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Memorandum

TO: Interested United Methodist Leaders and Organizations

FROM: GCFA Legal Department

DATE: June 1, 1999

RE: Legal and Tax Considerations of the Rental of Church Steeples to Cellular Phone Companies

The GCFA legal department has received many inquiries, especially from local churches, regarding the rental of church steeples to cellular phone companies. Industry reports indicate that local churches can earn rental income of approximately \$1,000 to \$2,000 per month from cellular phone companies, at little or no expense to the church. This is a very attractive way to fund new ministries, for the local church that is comfortable having a cellular antenna located on its premises.

In light of this growing interest and number of inquiries, we thought it would be useful to United Methodist leaders to have a written analysis of the basic legal and tax considerations that a church organization should be evaluating before a decision is made to rent space for this purpose. GCFA retained outside counsel to provide the analysis, and their memoranda are enclosed. [Link: Rental of Church Steeples to Cellular Phone Companies-Tax Consideration] [Link: Non-Tax Legal Issues Associated with the Placement of Wireless Communications Equipment on Church Property] We emphasize that any local church or other church organization that is considering a decision of this magnitude **needs to retain its own attorney to help with the evaluation**. The enclosed memoranda is not a substitute for local legal counsel. However, we believe the memoranda will save church organizations considerable time and expense, because much of the necessary research (particularly on the tax issues) has already been done.

The legal and tax considerations covered by these two memos do not cover the full range of issues that a local church or other church organization needs to consider when invited to rent steeple space to a cellular phone company. For example, the very first question that needs to be addressed is whether this activity is in keeping with the mission and ministry of the local church. In addition, we are aware of two local churches that have been severely criticized by their neighbors for agreeing to rent steeple space for cellular phone antennas, because of possible health concerns. We are not experts on these issues but can tell you that some people are very fearful of possible adverse health effects from living in the vicinity of these antennas.

We highlight the importance of the "non-lega" analysis because the enclosed memos do not attempt to cover the myriad of unique circumstances that may exist in any given local church. Church organizations need to examine the decision from all possible perspectives before saying "yes" to what appears at first blush to be an easy and attractive way to raise new funds.

Readers probably will find the Arnold & Porter tax memo more complex than the Andrews & Kurth legal issues memo. The Internal Revenue Code and regulations are complicated, and understanding the nuances of unrelated business income tax (UBIT) can be overwhelming even to trained lawyers. Some of you will read the tax memo in earnest and others will want to give it to your tax advisors after reading the Conclusions section. We want to elaborate on one area that is particularly complex: the notion of "debt-financed property."

Page three of the tax memo explains that the rental income from leased property owned by a non-profit organization ordinarily is not subject to federal income tax, unless one of five conditions exists (see the five bullet points). The fifth bullet may be the most important one to most churches, because it refers to "debt-financed property." "Debt-financed property" is defined as property which is held to produce income and as to which there is "acquisition indebtedness." This could, on its face, loop in churches that have a mortgage and rental income from a cellular phone company, except that there is a helpful "out" from the definition of "debt-financed" that should exempt most churches. If "substantially all" of the use of the property is "substantially related" to the performance of the church's exempt purpose (mission and ministry), then the IRS will not consider the property to be "debt-financed," even if debt is incurred to acquire or improve the property. The "substantially all" test is met if "at least 85 percent" of the use of the property is devoted to the organization's exempt purposes.

Each local church with an outstanding mortgage needs to carefully review its own situation in relation to the "substantially all" test. However, we believe that most churches in debt should be able to take a strong good faith position that rental income from a cellular phone company is not taxable under the UBIT rules if approximately 85 percent of the use of the property is devoted to the church's mission and ministry, and the rental of space to a cellular phone company is a very minor and incidental use of the church property. Again, however, each set of facts and circumstances is unique, and church organizations need to consult with their own legal and tax counsel before forming any conclusions about this or any other issue.

We encourage you to share these two memos with your local churches and agencies. We hope you find the information helpful. **Again, we cannot overemphasize the need for local legal counsel to provide assistance and advice on this important matter.**

We are pleased to provide this information as a part of GCFA's ministry of administration, which is made possible through your participation in the general church apportionments.

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