

## **Timely Reminder Regarding the Movement of Funds Overseas Post 9/11/2001**

### **Background:**

Since September 11, 2001, the IRS has been looking for ways to stop charities that raise money in the U.S. from illegally sending the funds to terrorist organizations. Churches, ministries, and other charitable nonprofits need to be aware that there are specific IRS rules which govern foreign activities. Any failure to comply with these rules could subject the organization to criminal and civil sanctions.

### **Basic Rules:**

When an American church or nonprofit organization with no permanent presence in the foreign country spends money outside the United States, the IRS requires it to: (1) retain control and discretion over the use of the funds, (2) maintain records establishing that the recipient used the funds for exempt purposes, and (3) limit spending to specific projects that further the organization's exempt purposes. In short the organization should maintain records equal to what would be required for funds spent domestically. This often means that the organization will need to establish a bank account in the host country and disburse funds only upon receipt of qualifying, pre-approved expenses. In addition, the organization must now also check the intended payee against the federal list of suspected terrorists. If the payment is to a company, then the organization must identify the owners and determine whether or not they are on the list as well. Payments directly to individuals require that even more stringent records be maintained and may require that an IRS Form 1099 or even an IRS Form W-2 be filed for payments made.

In situations where funds are being directed to another U.S. based, charitable, exempt organization the responsibility for handling these duties would rest with the recipient organization. Where the funds are being directed to a non-U.S. entity (typically organized and structured in the foreign country under the heading of a "non-government organization or NGO") it is recommended that the U.S. based organization only do so after entering into a formal agreement.

### **U.S. Treasury Voluntary Best Practices for U.S. Based Charities**

In November of 2002 the U.S. Department of the Treasury published a set of "voluntary" best practice guidelines designed to help U.S. based charities comply with the current body of regulations governing the movement of monies overseas. In December of 2005, in response to one particular inquiry, the Department published a memorandum designed to further clarify and amplify on these guidelines. Since then, these draft revisions were further amended on a regular basis to improve their utility.

While adoption of these guidelines will not necessarily preclude any criminal or civil sanctions should the charitable organization find itself out of compliance, their application would likely provide a strong basis of support for documenting any actions taken.

### **Summary**

In closing, it is strongly recommended that any organization involved in worldwide activities always try to do so by directing their funds and efforts through a U.S. based 501(c)(3), tax exempt organization whenever possible.

For situations where the organization intends to become directly involved in moving funds overseas as part of their charitable endeavors, careful consideration should be given to ensuring that the process taken falls within current U.S. regulations and that every attempt is made to makes use of recommended “best practice” guidelines.

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