



## MEMORANDUM

TO: All Institutions Participating in the Child and Adult Care Food Program (CACFP)

FROM: *Norma Birckhead*  
Norma Birckhead, CACFP Manager

SUBJECT: Tax Exempt Status for Private Nonprofit Organizations and Churches in the Child and Adult Care Food Program and Summer Food Service Program

DATE: February 28, 2013

STATE AGENCY MEMO: CACFP #6-13

This memorandum provides updated guidance and clarification regarding the eligibility of private nonprofit organizations and churches seeking to participate in the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP). This memorandum supersedes U.S. Department of Agriculture Food and Nutrition Service (FNS) memorandum, *Guidance on Tax Exempt Status for Churches in the Child and Adult Care Food Program and Summer Food Service Program*, which was issued on September 29, 1999. Please note that all nonprofit organizations, including churches, must fulfill all application requirements and demonstrate financial and administrative capability for CACFP and SFSP operations in order to participate in the Programs. This memorandum addresses only the requirement relating to tax exempt status.

CACFP authorities in Section 17 of the Richard B. Russell National School Lunch (NSLA) (42 USC 1766) and Program regulations at 7 CFR 226.2 and 226.15(a) require that private nonprofit organizations must have Federal tax exempt status under the Internal Revenue Code of 1986 (IRC) in order to be eligible to participate in CACFP.

Recently, Section 111 of the Healthy, Hunger-Free Kids Act of 2010 amended Section 13 of the NSLA (42 USC 1761) by clarifying the definition of “private nonprofit” in SFSP to specify that private nonprofit organizations must now *have*, rather than simply be eligible for, tax exempt status under the IRC. This provision was implemented through SFSP 02-2011, *Child Nutrition Reauthorization 2010: Eligibility Requirements and Site Limits for Private Nonprofit Organizations in the Summer Food Service Program*, January 14, 2011, (<http://www.fns.usda.gov/cnd/summer/Administration/Policy/SFSP-02-2011.pdf>). A final regulation implementing this change will be published soon.

For purposes of CACFP and SFSP participation by private nonprofit organizations, only Federal tax exempt status pursuant to the IRC is relevant. Generally, the IRC requires private nonprofit organizations to apply for and receive documentation of tax exempt status. However, Internal Revenue Service (IRS) guidance provides that under certain circumstances, a church is considered automatically tax exempt under the IRC and is not required to apply for the IRS document verifying that it has tax exempt status (Form 1023). Therefore, for



purposes of participation in CACFP and SFSP, churches are not required to provide the State agency with IRS Form 1023 as documentation of tax-exempt status.

When determining whether an organization qualifies as a church, the State agency should refer to IRS Publication 557, “Tax Exempt Status for Your Organization” (<http://www.irs.gov/pub/irs-pdf/p557.pdf>) and “Tax Guide for Churches and Religious Organizations” (<http://www.irs.gov/pub/irs-pdf/p1828.pdf>) for guidance. Should there be concerns regarding the legitimacy of an organization’s claim of tax exempt status based on being a church, State agencies are encouraged to contact a local or regional IRS office or their State agency counsel.

If you have any questions, concerns, or require further clarification related to this memorandum, please do not hesitate to contact your assigned CACFP Specialist. We appreciate your continued participation in the CACFP!