13) Sunday schools for religious instruction of the young; and (14) schools for the preparation of its ministers.

<sup>8</sup> 1975-2 CB 587 (1975).

and so has a separate civil legal existence from Diocese. DSO is not covered by Diocese’s filing exemption as a church under section 6033(a)(3)(A)(i). However, DSO may nevertheless be exempt from having to file an annual information return, depending on the facts-and-circumstances. See [Integrated Auxiliaries](#), below.

*Example: Diocese and Single Member Limited Liability Company*

Diocese is in the USCCB group ruling. It is the sole member and owner of Single Member Limited Liability Company (“SMLLC”), which holds legal title to real property previously owned by Diocese. SMLLC is not included in the USCCB group ruling in its own right, but rather is a disregarded entity for federal income tax purposes and is exempt from tax as a part of Diocese. SMLLC is covered by Diocese’s filing exemption as a church under section 6033(a)(3)(A)(i). However, if SMLLC claims tax exempt status in its own right by filing a Form 990/EZ/N, filing a Form 1023 or 1023-EZ or requesting inclusion in the USCCB group ruling, the result would be the same as in [Example: Diocese and Diocesan Support Organization](#).

*Disregarded Entities*

The above example illustrates that a ministry or activity can be in a separate legal form, but still be deemed a part of its owner for federal income tax purposes, including classification of the entity under Section 6033. For purposes of employment and certain excise taxes, however, a disregarded entity is treated as a separate entity.<sup>9</sup> The ministry or activity would need to be a separate “eligible entity,” usually a single member limited liability company or an unincorporated association with a single owner.<sup>10</sup> In order to be disregarded, the entity cannot elect to be treated as separate from its owner,<sup>11</sup> such as by filing a Form 8832, Entity Classification Election, with the IRS,<sup>12</sup> and must not be *deemed* to elect to be treated as separate from its owner.<sup>13</sup> An organization is deemed to have made that election if it has been “determined to be” or “claims to be” exempt from tax under Section 501(a). The IRS has interpreted this to include filing a Form 1023 or a Form 990.<sup>14</sup> Organizations that have

<sup>9</sup> Treas. Reg. § 301.7701-2(c)(2)(iv); *see also* Instructions for Form 990 Return of Organization Exempt From Income Tax, Appendix F (2013).

<sup>10</sup> An “eligible entity” is one that can elect its classification, i.e., if it is a business entity not automatically classified as a corporation. Treas. Reg. § 301.7701-3(a). Entities not eligible to be treated as disregarded under Treas. Reg. § 301.7701-3 include trusts and incorporated entities. Treas. Reg. § 301.7701-2(a), (b)(1).

<sup>11</sup> Treas. Reg. § 301.7701-3(b)(1).

<sup>12</sup> Treas. Reg. § 301.7701-3(c)(1).

<sup>13</sup> Treas. Reg. § 301.7701-3(c)(1)(v)(A).

<sup>14</sup> McCray, Richard A. and Ward L. Thomas, *Limited Liability Companies as Exempt Organizations – Update*, FY 2001 IRS Exempt Organizations Technical Instruction Program. *See also* Treas. Reg. § 1.6033-2(c)(2)(iv), which requires that an organization “claiming” exempt status file a Form 990, 990-EZ or 990-N prior to “establishing” exempt status, which the regulation equates with being recognized by the IRS as exempt.

requested inclusion in the USCCB group ruling also have claimed to be exempt insofar as being recognized as exempt as part of a group ruling is equivalent to filing a Form 1023.<sup>15</sup>

*Example: Dioceses and State Catholic Conference*

Diocese A and Diocese B are both in the USCCB group ruling. They jointly control State Catholic Conference Y (“SCC”), which operates as the official public policy voice on matters of interest to the Catholic Church in State. SCC is operated as a joint activity of Diocese A and Diocese B, but it is not separately incorporated and does not otherwise have a separate civil legal existence under state law from Diocese A and Diocese B, although it does have its own employer identification number, or EIN. The activities of SCC (which in effect are activities of the dioceses) are covered by Diocese A’s and Diocese B’s filing exemptions as churches or conventions or associations of churches under section 6033(a)(3)(A)(i).

*Example: Dioceses and Separately Incorporated State Catholic Conference*

Diocese C and Diocese D are both in the USCCB group ruling. Both dioceses are members of and control State Catholic Conference Z (“SCC”), which operates as the official public policy voice on matters of interest to the Catholic Church in State. SCC is separately incorporated as a nonprofit corporation under the law of State, and so has a separate civil legal existence from the dioceses. SCC is tax-exempt under section 501(a) and described in section 501(c)(4) as a social welfare organization. SCC is not covered by Diocese C’s and Diocese D’s filing exemptions as churches or conventions or associations of churches under section 6033(a)(3)(A)(i). As a 501(c)(4) organization, it is required to file Form 990/EZ/N.

This example illustrates the principal that an organization that is not described in section 501(c)(3) cannot claim a filing exemption as a church or convention or association of churches under section 6033(a)(3)(A)(i).

***Schools Affiliated with a Church or Operated by a Religious Order***

There is a regulatory filing exemption for schools that are affiliated with a church or operated by a religious order.<sup>16</sup> For this filing exemption to apply, the organization must be an educational organization (below college level) that is described in section 170(b)(1)(A)(ii). All organizations described in 170(b)(1)(A)(ii) are educational, but not all educational organizations are described in 170(b)(1)(A)(ii). An educational organization is described in section

<sup>15</sup> See Treas. Reg. § 1.508-1(a)(3)(i)(c).

<sup>16</sup> Treas. Reg. § 1.6033-2(g)(1)(vii).

170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it has (1) a regularly scheduled curriculum, (2) a regular faculty of qualified teachers, (3) a regularly enrolled student body, and (4) facilities where its educational activities are regularly carried on.<sup>17</sup>

In addition to being described in section 170(b)(1)(A)(ii), the school must be of a general academic nature below college level, that is affiliated with a church or operated by a religious order. A school included in the USCCB group ruling that otherwise meets these requirements will automatically be considered “affiliated with a church” by virtue of its inclusion in the group ruling.<sup>18</sup>

### *Racial Nondiscrimination Policy*

All private schools in section 501(c)(3), including Catholic schools, must avoid racial discrimination in both policy and practice, and must comply with policy publication requirements as set forth in Revenue Procedure 75-50.<sup>19</sup> Therefore, all Catholic schools included in the group ruling must comply with the requirements of Rev. Proc. 75-50 and must make annual certification of compliance with those requirements. A private school that does not have a racially nondiscriminatory policy as to students does not qualify for exemption.<sup>20</sup> A *school* is an educational organization described in § 170(b)(1)(A)(ii), and includes preschools, primary, secondary, preparatory, or high schools, and colleges and universities, whether operated as a separate legal entity or as an activity of a church or other organization described in section 501(c)(3).

Under Rev. Proc. 75–50, a school must show affirmatively that it—

- has adopted a racially nondiscriminatory policy as to students, i.e., include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and therefore does not discriminate against applicants and students on the basis of race, color, and national or ethnic origin;
- is operating under a racially nondiscriminatory policy as to students; and
- has made this policy known to all segments of the general community served by the school.

Therefore, there is a requirement to *adopt* a policy, *operate* in accord with that policy, and *publish* it.

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<sup>17</sup> Treas. Reg. § 1.170A-9(c)(1); *see also* Rev. Rul. 69-492, 1969-2 CB 36; PLR 200817045.

<sup>18</sup> Treas. Reg. § 1.6033-2(h)(2)(i).

<sup>19</sup> 1975-2 C.B. 587; *see* Rev. Rul. 75-231, 1975-1 C.B. 158.

<sup>20</sup> *See* Rev. Rul. 71-447, 1971-2 C.B. 230.

### *Statement of Nondiscriminatory Policy*

Every school must adopt a statement of nondiscriminatory policy, and then include it in all its brochures and catalogues dealing with student admissions, programs, and scholarships, *and publish it annually*. A school adopts a statement of policy by including it in its charter, bylaws, or other governing instrument. If a school is not separately incorporated from its parish or diocese, it may not have such a governing instrument. In that case, the policy can be formally adopted by a resolution of the parish or diocese (i.e., the governing body) that it has a racially nondiscriminatory policy as to students and therefore does not discriminate against applicants and students on the basis of race, color, and national or ethnic origin.

A statement substantially similar to the following is acceptable for this purpose:

St. Mary's School admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

Further, every school must include a reference to its racially nondiscriminatory policy in other written advertising that it uses as a means of informing prospective students of its programs. The following is an example of an acceptable reference:

St. Mary's School admits students of any race, color, and national or ethnic origin.

### *Annual Publication of the Policy*

The annual "publication" requirement can be met in several ways:

- i. If 75% of the students for the preceding three years are Catholic, the school may publish its policy in a diocesan or parish newsletter, *unless* the school advertises in newspapers of general circulation.<sup>21</sup> In addition, a statement of diocesan policies for all schools within a diocese may be included in the official diocesan newspaper with a listing of the names of the schools within the diocese that comply with the policy;<sup>22</sup> or
- ii. If a school draws its students from local communities and has a racially nondiscriminatory policy, and the school can demonstrate that it currently enrolls students of minority groups in meaningful numbers, the school may satisfy its

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<sup>21</sup> See Sec. 4.03(2)(a) of Rev. Proc. 75-50.

<sup>22</sup> The IRS approved this approach in a letter to the predecessor of the United States Conference of Catholic Bishops on March 10, 1976.

publication requirement by including its statement of its policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships;<sup>23</sup> or

- iii. A school not described in (i) or (ii) may be required to publish its policy in a newspaper of general circulation, or by using broadcast media, unless it draws a substantial percentage of its students on a nationwide or worldwide basis.<sup>24</sup>

### *Annual Certification of the Policy and Publication*

A school must also certify annually that it meets the requirements of Rev. Proc. 75-50. The certification of racial nondiscrimination must be filed annually by the 15th day of the 5th month following the end of the organization's calendar year or fiscal period.

A school that files Form 990 (e.g., a college or university) makes its certification on Schedule E of the Form 990. Catholic schools that are exempt from having to file an annual information return make this certification by filing Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax. The Form 5578 filing may be done on a diocesan-wide basis for all schools operated by the diocese which are under its general supervision or control. Non-diocesan schools are responsible for Rev. Proc. 75-50 compliance and certification on an individual basis.

### ***Integrated Auxiliaries***

An "integrated auxiliary" is an organization that is:

- 1) Described both in sections 501(c)(3) and 509(a)(1), (2), or (3);
- 2) Affiliated with a church or a convention or association of churches; and
- 3) Internally supported.<sup>25</sup>

Some Catholic organizations are considered integrated auxiliaries if they meet the criteria in (1) and (2), regardless of whether or not they are internally supported. See [\*Men's and Women's Organizations, Seminaries, Mission Societies and Youth Groups\*](#), below.

#### *Described Both in Sections 501(c)(3) and 509(a)(1), (2), or (3)*

A Catholic organization included in the USCCB group ruling is described in section 501(c)(3) and qualifies as a public charity described in section 509(a)(1), (2) or (3). Organizations that are not described in section 501(c)(3), or that are not public charities (i.e., because they are private foundations), are not eligible for inclusion in the USCCB group ruling and would not qualify as integrated auxiliaries.

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<sup>23</sup> See Sec. 4.03(2)(c) of Rev. Proc. 75-50.

<sup>24</sup> See Sec. 4.03(1) and 4.03(2)(b) of Rev. Proc. 75-50.

<sup>25</sup> Treas. Reg. § 1.6033-2(h)(1).

### *Affiliated with a Church or a Convention or Association of Churches*

An organization is affiliated with a church if it is:

- a) Covered by a group exemption letter issued to a church or a convention or association of churches;
- b) “Operated, supervised, or controlled by or in connection with” a church or a convention or association of churches; or
- c) Affiliated by virtue of the facts and circumstances.<sup>26</sup>

A Catholic organization included in the USCCB group ruling will automatically be considered “affiliated with a church or a convention or association of churches” by virtue of its inclusion in the group ruling. Therefore, these guidelines do not address the affiliation tests under (b) or (c).

### *Internally Supported*

An organization is internally supported unless it *both*—

- a) Offers admissions, goods, services or facilities for sale, other than on an incidental basis, to the general public (except goods, services, or facilities sold at a nominal charge or for an insubstantial portion of the cost); and
- b) Normally receives more than 50 percent of its support from a combination of governmental sources, public solicitation of contributions, and receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

The first prong looks at the nature of an organization’s activities, and is intended generally to identify organizations that derive program service revenue from the furtherance of their exempt activities. An organization offers admissions, goods, services or facilities for sale to the general public if there is a *quid pro quo* exchange, and the admissions, goods, services or facilities are not limited to Catholic institutions or individuals. Examples of tax-exempt organizations that would be described in (a) include schools, hospitals, retirement homes, elderly and low income housing providers, thrift stores, etc. Organizations that solicit contributions from members and/or the public but that do not provide any admissions, goods, services or facilities would not be described in (a).

The second prong focuses on the sources of an organization’s support and requires a comparison of an organization’s inside and outside revenue, and is intended to further Congress’ intent that “organizations receiving a majority of their support from public and

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<sup>26</sup> Treas. Reg. § 1.6033-2(h)(2).

government sources, as opposed to those receiving a majority of their support from church sources, should file annual information returns in order that the public have a means of inspecting the returns of these organizations.”<sup>27</sup>

The second prong considers three sources of revenue to be outside or external, from which the revenue must be added together to determine whether the sum is half or more of the organization’s total support. The external sources are: (i) governmental sources, (ii) public solicitation of contributions, and (iii) receipts from the sale of admissions, goods, performance of services, or furnishing of facilities in activities that are not unrelated trades or businesses.

Because of the nature of the internal support test, an organization’s qualification as an integrated auxiliary is not a permanent status. If an organization’s activities change over time such that it is at some point described in both the first and second prongs, it is no longer an integrated auxiliary and must begin filing an annual information return.

#### *Men’s and Women’s Organizations, Seminaries, Mission Societies and Youth Groups*

Catholic men’s and women’s organizations, seminaries, mission societies and youth groups included in the USCCB group ruling qualify as integrated auxiliaries regardless of whether or not they are internally supported.<sup>28</sup>

#### ***Exclusively Religious Activities of any Religious Order***

The Internal Revenue Code and the IRS use the term “religious order,” which in the context of determining whether a Catholic organization is required to file an annual information return, generally refers to a canonical religious institute or society of apostolic life.<sup>29</sup> A religious order’s “exclusively religious activities” are its activities other than educational, charitable, or other activities which could serve as an independent basis for an organization to be described in section 501(c)(3).<sup>30</sup> Although a religious order may, in terms of its public charity status, be described in section 170(b)(1)(A)(i) along with churches and conventions or associations of churches, for purposes of section 6033, it is not exempt from having to file Form 990/EZ/N as a “church.” The filing exemption for the exclusively religious activities of any religious order is limited to the internal matters of the religious order to the exclusion of its charitable ministries. Separately organized entities that are operated, supervised, or controlled by, or supervised or controlled in connection with, a religious order are therefore not exempt from having to file an annual information return on the basis of being an exclusively religious activity of any religious order. In some cases, depending on the facts and circumstances, they may be exempt from

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<sup>27</sup> Preamble to final regulations issued under Section 6033, T.D. 8640 (Dec. 20, 1995).

<sup>28</sup> Treas. Reg. § 1.6033-2(h)(5).

<sup>29</sup> The factors the IRS uses to determine whether an organization qualifies as a “religious order” are set forth in Rev. Proc. 91-20, 1991-10 I.R.B. 26 (1991).

<sup>30</sup> Conf. Rep. No. 91-782, 1969-3 C.B. 644.

having to file an annual information return for other reasons. See [Schools Affiliated with a Church or Operated by a Religious Order](#) and [Integrated Auxiliaries](#), above.

The following examples illustrate the provisions of this section.

*Example: Religious Order and Separately Incorporated Ministry*

Religious Order is in the USCCB group ruling. It controls and operates Health Care Ministry, which receives federal funding and other grants to provide health care to indigent persons. Health Care Ministry is separately incorporated as a nonprofit corporation under the law of State, and so has a separate civil legal existence from Religious Order. Health Care Ministry is not covered by Religious Order's filing exemption under section 6033(a)(3)(A)(iii). However, Health Care Ministry may nevertheless be exempt from having to file an annual information return, depending on the facts-and-circumstances. See [Integrated Auxiliaries](#), above.

*Example: Religious Order and Separate Welfare Trust*

Religious Order is in the USCCB group ruling. It controls and operates the Health Care Trust for Religious Members ("HCTRM"). HCTRM was created under a deed of trust under the laws of State. All of the trustees of HCTRM are members of Religious Order. The sole purpose of HCTRM is to hold assets in trust and the trustees shall make distributions for the health care of the Religious Order's members. HCTRM is not covered by Religious Order's filing exemption under section 6033(a)(3)(A)(iii). However, HCTRM may nevertheless be exempt from having to file an annual information return, depending on the facts-and-circumstances. See [Integrated Auxiliaries](#), above.

## FILING REQUIREMENTS

If a Catholic organization is not eligible for one of the [filing exemptions](#) from the requirement to file an annual information return, then it must file a Form 990, Form 990-EZ or Form 990-N, depending on its annual gross receipts, the fair market value of its assets, and its public charity status.

### ***Form 990, Form 990-EZ or Form 990-N?***

A section 501(c)(3) Catholic organization required to file a Form 990/EZ/N is eligible to satisfy its reporting requirement by filing a Form 990-N if (i) its annual gross receipts are normally not more than \$50,000,<sup>31</sup> and (ii) it is neither a private foundation nor a supporting organization.

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<sup>31</sup> Rev. Proc. 2011-15, 2011-3 I.R.B. 322.

### *“Gross Receipts”*

“Gross receipts” means the gross amount received by the organization during its annual accounting period from all sources without reduction for any costs or expenses, and includes, but is not limited to, (i) the gross amount received as contributions, gifts, grants, and similar amounts without reduction for the expenses of raising and collecting such amounts, (ii) the gross amount received as dues or assessments from members or affiliated organizations without reduction for expenses attributable to the receipt of such amounts, (iii) gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption, the net income or loss from which may be required to be reported on Form 990-T), (iv) the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and (v) the gross amount received as investment income, such as interest, dividends, rents, and royalties.<sup>32</sup>

### *“Normally Not More Than”*

The phrase “normally not more than” generally refers to a three-year averaging of an organization’s gross receipts, i.e., the sum of the gross receipts from the current year and the prior two years, divided by three. However, if an organization is in its first or second taxable year, a different threshold applies. “Normally not more than” is therefore summarized as follows:

- (1) in the case of an organization that has been in existence for one year or less, the organization’s gross receipts, including amounts pledged by donors, are \$75,000 or less during its first taxable year;
- (2) in the case of an organization that has been in existence for more than one year, but less than three years, the organization’s average annual gross receipts for its first two taxable years is \$60,000 or less; and,
- (3) in the case of an organization that has been in existence for three years or more, the organization’s average annual gross receipts for the immediately preceding three taxable years, including the taxable year for which the return is filed, is \$50,000 or less.<sup>33</sup>

### *“Neither a Private Foundation Nor a Supporting Organization”*

All section 501(c)(3) organizations can be divided into two subcategories: private foundations and public charities. Private foundations are not eligible for inclusion in the USCCB group ruling. There are three general types of organizations that qualify as public charities, eligible for inclusion in the Group Ruling: (i) “institutional” charities described in § 170(b)(1)(A)(i) (churches and religious orders), § 170(b)(1)(A)(ii) (schools), and § 170(b)(1)(A)(iii) (hospitals); (ii) charities

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<sup>32</sup> Treas. Reg. § 1.6033-2(g)(4).

<sup>33</sup> See Sec. 4 of Rev. Proc. 2011-15.

that receive broad, public support as described in § 170(b)(1)(A)(vi) or § 509(a)(2); and (iii) organizations that have a structural relationship with, and which are formed to support, other public charities described in (i) or (ii) (§ 509(a)(3) Type I or Type II supporting organizations).<sup>34</sup> Catholic organizations that are section 509(a)(3) Type I or Type II supporting organizations are not eligible to file Form 990-N, except as discussed in [Supporting Organizations Eligible to File Form 990-N](#), below. Such organizations must file Form 990/EZ, unless they are exempt from having to file an annual information return by virtue of being [Integrated Auxiliaries](#).

### *Supporting Organizations Eligible to File Form 990-N*

As an exception to the rule that Catholic organizations that are section 509(a)(3) Type I or Type II supporting organizations must file Form 990 or Form 990-EZ and are not eligible to submit Form 990-N, a Catholic organization in the USCCB group ruling that is a section 509(a)(3) Type I or Type II supporting organization is eligible to file Form 990-N for each year that its gross receipts are normally not more than \$5,000.<sup>35</sup> The meaning of “[Gross Receipts](#)” is explained above. The phrase “normally not more than” generally refers to a three-year averaging of an organization’s gross receipts, i.e., the sum of the gross receipts from the current year and the prior two years, divided by three. However, if an organization is in its first or second taxable year, a different threshold applies. “Normally not more than” for these purposes is summarized as follows:

- (1) In the case of an organization which has been in existence for one year or less, the organization has received, or donors have pledged to give, gross receipts of \$7,500 or less during the first taxable year of the organization;
- (2) In the case of an organization which has been in existence for more than one but less than 3 years, the average of the gross receipts received by the organization in its first 2 taxable years is \$6,000 or less; and
- (3) In the case of an organization which has been in existence for 3 years or more, the average of the gross receipts received by the organization in the immediately preceding 3 taxable years, including the year for which the return would be required to be filed, is \$5,000 or less.<sup>36</sup>

### *Form 990 or Form 990-EZ?*

If a Catholic organization required to file an annual information return is not eligible to file Form 990-N, then it must file Form 990 or Form 990-EZ. If the organization has received gross receipts of less than \$200,000 in its most recent taxable year, and has total assets at the end of the taxable year with a fair market value of less than \$500,000, the organization may file Form

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<sup>34</sup> Type III supporting organizations, whether or not they are “functionally integrated,” are no longer eligible for inclusion in the USCCB group ruling. Such organizations, to the extent they were approved for inclusion prior to 2006, may remain in the group ruling, however.

<sup>35</sup> See Section 6033(i) section 6033(a)(3)(A)(ii).

<sup>36</sup> Treas. Reg. § 1.6033-2(g)(3).

990-EZ instead of Form 990. If the Catholic organization received gross receipts of \$200,000 or more in its most recent taxable year, or it has total assets at the end of the taxable year with a fair market value of \$500,000 or more, the organization must file Form 990.

*Chart Summary of Form 990/EZ/N Filing Thresholds*

The chart below provides a summary of the filing thresholds for organizations required to file a Form 990, 990-EZ or 990-N.

Gross receipts or fair market value of assets	Return required
Gross receipts normally not more than \$50,000 (total assets are ignored)	990-N (but may file a Form 990 or 990-EZ)
Gross receipts < \$200,000, <i>and</i> Total assets < \$500,000	990-EZ (but may file a Form 990)
Gross receipts ≥ \$200,000, <i>or</i> Total assets ≥ \$500,000	990

A Catholic organization classified as a section 509(a)(3) supporting organization that is required to file an annual information return must file a Form 990/EZ, notwithstanding its gross receipts or the fair market value of its assets, except as described in [Supporting Organizations Eligible to File Form 990-N](#), above.

**Group Returns**

The IRS permits the parent or central organization that holds a group ruling to file a group return on behalf of two or more subordinate organizations.<sup>37</sup> The USCCB is therefore the only organization legally permitted to file a group return *on behalf of any organization* in the USCCB group ruling. The USCCB does not file a group return, and no subordinate organization in the USCCB group ruling is authorized to file a group return for its own affiliated group of organizations. In some cases, a Catholic organization has attempted to file a purported group return on behalf of itself and two or more affiliated organizations. In such cases, the purported group return may only count as an annual information return for the filing organization, and all of the affiliated organizations “included” in the return are not treated as having filed, and many have had their tax-exempt status automatically revoked for failing to file an annual information return. See [Auto-Revocation](#), below. Organizations that are auto-revoked are no longer tax-exempt and may not legally be included in the group ruling, and therefore they must be removed from the Official Catholic Directory. In order to reinstate their tax-exempt status, they

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<sup>37</sup> Treas. Reg. § 1.6033-2(d).

will be required to file applications for reinstatement (i.e., Form 1023 or Form 1023-EZ) with the IRS. They cannot apply for re-inclusion in the USCCB group ruling.

When an organization in the USCCB group ruling attempts to file a purported group return, or even an application for extension of time to file a purported group return, IRS computers think that a return or extension is being filed for **every single subordinate organization in the group ruling**. This can cause massive problems for thousands of other Catholic organizations, particularly the ones trying to file their own returns. In some cases, because of multiple such filings, the IRS may have to freeze all group ruling accounts in order to reset them, and during that time period (which can last several months), the IRS is not able to process any changes to GEN 0928 accounts, such as updating names or addresses, or having erroneous auto-revocations corrected.

If the USCCB determines that an organization is attempting to file purported group returns, the USCCB may remove the organization from the group ruling.

**Chart of Public Charity Classification and Filing Requirement**

If the organization is described in ...	Its 990/EZ/N Filing Requirement (or Exemption) is likely...
§170(b)(1)(A)(i)	Exempt as a “Church,” unless it’s a religious institute, in which case, exempt as “Religious Order.” Generally, only a province of a religious institute is exempt as a “Religious Order” – a separately organized ministry (school, hospital, nursing home, etc.) of a religious institute that qualifies under 501(c)(3) should be evaluated under the standards below, and often may be required to file Form 990/EZ/N
§170(b)(1)(A)(ii)	If a below college-level school with a general academic program, likely exempt as a school; colleges are usually required to file a Form 990
§170(b)(1)(A)(iii)	Almost always required to file a Form 990
§170(b)(1)(A)(vi)	Usually required to file a Form 990/EZ/N, but may qualify as an integrated auxiliary if it meets <a href="#">internal support test</a>

If the organization is described in ...	Its 990/EZ/N Filing Requirement (or Exemption) is likely...
§509(a)(2)	Usually required to file a Form 990/EZ/N, unless provision of admissions, goods, services, or facilities is generally limited to Catholic persons or institutions.
§509(a)(3) Type I or Type II	Usually required to file a Form 990/EZ, but may qualify as an integrated auxiliary if it meets <a href="#">internal support test</a> (but see <a href="#">Supporting Organizations Eligible to File Form 990-N</a> )

### ***Due Date for Filing Form 990/EZ/N***

An organization’s Form 990/EZ/N is due on or before the 15th day of the fifth calendar month following the close of the period for which the information return is being filed.<sup>38</sup> Therefore, the due date for Form 990/EZ/N of an organization whose tax year ends December 31 will be May 15 of the following year. If the tax year ends on June 30, the due date will be November 15 of that same year.

An organization can file Form 8868, Application for Extension of Time To File an Exempt Organization Return, to request an automatic 3-month extension of time to file, and also to apply for an additional (not automatic) 3-month extension if the original 3 month extension was not sufficient. An organization must show reasonable cause for the additional time requested. There is no form to request an extension of time to file Form 990-N because there is no penalty for late-filing a Form 990-N, unless an organization fails to file required Forms 990-N for three consecutive years. See [Auto-Revocation](#), below.

### ***When does a Catholic organization need to begin filing Form 990/EZ/N?***

Organizations required to file a Form 990/EZ/N must begin filing those returns as of the end of their first tax year, even if the organization has not yet applied for or requested to be included in the group ruling.<sup>39</sup> For example, if an organization is incorporated in November of Year 1, and has a tax year ending December 31, it should file its first Form 990/EZ/N (covering the first short taxable year) by May 15 of Year 2. If an organization is eligible to submit Form 990-N in lieu of a Form 990 or Form 990-EZ, the organization may need to call IRS Customer Account Services at (877) 829-5500 in order to file the e-Postcard.<sup>40</sup>

<sup>38</sup> Treas. Regs. §§ 1.6033-2(e) and 1.6033-6(f).

<sup>39</sup> See Treas. Reg. § 1.6033-2(c) and [Exempt Organizations Annual Reporting Requirements - Annual Electronic Notice \(Form 990-N\): Frequently Asked Questions and Answers](#) on www.irs.gov.

<sup>40</sup> This is so because the IRS does not yet recognize the organization’s EIN as belonging to a tax-exempt organization. Once the account has been set up, it should not be necessary to call the IRS in future years to assist

## ***Public Inspection Requirements***

### ***Public Inspection of Form 990/EZ/N***

Catholic organizations required to file a Form 990/EZ must make their annual information returns (other than the names and addresses of their contributors)<sup>41</sup> available for public inspection for a period of up to three years after the filing due date of a requested return.<sup>42</sup> A person who makes an in-person request must be provided a copy immediately, and a person who makes a request in writing must be provided a copy within 30 days. An organization may not impose a charge on the request other than a reasonable fee for reproduction and the cost of mailing (if applicable).<sup>43</sup> Forms 990-N filed by Catholic organizations are available to the public on Exempt Organizations Select Check at [www.irs.gov](http://www.irs.gov). The IRS is also required to make annual information returns available for public inspection,<sup>44</sup> and some third-party vendors, such as GuideStar and Foundation Center, make this information available to the public. Even if a Catholic organization's Form 990/EZ is available through the IRS or a third-party vendor, the organization should comply with requests for public inspection.<sup>45</sup> An organization can satisfy its public inspection requirement by making its Form 990/EZ available to the public through its website.<sup>46</sup>

### ***Public Inspection of Form 0928A, Application for Inclusion in Group Ruling***

The Internal Revenue Code requires that organizations make available for public inspection their application for recognition of exemption under section 501 (i.e., Form 1023, Form 1023-EZ or Form 1024) in a manner similar to their annual information returns described in [Public Inspection of Form 990/EZ/N](#). The group ruling application form, Form 0928A (or its predecessors) is not an application for recognition of exemption under section 501. Therefore, Catholic organizations included in the group ruling are not required to make it available for inspection pursuant to section 6104.

## **CONSEQUENCES OF NOT FILING; AUTO-REVOCAION**

Organizations that do not file required annual information returns may be subject to failure to file penalties, automatic loss of revocation, or both.

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with filing. See also [Exempt Organizations Annual Reporting Requirements - Annual Electronic Notice \(Form 990-N\): Frequently Asked Questions and Answers](#) on [www.irs.gov](http://www.irs.gov).

<sup>41</sup> Section 6104(d)(3)(A). Organizations that file Form 990/EZ list their contributors on Schedule B, Schedule of Contributors.

<sup>42</sup> See Sections 6104(d)(1)(A) and (d)(2).

<sup>43</sup> Section 6104(d)(1)(B).

<sup>44</sup> Section 6104(b).

<sup>45</sup> For example, the organization's most recently filed Form 990/EZ may not appear otherwise be available for public inspection.

<sup>46</sup> Section 6104(d)(4).

## ***Nonfiler Penalties***

Catholic organizations that fail to file a required Form 990/EZ, or to include information required on such form, or show incorrect information on such form, are subject to a penalty of \$20 each day the failure continues.<sup>47</sup> The maximum penalty is the lesser of (i) \$10,000, or (ii) 5 percent of the organization's [gross receipts](#). If the organization's gross receipts exceed \$1,000,000, the penalty increases to \$100 each day, up to a maximum of the lesser of (i) \$50,000, or (ii) 5 percent of the organization's gross receipts. Penalties may be abated if the organization can demonstrate reasonable cause.<sup>48</sup> There is no penalty for failing to file (or timely file) a single Form 990-N.

## ***Auto-Revocation***

If a Catholic organization is required to file an annual information return, and fails to do so for three consecutive years, it automatically loses its tax-exempt status by operation of law as of the due date (e.g., May 15 for calendar year taxpayers) of the third consecutive non-filed return.

If an organization is revoked, it must *file an application with the IRS* (Form 1023 or Form 1023-EZ) in order to obtain reinstatement of such status regardless of whether the organization was originally required to make such an application. Therefore, as the IRS stated in Revenue Procedure 2014-11, "...if the tax-exempt status of a subordinate organization included in a group exemption letter is automatically revoked under section 6033(j)(1), the subordinate organization must apply [i.e., file a Form 1023] for reinstatement of its tax-exempt status on its own behalf." An organization whose tax-exempt status is auto-revoked may not apply for re-inclusion in the group ruling by filing Form 0928A. Catholic organizations that are reinstated by the IRS are eligible to request an asterisked (non-group ruling) listing in the Official Catholic Directory by contacting their diocese's Chancery Office.

Generally, if a revoked organization files an application for reinstatement, and the application is approved by the IRS, it will be reinstated as of the post-mark date of its application. However, the statute provides the IRS with discretion to approve reinstatement of tax-exempt status back to the date of revocation if the organization can demonstrate to the satisfaction of the IRS that there was evidence of reasonable cause for the failure to file.

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<sup>47</sup> Section 6652(c)(1)(A).

<sup>48</sup> Section 6652(c)(4).

### *Example: Auto-Revocation*

Charity X was incorporated in March 2011 with a tax year ending December 31. Its first Form 990/EZ/N (its 2011 return) was due May 15, 2012. Charity X never files a Form 990/EZ/N. On May 15, 2014, Charity X's tax-exempt status is automatically revoked. Charity X learns of the revocation and files an application for reinstatement (Form 1023) on January 1, 2015. If the application is approved, Charity X's tax-exempt status is reinstated as of January 1, 2015, but will have lost tax-exempt status for the short period from May 15, 2014 to January 1, 2015 and may be required to file an income tax return (Form 1120 for corporations, or Form 1041 for trusts) for that period. This is generally referred to as "prospective" reinstatement. Charity X may try to close this taxable gap period by requesting "retroactive" reinstatement and demonstrating reasonable cause for the failure to file.

Revenue Procedure 2014-11 describes the procedures for requesting prospective and retroactive reinstatement of tax-exempt status following auto-revocation.

### *Erroneous Notices of Non-Filing or Auto-Revocation*

If your organization receives a notice from the IRS regarding a late or non-filed Form 990/EZ/N, or a notice that your organization's tax-exempt status has been automatically revoked for failing to file for three consecutive years, and you believe your organization is not required to file an annual information return, you should contact the Chancery Office in your diocese. The diocese can then contact the USCCB which, as the central or parent organization in the group ruling, may be able to intervene with the IRS on your organization's behalf, or provide guidance concerning your organization's options. In some cases, the USCCB may need to contact your organization for more information.