

# What must our congregation consider before leasing our building?

**"Some other unrelated organization wants to rent space in our congregation's building to hold their meetings, to operate an after school program, or for some other purpose. If we lease space to them, what are the legal problems?"**

The following is a very brief discussion identifying important issues that a congregation should consider. The congregation should consult with a lawyer or other advisor, since the following discussion is not intended as legal advice in particular situations.

**Federal Income Tax** - The leasing of property owned by a church will NOT result in the loss of the church's exempt status for federal income tax purposes. However, the congregation may be subject to federal income tax on some or all of the net rental income if the church has outstanding indebtedness. If the congregation is debt free, none of the net rental income will be subject to tax. Even where the congregation has some indebtedness, there are several exceptions that avoid the imposition of tax. This question of federal income taxation is discussed in more detail in another explanation, [Taxation of a Congregation's Rental Income](#).

**State Income Tax** - Many states mirror the federal tax treatment. If the congregation is located in a state that does not follow the federal definitions for exempt entities and taxable income, it will be doubly important to check with a tax professional who is knowledgeable about income taxation by the particular state.

**Local Real Estate Tax** - Exemption from real estate taxes is governed by state law and varies from state to state. What is exempt in one state may be taxable in another state. Furthermore, exemption from real estate tax may vary from county to county within the same state. In some states, what the local tax accessor / collector says or thinks the state law is, controls. Therefore, check with the local taxing authorities or a local tax professional to find out whether the congregation will lose its real estate tax exemption if it leases property.

**Zoning** - If local zoning laws are violated, the owner of the property, as well as the lessee of the property may be liable. Therefore, check out the local zoning and property-use laws to make sure that the use which the lessee will make of the congregation's property will not be in violation.

**Insurance** - Check with the congregation's insurance company/agent to make sure that leasing of the congregation's property will not invalidate any of the congregation's coverage or increase potential liability. Also consider requiring the lessee to have the congregation named as a co-insured on insurance obtained by the lessee. Advice from your insurance agent/consultant is very important.

**Written Lease** - A written lease is necessary. The real issue is how short and simple or how long and detailed the lease should be. A practical rule of thumb is that the length of the lease ought to be proportional to the length of time required to terminate the lease. The longer the cancellation period or the period before termination, the more necessary it is to provide for different contingencies that could arise. Where the lease can be terminated on 10 to 15 days notice, it might be a short, one or two page document. But, if the lease is for ten years and there is no provision for cancellation, the lease may have to be fifty pages or longer. Consult your local attorney.

This explanation on leasing property by a congregation was prepared in February 1998, by Mr. David J. Hardy, senior attorney, in the Office of the Secretary of the Evangelical Lutheran Church in America, 8765 West Higgins Road, Chicago, IL 60631. It is informational only and may not be considered legal advice.