



DEPARTMENT OF THE TREASURY

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street MC 4920 DAL
Dallas, TX 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: DEC 07 2018

UIL: 501.03-00

Person to Contact:
Identification Number:
Telephone Number:
In Reply Refer to

Number: 202149013
Release Date: 12/10/2021

LAST DATE FOR FILING A PETITION
THE TAX COURT:

CERTIFIED MAIL -- Return Receipt Requested

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). Our favorable determination letter to you dated January 11, 19XX, is hereby revoked and you are no longer exempt under section 501(a), as an organization described in section 501(c)(3) of the IRC, effective August 1, 20XX.

Our adverse determination was made for the following reasons:

You operated for the benefit of private interests of church members. Treas. Reg. section 1.501(c)(3)-1(d)(ii) provides that an organization is not operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Part of your earnings inured to the benefit of church members. Treas. Reg. section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of individuals.

You are not a church within the meaning of I.R.C. sections 509(a)(1) and 170(b)(1)(A)(i).

We have enclosed a copy of our report of examination explaining why we believe a revocation of your tax-exempt status under section 501(c)(3) of the Internal Revenue Code is necessary. Section 7611(g) provides that any final report of an agent of the Internal Revenue Service shall be treated as a final adverse determination under section 7428(a)(1), and any church receiving such a report shall be treated for purposes of sections 7428 and 7430 as having exhausted any administrative remedies available to it. Accordingly, section 7611(g) precludes the administrative appeal of any final report issued to a church.

Contributions to your organization are no longer deductible under section 170 of the Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending July 31, 20XX and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Court of Federal Claims or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. We can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. If you qualify for our assistance, which is always free, we will do everything possible to help you. Visit taxpayeradvocate.irs.gov or call 1-877-777-4778.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



Maria Hooke
Director, Exempt Organizations Examinations

Enclosures:
Form 4621-A

Form 886-A (May 2017)	Department of the Treasury – Internal Revenue Service Explanation of Items	Schedule number or exhibit
Name of taxpayer	Tax Identification Number <i>(last 4 digits)</i>	Year/Period ended July 31, 20XX; 20XX; 20XX; 20XX

ISSUES:

- Whether _____ failed to operate exclusively for an exempt purpose.
- Whether the effective date of revocation of _____ exempt status is August 1, 20XX.
- Whether _____ qualifies as a church under I.R.C. § 509(a)(1) and § 170(b)(1)(A)(i).

FACTS:

Incorporation

_____ (“ ”) is the pastor and founder of _____ (“ ”). On September 24, 19XX, _____ filed its articles of incorporation with the State of _____ and is currently registered as an _____, Domestic, Non-profit corporation (DNP).

Article V, 2 of _____ Articles of Incorporation provides that, “The Corporation shall be managed by a Council as provided by law, these Articles of Incorporation and the Bylaws.” _____ Bylaws provides the following:

Article 1, Section 1 – Membership: This corporation shall have no members but shall be governed and managed by a Council.

Article II, Section I – Number: The Council of this corporation shall consist of not less than three council members and not more than nine council members.

Schedule of Compensation for 19XX: Annual salary for Pastor: \$0.

On September 15, 19XX, the Internal Revenue Service received _____ filed Form 1023, *Application for Recognition of Exemption*. _____ reported the following on the Form 1023:

Part II, 1, _____ states that its activities will consist of the following:

Bible teaching – specific teaching from the Bible, about the scriptures and relationship to people today. 0% of activity time.

Praise and worship – songs, hymns and verbal exaltation of God. 0% of activity time.

Prayer for individuals, corporate, etc. 0% of activity time.

All activities are participatory.

Part II, 2, _____ states that the sources of financial support will be by, “*donation of attending persons.*”

Part II, 4, a, _____ indicates that it will be governed by council members. _____ provided a list of Council Members as follows:

- _____, *Chairman*
- _____, *Council Member*
- _____, *Council Member*
- _____, *Council Member*
- _____, *Council Member*
- _____, *Council Member*
- _____, *Council Member*

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, *Secretary*

Part II, 4, d, of the Form 1023, indicates, by checking box "no", that there are no disqualified persons with respect to (other than by reason of being a member of the governing body) or have a business or family relationship with disqualified persons.

Part III, indicates that it is not a private foundation by checking box "a" indicating that it qualifies as a church, within the meaning of sections 509(a)(1) and 170(b)(1)(A)(i) of the Code.

On Schedule A of Form 1023, responded to the given questions (in *italics*) in the following manner:

1. Provide a brief history of the development of the organization, including the reasons for its formation.

The history of this organization is simply the coming together of a group of people for the purpose of worshipping God. The reason for its formation is to facilitate the sharing of this belief and form of worship with others.

2. Does the organization have a written creed or statement of faith? If "Yes," attach a copy.

checked "yes" but there appears to be no written creed or statement of faith attached.

6. Are the services open to the public? If "Yes," describe how the organization publicizes its services and explain the criteria for admittance.

checked "yes" and provided the following statement:

There is no criteria of admittance – all are welcome. Publicity will be word of mouth, telephone directory and a sign on location.

7. Explain how the organization attracts new members.

Word of mouth, telephone directory and a sign on location

8a. How many active members are currently enrolled in the church?

8b. What is the average attendance at the worship service?

9. In addition to worship services, what other religious services (such as baptisms, weddings, funerals, etc) does the organization conduct?

Baptisms, weddings, funerals, baby dedications.

11. Were the current deacons, minister, and/or pastor formally ordained after a prescribed course of study?

No

12. Describe the organization's religious hierarchy or ecclesiastical government.

Led by a Pastor, governed by a council.

13. Does the organization have an established place of worship?

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No

If the organization has no regular place of worship, state where the services are held and how the site is selected.

In home site. State of — meeting sites decided upon by oral agreement.

16. Show how many hours a week the minister/pastor and officers each devote to church work and the amount of compensation paid to each of them. If the minister or pastor is otherwise employed, indicate by whom employed, the nature of the employment, and the hours devoted to that employment.

Pastor devotes 8-16 hrs per week – monthly compensation \$0. He is otherwise self employed as a general contractor 30-40 hrs a week

17. Will any funds or property of the organization be used by any officer, director, employee, minister, or pastor for his or her personal needs or convenience?

No

18. List any officers, directors, or trustees related by blood or marriage.

None

On January 11, 19XX, the IRS issued Determination Letter 947 granting exemption from federal income tax under section 501(a) of the Code as an organization described under section 501(c)(3). The letter also indicates that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described under sections 509(a)(1) and 170(b)(1)(A)(i).

Section 7611 Examination

On September 12, 20XX, the Commissioner, Tax Exempt and Government Entities Division (“TE/GE Commissioner”) personally approved the issuance of a Notice of Church Tax Inquiry (“NCTI”).

On September 14, 20XX, the IRS issued the NCTI and enclosed church inquiry questions to . It was returned as undeliverable.

On October 20, 20XX, the IRS re-issued the NCTI with enclosed church inquiry questions to . This was not returned as undeliverable. On October 26, 20XX, the IRS received consent to suspend the period to conduct a church tax inquiry. did not respond to the church inquiry questions.

On January 12, 20XX, the IRS issued a Notice of Church Tax Examination (“NCTE”).

On February 10, 20XX, the IRS issued an initial examination letter with Information Document Request (IDR) #1. On March 27, 20XX, March 28, 20XX, and March 29, 20XX the IRS received a response to IDR #1 from .

On April 12, 20XX, the IRS issued IDR #2. On June 20, 20XX, the IRS received a response to IDR #2 from .

On July 25, 20XX and July 31, 20XX, the IRS issued IDR #3 and IDR #4, respectively. On September 15, 30XX, the IRS received responses to IDRs #3 and #4.

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On November 21, 20XX and December 5, 20XX, the IRS issued IDR #5 and IDR #6, respectively. The IRS did not receive a response.

On April 2, 20XX, the IRS mailed a clarification letter to stating that the TE/GE Commissioner approved the issuance of the NCTI. The IRS also provided another informal opportunity to resolve the issues. The IRS did not receive a response.

Church Activities

operates from home garage. is the son of and is stated to be the youth pastor of

membership primarily consists of and his immediate and extended family. The table below provides a description of each church member and their known relationship to :

Member Name	Relationship to Pastor & His Childr	Approximate Number of Adult Members	Approximate Number of Children
() &	Self & (spouse)		
&	son of Pastor		
&	son of Pastor		
&	son of Pastor		
&	daughter of Pastor		
&	daughter of		
	Mother to (son-in-law)		
	Relative of		
&	is brother		
()	Son-in-law's sister		
()	Possible relative of		
	Son-in-law's mother		
Total Membership		0	0

On February 10, 20XX, the IRS issued Information Document Request (IDR) #1 to answered IDR#1 on behalf of Below is an excerpt from IDR#1 with answers (in *italics*):

9. Does have a recognized creed and form of worship? If so, please provide a detailed description of this information or documentation that will demonstrate its existence.

Yes. Our name comes from our desire to worship the Lord as a community. To love Him with all our hearts and to worship Him in truth. John 4:24 "God is Spirit, and those who worship Him must worship in spirit and truth." Duet. 6:5-7 "You shall love the Lord your God with all your heart, with all your soul, and with all your strength. "And these words which I command you today shall be in your heart." "You shall teach them diligently to your children, and shall talk of them when you sit in your house, when you walk by the way, when you lie down, and when you rise up." Matt. 22.37-40 "Jesus said to him, "You shall love the Lord your God with all your heart, with all your soul, and with all your mind.' "This is the first and great commandment. "And the second is like it: 'You shall love your neighbor as your self.' "On these two commandments hang all the Law and the Prophets."

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(2) Ran men's bible study group for two years
(3) In charge of prayer ministry for 0 services each weekend, training and mentoring

20. Minutes of Board of Directors, officers, officials or the equivalent for the period covering August 1, 20XX through July 31, 20XX. If minutes are not contemporaneously recorded, please state the reasons.

Board Meetings - No Records

21. Copies of all employment contracts including but limited to Pastor A.

Copies of Employment Contracts- N/A

Revenue

Overall, does not maintain any electronic accounting system to record revenues and expenses but rather uses a manual, bank-issued check register. , wife, is primarily the person who manually records all entries into the check register. The examiner identified one checking account from one bank.

received its revenue solely from tithes and offerings from members¹. No other revenue sources were identified. received tithes on a regular basis throughout the week where each tithe was recorded by hand into a spiral notebook. There were no records provided that would identify any offerings received. Tithes are recorded, by date, name of contributor and the amount of the contribution. The notebook entries are then recorded onto an electronic data base to generate an annual statement for each contributor for their use in preparing their respective charitable contribution deduction when preparing and filing their Form 1040 each year.

In determining the amount of revenue received by , had bank records, a tithing notebook, computer generated tithing records, and annual contribution statements issued to donors.

Tithing was done in cash and, in the majority, in checks. Due to lack of proper bookkeeping for cash tithes, the revenue agent was only able to examine the checks received. The table below provides the tithing in checks received from each member from 20XX through 20XX. Of all tithes received, 0% were from and his "Family Members"²:

¹ Tithes are distinguished from offerings in that, tithes are contribution made by members that represent 10% of their income. Whereas offerings are separate, contributions stated to benefit other members as they had need.

² For the purposes of this table, "Family Members" is defined as , his wife, his children and their spouses, and his known grandchildren. Also included is , a for-profit business where the founder and president is youth pastor, (<http://www.com/about/>).

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Net Deposits					0
Tithes					0
Difference					0

Expenses / Disbursements

All monies deposited into checking account are disbursed in the following manner: (a) Checks issued to pastors and as compensation; (b) Checks issued to members; (c) Electronic payments pay for charges made on the -owned card; or (d) Electronic payments pay for charges made on the personal credit card of and . Below is a detailed description of the activity conducted with respect to the monies deposited into checking account.

A. Disbursements to Pastors

issued checks made to or for compensation with respect to position as pastor. stated that his compensation is \$0 per week. He also added that there is no board to approve salaries and that he sets the amount of his own salary, including bonuses. In subsequent correspondence, stated that his salary is approved and agreed upon by the body. No documents were provided to demonstrate any type of governance or approval by a governing body with respect to salary.

also issued checks made payable to or for compensation with respect to position as youth pastor. received \$0 per month as compensation for this service.

For clarification of the facts respect to daily ministerial activities, IDR#6 requested that provide: (a) a detailed, daily schedule of pastoral activities for an "average" two-week period; (b) Church bulletins, newsletters, etc.; and (c) Legible and logically organized, hand written or typed statements of the specific tasks conducted by from a day-to-day basis. did not provide a response.

Regarding pastoral compensation, did not issue Forms W-2 to Pastors and . Instead, issued Forms 1099 to both, reporting compensation as non-employee compensation. The table below illustrates Form 1099 amounts issued to and from 20XX through 20XX:

TABLE DELETED

B. Disbursements to Members

made disbursements to its members to be used at their discretion. does not maintain supporting documentation showing the purpose or nature of the disbursements.

The table below demonstrates the total amount of disbursements made by , including compensation paid to and . Also attached as Exhibit A is a detailed account of the disbursements by name, amount and check number. The table also demonstrates that disbursements to

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Reconciliation:					
Charges & Checking Account Payments					
	20XX	20XX	20XX	20XX	Total
Charges					0.00
Payments					0.00
Difference	0.00	0.00	0.00	0.00	0.00

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D. Electronic Payments – Personal Account

According to bank statements, electronic payments were made directly to a personal banking account. did not provide any information with respect to the nature of these electronic payments.

The table below provides the total payments from bank account to and personal account from 20XX through 20XX:

	20XX	20XX	20XX	20XX	Total
Electronic Payment					0.00

E. Summary of Total Deposits and Expenses / Disbursements

The following table provides a summary of total deposits from tithes to bank account and the amount paid out in checks to individuals and to credit card charges:

TABLE DELETED

The majority of net deposits were disbursed. As discussed above, was unable to provide documents demonstrating the nature of these disbursements.

LAW:

Church Status Qualification

Section 170(b)(1)(A)(i) describes a church or a convention or association of churches. Section 509(a)(1) of the Code generally provides that the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 170(b)(1)(A).

In Foundation of Human Understanding v. United States, 88 Fed.Cl. 203 (Fed. Cl. 2009), the Court identified the IRS's Fourteen Criteria approach and the Associational Test to evaluate whether an organization qualifies for church status pursuant to I.R.C. § 170(b)(1)(A). In applying these two approaches, the Court reached the conclusion that the organization failed to meet most of the fourteen criteria and failed to satisfy the threshold criteria of communal activity necessary for a church.

In Spiritual Outreach Society v. Commissioner, 927 F.2d 335 (8th Cir. 1991) and Church of Visible Intelligence that Governs the Universe v. United States, 4 Cl.Ct. 55 (1983) the courts adopted the IRS's fourteen criteria standard in deciding whether an organization is a church: (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) an organization of ordained ministers; (8) ordained ministers selected after completing prescribed studies; (9) a literature of its own; (10) established places of worship; (11) regular congregations; (12) regular religious services; (13) Sunday schools for religious instruction of the young; and (14) schools for the preparation of its ministers.

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In American Guidance Foundation, Inc. v. United States, 490 F. Supp. 304 (D.D.C. 1980) the Court ruled that at a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship. This is referred to as the Associational Test. Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill this associational role. Mr. Seyfried and his wife prayed together in the physical solitude of their home. They did not constitute a "congregation" within the ordinary meaning of the word. American Guidance Foundation made no real effort to convert others or to extend its membership beyond the immediate Seyfried family. Its "conduct of religious worship" did not extend beyond the family dwelling, which is used primarily for non-religious purposes. Rather than ministering to a society of believers, plaintiff was engaged in a quintessentially private religious enterprise.

In The Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916 (1986), the Court ruled that to qualify as a church, an organization must serve an associational role in accomplishing its religious purposes. The petitioner had only two members since its formation and the petitioner seemed to have intentionally pursued a policy that discouraged additional membership. Although petitioner generally held bi-monthly meetings, the record was void of evidence of the nature or conduct of these meetings other than listings in petitioner's newsletter of topics for certain meetings, generally involving discussion of libertarian, economic or social issues. The record failed to establish that petitioner served any associational role for purposes of worship. Therefore, the Court held that petitioner was not a church within the meaning of section 508(c)(1)(A).

Exemption

Section 501(a) provides that an organization described in subsection (c) or (d) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

Section 501(c)(3) generally includes corporations organized and operated exclusively for purposes that include religious, educational or charitable purposes, and which no part of the net earnings inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(a)-1(c) of the Regulations defines a private shareholder or individual in section 501 as persons having a personal and private interest in the activities of the organization.

Treas. Reg. § 1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(c)(1) states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(c)(2) states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words private shareholder or individual, see paragraph (c) of § 1.501(a)-1.

Treas. Reg. § 1.501(c)(3)-1(d)(ii) states that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to

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establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treas. Reg. § 1.501(c)(3)-1(f)(2) of the Regulations states.

- (i) In general. Regardless of whether a particular transaction is subject to excise taxes under section 4958, the substantive requirements for tax exemption under section 501(c)(3) still apply to an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958-2) described in section 501(c)(3) whose disqualified persons or organization managers are subject to excise taxes under section 4958. Accordingly, an organization will no longer meet the requirements for tax-exempt status under section 501(c)(3) if the organization fails to satisfy the requirements of paragraph (b), (c) or (d) of this section. See § 53.4958-8(a).
- (ii) Determination of whether revocation of tax-exempt status is appropriate when section 4958 excise taxes also apply. In determining whether to continue to recognize the tax-exempt status of an applicable tax-exempt organization (as defined in section 4958(e) and § 53.4958-2) described in section 501(c)(3) that engages in one or more excess benefit transactions (as defined in section 4958(c) and § 53.4958-4) that violate the prohibition on inurement under section 501(c)(3), the Commissioner will consider all relevant facts and circumstances, including, but not limited to, the following—
 - (A) The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;
 - (B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes;
 - (C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons,
 - (D) Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and
 - (E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f)(6) and § 53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.
- (iii) All factors will be considered in combination with each other. Depending on the particular situation, the Commissioner may assign greater or lesser weight to some factors than to others. The factors listed in paragraphs (f)(2)(ii)(D) and (E) of this section will weigh more heavily in favor of continuing to recognize exemption where the organization discovers the excess benefit transaction or transactions and takes action before the Commissioner discovers the excess benefit transaction or transactions. Further, with respect to the factor listed in paragraph (f)(2)(ii)(E) of this section, correction after the excess benefit transaction or transactions are discovered by the Commissioner, by itself, is never a sufficient basis for continuing to recognize exemption.

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In Unitary Mission Church of Long Island v. Commissioner, 74 T.C. 507 (1980), the Tax Court ruled that the petitioner was not entitled to exemption from Federal taxation under sections 501(a) and 501(c)(3), because a part of its net earnings inured to the benefit of its founder and other ministers.

In Univorsal Church of Josus Christ, Inc. v. Commissioner, T.C. Memo 1988 65, the Tax Court decided that the petitioner operated four commercial activities as departments that were all primarily commercial in nature. As a result, it was ruled that the petitioner did not operate exclusively for one or more exempt purposes.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 870 F.2d 104 (9th Cir. 1981), the church was unable to supply evidence showing that payments to its controlling members were reasonable. As a result, the circuit court ruled that the church was unable to demonstrate that it is entitled to section 501(c) exemption.

GOVERNMENTS POSITION:

I. ISSUE 1: PRIVATE BENEFIT

failed to operate exclusively for exempt purposes by operating for the private benefit of individual church members. The grounds supporting revocation include: (1) circular flow of funds; and (2) inurement.

A. Circular Flow of Funds

Section 61(a) states that except as otherwise provided in this subtitle, gross income means all income from whatever source derived. Section 170(b)(1)(A)(i) provides for a deduction of charitable contributions made by individuals to a church or a convention or association of churches. A charitable contribution is a transfer of money or property without adequate consideration. United States v. American Bar Endowment, 477 U.S. 105 (1986).

In Church of World Peace, Inc. v. Commissioner, T.C. Memo. 1994-87, the petitioner granted charters to parishes, allowing the use of its name, status, and tax identification number, and designated individuals as ministers. In return, the petitioner requested a donation, without other qualification. Ministers deducted contributions to petitioner's bank account, then the ministers would withdraw the same amount for use for personal expenses. These withdrawn amounts were not reported as income, but instead characterized as tax-free under section 107 housing allowances or reimbursement of church expenses. The Tax Court ruled that this circular flow of funds was in contravention of the petitioner operating exclusively for religious purposes within the meaning of section 501(c)(3) and that operations benefited private individuals.

As in Church of World Peace, accepted tithes from its members, facilitating members claiming charitable contribution deductions. would then return the funds back its members for personal use. The table below demonstrates the total tithing received from members from 20XX through 20XX:

Explanation of Items

Name of taxpayer

Tax Identification Number (last 4 digits)

Year/Period ended
July 31, 20XX;
20XX; 20XX;
20XX

Tithe Summary								
* - Family Member	Donor	20XX	20XX	20XX	20XX	Total	Family Member	Family Member Percentage
*						0		0%
						0		
						0		
*						0		
						0		
*						0		
*						0		
						0		
						0		
*						0		
						0		
						0		
*						0		
*						0		
*						0		
	Cash					0		
						0		
						0		
*						0		
						0		
	Cash, unknown					0		
						0		
						0		
*						0		
*						0		
						0		
						0		
	Total	0	0	0	0	0	0	0%

As shown, 0% of all tithing received were from _____ and his "Family Members"⁴.

⁴ For the purposes of this table, "Family Members" is defined as _____, his wife, his _____ children and their spouses, and his known grandchildren. Also included is _____, a for-profit _____ business where the founder and president is _____ youth pastor, _____ (http://www._____.com/about/).

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The table below demonstrates the distributions back to its members. As shown, 0% of disbursements were to its members:

Check Disbursements to or on behalf of individuals								
* - Family Member	Name	20XX	20XX	20XX	20XX	Total	Total to Family Members	Percentage of total Disbursements
*						0	0	0.00%
*						0		
*						0		
*						0		
*						0	0	0.00%
*						0		
*						0		
*						0		
*						0	0	0.00%
*						0		
*						0		
*						0		
*						0	0	0.00%
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*						0		
*						0		
*						0	0	0.00%
*						0		
*						0		
*						0		
*						0	0	0.00%
*						0		
*						0		
*						0		
Grand Total paid to individuals		0	0	0	0	0	0	0.00%

These two tables demonstrate the circular flow of funds where donations received by _____ in the form of tithes were eventually returned to its members for their personal use. As a result, _____ is not operating exclusively for exempt purposes as required under section 501(c)(3) and its operations benefited private individuals— _____ members.

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B. Inurement

failed to operate exclusively for an exempt purpose because its net earnings inured to the benefit of private individuals. Under Treas. Reg. § 1.501(c)(3)-1(c)(2) an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. § 1.501(a)-1(c) defines a “private shareholder or individual” as one having a personal and private interest in the activities of the organization. Further, Treas. Reg. § 1.501(c)(3)-1(d)(ii) provides that an organization is not organized or operated exclusively for one or more of the exempt purposes specified, unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In this case, is the pastor and founder of . The members of consist primarily of his immediate and extended family. Therefore, and his family are persons who have a private and personal interest in the activities of .

received all its revenue from its members in the form of tithes. and have complete control over bank account as well as the overall financial affairs of . They have the ability to issue church disbursements at their discretion, including pastoral compensation. stated to the examiner that there was no organizing body of with authority to govern the affairs of , but that all authority is held by him. stated in subsequent correspondence that members agreed to his compensation. However, members are primarily related to , therefore the independence of membership appears to be impaired. In addition, could not provide any contemporaneous documentation, such as minutes, demonstrating any meeting of members.

Of all the disbursements issued by , 0% was disbursed to members⁵; 0% was disbursed to and his “Family Members”⁶; and 0% was paid directly to and/or at their discretion, of which, only 0% was stated to be compensation:

TABLE DELETED

In addition to the disbursements, owned an card where and were the sole authorized users. The types of charges included airline fees, hotel fees, jewelry purchases, grocery purchases, and home remodel purchases. Then payments to the account were electronically paid from checking account. was unable to provide documentation showing the nature of charges were church-related expenses. Charges to the church credit card therefore appear to be for the private benefit of and .

It was also shown that electronic payments were made from checking account to the personal credit card of and . was unable to provide any records on the nature of these payments.

To help illustrate the amount paid to or on behalf of members who received an economic benefit, the table below shows the total deposits received by and compares them to the various disbursements

⁵ See table on page 12.
⁶ See table on page 10.

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made through checks and credit cards. The table then shows that 0% of its revenue is disbursed to members for their personal benefit:

Calendar Year Information						
	20XX	20XX	20XX	20XX	Total	Percentage
Revenue:						
Deposits					0	0%
Disbursements:						
Checks to or on behalf of ALL members					0	0.0%
: attributable to					0	0.0%
: attributable to					0	0.0%
Total Amount Paid to or on behalf of members.	0	0	0	0	0	0.0%

and authorized church disbursements to personally benefit themselves and to members. disburses 0% of its revenue to its members for their personal benefit, which is a substantial non-exempt purpose within the meaning of Treas. Reg. § 1.501(c)(3)-1(c)(1). As a result, net earnings have inured to the benefit of private individuals within the meaning of section 501(c)(3) of the Code and Treas. Reg. § 1.501(c)(3)-1(c)(2).

Based on these facts, fails the operational test within the meaning of Treas. Reg. § 1.501(c)(3)-1(a)(1) because its net earnings inured to the benefit of private individuals.

II. ISSUE 2: DATE OF REVOCATION

Section 12.03 of Revenue Procedure 2018-5 states that the revocation of a determination letter may be retroactive if: (1) there has been a change in the applicable law; (2) the organization omitted or misstated material information. A misstatement of material information includes an incorrect representation or attestation as to the organization's organizational documents, the organization's exempt purpose, the organization's conduct of prohibited and restricted activities, or the organization's eligibility to file Form 1023-EZ; (3) the organization operated in a manner materially different from that originally represented in an application for recognition of exemption; or (4) in the case of an organization to which § 503 applies, the organization engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. If a determination letter is revoked or modified by a letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the determination letter is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

As described above, operated for the private benefit of its members through a circular flow of funds and inurement. As a result, it has operated in a manner materially different from that originally represented in its Form 1023 and the effective date of revocation of exempt status is August 1, 20XX.

III. ISSUE 3: CHURCH QUALIFICATION

In the absence of Congressional guidance, courts have applied the IRS' Fourteen Criteria and the Associational Test to determine whether a taxpayer qualifies as a "church" for purposes of section 170(b)(1)(A)(i). See Foundation of Human Understanding, 88 Fed.Cl. at 218. As described below, fails to meet both standards.

A. The IRS's Fourteen Criteria

Courts have used the IRS' 14 criteria to help ascertain whether an organization qualifies as a church under section 170(b)(1)(A)(i). Based on IDR responses, the IRS considers the following:

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1. A distinct legal existence:

is organized as an _____, non-profit corporation.

2. A recognized creed and form of worship:

indicated on its Form 1023 application, Schedule A, that it has a written creed or statement of faith.

During the examination, _____ simply provided citations of certain scripture verses and did not provide any document that outlines a formal statement that church members embrace and adhere to.

3. A definite and distinct ecclesiastical government:

is controlled by _____ According to _____, he has complete control over the affairs of _____ and there is no governing body with authority to govern _____ in religious, doctrinal, financial, or any other church matter. _____ also does not maintain minutes of any meeting that may have occurred.

4. A formal code of doctrine and discipline:

stated "n/a".

5. A distinct religious history:

formed in September 19XX. _____ was unable to provide details of its religious activities.

6. A membership not associated with any church or denomination:

In its Form 1023, Schedule A, _____ indicated that it does not require prospective members to renounce other religious beliefs or their membership in other churches or religious orders to become members.

7. An organization of ordained ministers:

is neither licensed nor ordained.

8. Ordained ministers selected after completing prescribed studies:

did not complete any prescribed course of study.

9. A literature of its own:

does not produce any literature of its own that would provide information to prospective members of _____ general beliefs.

10. Established places of worship:

alleged that it meets every Sunday in _____ garage. _____ is the son of _____. _____ does not advertise its place of worship to the public. Therefore, the "place of worship" is only known to the members of _____.

11. Regular congregations:

is primarily made up of _____ and his immediate and extended family. _____ reported on its Form 1023 that it would attract new members by word of mouth and by the signage in front of _____. However, during the examination, _____ revealed that it did not have an application process for new members or maintain any signage.

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also reported on its Form 1023, Schedule A, that it had 0 members and 0 individuals who attended the worship services. During the audit provided a list of 0 members, all of whom appear to be related to each other, and over half are related to himself Also 0 of the listed individuals appeared to be children.

As a result, has not demonstrated that it is a congregation.

12. Regular religious services:

On its Form 1023, stated that it would conduct baptisms, weddings, funerals, child dedications. However, during the years under examination, conducted wedding. did not maintain a record of its religious services.

13. Sunday schools for the religious instruction of the young:

stated that it conducted a youth meeting every other Tuesday. was unable to provide any proof of the existence of these Sunday schools.

14. Schools for the preparation of its ministers:

did not provide any documents.

In weighing the 14 criteria discussed above, would not qualify as a church within the meaning of sections 509(a)(1) and 170(b)(1)(A)(i).

B. Associational Test

To qualify as a church, “an organization must serve an associational role in accomplishing its religious purpose.” Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 924 (1986). The associational test is a “threshold” standard which religious organizations must satisfy in order to obtain church status. In creating the associational standard, the United States District Court for the District of Columbia stated that demonstrating associational aspects is the “minimum” requirement necessary for a religious organization to gain church status. American Guidance Foundation, Inc. v. United States, 490 F.Supp. 304, 306 (D.D.C. 1980).

Courts have also followed American Guidance Foundation in finding that a “church” may be distinguished from other religious organizations by fulfillment of an “associational role”: The means by which an avowedly religious purpose is accomplished separates a “church” from other forms of religious enterprise. At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship. Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill this associational role. See Foundation of Human Understanding, 88 Fed. Cl. at 221.

In American Guidance Foundation, the American Guidance Foundation (“AGF”) consisted of Robert Seyfried and at most five members of his immediate family. The District Court ruled that AGF was not a congregation because Mr. Seyfried and his wife prayed together in the physical solitude of their home, AGF made no real effort to convert others or to extend its membership beyond the immediate family, its “religious instruction” consisted of a father preaching to his son, its organized ministry was a single, self-appointed clergyman, and its “conduct of religious worship” did not extend beyond the family dwelling.

The facts in are comparable to that of American Guidance Foundation: membership consisted primarily of and his immediate and extended family members, met at home, was unable to demonstrate any real effort to convert others, “religious instruction” consisted of preaching to his immediate and extended family, is a

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self-appointed pastor who was not formally ordained, and “conduct of religious worship” did not extend beyond home. As a result, is not a congregation and does not satisfy the associational test.

For these reasons, does not qualify as a church within the meaning of sections 509(a)(1) and 170(b)(1)(A)(i) of the Code.

TAXPAYER’S POSITION:

has not provided a position.

CONCLUSION:

failed to operate exclusively for an exempt purpose because it operated for the private benefit of individual church members, and because its net earnings inured to the benefit of private individuals. As a result, the effective date of revocation of exempt status is August 1, 20XX. In addition, failed to qualify as a church within the meaning of I.R.C. §§ 509(a)(1) and 170(b)(1)(A)(i).