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From Rubik's Cube to Checkers: Determining Church Status Is Not as Hard as You Think

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There are more than 300,000 churches in the United States, espousing a variety of beliefs and conducting a variety of activities.[1] But only some organizations claiming to be churches qualify as "churches" under the federal income tax laws and accordingly receive special tax treatment. The problem for churches and practitioners is that the federal income tax laws use the word "church" in many different provisions without defining it.[2] The IRS and various courts have used different approaches to determine whether an organization is a church, but these approaches have seemed inconsistent.[3] The situation was described several years ago as one that has "puzzled the Service, courts and scholars."[4]

This puzzle, like the Rubik's Cube, continues to create confusion for the IRS, courts, churches, and practitioners. This paper examines the context and history of the cases and rulings to show that despite the lack of a formal definition of church, and the apparent inconsistency between approaches to determine church status, there is in fact a test to determine church status that is used in the majority of cases and rulings, and in practice it subsumes all other approaches.[5] By recognizing this test as the test, the process of determining church status can become less mysterious and more predictable — like substituting a game of checkers for the Rubik's Cube.

Part I describes the various uses of the term "church" in the Internal Revenue Code of 1986. Part II discusses the key cases and rulings interpreting the term "church" under section[6] 170(b)(1)(A)(i) (the most commonly cited section regarding churches) to show how it has been interpreted over time. Part III shows that one test of section 170(b)(1)(A)(i) status encompasses all others. Part IV examines several ancillary 170(b)(1)(A)(i) issues on which the courts and the IRS agree. Part V shows that the section 170(b)(1)(A)(i) test described in Part III is also sufficient for church status under other parts of the code.

I. Use of 'Church' in the Code

The term "church" is used in several places in the code. Under sections 509(a)(1) and 170(b)(1)(A)(i), a church is classified as a public charity rather than a private foundation.[7] Also, under section 508(c)(1)(A) the

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[1]"More Americans Flock to Mega-Churches: Mega-Churches Grow Bigger and Bigger," *available at* http://abcnews.go.com/US/story?id=93111 on Jan. 27, 2011; *see also* http://churchrelevance.com/qa-how-many-us-churches-exist/.

[2]*See* Whelan, Charles M., "'Church' in the Internal Revenue Code: The Definitional Problems," 45 *Fordham L. Rev.* 885 (1976) (questioning consistency of use of the word "church" in the code); and Bruce R. Hopkins, *The Law of Tax-Exempt Organizations*, section 10.3, at 320 (9th ed. 2007) (discussing the inability to provide a formal definition of church).

[3]*See, e.g.*, TAM 200437047 ("both the courts and the Service agree that there is no bright-line test as to whether an organization is a . . . church); and *Foundation II*, 104 A.F.T.R. 2d 2009-5424, 5434 (Cl. Ct. 2009).

[4]Louthian, Robert and Thomas Miller, 1994 EO CPE Text: "A. Defining 'Church' — The Concept of a Congregation."

[5]It is well established that making a determination whether an organization does or does not qualify for favorable federal income tax treatment under section 501(c)(3) or as a church does not violate constitutional prohibitions. *See, e.g.*, *Church of Spiritual Technology v. U.S.*, 70 A.F.T.R. 2d 92-5233 (Cl. Ct. 1992);

(Footnote continued in next column.)

Universal Life Church, 60 A.F.T.R. 2d 87-5989, 5999 (Cl. Ct. 1987) ("It is not within this court's purview to judge in this motion the legitimacy of plaintiff's religion. However, it is legitimate for the court to decide plaintiff's status under [section] 501(c)(3)."); *Foundation II*, 104 A.F.T.R. 2d 2009-5424 (determining the organization's church status does not require resolution of a constitutional question); *Church of the Visible Intelligence That Governs the Universe v. U.S.*, 53 A.F.T.R. 2d 84-406, 413 (Cl. Ct. 1983) ("exemption from taxation as a church is not a right, but a matter of legislative grace"); and *Fields v. U.S.*, 81 A.F.T.R. 2d 98-1625 (D.C. Dist. Ct. 1998) at note 90 below.

[6]All section references are to the Internal Revenue Code of 1986, as amended, and the Treasury regulations promulgated thereunder.

[7]*See also* reg. section 1.170A-9(b) ("An organization is described in section 170(b)(1)(A)(i) if it is a church or a convention or association of churches"). Congress enacted section 170(b)(1)(A)(i) as part of the Internal Revenue Code of 1954. *Vaughn v. Chapman*, 48 T.C. 358, 363 (1967). *Chapman* contains a detailed discussion of the legislative history of this section. A detailed discussion of the differences between private foundations and public charities is beyond the scope of this paper. *See* sections 170(b) and 4940-4948 for some of the differences between private foundations and public charities. The rationale for not applying the private foundation rules to churches has been explained by the declaration that churches would be responsive to the needs of the public and therefore do not require government regulation. *Church of the Visible Intelligence*

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requirement to file a Form 1023 to seek recognition of exempt status does not apply to churches.[8] Further, under section 6033(a)(3)(A)(i), churches are exempt from the requirement to file an annual information return with the IRS.[9] Under the Federal Insurance Contributions Act, section 3121(w) allows a church to elect to exclude employee income from such tax and section 3121(w)(3)(A) defines church for these purposes as ''a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.'' Several other sections define church by reference to the section 3121(w)(3)(A) definition.[10] Under the tax rules governing benefit plans such as pension, profit-sharing, and stock bonus plans, section 414(e) defines the term ''church plan'' generally as a plan established and maintained ''for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.''[11] Several other sections define church plan by reference to section 414(e).[12] Section 7702(j) governs the treatment of some church plans as life insurance.[13] The IRS also has provided special rules for church tax inquiries and investigations.[14] Section 7611(h) defines a church for such purposes as ''any organization claiming to be a church and any convention or association of churches.'' At one time, churches were also exempt from the tax on unrelated business income.[15] Such exemption no longer exists, but the former exemption is relevant because many of the early church cases discussed such exemption.[16]

Finally, there are several other sections that use the word ''church'' without defining it or cross-referencing one of the sections mentioned above.[17] With the exception of section 7611, neither the code nor the Treasury regulations define church or provide a test for church status under these sections.

That Governs the Universe v. U.S., 53 A.F.T.R. 2d 84-406 (Cl. Ct. 1983) (citing S. Rep. No. 91-552, 91st Cong., 1st Sess. 57 (1969); H.R. Rep. No. 91-413, 91st Cong., 1st Sess. 41 (1969)).

[8]*See also* reg. section 1.508-1(a)(3)(i)(a). This exemption and many of the other exemptions discussed herein also apply to ''a convention or association of churches'' or an ''integrated auxiliary'' of a church. This paper will not discuss these terms, but will focus solely on the meaning of ''church.''

[9]*See also* reg. section 1.6033-2(g)(1). This filing exemption includes the Form 990 as well as Form 990-N. Section 6033(i). For a discussion of the legislative history of section 6033, see GCM 37116 (1977).

[10]*See* sections 401(a)(9)(c)(iv) (in the context of the beginning date for distributions, ''church plan'' means a ''plan maintained by a church for church employees'' and church is defined in section 3121(w)(3)(A)); 403(b)(12)(B) (when defining retirement income account, church is defined in section 3121(w)(3)(A) and includes any qualified church-controlled organization (as defined in section 3121(w)(3)(B), which describes certain church-controlled 501(c)(3) organizations)); and 457(3)(13) (in the context of exempting churches from some deferred compensation rules set forth in section 457, church is defined in section 3121(w)(3)(A)).

[11]*See also* 29 U.S.C.A. 1002 (33) (setting forth the same definition for church plan for ERISA purposes); reg. section 1.414(e)-1(a) (providing that the term ''church'' includes a church or a ''convention or association of churches''); and reg. section 1.414(e)-1(e) (providing that ''church'' includes ''a religious order or a religious organization if such order or organization (1) is an integral part of a church, and (2) is engaged in carrying out the functions of a church, whether as a civil law corporation or otherwise'').

[12]*See* sections 79(d)(7) (group term life insurance discrimination rules); 402(g)(7)(B) (limitation on elective deferrals); 410(c) (minimum participation standards); 411(e) (minimum vesting standards); 412(e)(2) (minimum funding standards); 415(c)(7) (limitations on benefits and contributions of church plans); 1402(a)(8) (definition of net earnings from self-employment); 4975(g)(3) (tax on prohibited transactions); 4980B(d)(3) (tax on failure to comply with group health plan continuation coverage requirements); 4980F(f)(2) (tax on failure to comply with plan notice requirements); 6057(c) (voluntary reports of church plans); and 9802(f) (group health plan discrimination rules).

[13]Section 7702(j)(3) defines church as ''a church or a convention or association of churches.''

[14]Section 7611. A detailed discussion of section 7611 is beyond the scope of this paper, but may be found at Gonzalez, Edward, Thomas Miller, and David W. Jones, IRS 1992 EO CPE Text: ''A. Update on Churches Examinations Under IRC 7611.''

[15]*See De La Salle Institute v. U.S.*, 195 F. Supp. 891, 898 (N.D. Cal. 1961). As part of the Revenue Act of 1950, churches and associations or conventions of churches were exempted from the tax on unrelated business income. In connection with that exemption, a clarifying Treasury regulation was provided. Reg. section 1.511-2(a)(3)(ii), which applies to tax years beginning before January 1, 1970, provides: ''The term 'church' includes a religious order or a religious organization if such order or organization (a) is an integral part of a church, and (b) is engaged in carrying out the functions of a church, whether as a civil law corporation or otherwise. In determining whether a religious order or organization is an integral part of a church, consideration will be given to the degree to which it is connected with, and controlled by, such church. A religious order or organization shall be considered to be engaged in carrying out the functions of a church if its duties include the ministration of sacerdotal functions and the conduct of religious worship. . . . What constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of a particular religious body constituting a church.'' LTR 8508070; *Lutheran Social Service of Minn. v. U.S.*, 583 F.Supp. 1298 (Dist. Minn. 1984). *See also* LTR 8508070 (the IRS determined that an organization was not a church by evaluating it under the unrelated business income tax regulations). Similar language was included in a draft proposed regulation for section 170(b)(1)(A)(i) that was never issued: A church or convention or association of churches as described in section 170(b)(1)(A)(i) if it is an organization of individuals having commonly held religious beliefs, engaged solely in religious activities in furtherance of such beliefs. The activities of the organization must include the conduct of religious worship and the celebration of life cycle events such as births, deaths, and marriage. The individuals engaged in the religious activities of a church are generally not regular participants in activities of another church, except when such other church is a parent or subsidiary organization of their church. *See* GCM 36993 (1977).

[16]Reg. section 1.6012-2(e). In fact, reg. section 1.170-2(b)(2) still provides, ''For the definition of 'church,' see the regulations under section 511.''

[17]*See* sections 501(h)(5), 170(b)(1)(A)(i) (organizations may not make the 501(h) lobbying election); 501(m) (commercial-type insurance); 504(c) (status after organization ceases to

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II. Section 170(b)(1)(A)(i) Case Law and Rulings

Most of the cases and rulings that examine church status do so under section 170(b)(1)(A)(i) and they will be the focus of Part II.[18] First, Part II will summarize the important cases and rulings that have been issued. Then it will provide a more detailed case study of one organization, the section 170(b)(1)(A)(i) status of which has been the subject of five different cases and rulings.

A. Early Cases and Rulings

In Rev. Rul. 59-129, 1959-1 C.B. 58, the IRS ruled that The Salvation Army was a church or a convention or association of churches within the meaning of section 170(b)(1)(A)(i). No explanation was provided for the ruling.

The first court case to examine the definition of church was *De La Salle Institute v. U.S.*[19] In *De La Salle*, the district court examined the activities of an incorporated religious order, which operated a winery, parochial schools, and a chapel (among other activities), that sought exemption from unrelated business income tax.[20] The court examined the legislative history of sections 170 and 511 and concluded that when Congress used the term ''church'' it intended to convey a more limited idea than is conveyed by the term ''religious organization.''[21] The court stated: ''To exempt churches, one must know what a church is. Congress must either define 'church' or leave the definition to the common meaning and usage of the word'' [*De La Salle* Common Meaning Rule];[22] otherwise Congress would be unable to exempt churches.'' [23] The court held that the incorporated religious teaching order, which performed no sacerdotal functions, was not a church. In particular, saying that the ''tail cannot be permitted to wag the dog,'' the court held that the incidental activities of the religious teaching order could not make the order a church.[24]

A few years later, the Tax Court for the first time analyzed the meaning of church under section 170(b)(1)(A)(i) in *Vaughn v. Chapman*.[25] The organization in that case provided dental care in foreign countries and the organization's members conducted religious services and established ''small indigenous churches'' in such countries.[26] After looking at the legislative history of section 170(b)(1)(A)(i), the court declared that religious organizations are not per se churches.[27] The court stated that Congress intended ''church'' to ''be synonymous with the terms 'denomination' or 'sect' rather than to be used in any universal sense'' (*Chapman* Denomination Rule).[28] The majority opinion held that the organization was not a church, emphasizing that the organization (i) was interdenominational, (ii) urged converts to establish their own native churches, and (iii) did not ordain its own ministers.[29] Judge Tennenwald's concurring opinion in *Chapman* stated that the analysis requires looking ''not only at the purposes of the organization but the means by which those purposes are accomplished. . . . [R]eligious purposes and means are not enough'' (*Chapman* Means Rule).[30] He went on to state that ''the word 'church' implies that an otherwise qualified organization bring people together as the principal means of accomplishing its purpose'' (*Chapman* Bring Together Rule).[31] Further, the ''permissible purpose may be accomplished individually and privately,'' but not in ''physical solitude.''[32] Judge Tennenwald concurred with the majority holding because the church activities, though important, were accessorial to the furnishing of dental services and the ''critical element of spiritual togetherness'' was missing to a large degree.[33]

B. The 14 Factors

In 1977, in GCM 36993, the IRS general counsel's office examined whether an organization ''formed for and engaged in the practice of witchcraft'' was a church under section 170(b)(1)(A)(i). The general counsel's office explained that although Rev. Rul. 59-129 was published in digest form, the IRS had observed that the Salvation Army qualified as a church because it possessed the following 14 factors (14 Factors):

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qualify under section 501(c)(3) for substantial lobbying or political activities); 512(b)(12) (modified specific UBIT deduction for a ''diocese, province of a religious order, or a convention or association of churches''); 514(b)(3)(E) (unrelated debt-financed income for a church or convention or association of churches); 1402(j) (church employee income); 3309(b)(1)(A) (federal unemployment tax); 3401(a)(9) (definition of wages for withholding); 5122(c) (record keeping by retail dealers); 6043(b) (exempting ''churches, their integrated auxiliaries, conventions or associations of churches'' from the return requirement in connection with liquidation); and 7701(a)(19) (domestic building and loan association used for church purposes). *See also* reg. section 301.7701-13(d)(8) (pre-1970 domestic building and loan association).

[18]Two non-170(b)(1)(A)(i) cases will be included because they have been so heavily cited by 170(b)(1)(A)(i) cases. *See* notes 19 and 41 below.

[19]195 F.Supp. 891 (N.D. CA. 1961). Although this is not a 170(b)(1)(A)(i) case, it is discussed here because it is a seminal case.

[20]*Id.* at 893. At this time, churches were exempt under section 511(a)(2)(A), but no defining regulation had been promulgated.

[21]*Id.* at 897-898.

[22]*Id.* (emphasis added).

[23]*Id.* at 903 (emphasis added). All Rules are reproduced in Appendix A.

[24]*Id.* at 901-902. The court noted that the ''chapels at plaintiff's parochial schools and novitiate are 'churches'" and if a corporation only operated one of them, it would ''obviously be a 'church.'"

[25]48 T.C. 358 (1967).

[26]*Id.* at 359-360.

[27]*Id.* at 363.

[28]*Id.*

[29]*Id.* at 364-365.

[30]*Id.* at 367 (emphasis in original).

[31]*Id.* (emphasis in original).

[32]*Id.* Judge Tennenwald also stated on this point: A man may pray alone, but ''though his house may be a castle, it is not a 'church.'"

[33]*Id.* at 368.

(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) a complete organization of ordained ministers ministering to their congregations;
(8) ordained ministers selected after completing prescribed courses of study;
(9) a literature of its own;
(10) established places of worship;
(11) regular congregations;
(12) regular religious services;
(13) Sunday schools for the religious instruction of the young; and
(14) schools for the preparation of its ministers.

The general counsel's office said that the 14 Factors "normally would be attributed to a 'church' in the commonly accepted meaning of that term" and that since "'church' is not defined in the Code or regulations, the above criteria are useful in determining whether, on balance, a particular religious organization, if tax exempt, constitutes a 'church.'" Further, such "determination is necessarily one of fact and must be made on a case by case basis."[34]

[34]On January 9, 1978, the IRS commissioner set forth the 14 Factors as part of his remarks at a conference. "Remarks of IRS Commissioner Jerome Kurtz," PLI Seventh Biennial Conference on Tax Planning (Jan. 9, 1978), reprinted in *Fed. Taxes* (P-H) 54,820 (1978). In Implementation of Tax Protestor Study Group Recommendation, GCM 38699 (1981), the general counsel's office recommended that the IRS publish the 14 Factors in the Internal Revenue Manual. The IRM was chosen rather than a revenue ruling because the 14 Factors are "merely a tool which the Service finds helpful in making a particular factual determination." The general counsel's office also recommended that the IRM state that "the criteria are not exclusive and are not to be mechanically applied, but are to serve only as a list of some of the characteristics that may be used in determining whether an organization is a church and that some of these characteristics may be given more weight than others in a given case." Finally, the general counsel's office recommended adding a 15th factor to read "any other facts and circumstances which may bear upon the organization's claim to church status." The current IRM introduces the 14 Factors by stating: "The Service considers all the facts and circumstances in determining whether an organization is a church, including whether the organization has the following characteristics." The IRM also provides that the 14 Factors are "not exclusive — any other facts and circumstances that may bear upon the organization's claim for church status must also be considered." Finally, the IRM states that "an organization need not have all of the characteristics (few churches do, and newly-created churches cannot be expected to); thus, no single characteristic is controlling" and "some of the characteristics may be given more weight than others in a given case." IRM 7.26.2.2.4 (last revised: 03-30-1999).

Next, the general counsel's office summarized *Chapman*, *Christian Echoes* (discussed below), and *De La Salle*, and which of the 14 Factors were critical to each: *Chapman* equated "church" with denomination, *Christian Echoes* emphasized an established congregation with ordained ministers, and *De La Salle* showed what a church is not — a teaching order that performs no sacerdotal functions. The general counsel's office compared the witchcraft organization under the *Chapman* and *Christian Echoes* requirements, then showed that the organization satisfied nine of the 14 Factors.[35] In the end, the general counsel's office determined that the organization was a church under section 170(b)(1)(A)(i) based on "an overall weighing of the 'normal characteristics' of churches."

C. *American Guidance*

In *American Guidance Foundation, Inc. v. U.S.*,[36] the district court examined an organization that consisted of members of one family, conducted prayer, and recorded messages on telephone tape.[37] The court noted that no "coherent definition emerge[s] from reviewing the Service's rulings or regulations, or the limited instances of judicial treatment." It described the *De La Salle* Common Meaning Rule and, regarding the 14 Factors, stated:

> While some of these are relatively minor, others, e.g. the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and dissemination of a doctrinal code, are of central importance [*American Guidance* Central Importance Rule]. . . . At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship [*American Guidance* Minimum Assembly Rule]. 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.[38]

Ultimately, the court ruled that the organization was not a church under section 170(b)(1)(A)(i): The organization had prepared "superficially responsive documentation for each of the established IRS criteria," but the family does not constitute a "congregation" within the ordinary meaning of the word, the organization has "made no real effort to convert others," and the organization's instruction consists of a father preaching to his son.[39] Thus, it failed to "qualify under the threshold indicia of communal activity necessary" for a church.[40]

[35]The IRS also showed that the organization satisfied most of the requirements of the proposed regulation for section 170(b)(1)(A)(i). *See* note 15 above.

[36]46 A.F.T.R. 2d 80-5006 (D.C. Dist. Ct. 1980), *aff'd in unpublished opinion (D.C. Cir. 1981).*

[37]*Id.* at 5007.

[38]*Id.*

[39]*Id.* at 5008.

[40]*Id.*

D. Other Cases and Rulings

In *Church of Eternal Life & Liberty, Inc. v. Comm'r*,[41] the Tax Court examined an organization that claimed exemption under section 508(c)(1)(A). The organization had only two members and seemed to have discouraged membership growth.[42] The Tax Court quoted the *Chapman* Bring Together Rule and declared that a "church is a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs" (*Eternal Life* Coherent Rule).[43] The Tax Court further stated:

> In other words, a church's principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith. . . . To qualify as a church an organization must serve an associational role in accomplishing its religious purposes (*Eternal Life* Association Rule).[44]

The Tax Court held that the organization "failed this threshold test" because the "record failed to establish . . . any associational role for purposes of worship" since growth was discouraged and the record did not reveal the nature or conduct of meetings other than "discussion of libertarian, economic or social issues."[45]

In *Spiritual Outreach Society* (SOS I),[46] the Tax Court analyzed an organization seeking church status under section 170(b)(1)(A)(i) that held bimonthly music programs (including prayer and congregational music) and conducted several retreats and weddings. The Tax Court quoted the *Chapman* Means Rule, the *Chapman* Bring Together Rule, the *American Guidance* Minimum Assembly Rule, the *Eternal Life* Association Rule, and the *Eternal Life* Coherent Rule.[47] It also examined the 14 Factors and found that many of them were not satisfied, including the organization not having its own songs or literature, ordained ministers, a school for the preparation of ministers, or Sunday school for the religious instruction of the young. Ultimately, the Tax Court held that the organization was not a church because its "musical festivals and revivals . . . and gatherings for individual meditation and prayer by persons who do not regularly come together as a congregation for such purposes" were not sufficient to satisfy the "cohesiveness factor which . . . is an essential ingredient of a 'church.'"[48]

The Eighth Circuit[49] affirmed the holding of the Tax Court (SOS II). The Eighth Circuit declared that it viewed the 14 Factors as "a guide, helpful in deciding what constitutes a church" and quoted the *American Guidance* Central Importance Rule.[50] The Eighth Circuit summarized the holding of SOS I — that the organization failed to fulfill an associational requirement and some factual requirements — and found that the organization did not satisfy the 14 Factors and accordingly did not reach the associational requirement issue.[51]

In *Purnell v. Commissioner*,[52] the Tax Court examined donations made to an organization that claimed to be a

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[41]86 T.C. 916 (1986). Although this is not a section 170(b)(1)(A)(i) case, it is discussed here because so many section 170(b)(1)(A)(i) cases quote it.

[42]*Id.* at 924-925.

[43]*Id.* at 924. The Tax Court does not mention the 14 Factors anywhere in its opinion.

[44]*Id.*

[45]*Id.* at 925. *See Church of the Visible Intelligence That Governs the Universe v. U.S.*, 53 A.F.T.R. 2d 84-406, 412-413 (Cl. Ct. 1983) (holding that an organization, which had three members, no ordained ministers, no places of worship, no formal religious instruction, and no formal code of doctrine, was not a church because it "satisfied few of the 14 requirements in the IRS guidelines and fails" the *American Guidance* Minimum Assembly Rule; the claims court further said that if membership does not extend beyond the immediate family, the organization seems to be engaged in "a private religious enterprise, rather than a church"); *Junaluska Assembly Housing, Inc. v. Comm'r*, 86 T.C. 1114, 1117 (1986) (holding that an organization that provided housing for a separate church's activities was not itself a church); *Universal Bible Church, Inc.*, T.C. Memo. 1986-170 (denying section 170(b)(1)(A)(i) status to an organization that conducted worship services in various individuals' homes because it did not "include a body of believers that assembles regularly to worship" — citing reg. section 1.511-2(a)(3)(ii) and the *American Guidance* Minimum Assembly Rule); *Universal Life Church, Inc. v. Comm'r*, 83 T.C. 292 (1984) (holding than an organization did not qualify for exemption under section 501(c)(3) because "nothing in the administrative record showed that [the organization] had a regular place of worship, held regular worship services, or performed any religious functions"); and LTR 200830028 (denying section 170(b)(1)(A)(i) status to an organization that had a street ministry but no regular services, ordained ministers, or instruction for the young, and the membership consisted of only four members of one family, because although a small congregation does not disqualify an organization from being a church, if such an organization is "not actively engaged in trying to acquire new

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members it will not qualify for exemption," and it lacked all of the significant 14 Factors and most of the other 14 Factors. Further, it did not qualify under section 501(c)(3) because it violated the prohibition on private benefit). *See also* LTR 200846040 (quoting the 14 Factors and the *American Guidance* Central Importance Rule, the IRS denied 170(b)(1)(A)(i) status to an organization because it met few of the 14 Factors: members are not required to dissociate from other churches; there is no effort to increase membership; there is no clergy of its own; it does not perform rituals; and there is no ecclesiastical government or school for the youth. The IRS also ruled that the organization did not qualify under section 501(c)(3) because it was organized for a substantial nonexempt purpose).

[46]T.C. Memo. 1990-41.

[47]The Tax Court slightly revised the *Eternal Life* Coherent Rule, replacing "coherent" with "cohesive": A church is a "cohesive group of individuals who join together to accomplish the religious purposes of mutually held beliefs."

[48]The Tax Court also noted that this case contrasted with *Foundation I* (discussed below), in which the "critical association factor was present."

[49]*Spiritual Outreach Society v. Comm'r*, 927 F.2d 335 (8th Cir. 1991).

[50]*Id.* at 339. The circuit court also expressly declined to comment on the validity of the *De La Salle* Common Meaning Rule.

[51]*Id.* at 338.

[52]T.C. Memo. 1992-289. *See VIA*, T.C. Memo. 1994-349 (denying 170(b)(1)(A)(i) status to a religious organization that published a newsletter and sold nutritional food supplements

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church under section 170(b)(1)(A)(i). The Tax Court quoted the *Chapman* Means Rule, the *Chapman* Bring Together Rule, the *American Guidance* Minimum Assembly Rule, the *Eternal Life* Association Rule, and the *Eternal Life* Coherent Rule, and called them the test for the meaning of ''church.'' The Tax Court then analyzed the organization under the 14 Factors and held that it was a church. The court said that although the organization did not have a definite and distinct ecclesiastical government, ordained ministers, or schools to prepare ministers, it did have a form of worship, a code of doctrine and discipline, literature, a place of worship, regular congregations, and regular services. Also, it was not a one-family church, the Tax Court said.

In TAM 9624001, the IRS denied section 170(b)(1)(A)(i) status to an organization with missionaries that traveled and taught at various congregations and distributed teachings through radio and printed literature, but did not have a facility of its own. The IRS listed the 14 Factors, described the *American Guidance* Central Importance Rule, quoted the *Eternal Life* Coherent Rule[53] and the *American Guidance* Minimum Assembly Rule, and summarized the holding of *De La Salle*, *Chapman*, *American Guidance*, Foundation I (discussed below), and GCM 38982 (discussed below). The IRS declared that a church must have a ''regular congregation and an established place of worship.'' Thus, it ruled the organization at issue was not a church because without facilities it could not ''have a place of worship where its members congregate,'' and regular radio listeners do ''not constitute a regular congregation.''[54]

E. The Saga of the Foundation for Human Understanding

In GCM 38982 (1983), the IRS examined the Foundation for Human Understanding (FHU),[55] which had requested church designation under section 170(b)(1)(A)(i). The IRS determined that although FHU could make a ''plausible argument that a portion of its activities satisfies a sufficient number of the significant criteria'' among the 14 Factors, the primary purpose of the organization's activities was the ''promulgation of its religious beliefs and doctrines through a religious broadcasting and publishing service with related tape recording activities, rather than through the operation of a church within the common usage of that term.'' Thus, church status was denied because church activities were ''insignificant in comparison to and incidental to its religious broadcasting and publication activities.'' Four years later, in *Foundation of Human Understanding v. Comm'r* (*Foundation I*),[56] the Tax Court issued an opinion on FHU, which had brought suit in response to the denial of section 170(b)(1)(A)(i) status. The Tax Court opinion provided facts that were not mentioned in GCM 38982: FHU regularly conducted religious services at two locations, operated a school and one or more thrift stores and spread its teachings through broadcasting and publishing.[57] FHU did not require that its adherents dissociate from other churches, but many considered FHU to be their only church. The Tax Court quoted the *Chapman* Means and Minimum Assembly Rules, the *American Guidance* Central Importance Rule, and the 14 Factors.[58] The Tax Court declared that ''when bringing people

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because the organization only satisfied, at most, two of the 14 Factors and, even if its meetings were viewed as worship, they were incidental to the organization's other activities; unlike *Purnell*, the Tax Court here stated there is no ''rigid test'' for church status, though it quoted the 14 Factors and the *American Guidance* Minimum Assembly Rule); and *William R. Richardson v. Comm'r*, T.C. Memo. 1995-302, *aff'd* in unpublished opinion, 91 F.3d 154 (9th Cir. 1996) (in the context of donations made to a one-person organization, the Tax Court defined a church as ''a group of people gathering together as part of an organized entity'' and held that the organization at issue was not a church) (citing *U.S. v. Jeffries*, 854 F.2d 254 (7th Cir. 1988), *Church of Eternal Life & Liberty, Inc. v. Comm'r*, 86 T.C. 916 (1986) and *Hansen v. Comm'r*, 820 F.2d 1464 (9th Cir. 1986) (holding that a deduction was not allowed because the donation was not a gift and the recipient church was not organized exclusively for religious purposes). The *Richardson* Tax Court also listed the 14 Factors in a footnote.

[53]Once again, the word ''cohesive'' replaced the word ''coherent.'' *See* note 47.

[54]*See* LTR 200926049 (after quoting the *American Guidance* Minimum Assembly Rule and the *Chapman* Means Rule, the IRS ruled that an organization that held ''services'' in the form of telephone conversations with ''members'' was not a section 170(b)(1)(A)(i) church because its ''participants do not assemble regularly, which is a minimum requirement.'' The IRS also noted that the organization did not meet eight of the 14 Factors.); LTR 200912039 (denying section 170(b)(1)(A)(i) status to an organization because it failed to meet most of the 14 Factors, ''especially those that are considered the most important''; the organization had no meetings or established places of worship but posted sermons on its website weekly); LTR

(Footnote continued in next column.)

201044019 (ruling that an organization that did not have a regular place of worship and the activities of which consisted of ''weekly online discussions'' would not constitute a church because the founder and his family did not constitute a congregation and the online activities did not constitute a worship service; individuals do not ''come together at a specific time and there will be no interaction between individuals and [the organization's] minister''); LTR 200712047 (ruling that an organization was not a section 170(b)(1)(A)(i) church because it did not meet the ''central criteria,'' as it acted primarily as an incubator for new churches and its affiliated churches were separate and distinct from the organization and the organization itself did not have a ''regular, established congregation of members who meet together, as a church, for regular worship services and instruction of the young''). *See also* LTR 200712046 (using the same analysis as that in LTR 200712047, the IRS denied section 170(b)(1)(A)(i) status to a similar organization that established and provided training for other autonomous churches); LTR 200727021 (also using a similar analysis as that in LTR 200712047, the IRS denied section 170(b)(1)(A)(i) status to an organization that acted as an incubator for new churches in various countries); and LTR 200502044 (denying church status to an organization that held regular Bible study and Sunday services because only two of the 14 Factors were satisfied and the organization did not have, other than the small Bible study groups, a ''body of believers who assemble regularly in order to worship'').

[55]TAM 9624001 indicates that the organization in GCM 38982 is FHU.

[56]88 T.C. 1341 (1987), *acquiesced by* the IRS 1987-2 C.B. 1.

[57]88 T.C. at 1347.

[58]*Id.* at 1357-1358.

together for worship is only an incidental part of the activities of a religious organization, those limited activities are insufficient to label the entire organization a church'' (*Foundation* Incidental Rule).[59]

The Tax Court examined FHU under the 14 Factors and concluded that although FHU did not possess all of the 14 Factors, it did ''possess most of the criteria to some degree,'' and ''most of the Factors considered to be of central importance [were] satisfied.'' The court noted that many of the organization's followers considered the organization to be their only church and that regular worship services were held for congregations of between 50 and 350 persons in two locations.[60] The case presented ''a close question,'' but the Tax Court emphasized that the ''associational aspects are much more than incidental,'' in spite of substantial ''broadcasting and publishing efforts.''[61]

Several years later, in TAM 200437040, the IRS again examined FHU.[62] The IRS described some facts that had changed regarding FHU since *Foundation I*: FHU had sold its church buildings and no longer owned any building where regular services were conducted; in fact, FHU no longer conducted regular religious services, but conducted services on a seasonal basis. FHU also conducted several discussion groups and seminars each year, had performed five marriages during each year under examination, sold books and tapes, and regularly broadcast its teachings.

After summarizing *De La Salle* and *Chapman* and quoting the *De La Salle* Denomination Rule, the *American Guidance* Central Importance Rule, the *American Guidance* Minimum Assembly Rule, and the *Foundation* Incidental Rule, the IRS declared: ''Thus, both the courts and the Service agree that there is no bright-line test as to whether an organization is a religious organization or a church. Such a determination must be made based on the facts and circumstances of each case.'' Further, the IRS concluded that both *De La Salle* and *Chapman* showed that incidental churchlike activities cannot make an organization a church. The IRS ruled that FHU was no longer a church: It had no ''membership not associated with any other church,'' did not have an ''established regular congregation as it did when it held weekly services'' at its former facility, and did not possess ''regular church services which have been held to be a prerequisite for church status.'' Thus, it was ''predominantly a religious broadcaster'' and no longer had the ''minimum for church status — a body of believers or communicants that assembles regularly in order to worship.''[63]

After the publication of TAM 200437040, FHU sought a declaratory judgment from the U.S. Court of Federal Claims that FHU qualified as a church under section 170(b)(1)(A)(i) (*Foundation* II).[64] The claims court stated that ''it remains true that a coherent definition [of church does not] emerge from reviewing . . . the limited instances of judicial treatment.''[65]

The claims court said courts have developed at least three different approaches to determine whether a taxpayer qualifies as a church for purposes of section 170(b)(1)(A)(i).[66] First, the claims court summarized *De La Salle*, quoted the *De La Salle* Common Meaning Rule, and declined to adopt it as a test.[67] Second, the claims court discussed the 14 Factors and declared that it would apply them as a guide; it then quoted the *American Guidance* Central Importance Rule, but concluded that it did not believe that ''any problems resulting from a mechanical application of the fourteen Factors are likely to be ameliorated by determining that a lesser number of those factors'' are of central importance.[68] The claims court also stated that the *American Guidance* Minimum Assembly Rule created the associational standard and quoted part of the *Eternal Life* Association Rule as the associational test: ''An organization must serve an associational role in accomplishing its exempt purposes.''[69]

The claims court analyzed FHU under the 14 Factors and found that some, but not all, of the factors were satisfied. As in *Foundation I*, the case presented a ''close question'' when viewed in light of the 14 Factors alone.[70] The claims court also analyzed FHU under the associational test and described it as a threshold standard that religious organizations must satisfy to obtain church status.[71] The claims court concluded that because FHU no longer exhibited the ''associational characteristics which

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[59]*Id.* at 1357 (citing *De La Salle* and *Chapman*). *See also Church of Spiritual Technology v. U.S.*, 70 A.F.T.R. 2d 92-5233 (Cl. Ct. 1992) (the claims court determined that an organization was not a church because it did not satisfy the *Eternal Life* Coherent Rule, it satisfied only one of the 14 Factors, and its religious services were incidental to archiving its founder's works).

[60]*Id.* at 1359. The Tax Court preceded this analysis by declaring that ''although the criteria developed by the IRS are helpful in deciding what is essentially a fact question, whether petitioner is a church, we do not adopt them as a test.'' *Id.* at 1358.

[61]*Id.* Regarding the use of ''church'' throughout the code, the Tax Court noted that section 170(b)(1)(A)(i) recognition also would entitle FHU to the church benefits under sections 6033(a)(2)(A)(i), 410(c)(1)(B) and (d), 411(e)(1)(B), 412(h)(4), and 414(e); 508(c)(1)(A); 512(b)(14) and 514(b)(3)(E), 3309(b)(1); 5122(c); 6043(b)(1); and 7605(c). *Id.* at 1376 (quoting *Friends of the Society of Servants of God v. Comm'r*, 75 T.C. 209, 213 (1980) (noting the benefits of section 170(b)(1)(A)(i) status in holding that the Tax Court had jurisdiction under section 7428 to rule on 170(b)(1)(A)(i) status)).

[62]*See Foundation II*, 104 A.F.T.R. 2d 2009-5424 (2009) (discussing 2004 technical advice memorandum regarding FHU).

[63]Internal quotations omitted. The IRS also examined the political activities of FHU and possible inurement, but determined that FHU still qualified for section 501(c)(3) status. *See* LTR 200843032 (holding that an organization seeking section 170(b)(1)(A)(i) status did not qualify under section 501(c)(3) because of private inurement).

[64]*Foundation of Human Understanding v. U.S.*, 104 A.F.T.R. 2d 2009-5424 (2009).

[65]*Id.* at 5434 (quoting *American Guidance Foundation, Inc. v. U.S.* 46 A.F.T.R. 2d 80-5006 (D.C. Dist. Ct. 1980), *aff'd in unpublished opinion* (D.C. Cir. 1981)).

[66]*Id.*

[67]*Id.* at 5434-5435. 104 A.F.T.R. 2d 2009-5424.

[68]*Id.* at 5435-5436.

[69]*Id.* at 5445.

[70]*Id.*

[71]*Id.*

were critical'' to its church status in *Foundation I*, it was not a church.[72] And to the extent FHU did bring people together to worship, doing so was incidental to its main function, which was ''the dissemination of its religious message through radio and internet broadcasts, coupled with written publications.''[73]

FHU appealed the holding in *Foundation II*, and the Court of Appeals for the Federal Circuit affirmed (*Foundation* III).[74] The circuit court said that ''some consensus has emerged from court decisions.''[75] First, the courts largely agree that Congress intended a more restricted definition for a church than for a religious organization.[76] Second, ''the means by which an avowedly religious purpose is accomplished separates a church from other forms of religious enterprise.''[77] Third, the courts have relied mainly on the 14 Factors and ''on the associational test when addressing the distinction between a religious organization and a church under Section 170.''[78]

Regarding the 14 Factors, the circuit court stated that it shared the concern expressed in *Foundation II* and noted that courts have declined to accept the 14 Factors as a ''definitive test.''[79] The circuit court then declared that courts have been ''more receptive to the associational test as a means of determining church status under Section 170.''[80] The circuit court agreed that the associational test is an appropriate test for determining church status under section 170, though it recognized that the associational test and the 14 Factors substantially overlap since ''among the most important of the 14 criteria are the requirements of 'regular congregations' and 'regular religious services.'''[81] Thus, the circuit court concluded, whether applying the associational test or the 14 Factors, courts have held that to be considered a church under section 170(b)(1)(A)(i), ''a religious organization must create, as part of its religious activities, the opportunity for members to develop a fellowship by worshipping together.''[82]

Regarding FHU, the circuit court determined that 21 seminars at various locations did not establish that FHU conducted regular meetings or had a regular congregation; therefore, FHU did not satisfy the associational test — there was no ''regular assembly of a cohesive group of people for worship.''[83] Further, FHU's radio call-in show, did ''not provide individual congregants with the opportunity to interact and associate with each other in worship'' and therefore did not satisfy the associational test.[84]

[72]*Id.* at 5447.
[73]*Id.*
[74]*Foundation for Human Understanding v. U.S.*, 614 F.3d 1383 (Fed. Cir. Ct. App. 2010), *cert. denied*, 2011 WL 940894.
[75]*Id.* at 1388.
[76]*Id.*
[77]*Id.*
[78]*Id.*
[79]*Id.*
[80]*Id.* The circuit court cited the same language as *SOS I* to describe the associational test.
[81]*Id.* at 1389.
[82]*Id.*
[83]*Id.* at 1390.
[84]*Id.* at 1391.

III. Definition of Church Under Section 170(b)(1)(A)(i)

The cases and rulings discussed above involve facts and circumstances analyses to determine section 170(b)(1)(A)(i) status, but the language of some cases and rulings seems to indicate inconsistency or uncertainty as to which facts and circumstances are paramount. Part III will show that there is one test that is sufficient to determine section 170(b)(1)(A)(i) status in any jurisdiction.

A. *American Guidance* Test

American Guidance (the first case issued after the introduction of the 14 Factors and the first case to recognize them) added two important clarifications to the 14 Factors. First, the *American Guidance* Central Importance Rule established that some factors are more important than others: an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code.[85] Second, the *American Guidance* Minimum Assembly Rule established that a necessary element of a church is a ''body of believers . . . that assembles regularly in order to worship.'' Because the *American Guidance* Minimum Assembly Rule was introduced in a discussion of the 14 Factors, it is reasonable to think of it as an elaboration on the regular congregation or regular religious services factor.[86]

The IRS's approach generally has been to examine the 14 Factors in light of the *American Guidance* Central Importance Rule (though some rulings quote only the *American Guidance* Minimum Assembly Rule).[87] The Tax Court has decided the most cases and has not been

[85]Interestingly, this list does not match up perfectly with the 14 Factors. ''Established congregation'' is similar to factor 11 (regular congregations), ''organized ministry'' is similar to factor 7 (a complete organization of ordained ministers ministering to their congregations), ''regular religious services'' is the same as factor 12, ''religious education for the young'' is similar to factor 13 (Sunday school for the religious instruction of the young), but ''dissemination of doctrinal code'' is somewhat similar to factor 4 (formal code of doctrine and discipline) and somewhat similar to factor 9 (literature of its own), though none of the factors pertains to dissemination.
[86]*See* Louthian, Robert and Thomas Miller, 1994 EO CPE Text: ''A. Defining 'Church' — The Concept of a Congregation.'' The authors describe the *American Guidance* Minimum Assembly Rule and *Eternal Life* Coherent Rule as aspects of the regular congregation factor. *See also Foundation III*, 614 F.3d 1383, 1391 (Fed. Cir. 2010), *cert. denied*, 2011 WL 940894 (''among the most important of the 14 criteria are the requirements of 'regular congregations' and 'regular religious services'''').
[87]*See, e.g.*, LTR 200502044 and LTR 200926049 at note 54. A few rulings rely solely on the 14 Factors. *See, e.g.*, LTR 200209055 (ruling that a private foundation did not need to exercise expenditure responsibility because the recipient was qualified under section 170(b)(1)(A)(i); the IRS determined that the recipient qualified because it possessed all 14 Factors, and the IRS did not cite any court cases); LTR 200530028 (ruling that an organization was a church under section 170(b)(1)(A)(i) because it satisfied most of the 14 Factors, notably by holding more than 100 weekly services at various locations, each with a regular congregation, in addition to weekly Bible studies); and TAM

(Footnote continued on next page.)

entirely consistent in its approach to section 170(b)(1)(A)(i), but most of the Tax Court cases also have examined the 14 Factors in light of the *American Guidance* Central Importance Rule.[88] The one Seventh Circuit case applied the 14 Factors in light of the *American Guidance* Central Importance Rule[89] and the only D.C. Circuit case is *American Guidance*.[90]

Thus, the majority approach to analyzing whether an organization is a church is to examine the facts and circumstances through the lens of the 14 Factors, the *American Guidance* Central Importance Rule, and the *American Guidance* Minimum Assembly Rule (*American Guidance* Test).[91]

B. Association-Only Test

The term ''associational test'' first appears in SOS I, but its roots are deeper, as has been shown above. The concept was introduced by the *Chapman* Bring Together Rule, and almost 20 years later, the *American Guidance* Minimum Assembly Rule was pronounced. Later, the Tax Court declared the *Eternal Life* Association Rule based on the reasoning of the *Chapman* Bring Together Rule. SOS I used, but did not define, the term ''associational test''; nonetheless, the SOS I Tax Court (and later, the Foundation III circuit court) described it by the enumeration of the *Chapman* Means Rule, the *Chapman* Bring Together Rule, the *American Guidance* Minimum Assembly Rule, the *Eternal Life* Association Rule, and the *Eternal Life* Coherent Rule. Later, the Purnell Tax Court quoted the enumeration of these rules in SOS I as ''the test'' for a church.[92] The claims court in Foundation II stated that the *American Guidance* Minimum Assembly Rule created the associational standard and quoted part of the *Eternal Life* Association Rule as the associational test: ''an organization must serve an associational role in accomplishing its exempt purposes.''[93] Foundation III cites the same rules as SOS I as its description of the associational test. Ultimately, the various statements of the associational test do not vary substantively from the *Chapman* Minimum Assembly Rule. Therefore, when analysis has been performed under a version of the associational test in connection with the 14 Factors, the analysis is no different than if it had been done under the *American Guidance* Test.[94]

However, an associational test has sometimes been applied without examining the 14 Factors (Association-Only Test).[95] Whereas the *American Guidance* Test provides that association is a necessary element of a church, the Association-Only Test provides that association is a sufficient element of a church. In other words, because the Association-Only Test is not substantially different from the *American Guidance* Minimum Assembly Rule, all

8833001 (ruling that an organization was a church under section 170(b)(1)(A)(i) because it satisfied 13 of the 14 Factors).

[88]*See, e.g.*, *Foundation I*, 88 T.C. 1341, 1351 (1987), *acquiesced by* IRS (1987-2 C.B. 1); *First Church of in Theo v. Comm'r*, T.C.M. 1989-46 (after quoting or describing the *American Guidance* Minimum Assembly Rule, the *Chapman* Bring Together Rule, the *Eternal Life* Association Rule, and the 14 Factors, the Tax Court concluded that an organization was not a church under 170(b)(1)(A)(i) because its ''religious purposes were accomplished through the writing, publishing, and distribution of religious literature rather than through the regular assembly of a group of believers to worship together,'' the organization did not ''ever plan to have members,'' and it did not satisfy many of the 14 Factors and failed to satisfy the ''threshold criteria of communal or associational activities necessary for a church''); and *VIA*, T.C. Memo. 1994-349. But compare Church of *Eternal Life & Liberty, Inc. v. Comm'r*, 86 T.C. 916 (1986) and *Universal Bible Church, Inc.*, T.C. Memo. 1986-170, in which the Tax Court looked only at associational aspects and did not examine the 14 Factors. In *Richardson*, the most recent case, the Tax Court defined a church as ''a group of people gathering together as part of an organized entity'' and listed the 14 Factors in a footnote (though *Richardson* did not require detailed analysis because it involved a one-person church).

[89]*U.S. v. Jeffries*, 854 F.2d 254 (7th Cir. 1988) (in the context of potential liability for willfully evading income tax when the taxpayer claimed he was exempt as a one-person church, the circuit court denied church status because, as in *American Guidance*, ''there was no established congregation served by an organized ministry, no regular religious services, and no dissemination of a doctrinal code''). *See also Dube v. U.S.*, 74 A.F.T.R. 2d 94-5473 (Bankruptcy Ct. IL 1994), *aff'd*, 75 A.F.T.R. 2d 95-2482 (N.D. Ill. 1995) (the bankruptcy court, after quoting the 14 Factors, the *American Guidance* Central Importance Rule, and the *American Guidance* Minimum Assembly Rule, denied church status to an organization that hosted Bible study for members of another church because the organization did not have its ''own body of believers, the minimum requirement to be considered a church''). There are several other court cases that analyze whether a purported church is really just a tax avoidance device; these generally do not examine whether the purported church qualifies for church status. *See, e.g.*, Lynch, T.C. Memo. 1980-464 (in the context of determining whether a purported church had ''an existence separate from the petition'' or was ''merely a device to avoid [taxpayer's] income taxes''; the Tax Court determined it was the latter, without citing authority, because the purported church had no congregation, members, building, regular worship services, beliefs, creed, pastoral duties, or record of performing sacraments, and its funds were used for personal living expenses).

[90]The only other case that is close is *Fields v. U.S.*, 81 A.F.T.R. 2d 98-1625, 1626 (D.C. Dist. Ct. 1998) (in response to a claim that the 14 Factors were unconstitutional, the district court held that the plaintiff did not have standing to bring the claim and that courts have ''repeatedly sanctioned the use of section 501(c)(3) of the IRS Code and the IRS's fourteen-point test to determine what organizations should be given tax exempt status'').

[91]Although some of the cases and rulings only reference the *American Guidance* Central Importance Rule or the *American Guidance* Minimum Assembly Rule, the results of all such cases and rulings are consistent with both, and because both arose in the same paragraph of the same case, it is appropriate to group them together for purposes of formulating a test.

[92]T.C. Memo. 1992-289.

[93]104 A.F.T.R. 2d at 2009-5426.

[94]*See, e.g.*, *Foundation I*, 88 T.C. 1341, 1351 (1987), *acquiesced by* IRS (1987-2 C.B. 1); *First Church of in Theo v. Comm'r*, T.C.M. 1989-46; *SOS I*, T.C. Memo. 1990-41; *Purnell v. Comm'r*, T.C. Memo. 1992-289; and *VIA*, T.C. Memo. 1994-349.

[95]*See, e.g.*, *Church of Eternal Life & Liberty, Inc. v. Comm'r*, 86 T.C. 916 (1986); *Universal Bible Church, Inc.*, T.C. Memo. 1986-170; and *Foundation III*, 614 F.3d 1383, 1391 (Fed. Cir. 2010), *cert. denied*, 2011WL 940894.

organizations that meet the *American Guidance* Test will meet the Association-Only Test. It is theoretically possible that an organization might satisfy the Association-Only Test and fail the *American Guidance* Test, but no such case has been presented to date.[96]

C. Other Approaches

Regarding the other jurisdictions, the approaches seem different at face value, but they likewise can be collapsed into the *American Guidance* Test. For example, the *De La Salle* Common Meaning Rule seems to establish a different test for church than the *American Guidance* Test or Association-Only Test. In fact, many jurisdictions have taken exception to the *De La Salle* Common Meaning Rule.[97] But others have argued for its consistency with the facts and circumstances approach. For example, in GCM 38982 the IRS stated that *De La Salle* ''provides the correct approach in principle, essentially a facts and circumstances analysis,'' to the issue of incidental churchlike activities.[98] Also, it is important to remember that *De La Salle* was the first opinion issued on the definition of ''church''; it preceded the introduction of the 14 Factors; it pertained to the meaning of church under the UBIT rules; and it was resolved based on the incidental nature of the churchlike activities, not the failure to satisfy any church-specific criterion. Further, no other jurisdictions have adopted the *De La Salle* Common Meaning Rule and no other cases have been decided by the Ninth Circuit on the definition of church.[99] Thus, although the *De La Salle* Common Meaning Rule on its face differs from the *American Guidance* Test, it does not establish a distinct section 170(b)(1)(A)(i) test.

Similarly, the district court in *Christian Echoes National Ministry, Inc. v. U.S.*,[100] determined that an organization was a church because its ''organization and structure, its practices, precepts, and activities provide all the necessary elements of and is legally defined a 'church' in the ordinary accepted meaning of the term and as used in the Internal Revenue Code of 1954, its amendments and applicable regulations.''[101] This case was decided before *American Guidance* and before the 14 Factors were introduced. It did not cite any precedents, nor did it involve a detailed analysis of the issue of church status. The decision was overturned on other grounds without further discussion of church status, and no subsequent Tenth Circuit cases have examined church status. Although the Christian Echoes analysis on its face differs from the *American Guidance* Test, like *De La Salle* it does not establish a distinct section 170(b)(1)(A)(i) test.

The district court in *Williams Home, Inc. v. U.S.*[102] examined a retirement home and a girls' shelter using the 14 Factors without the *American Guidance* Central Importance Rule or *American Guidance* Minimum Assembly Rule (though it chronologically followed *American Guidance* and cited that case's recognition of the 14 Factors).[103] Nonetheless, *Williams Home* also arguably does not present a deviation from the *American Guidance* Test because the organizations at issue in *Williams Home* possessed at most three factors — distinct legal existence, established place of worship, and regular religious services — and no subsequent Fourth Circuit cases have examined church status. In fact, the court emphasized that neither organization had a regular congregation of worshippers, which is consistent with the *American Guidance* Test.

Finally, the Eighth Circuit's approach in SOS II varies somewhat from the *American Guidance* Test because the court first examined the 14 Factors and did not ''reach the associational requirement'' issue because the organization at issue did not satisfy the 14 Factors.[104] Noting the *American Guidance* Central Importance Rule, the circuit court determined that the organization at issue was not a church because it did not have an established congregation served by an organized ministry and there was no religious education of the young. This approach will not lead to different results from the *American Guidance* Test.

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[96]One example might be a new organization with members that gather together to pray to a Supreme Being and have discussions about leading a moral life and following a Supreme Being, but the organization does not have any ecclesiastical government, code of doctrine, ministers, literature, Sunday school, or school to prepare ministers. Such an organization arguably would satisfy the Association-Only Test but may not satisfy the *American Guidance* Test because it meets at most six of the 14 Factors and two of the five factors of the *American Guidance* Central Importance Rule.

[97]*See, e.g.*, SOS II, 927 F.2d 335, 339 (8th Cir. 1991) (declining to comment on the validity of the *De La Salle* Common Meaning Rule) and *Foundation II*, 35. 104 A.F.T.R. 2d 2009-5425, 5435 (Cl. Ct. 2009) (declining to adopt the *De La Salle* Common Meaning Rule).

[98]*See* SOS I, T.C. Memo. 1990-41 (the Tax Court declared that it takes ''a common sense approach'' and was basing its meaning of church on ''ordinary, everyday parlance'').

[99]A case in the Ninth Circuit that is about a church but did not examine its church status is *Morey v. Riddell*, 205 F. Supp. 918 (S.D. Cal. 1962) (holding that a church was not disqualified from receiving charitable contributions on the grounds that it did not have a name, articles of incorporation, or bylaws). Also, in an unpublished opinion, the Ninth Circuit affirmed *Richardson* on the grounds that the petitioner failed to meet his burden of establishing that he satisfied the requirements of section 501(c)(3). 91 F.3d 154 (9th Cir. 1996).

[100]28 A.F.T.R. 2d 71-5934 (N.D. Okla. 1971), *rev'd on other grounds*, 470 F.2d 849 (10th Cir. 1972), cert. denied 414 U.S. 864 (1973). The reversal was based on the organization's substantial and continuous lobbying activities; the definition of church was not discussed by the circuit court. The circuit court provided the oft-quoted statement that ''tax exemption is a matter of legislative grace and taxpayers have the burden of establishing their entitlements to exemptions.'' 470 F.2d at 854.

[101]28 A.F.T.R. 2d at 71-5945.

[102]540 F.Supp. 310 (Va. Dist. Ct. 1982).

[103]The district court held that neither organization constituted a church because they only had ''a distinct legal existence, and perhaps an established place of worship and regular religious services,'' but there was no regular congregation of worshipers at the services because most or all attended other churches. *Id.* at 316-317.

[104]*Id.* at 338.

As far as I can tell, the other circuits have not considered the definition of church under section 170(b)(1)(A)(i).[105]

Hence, there are arguably six different church tests: the *American Guidance* Test, the Association-Only Test, the *De La Salle* Common Meaning Rule, *Christian Echoes, Williams,* and SOS II. SOS II, *Williams*, and the Association-Only Test are clearly consistent with the *American Guidance* Test. *De La Salle* and *Christian Echoes* should not be characterized as competing tests because they preceded the 14 Factors and *American Guidance* and have not been applied since their initial use. And, as a practical matter, none of the tests have led to a result that would not be reached under the *American Guidance* Test. Thus, even though some of the tests of section 170(b)(1)(A)(i) status seem on their face to vary from the *American Guidance* Test, that test subsumes all other approaches and accordingly may be used as the test for section 170(b)(1)(A)(i) status in all jurisdictions.

IV. Section 170(b)(1)(A)(i) Points of Agreement

In addition to general agreement on the *American Guidance* Test, there are some other ancillary issues regarding the application of the test on which the courts and the IRS agree. First, there is general agreement that to qualify under section 170(b)(1)(A)(i), an organization must satisfy the requirements of section 501(c)(3).[106] In fact, in general, the question of whether an organization is a church is generally examined only if it has already been determined that the organization qualifies for exemption as an organization described under section 501(c)(3).[107] Second, as discussed in Foundation III, there is general agreement that Congress intended that the word "church" have a more narrow meaning than a religious organization; this has been stated expressly in several jurisdictions[108] and otherwise implied by others that have considered the definition of church. Third, also as discussed in Foundation III, there is general agreement with the *Chapman* Means Rule: "the means by which an avowedly religious purpose is accomplished separates a 'church' from other forms of religious enterprise."[109]

Fourth, all the jurisdictions that have considered it have agreed that incidental church activity is insufficient to establish an organization as a church.[110] None of the rulings or opinions have expressly defined incidental, but there is some evidence that it is interpreted as "less than principal."[111]

Fifth, all the jurisdictions that have considered "one person" or "one family" organizations agree that they cannot constitute a church. One of the concerns here, of course, is private benefit and private inurement,[112] but even when violations of such doctrines are absent, there is consensus that a congregation cannot consist of one person or one family.[113] Similarly, inherent in the definition of congregation is the effort to grow; small organizations that do not grow (even if the members are not from the same family) do not qualify.[114]

Sixth, physical gathering, rather than virtual or audio gathering, is required to satisfy the associational requirements of section 170(b)(1)(A)(i) status.[115]

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[105]*See Tennessee Baptist Children's Home, Inc. v. U.S.*, 604 F.Supp 210, 212 (D.C. Tenn. 1984), *aff'd*, 790 F.2d 534 (6th Cir. 1986) (the district court stated that the 14 Factors "used by the IRS and the courts to determine whether an entity is a church should only be considered when a party claims that an entity is a church" and in this case the trial evidence clearly showed that the organization members did not consider it a church, so the district court did not rule on whether the organization was a church).

[106]But an organization does not need to be recognized by the IRS as an exempt organization described under section 501(c)(3). *Cf.* GCM 38916 (1982) and GCM 36078 (1974).

[107]*See, e.g.*, *Bubbling Well Church of Universal Love, Inc. v. Comm'r*, 670 F.2d 104 (9th Cir. 1981) (not reaching the issue of section 170(b)(1)(A)(i) status because the organization was disqualified from section 501(c)(3) status because of private inurement); LTR 200817043 (despite summarizing the precedents and rules on section 170(b)(1)(A)(i) status, including the 14 Factors and *American Guidance*, the IRS did not consider section 170(b)(1)(A)(i) status because it determined that the organization did not qualify for section 501(c)(3) status because of a substantial commercial nonexempt purpose); and LTR 200851027 (discussing requirements for section 170(b)(1)(A)(i) status, but ultimately not ruling thereon because the organization had a substantial nonexempt purpose). *Cf.* LTR 200846040 (discussing 170(b)(1)(A)(i) status after determining that the organization is not exempt as an organization described under section 501(c)(3)). A detailed discussion of the organizational and operational tests, prohibition on private inurement, and other section 501(c)(3) requirements are beyond the scope of this paper.

[108]*De La Salle Institute v. U.S.*, 195 F. Supp. 891, 897-98 (N.D. Cal. 1961); GCM 36078, *Vaughn v. Chapman*, 48 T.C. 358, 363 (1967); Rev. Rul. 74-224, 1974-1 C.B. 61; *Williams Home, Inc. v. U.S.*, 540 F.Supp. 310, 317 (Va. Dist. Ct. 1982).

[109]*Chapman*, 48 T.C. at 367. *See American Guidance Foundation, Inc. v. U.S.* 46 A.F.T.R. 2d 80-5006, 5007-08 (D.C. Dist. Ct. 1980), *aff'd in unpublished opinion* (D.C. Cir. 1981); *Church of Eternal Life & Liberty, Inc. v. Comm'r*, 86 T.C. 916, 924 (1986); *First Church of in Theo v. Comm'r*, T.C.M. 1989-46; *SOS I*, T.C. Memo. 1990-41, T.C. Memo. 1990-41; *SOS II*, 927 F.2d 335, 339 (8th Cir. 1991); *Purnell v. Comm'r*, T.C. Memo. 1992-289; *VIA*, T.C. Memo. 1994-349; TAM 200437040; and LTR 200926049.

[110]*De La Salle Institute v. U.S.*, 195 F. Supp. 891 (N.D. Cal. 1961) (operation of chapels was incidental to principal activities); GCM 38982 (church activities of FHU were "insignificant in comparison to and incidental to its religious broadcasting and publication activities"); *Foundation I*, 88 T.C. 1341, 1351 (1987), *acquiesced by IRS* (1987-2 C.B. 1) (associational aspects of FHU were not incidental to broadcasting); *VIA*, T.C. Memo. 1994-349 (religious activities were incidental to publishing a newsletter and selling nutritional food supplements); and TAM 200437040 (FHU's church activities were incidental to broadcasting activities).

[111]*See De La Salle*, 195 F. Supp. 891 at note 110 above; and GCM 38982 (concluding that FHU was not a church because its primary purpose was broadcasting and publishing).

[112]*See, e.g.*, TAM 200437040 (examining FHU under the private inurement doctrine); and *Universal Life Church v. Comm'r*, 83 T.C. 292 (1984) at note 45 above.

[113]*See American Guidance*, 46 A.F.T.R. 2d at 80-5008; *Visible Intelligence*, 53 A.F.T.R. 2d at 413; and LTR 200830028.

[114]*See, e.g., Church of Eternal Life & Liberty, Inc. v. Comm'r*, 86 T.C. 916, 925 (1986); and LTR 200830028.

[115]*See Foundation I*, 88 T.C. 1341, 1360 (1987), *acquiesced by IRS* (1987-2 C.B. 1) (contrasting the radio broadcasts of FHU with its associational aspects); LTR 9624001 (radio listeners do not

(Footnote continued on next page.)

V. Definition of Church Under Other Sections

Common sense and rules of statutory interpretation[116] compel a consistent interpretation of the word ''church'' in the various sections of the code (except when the code otherwise provides).[117] In other words, if an organization qualifies as a church under section 170(b)(1)(A)(i), it also should qualify as a church under other provisions of the code. Several court cases and IRS rulings directly support this interpretation. For example, in Foundation I, the Tax Court said if an organization were recognized under section 170(b)(1)(A)(i), it would qualify under sections ''6033(a)(2)(A)(i), 410(c)(1)(B) and (d), 411(e)(1)(B), 412(h)(4), and 414(e); 508(c)(1)(A); 512(b)(14) and 514(b)(3)(E), 3309(b)(1); 5122(c); 6043(b)(1); and 7605(c).''[118] And in GCM 39782 (1989), in the context of seeking exemption from FICA under section 3121(w), the General Counsel's office declared that the term ''church'' under section 3121(w) ''applies only to churches described in section 501(c)(3) and 170(b)(1)(A)(i).''[119]

Many other cases and rulings, while not expressly providing that section 170(b)(1)(A)(i) status is sufficient for church status under other sections, imply it is sufficient by basing their analysis on the holdings and reasoning of section 170(b)(1)(A)(i) cases and rulings. For example, in *Lutheran Social Service of Minnesota v. U.S.*,[120] the Eighth Circuit affirmed the denial of church status under section 6033 for an organization that had the primary activity of ''providing a wide variety of social services to the public at large.''[121] The circuit court set forth reg. section 1.511-2(a)(3)(ii), the 14 Factors, the *American Guidance* Minimum Assembly Rule, and the *American Guidance* Central Importance Rule.[122] The circuit court based its holding on the fact that ''there is not evidence in the record that regular worship services are held'' and the ''primary activities consist of providing social services to the public at large irrespective of their religious beliefs.''[123]

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constitute a regular congregation); and LTR 201044019 (online activities do not constitute a worship service). *See also* Coxe, Matson, ''Recent Development: Here is the Church, Where is the Steeple: *Foundation of Human Understanding v. United States*,'' 89 N.C.L. Rev. 1248 (May 2011) (discussing church status for Internet churches).

[116]There is a rule of statutory construction that ''identical words used in different parts of the same Act are intended to have the same meaning.'' *C.I.R. v. Lundy*, 516 U.S. 235, 249-250 (1996) (internal quotations omitted) (equating the use of the word ''claim'' under section 6512 with ''claim'' under 6511(a)). *See also C.I.R. v. Keystone Consol. Industries, Inc.*, 508 U.S. 152, 159 (1993) (the code should be given ''as great an internal symmetry as its words permit'') (internal quotations omitted).

[117]Section 7611, discussed in Section I of this paper, provides a separate definition of church that is not tied to section 170(b)(1)(A)(i), but section 170(b)(1)(A)(i) status is still sufficient for section 7611 status since the definition of church under 7611 is ''any organization claiming to be a church and any convention or association of churches.'' Section 7611(h).

[118]88 T.C. 1341 (1987). *See also High Adventure Ministries*, 80 T.C. 292 (1983) (noting that churches, within the meaning of section 170(b)(1)(A)(i), are ''not required to file an annual return by section 6033(a)''); and ''Update on Churches and Religion,'' 1980 EO CPE Text (''churches described in 170(b)(1)(A)(i) are not subject to the 508 notice requirements, do not have to file information returns under IRC 6033 . . .''). According to a Joint Committee on Taxation report, the same consistency across sections is found for organizations that qualify as a ''convention or association of churches.'' COMREP 77,011.003 (2005).

[119]*See* Rev. Rul. 80-59, 1980-1 C.B. 191 (for a minister to obtain an exemption from self-employment tax, the minister must establish that the church is described in sections 501(c)(3) and 170(b)(1)(A)(i)); and GCM 38910 (although ''organizations claiming church status and the corresponding benefits that the Code accords to churches'' are not required to file a Form 1023, they do need to ''demonstrate that they are described in section 501(c)(3) and section 170(b)(1)(A)(i)'') (revoking GCM 36078).

[120]583 F.Supp. 1298 (D.C. Minn. 1984).

[121]*Id.* at 1303.

[122]*Id.* at 1286-1287.

[123]*Id.* at 1287. *See* LTR 8046004 (ruling that an organization claiming church exemption under section 6033(a) did not qualify thereunder because, although it provided child care, foster care, and a variety of other charitable activities, it did not possess any of the 14 Factors); GCM 37116 (the general counsel's office said that the common thread to some section 170(b)(1)(A)(i) cases was whether the organization had ''a distinct congregation whose members did not maintain affiliation with other churches,'' and ruled that the organization at issue was not exempt as a church under section 6033(a) because it did not have that common thread and possessed few of the 14 Factors); *Foundation II*, 35. 104 A.F.T.R. 2d 2009-5425, 5429 (Cl. Ct. 2009) (approvingly citing *Lutheran Social Services of Minn. v. U.S.*, 583 F. Supp. 1298 (Dist. Minn. 1984), a section 6033(a) case, to describe the benefits of section 170(b)(1)(A)(i) status); IRS Publication 1328 at 22, 27 (2009) (churches that satisfy a combination of the 14 Factors together with other facts and circumstances are exempt from filing Form 990 and from the requirement to seek recognition of exempt status); *Universal Life Church, Inc. v. Comm'r*, 83 T.C. 292 (1984) (equating church status under section 508(c) with church status under section 6033(a)); GCM 37226 (1975) (determining that benefit plans of two religious orders were not church plans under section 414(e) because as in *De La Salle*, the orders were not churches because their principal activities were not religious, and incidental religious activities could not make them churches); GCM 39007 (1983) (confirming that GCM 37226 is correct as to whether an order is a church, but noting that church plan status no longer hinges on whether an order is a church); LTR 199942053 (because some organizations were exempt under section 170(b)(1)(A)(i), they qualified as churches, so the plans were church plans); LTR 9623065 (the IRS approved plans established by a section 170(b)(1)(A)(i) organization as church plans under section 414(e)(1), declaring without discussion that the organization was a church as contemplated under section 414(e)(1)). *Cf.* LTR 9114049 (the IRS determined that an organization's employees were employees of an organization controlled by or associated with a church because of the way the organization was structured and organized and because of its activities and the fact that it was an integral part of another church, but the fact that the organization itself was recognized under section 170(b)(1)(A)(i) was not part of the analysis); and LTR 9032037 (the IRS applied the same analysis as in LTR 9114049).

I am unaware of cases or rulings interpreting the word ''church'' under any sections other than those cited herein. One case that does not interpret ''church,'' but does provide a useful clarification, is *St. Martin Evangelical Church v. South Dakota*, 451 U.S. 772 (1981) (in a case involving unemployment compensation taxes and the term ''church'' under section 3309(b)(1), the

(Footnote continued on next page.)

VI. Conclusion

I recommend that the IRS and courts adopt the *American Guidance* Test as *the test* of church status under all sections of the code. This would not represent a substantive shift for the IRS or courts, but simply a recognition that the various approaches to determine church status are all subsumed in the *American Guidance* Test. Doing so would eliminate confusion and provide much-needed predictability and consistency to analyses of church status, so they play out less like a Rubik's Cube and more like a good game of checkers.

Glossary of Rules and Tests

14 Factors:

(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) a complete organization of ordained ministers ministering to their congregations;
(8) ordained ministers selected after completing prescribed courses of study;
(9) a literature of its own;
(10) established places of worship;
(11) regular congregations;
(12) regular religious services;
(13) Sunday schools for the religious instruction of the young; and
(14) schools for the preparation of its ministers.

***American Guidance* Central Importance Rule:** "While some of [the 14 Factors] are relatively minor, others, e.g. the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and dissemination of a doctrinal code, are of central importance."

***American Guidance* Minimum Assembly Rule:** "At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship."

***American Guidance* Test**: Examine the facts and circumstances through the lens of the 14 Factors, the *American Guidance* Central Importance Rule, and the *American Guidance* Minimum Assembly Rule.

Association-Only Test: Apply only the *American Guidance* Minimum Assembly Rule/*Chapman* Bring Together Rule/*Eternal Life* Association Rule/*Eternal Life* Coherent Rule.

***Chapman* Denomination Rule:** Congress intended "church" to "be synonymous with the terms 'denomination' or 'sect' rather than to be used in any universal sense."

***Chapman* Bring Together Rule:** "The word 'church' implies that an otherwise qualified organization bring people together as the principal means of accomplishing its purpose."

***Chapman* Means Rule:** Look "not only at the purposes of the organization but the means by which those purposes are accomplished. . . . [R]eligious purposes and means are not enough."

***De La Salle* Common Meaning Rule:** "Leave the definition [of 'church'] to the common meaning and usage of the word."

***Eternal Life* Coherent Rule:** "A church is a coherent group of individuals and families that join together to accomplish the religious purposes of mutually held beliefs."

***Eternal Life* Association Rule:** "A church's principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith. . . . To qualify as a church an organization must serve an associational role in accomplishing its religious purposes."

Supreme Court held that the word "church" therein refers to "the congregation or hierarchy itself" rather than the physical house of worship; the Supreme Court expressly disavowed any intent to define or limit what constitutes a church under any provision of the code).