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VIA FEDERAL EXPRESS

Ms. Pat Schneiders
Exempt Organizations Specialist
Internal Revenue Service
210 Walnut St., MC 4926 DSM
Des Moines, IA 50309-2109

Dear Ms. Schneiders:

On behalf of All Saints Church (the "Church") in Pasadena, California, I am writing to express concern regarding the Internal Revenue Service's ("IRS") compliance with the requirements of section 7611 of the Internal Revenue Code. As you know, section 7611 imposes certain procedural safeguards at the "church tax inquiry" stage in order to protect churches from unnecessary audits. Therefore, attention to procedural details in this case is critical to enforcing the legislative intent of the statute and to ensuring the clearest possible guidance regarding the legal framework in which churches operate.

Section 7611(a)(2) requires that, before initiating a church tax inquiry, an appropriate high-level Treasury Department official must reasonably believe (on the basis of facts and circumstances recorded in writing) that a church may not be tax-exempt under section 501(a). Section 7611(h)(7) defines "appropriate high-level Treasury official" as "the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region." This requirement is a key component of the set of the statutory safeguards that Congress enacted to ensure that churches are protected from overly intrusive IRS review.

After appropriate notice and opportunity for public comment, the Treasury Department and the IRS issued regulations, in "question and answer" form, further interpreting section 7611. Question 1 and its answer explicitly state that the IRS "may begin a church tax inquiry only when the appropriate Regional Commissioner (or higher Treasury official)" makes the "reasonable belief" determination. At the time, a Regional Commissioner was the highest level of career IRS employee, reporting directly to the Deputy Commissioner and

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Commissioner. The references to Regional Commissioners, of course, no longer comport with the IRS' structure; however, the regulations clearly provide for an alternative process – that the decision be made by a *higher* (emphasis added) official. Despite the clear language of the Code and regulations, all indications are that, relatively recently, the IRS assigned the “reasonable belief” determination to the Director of EO Examinations. We are not aware of any official modification of the regulations under section 7611, or any other adjustment of them that was subject to the same public notice and comment procedures as the regulations themselves that accomplished the delegation. In fact, the only official statement that we have been able to locate to date is in the Internal Revenue Manual in a section apparently added in June of 2004. See I.R.M. Section 4.76.7.4. This delegation contradicts the intent of section 7611. The Director of EO Examinations clearly is not a “principal” officer of the IRS, with duties and responsibilities comparable to those of a Regional Commissioner. Indeed, the Director of EO Examinations reports, not to the Commissioner, but to an official several levels below the Commissioner and has a relatively narrow area of responsibility, unlike a Regional Commissioner’s broad responsibility for all aspects of tax administration in a given region. Moreover, as noted, it appears that this delegation below the principal officer level was made solely by amending the Internal Revenue Manual, rather than through the more formal process for amending regulations.

Despite the clear language of the Code and regulations referencing the need for very high-level decision making, in a recently released internal memorandum, dated March 31, 2005, the Director of EO Examinations made an explicit delegation of the “reasonable belief” decision even lower within the IRS as part of procedures for the IRS’ Political Intervention Project. In an attachment to the memorandum entitled, “Political Intervention Procedures,” a directive is set out that “the EO Referral Committee will make the determination... whether a reasonable belief exists under Section 7611.” The EO Referral Committee is comprised of first-line technical employees in the EO Division including senior examiners, classification specialists, and group managers.¹ With all due respect to these employees, their positions within the agency are not those of a “high-level Treasury official,” and thus the delegation of authority from the Director of EO Examinations down to the EO Referral Committee would seem to further contradict the Congressional intent of section 7611.

These procedural flaws are of great importance in the All Saints case as we do not believe the IRS has articulated a sufficient explanation of the basis for its “reasonable belief”

¹ *Review of the Exempt Organizations Function Process for Reviewing Alleged Political Campaign Intervention by Tax Exempt Organizations*, February 17, 2005, at 12.

