

## Religious Organizations: Select Issues

*UT Austin 40<sup>th</sup> Annual Nonprofit Institute*

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## The Panel

- Michael Durham is a shareholder at Kirton McConkie, Salt Lake City, Utah, and is Co-Chair of the ABA Tax Section Exempt Organizations Committee's Religious Organizations Subcommittee. His practice focuses on nonprofit organizations and especially the tax issues facing them.
- Regan VanSteenis has served for more than 20 years as Chief Legal Counsel of Lakewood Church and Joel Osteen Ministries. This has allowed her to be a part of some of the most distinctive transactions for churches around the globe, including the purchase of an NBA arena that now serves as the 16,000-seat home of Lakewood Church. In her role at Lakewood Church, she also had the privilege of overseeing the Human Resources Department. She represents churches and ministries all over America.

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## Topics

- Developments in the Definition of Church
- Child Safety
- Ministers and Intellectual Property
- Parsonage Allowance
- Ministerial Exception (time permitting)

## What is a church?

### Why it matters

- Special exemptions from Form 990 filing requirements
- Automatic public charity status (no public support test)
- Special tax rules for ministers of churches
- Special audit protections (section 7611)
- Church status for tax purposes sometimes used to define other religious exemptions (e.g., Affordable Care Act)

Note that these special protections are available to “associations of churches” as well, and in many but not all cases to “integrated auxiliaries” of churches and religious orders.

## What is a Church: IRS 14-Factor Test

- Distinct legal existence
- Recognized creed and form of worship
- Definite and distinct ecclesiastical government
- Formal code of doctrine and discipline
- Distinct religious history
- Membership not associated with any other church or denomination
- Organization of ordained ministers
- Ordained ministers selected after completing prescribed courses of study
- Literature of its own
- Established places of worship
- Regular congregations
- Regular religious services
- Sunday schools for the religious instruction of the young
- Schools for the preparation of its ministers

## What is a Church: the Courts

- Sometimes apply 14-factor test, but not committed to it
- *American Guidance Foundation v. United States*, 490 F. Supp. 304 (D.D.C. 1980), “**Associational Test**”:
  - More weight given to “the existence of 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.”
  - “At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship.”

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